

The Court Counts: A Stable Med Mal Environment Benefits All Ohioans

Patients injured as the result of negligence on the part of a health care provider are entitled to compensation for medical expenses, lost wages and pain and suffering, and pursuing a lawsuit is one course of action. But medical malpractice lawsuits are an expensive route to patient compensation, especially with much of the compensation in successful lawsuits going to legal fees and expenses. All claims, whether they result in payment to the claimant or not, require costs for investigation and legal expenses. They can

also result in defensive medicine and unnecessary testing at significant cost to patients. In addition, the medical malpractice system can be abused through unfounded claims and exorbitant awards. Larger numbers of claims and multi-million dollar awards result in higher premiums for physicians and hospitals – even those with spotless records. The direct costs health care providers will incur for medical malpractice liability – including premiums, settlements, awards and administrative costs not covered by insurance – is estimated to total approximately \$35 billion in 2009.¹

While a patient's ability to pursue compensation for medical negligence is important, an out-of-control medical malpractice environment negatively impacts all Ohioans through increased health care costs and jeopardized access to health care services. In the last decade, there has been a significant improvement in Ohio's medical professional liability environment. This is due in part to a shift in the ideology of the Ohio Supreme Court from one of an activist bench to one of judicial restraint. The balance of the court will be determined by the November election, with current Justices Maureen O'Connor and Judith Ann Lanzinger both on ballot, so hospital supporters need to educate themselves on the candidates and vote in the fall.

Ohio's Volatile Medical Liability Environment in 2004

In 2004, Ohio hospitals were seeing double- and triple-digit medical premium increases and fewer carriers while the state's physicians sustained double-digit premium increases, or in some cases, lack of available insurance. Physicians were leaving Ohio or not offering high-risk services such as obstetrics. Cleveland ranked among the most difficult medical liability insurance markets in the nation. Towers Watson estimated that medical malpractice lawsuits were costing the American economy \$28 billion per year.

Tort Reform Becomes Law, Supreme Court Balance Shifts

Many states, including Ohio, now have implemented some type of tort reform in an effort to protect the rights of those injured by negligence while also patrolling misuse of the medical malpractice laws. About a third of states have implemented caps on non-economic damages and two-thirds have reformed their rules re-

garding joint-and-several liability, where two or more people are liable for the same claim even if one person has only slight involvement. Effective April 2003, Ohio's General Assembly enacted Senate Bill 281, tort reform legislation that included a comprehensive set of tort reforms aimed at reducing the costs of litigation and stabilizing the Ohio medical professional liability insurance market. With the 2004 election, the balance of Ohio's Supreme Court shifted from an activist bench to one of judicial restraint.

In 2009, the Congressional Budget Office estimated that implementing a package of proposed national tort reforms could reduce U.S. spending on health care by about \$11 billion per year.²

Ohio's Current Medical Liability Environment

Though more time is needed to draw complete conclusions about the impact of

Ohio's tort reform, the state's medical liability insurance environment has shown strong improvement in recent years. The number of medical professional liability claims closed in 2008 showed a drop of nearly 40 percent from 2005, according to the Ohio Department of Insurance. Nearly 74 percent of medical malpractice claims closed in 2008 resulted in no payment to a claimant and the compensation paid to claimants remained steady, at an average of \$252,522 per claim. The cost of investigating and defending claims, even those that result in no award, is still substantial, with a cost of nearly \$113 million in 2008 (an average of \$42,000 per closed claim). The average cost of defending the claims has increased by over 70 percent since 2005.³ Ohio still ranked 12th in the U.S. for number of medical malpractice claims paid in 2008, so there is still progress to be made.⁴

The Importance of the Ohio Supreme Court

Tort reform is part of Ohio law, and the state supreme court is the final arbiter of any challenges to those statutes. The court has reaffirmed the constitutionality of damage limitations several times over the past five years but it has yet to rule specifically on medical non-economic damage caps. The make-up of the Ohio Supreme Court remains crucial to protecting the medical liability environment in Ohio and the balance of the court hinges on the November election. Hospital leaders, employees and supporters are encouraged to educate themselves on the candidates. The [League of Women Voters of Ohio](#) provides voter guides with candidate information and as the November election draws near, Friends of Ohio Hospitals will endorse candidates in these important races.

Closed Claim Year	2005	2006	2007	2008	Total
Total # Claims	5,051	4,004	3,451	3,080	15,586
# Claims with injury pre-tort reform	3,864	1,939	1,058	458	7,319
# Claims with injury post-tort reform	1,187	2,065	2,393	2,622	8,267
Average indemnity* pre-tort reform	\$307,899	\$342,091	\$556,191	\$422,498	\$363,646
Average indemnity* post-tort reform	\$171,299	\$235,677	\$213,065	\$221,685	\$214,495

* Payment made to claimant ** Senate Bill 281 Source: Ohio Department of Insurance

¹ [Congressional Budget Office](#)

² *ibid.*

³ [Ohio Department of Insurance](#)

⁴ [Henry J. Kaiser Family Foundation](#)