



The Ohio Orthopaedic Society

Summer Issue

September 2006

INSIDE THIS ISSUE:

New OOS Members	3
AAOS Update	5
Annual Meeting Wrap-Up	6

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Study Ranks States from Best to Worst in Tort Reform - Ohio Rated Near the Top

The U.S. Tort Liability Index 2006 Report, just released by the Pacific Research Institute, explains that states which have reformed their tort costs systems attract more jobs and businesses than states with high tort costs. The study's data ranks Texas

at the top and Vermont at the bottom in terms of monetary caps on damages and tort reforms. The study also categorizes states regarding their potential to keep and attract businesses. In considering variables among states,

researchers included monetary caps and legal rights and responsibilities in medical liability lawsuits, as well as areas such as product liability and number of cases per 100,000 residents.

~ See detailed analysis on page 2

Insurance Department Reports Lower Medical Malpractice Rate Increases for 2005

Department of Insurance Director Ann Womer Benjamin announced that the medical liability insurance rates of Ohio's top five medical malpractice insurers, which represent 66 percent of the market, increased only 6.7 percent in 2005, following rate increases of 20 percent in 2004 and about 30 percent in each of 2002 and 2003. Additionally, Medical Protective Company became the first medical malpractice insurer to lower its overall rates in Ohio in six years after the department accepted its five percent decrease for 2006. The National Association of Insurance Commissioners (NAIC) will be issuing its

annual profitability report in late January. The report is expected to show 2004 as the first profitable year for Ohio's medical malpractice insurance industry since 1997. A return to profitability combined with continued stability in loss experience may enable rates to level off and to possibly decrease, similar to those of Medical Protective. The department has proposed a rule that will require medical liability insurers to justify their rates to the department every year, even if they plan no changes to them. Medical malpractice non-economic damages were capped in 2003 by tort reform legislation as

another measure to control costs, since premiums are driven primarily by claims costs and lawsuit defense and settlement costs. Because insurers look at past data to estimate their future costs when setting rates, the impact of the reform legislation on rates will be clearer in a few years as pending lawsuits have worked through the court system. However, five major companies offering coverage have remained in Ohio despite difficult economic times, and two new companies have formed in Ohio to write medical malpractice insurance for the first time since the early 1990's.

Pacific Research Institute Releases First Objective State-by State Ranking of the Best and Worst Tort Systems in America

In the competition for jobs and capital investments among the states, those states that suffer from high tort costs will continue to lose jobs and businesses to states with superior tort systems, according to a new report released today by the Pacific Research Institute (PRI), a free-market think tank based in California. The U.S. Tort Liability Index: 2006 Report ranks all 50 states in terms of relative tort burdens and relative tort reforms.

“What’s unique about this study is that it uses objective data, and with that data, can predict the winners and losers in the race for jobs and business investment. For states that don’t institute reforms - a metric factored into the ranking - the writing is on the wall,” said Dr. Lawrence J. McQuillan, co-author of the study and director of Business and Economic Studies at PRI. “We hope that governors and state legislators will use the Index as a tool to assess their tort systems and enact laws that will improve their ranking, and as a consequence, the business climate in their state.”

Texas on Top; Vermont at the Bottom

“Our study found that Texas had the best overall tort climate in terms of relative burdens and relative reforms, Vermont has the worst,” said Dr. McQuillan. “By placing monetary caps on damages and instituting a wide range of tort reforms, state officials have made Texas very attractive for businesses - it’s no surprise that the state has had a strong economy.”

In addition to Texas, the top five states were Colorado, North Dakota, Ohio and Michigan. At the very bottom were Vermont, Rhode Island, New York, Pennsylvania and Maryland. The higher-ranking states tended to be in the Rocky Mountains and Great Plains, with some top performers - New Hampshire, Ohio, Texas and Virginia - distributed across the country. The poorest ranking states tended to be clustered in the Northeast and southern border. The Deep South and parts of the Southeast also ranked poorly.

The Saints, Sinners, and Salvageables

The study also categorized the states in terms of their prospective outlook. “But keep in mind that a state’s fate isn’t sealed. The ‘salvageables’ that have enacted reforms should move up in the rankings, and the ‘saints’ shouldn’t rest on their halos. With the trial bar always searching for legal loopholes and favorable forums, even saints have to vigilantly guard their reforms.” said Dr. McQuillan.

Saints: The states that are well positioned to stay at the top in future rankings are states with relatively low monetary tort losses that have also enacted some significant reforms that will lower future losses. These states include Kansas, Michigan, Texas, Utah and Virginia.

Salvageables: The states that are poised to move up in future rankings are those with medium or high relative monetary tort losses that have recently enacted meaningful reforms that will cut future losses. These states include Arizona, Georgia, Idaho, Louisiana, Mississippi, Missouri, New Hampshire, Rhode Island and South Carolina. Of course, these states will move up only if they don’t enact subsequent laws that counteract the beneficial reforms enacted by other states.

Sinners: The states that are poised to fall in future rankings or stay at the bottom are those with relatively high monetary tort losses and significant threats that have enacted few if any comprehensive reforms. These state states include Alabama, Florida, Illinois, Pennsylvania, and Vermont.

“A poor civil-justice system lowers the standard of living for ordinary citizens,” said co-author Hovannes Abramyan, a PRI public policy fellow. “By limiting job and business opportunities, imposing excessive costs on consumers, and inhibiting innovation in products and services, the many are suffering for the few who gain from unnecessary civil lawsuits,” he said.

Welcome New Members

Nicholas U. Ahn, M.D.
11100 Euclid Avenue
Cleveland, Ohio 44106

Aaron A. Buerk, M.D.
2121 Hughes Avenue, #980
Toledo, Ohio 43606

Jonathon B. Feibel, M.D.
259 Taylor Station Road
Columbus, Ohio 43213

Thomas A. Joseph, M.D.
6470 Tippecanoe Road
Canfield, Ohio 44406

James R. Leonard, M.D.
8737 Union Centre Blvd.
West Chester, Ohio 45069

Joseph Mileti, M.D.
4605 Sawmill Road
Upper Arlington, Ohio 43220

Derek L. Snook, M.D.
85 McNaughten Road, #200
Columbus, Ohio 43213

Gregory A. Vrabec, M.D.
224 W. Exchange St., Suite 440
Akron, Ohio 44302

Raymond K. Wurapa, M.D.
259 Taylor Station Road
Columbus, Ohio 43213

AAOS Clarifies Information on Medicare Payment Cuts for THA, TKA and Hip Fracture Treatment

The August 25 AAOS Legislative Update contained a message from the presidents of the American Association of Orthopaedic Surgeons (AAOS) and the American Association of Hip and Knee Surgeons (AAHKS) regarding efforts to stop proposed Medicare payment cuts for Total Hip Arthroplasty (THA) (code 27130), Treatment of Hip Fracture (code 27236) and Total Knee Arthroplasty (TKA) (code 27447). As reported, these proposed payment cuts result from the Medicare Five-Year Review.

The AAOS would like to clarify the payment information, because there has been some misinterpretation of it. As AAOS members realize, the final payment is based on a combination of factors. The Centers

for Medicare and Medicaid Services (CMS) proposed cutting the physician work values of these codes in the Medicare Resource-based Relative Value Scale by approximately 21 percent for THA, 19 percent for hip fracture treatment and 10 percent for TKA. If these physician work value cuts are adopted and combined with other proposed Five-Year Review changes, the final payment cuts for these procedures would be approximately 10 percent for THA (27130), 6 percent for hip fracture treatment (27236) and 4 percent for TKA (27447), starting in 2007. Up to another 5 percent in payment cuts could be applied to these figures to keep the Medicare payment system "budget neutral."

These projections are not final and may still be changed, because the Medicare regulatory process is ongoing. Specialty societies, like the AAOS and AAHKS, are talking with CMS about their concerns and CMS is still doing analytical work in preparation for issuing a final regulation in November or early December.

The AAOS will not know the final numbers until CMS takes into account all of the comments it receives in its proposals, finishes its work and then issues its final payment regulation for 2007. Until then, the AAOS and AAHKS will vigorously fight to stop unfair payment cuts for these procedures.

Medicare to Withhold Provider Payments for Last Nine Days of Fiscal Year

Physicians, hospitals and other health care providers will not receive Medicare reimbursements Sept. 22-30, the final nine days of the current fiscal year. Providers affected by the delay will receive payments in full on Oct. 2, but the federal government will not pay interest. According to the Center for Medicare Management, the delay was mandated by the Deficit Reduction Act of 2006. For more information:

<http://www.cms.hhs.gov/MLN MattersArticles/downloads/MM5047.pdf>



OOS Past President and Board of Councilor Member, John Kean, M.D. and Executive Director Steve Landerman meet with Congresswoman Deborah Pryce in Washington D.C.

Thank you to the 2006 Ohio Orthopaedic Society's Annual Meeting Sponsors

The members of the Ohio Orthopaedic Society would like to thank all of our Technical Exhibitors and Representatives for their participation in the 2006 Annual Meeting. Their continued support is appreciated.

Ascension Orthopedics	Imaging Systems and Security, Inc.	Osteo Solution/ Breg
Chart Logic, Inc.	Join USA	Paul Gilbert & Associates
Community Blood Center/ Community Tissue Services	Kapp Surgical Instrument, Inc.	Physician Owned Surgery Centers
DePuy Johnson & Johnson	Karl Storz Sports Medicine	RS Medical
DJ Orthopedics	K-Med Inc./ DePuy Spine	Smith + Nephew Orthopaedics
EBI	Kyphon	Stryker Orthopaedics Three Rivers
Excellence in Physical Therapy	LifeNet	Synthes (USA)
Ferring Pharmaceutical Inc.	Marquis Orthopedic, Inc.	Synthes Spine
Foundation Surgery Affiliates	Medical Equipment Services	The Doctors Company
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Hologic, Inc.	NeuroMetrix	Wright Medical Technology, Inc.
	NovaCare Rehabilitation	Zimmer Ohio

News from the American Academy of Orthopaedic Surgeons

Senate Rejects Limits on Medical Liability Awards

As expected, the procedural vote on S.22, a bill that would have capped noneconomic damage awards in medical liability lawsuits, fell short of the 60 needed to close debate on the measure, according to an article in the New York Times. A second procedural vote on S.23, which would have limited the reforms to cases involving obstetricians, also failed. The vote was 48-42 on the broader bill and 49-44 on the obstetrics and gynecology bill, largely along party lines. Stuart L. Weinstein, MD, AAOS past president and current chairman of Doctors for Medical Liability Reform (DMLR), commenting on the vote, noted that three out of four Americans support medical liability reform, and that the failure to achieve cloture "means that the medical liability crisis gripping our nation will continue to grow in severity, and it is patients who will suffer, as doctors are increasingly driven out of business or forced to cut back on high-risk life-saving procedures.

Study: Forty percent of Medical Liability Lawsuits are Groundless

A study in the New England Journal of Medicine finds that there are no grounds to support about 40 percent of the medical liability cases filed in the United States. Even though three out of four groundless lawsuits were thrown out or resolved without a payout, groundless lawsuits did account for about 15 percent of the money paid in settlements and verdicts. Researchers reviewed 1,452 medical liability claims resolved between 1984 and 2004, randomly selected from five insurance companies. The study also found that claims resolved take an average of five years to resolve, and about half of every dollar awarded to patients goes to cover lawyers' fees and other expenses.

Study: Tort Reform Effective in Reducing Medical Liability Premiums

A new study that tort reforms are the best proven instruments for reducing medical liability insurance premium growth, reports *Insurance Journal*. The study, conducted by Stanford University and funded by the Physician Insurers Association of America, found that increased claims costs are the primary driver of premium rate increases. Tort reforms decrease claims costs, which results in lower premiums for physicians. The study also found no evidence to support the argument that anticompetitive behavior, weak regulation or insurer investment decisions are important contributors to rising premiums.

GAO: Specialty Hospitals Don't Affect Competitive Changes Made by General Hospitals

In a report examining operational and clinical competitive changes made by general hospitals, the Government Accountability Office (GAO) concludes that there is little evidence to suggest that the presence of specialty hospitals has an effect on the number or type of changes made. GAO surveyed approximately 600 general hospitals in markets with and without specialty hospitals; 401 general hospitals responded to the survey, reporting an average of 22 operational changes and eight clinical service changes. GAO found no substantial differences in the average number of operational and clinical service changes made by general hospitals in markets with and without specialty hospitals, nor was there any statistical difference between the two groups in terms of specific changes they implemented. Highlights of the report, including a link to the full report, are available at:

<http://www.gao.gov/highlights/d06520high.pdf>

AAOS offers two Health Policy Fellowships with Washington office

Orthopaedic residents interested in health policy issues are urged to apply for the 2007 AAOS Washington Health Policy Fellowship Program. This program provides an opportunity for senior orthopaedic residents and fellows in-training to participate in and understand health policy processes at the federal level. Fellows actively contribute to the formulation of national health policies and accelerate their careers as leaders in health policy. Up to two health orthopaedic residents will have the opportunity to work in the legislative and regulatory arena for as a multi-week period during a 12-month time-frame.

Application and additional information are available online at:
<http://www.aaos.org/wordhtml/mbrsvc/washfellapp.pdf>

2006 Annual Meeting Wrap-Up

Bertram Inn and Conference Center
Aurora, Ohio

2006 Resident's Papers Contest

We would like to thank Smith and Nephew for sponsoring our resident's papers competition. We had a great selection of abstracts to choose from this year and are pleased to announce the following winners:

1st Place: Stephen J. Fitzgerald, M.D.

Case Western Reserve University

"A Biomechanical Analysis of Locked Condylar Plating in a Distal Femur Fracture Model, A Comparison with Other Methods"

2nd Place: R. Michael Greiwe, M.D.

University of Cincinnati

"Stiffness Following Pediatric Forearm Shaft Fracture Treatment: A Meta-Analysis of Non-Operative Versus Flexible Intramedullary Nailing"

3rd Place: Clayton L. Dean, M.D.

Case Western Reserve University

"Ketorolac Decreases Postoperative Pain and Morphine Requirements Following Decompressive Lumbar Laminectomy: A Prospective, Randomized, Double-Blind, Placebo-Controlled Trial"



Edward Miller, M.D., Resident's Paper Contest Chairman;
Stephen Fitzgerald, M.D.; Matthew Zetter, Regional VP Great Lakes Region, Smith & Nephew



Edward Miller, M.D.; R. Michael Greiwe, M.D.; Matthew Zetter,



Edward Miller, M.D.; Clayton Dean, M.D.;
Matthew Zetter,



Christopher Furey, M.D., Program Co-Chair
Paul Anderson, M.D., Guest Lecturer,
George Thompson, M.D., Program Co-Chair

2006 Member's Papers Contest

Stryker Orthopaedic once again sponsored the member's papers contest. We are grateful for their continued support of this program. We had many outstanding abstracts submitted and the winners were:

1st Place: Mark A. Snyder, M.D.

"Acute Multimodal Pain Management in Less Invasive Total Knee Arthroplasty: A Randomized Control Trial in 100 Arthroplasty Patients"

2nd Place: George H. Thompson, M.D.

"Fibrogen Levels Following Amicar in Surgery for Idiopathic Scoliosis"

3rd Place: Michael J. Prayson, M.D.

"Time Dependent Contamination of Opened Sterile Trays"