

Tennessee Medical Liability: Reform Now or Pay Later

TMA recently conducted a survey of physicians. The questions of the survey primarily dealt with issues of access to care and how Tennessee's litigious climate affects medical costs. The outcome was astounding in many aspects. Information regarding medical liability lawsuits and premiums was provided by State Volunteer Mutual Insurance Company which gives liability coverage to approximately 90% of all physicians in the state who need to purchase liability coverage.

We began by sending out a notice to approximately 4,500 TMA member and non-member physicians statewide asking them to fill out the survey which was located on TMA's website. They had from late October to mid-November to respond. At the close of the survey, there were 506 individual physicians that responded—an 11.24% response. (Unlike other surveys, practice managers could not respond in one survey for all of the physicians in the practice.) The breakdown of the responses is as follows.

Class of Physicians	Total Respondents in Class
*Specialists	348
Primary Care	144
Urban Practice	267
Rural Practice	225

*excludes all Family Practice, Internal Medicine, OB/GYN and Pediatricians

Patient Loss to Access to Care

There were several questions that showed dramatic issues regarding access to care. Although 54% of respondents felt that Tennessee currently has a shortage of primary care physicians, 70 % feel that there is a shortage of high risk specialists. Over 50% of physicians in Tennessee said that, within the last two years, they had made changes in their practice due to concern over Tennessee's litigation environment. Even more amazing was that 90% of physicians said that, if Tennessee's medical liability environment does not change, they will be making at least one (or additional) change(s) in their practice. In addition, 84% of respondents felt that patient access to care is a somewhat serious or a very serious problem in the state and 73% felt that the future supply of physicians in Tennessee is a somewhat serious or a very serious problem. Community recruitment of Anesthesiologists, ER Physicians, OB/GYNs, Surgeons or other specialties was cited as a problem by 94% of respondents. Their belief regarding future Tennessee physicians providing high risk procedures is even more serious- 89% believed the issue is a somewhat serious or a very serious problem.

The anecdotal information we have from physicians around the state is very compelling as well.

- In Memphis, the only board-certified thoracic surgeon in Tennessee's most populous city quit private practice and has now gone to work for the Veterans Administration (see attached Article).
- In that same city, one of the largest hospitals, Methodist North, has only one OB/GYN. The facility has been looking for additional OB/GYNs but for some time has not been able to recruit additional providers.
- An orthopedic surgeon in Memphis (who wishes to remain anonymous) who had practiced in Memphis for 20 years, informed TMA staff that he had moved his primary practice, in large part, to Mississippi once that state passed medical liability reform and would not return to Tennessee until we enacted reform.
- In Murfreesboro, one of the State's fastest growing cities, the community hospital must send emergency patients to Nashville because they don't have enough specialists available to provide full-time ER coverage.
- In Monroe County, a rural county in East Tennessee, Dr. John Ameen is one of only two practicing OB/GYNs. Due to increased liability costs, he and his partner are now considering giving up their obstetrical practice in order to be able to continue to provide gynecological

services to their patients if they cannot find relief from liability premium increases. (A copy of a letter he sent to his State Representative is located in the “In their own words” section of this request.) In fact, his story is not uncommon. According to the Department of Health’s *Health Access Plan Update*, the number of practicing OB/GYNs in rural communities has dropped from 179 in 1997 to 103 in 2004.

- High TennCare enrollment tied to low reimbursement, increasing uninsured populations, lower reimbursements from private third party payers, coupled with rising healthcare costs and out-of-control increases in malpractice insurance premiums are putting an enormous strain on OB/GYNs and other specialty physicians who want to continue to practice in rural communities in Tennessee.

Tennessee Patients Support Reform Action

In 2002, the TMA commissioned an independent study of citizen attitudes toward medical care in Tennessee and their opinions regarding medical liability reform. We found a majority of Tennesseans unconditionally favor reasonable limits or caps on non-economic awards in medical liability cases. If their own access to medical care is threatened, two-thirds favor limits.

In 2004, we revisited these same issues to find that support has increased even more, but that 57% of respondents indicated that they are more concerned about how medical liability will affect their care than they were two years earlier. More than 90% of respondents believe that medical liability concerns are driving physicians out of medicine or forcing physicians to change their practices, further threatening access to care.

In 2005, TMA commissioned focus groups in Nashville and Memphis to find out more about the public’s opinions surrounding medical liability and the impact on their medical care. Participants were shocked and very concerned to learn that 70% of Tennessee physicians who have practiced at least ten years have faced legal actions with regard to medical liability. While they expressed little real awareness of the socioeconomic impact of ‘defensive medicine’ on the price of their care, they did indicate, almost universally, their belief that physicians are becoming more reluctant to do all within their abilities to provide care to help patients because of the ever-present threat of litigation.

Affordability and Availability of Professional Liability Insurance

Companies writing medical liability insurance in Tennessee are State Volunteer Mutual Insurance Company (SVMIC), ProAssurance, the Doctors Company and Medical Protective. SVMIC writes approximately 90% of the medical malpractice insurance in Tennessee. SVMIC was organized as a mutual company to be owned, controlled and governed by physicians. After 30 years, the company is still 100% owned by and responsible to its physician-policyholders. The Board of Directors, which includes 16 physicians, is elected by physician-policyholders. As far as the other providers of medical liability insurance, it does not appear that they are writing much new business.

Doctors Insurance Reciprocal (DIR) was placed into receivership in early 2003 after its affiliate, Reciprocal of America, was also placed in receivership by Virginia insurance regulators. DIR wrote only a few physician policies in Tennessee. DIR is the only insurer which is no longer writing medical liability policies in the state. At one time DIR had about 200 physician policyholders in the state. St. Paul ceased writing OB/GYN, Emergency Medicine and General Surgery physicians in early 2001 just prior to their exit from the entire medical malpractice line of insurance throughout the U.S. in 2002. We do not have a clear number of how many physician policyholder they had in Tennessee.

While SVMIC has done all they can to keep rates at an affordable cost to physicians, they too have now dramatically increased their premiums. Attached are two spreadsheets reflecting that premiums have, on average, doubled since 1999. From 1995 to 2005 they have gone up 130% for OB/GYNs, 131% for Neurosurgery, 212% for Emergency Medicine and 127% for Internal Medicine.

State's Legislative, Legal and Judicial Climates

Last year 880 different Tennessee physicians were sued for malpractice. At the end of 2004, there were more than 2,000 pending claims, involving more than 4,000 SVMIC policyholders. One of these suits asks for \$81 million in damages. In the average pending lawsuit, the plaintiff asks for \$6.2 million in damages. It is rare for a physician in Tennessee not to be sued eventually. In fact, 70 % of all doctors who have practiced in Tennessee for more than 10 years have either been sued or have had a demand for monetary damages. Every cardiac surgeon and 92% of OB/GYNs who have practiced for more than 10 years have had a claim. There is no question; physicians are being sued at alarming rates.

Juries are also allowing themselves to participate in the flawed medical liability environment. Just last year, a physician at Vanderbilt University Medical Center made an error on a child during surgery. Vanderbilt, which self-insures both the facility and its physicians, made an offer to the family to cover damages. However, the family refused. The case went to court and the jury awarded the family \$16.4 million dollars, of which only \$1.4 million was for economic damages. While the trial judge decreased the amount by \$10 million, the bar for future damage requests has now been raised.

SVMIC has also experienced a dramatic increase in the cost and losses for the company. As the table below illustrates, the amount paid out by SVMIC has almost doubled in just 5 years.

SVMIC
Losses & Defense Costs Paid

Year	Amount (in millions)
2000	\$ 68
2001	\$ 86
2002	\$ 90
2003	\$ 92
2004	\$120

In Closing

According to TMA's Crisis State Survey, more than 80% of physicians believe Tennessee's current healthcare system in Tennessee is in a state of crisis. More than 80% of physicians claim to be practicing defensive medicine with two of five claiming that more than 20% of the procedures and tests that are ordered are defensive in nature. Almost four of five say that, if Tennessee's medical liability system were reformed including limits on non-economic damages, they would be somewhat or extremely likely to amend their mode of practice to order fewer defensive medical tests and procedures. There is no telling how much money could have been saved in Tennessee's healthcare system, allowing the state to maintain medical coverage for some of the 183,000 uninsured and uninsurable who were disenrolled from TennCare. What is even more frightening is that if premiums and other practice costs continue to grow in light of low reimbursement, physicians may have to resort to quit taking TennCare as well as new Medicare patients. If that happens, Tennessee's current crisis becomes a catastrophe.

*TMA Crisis Survey: Crunching the Numbers

Most of the information provided in the written request is based on overall data. When breaking down the data more closely, we found some interesting information.

- 68% of ER physicians who responded to the survey stated that their community was having trouble recruiting ER physicians.
- 32% of ER physicians said they had reduced practice hours due to increased exposure to medical liability issues.
- 20% of ER physicians said they are somewhat or very likely to change their medical specialty if Tennessee's medical liability climate does not change.
- 32% of ER doctors said they are somewhat or very likely to move to another state if the General Assembly does not pass medical liability reform.
- 38% of ER doctors have had at least 2 lawsuits filed against them in the last two years while 55% percent say they have had between 3 or more lawsuits filed against them during their career. This is significantly higher than the overall average of 11% and 18% respectively.
- Over the last 24 months, 14% of OB/GYNs have changed their medical specialty, 9% have left the practice of medicine and 44% have stopped providing certain services due to Tennessee's liability climate.
- 28% of OB/GYN's are considering changing their specialty and another 52% are considering leaving medical practice if Tennessee does not make medical liability reforms.
- 50% of OB/GYN respondents have had 3 or more lawsuits filed against them during their Career.
- 57% of Surgeons say their community is having trouble recruiting other surgeons to their area.
- 49% of Surgeons say they are having trouble recruiting anesthesiologists to their community.
- 59% of Surgeons say they are having trouble recruiting physicians from other specialties not listed in the survey to their community.
- 67% of surgeons say they have quit providing certain services in the last 24 months due to liability concerns.
- 63% of surgeons say they are **very** likely to stop providing certain services if Tennessee medical liability climate does not change.
- 44% of surgeons have had 3 or more lawsuits filed against them during their career.
- Physicians in rural community feel that there is a shortage of physicians in rural communities. 76% state that high-risk specialists are in great demand. They also are having difficulty recruiting specialists to their area.
- 51% of rural physicians have stopped providing certain services in the past 24 months due to medical liability concerns. 53% say they are **very** likely to stop providing new or additional services if Tennessee does not have medical liability reform.
- 80% of respondents report performing defensive medicine.
- 40% of physicians say that 20% or more of the procedures they perform and/or order are defensive in nature.
- 83% of physicians are somewhat or extremely concerned that Tennessee's TennCare changes (caps on visits, prescription limits, and government defined medical necessity definition) will increase their exposure to being sued.

*All numbers in this section come from responses made in the TMA Crisis Survey