

Medical Liability Insurance: The Calm Before the Storm?

Karen B. Domino, M.D., M.P.H., Chair
Committee on Professional Liability

2013 has been a tranquil year on the professional liability insurance front! This summer the ASA Committee on Professional Liability conducted its annual survey of trends in medical liability insurance premiums. Twenty-five U.S. medical liability insurance companies participated in the 2013 survey, representing nearly 18,000 insured anesthesiologists. We obtained information concerning costs of premiums, policy limits, differences between general anesthesiologists and anesthesiologists specializing in chronic pain management and other trends in malpractice insurance.

Policy Limits and 2013 Premiums for Anesthesiologists

Most anesthesiologists have policy limits of \$1 million per occurrence and \$3 million per year. In 2013, 72 percent of anesthesiologists had policy limits of \$1 million/\$3 million, 20 percent of anesthesiologists had higher limits, and 8 percent had lower policy limits. The optimal policy limits for an anesthesiologist varies with employer, hospital or state regulations; location and type of practice (e.g., higher policy limits for pediatric anesthesiologists); cost; liability insurance company recommendations; and personal consideration and asset protection.¹ Policies with lower limits are generally purchased by physicians in states with supplemental excess coverage liability insurance, patient compensation funds or states with excessively high costs of liability insurance premiums.

High awards may occur in injuries with severe disability that require long-term care, especially in children and young adults. Higher limits are often recommended for pediatric



Karen B. Domino, M.D., M.P.H. is Professor of Anesthesiology and Pain Medicine, University of Washington School of Medicine, Seattle.

Figure 1: Average Premiums for Mature \$1M/\$3M Policy Limits for Anesthesiologists



Average premiums for anesthesiologists have been declining slightly, but steadily, for the past several years.

anesthesiologists in high-liability states. However, since the medical legal system often makes payments only up to policy limits, many liability insurance companies do not recommend higher-than-standard policy limits. Most states have laws that protect against personal assets, such as homes and retirement funds, from being used to pay for a professional malpractice award. Consultation with your medical malpractice insurer is key to choosing the appropriate limits for your practice characteristics and location.

In 2013, the average premium for mature \$1 million/\$3 million policies for anesthesiologists was \$19,594 (range of \$3,911 to \$50,621). Premiums varied markedly based upon state, rural versus urban practice and physician claims history. The District of Columbia, Florida and Illinois had average premiums of \$30,000 or above, as in the past. In contrast, Midwest states with many rural regions (i.e., Iowa, Minnesota, Nebraska, South Dakota and Wisconsin) had average premiums of \$10,000 or less.

The Physician's Money Digest recently reported that five states account for almost half of all medical malpractice payouts for all physicians. Using data from the National Practitioner Data Bank, surgical (including anesthesia) represented the second most common malpractice allegations (24 percent).² Payouts from New York, Pennsylvania, California, New Jersey and Florida accounted for almost half of malpractice payouts.²

Malpractice insurance premiums for anesthesiologists have been declining slightly, but steadily, for the past several years

(Figure 1). While the premiums may reflect improvements in patient safety and/or reduced risk of malpractice claims, the modest trend downward is most likely due to the economic downturn. Predictions are that future premiums are likely to increase due to continued economic recovery, consolidation in the insurance industry and volatile jury awards. This note of caution is consistent with a Medical Liability Monitor study of medical liability insurance premiums for all specialties, which found that the medical liability climate for physicians is more favorable than in 2004.³ However, the study notes that the duration of the positive trend is not clear.³

Premiums for Chronic Pain Management Anesthesiologists

While most anesthesiologists had good news regarding their 2013 malpractice premiums, anesthesiologists who specialize in chronic pain management had mixed news. A positive note is that premiums for mature \$1 million/\$3 million policy limits for pain management anesthesiologists declined by 10 percent to \$21,391. However, the bad news is that premiums for a pain specialist remained consistently 10-15 percent higher than for other anesthesiologists (Figure 2). Malpractice premiums were higher for pain management anesthesiologists in two-thirds of states (Figure 3). Most professional liability insurance companies now require fellowship training and board certification in pain management, and many require an assessment of types of procedures performed in practice.

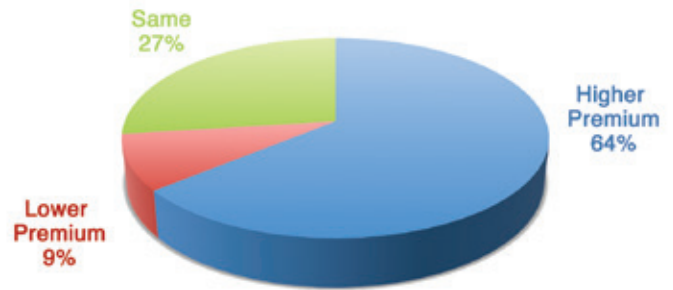
Figure 2: Average Premiums for Mature \$1M/\$3M Policy Limits: Surgical Anesthesia vs. Pain Management



Average premiums for chronic pain management anesthesiologists are consistently 10 percent higher than premiums for other anesthesiologists.

We reviewed chronic pain management claims in the Closed Claims Project database from injuries from 2005 and later to see if the Closed Claims data support the higher premiums for pain management anesthesiologists. Since 2005, chronic

Figure 3: State Average Premiums for Chronic Pain Medicine Specialists Compared to Anesthesiologists



Almost two-thirds of states have higher premiums for chronic pain management anesthesiologists than for other anesthesiologists.

pain management accounts for 14 percent of claims against anesthesiologists. In 2013, the median inflation-adjusted payments were higher for chronic pain management (\$250,000 versus \$150,000 for other anesthesiologists, $p < 0.023$). The higher payment was associated with more permanent injuries for chronic pain management (47 percent permanent/disabling versus 23 percent for other anesthesiology claims). These data, as well as our previous reports of severe complications from both invasive and medication pain management therapies,^{4,5} suggest that the higher premiums appropriately reflect the higher liability risk of the practice of chronic pain medicine.

Trends in Outcomes of Anesthesiologist's Claims

We reviewed more than 1,400 malpractice lawsuits against anesthesiologists for adverse events occurring in 2000 or later from the Closed Claims Project database. Note that the Closed Claims database does not include claims for dental damage or purely surgical events in which the anesthesiologist was dropped. Over half of these lawsuits in the Closed Claims database were settled, a third of claims were dropped or discontinued, and a judgment (jury or judge) was made in only 14 percent of lawsuits. Most (83 percent) of these judgments were a defense verdict, with no payment on behalf of the anesthesiologist. In the trials with payments on behalf of the anesthesiologist, the median payment was \$332,500 (interquartile range \$75,000 - \$880,000). The median of defense costs of all lawsuits was \$49,382 (interquartile range of \$22,055 to \$104,144) with a maximum defense cost of \$2,052,658 (this is a claim that the anesthesiologist ultimately settled for \$2 million with additional amounts paid by the Anesthesia Corporation and hospital for a total settlement of \$4.5 million). The high settlement reflected substandard care in a chronic pain management claim (reliance on two-year old images) associated with cervical

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steroid injections resulting in quadriplegia and eventual death of the patient. Defense costs were much lower when a claim was dropped or discontinued than if it was settled or went to a judgment ($p < 0.01$, see table). While we didn't identify any trends in defense costs, the Physician Insurers Association of America reported that defense costs for professional liability claims from all specialties have increased by nearly 80 percent between 2002 and 2011.⁶ Dramatic increases in defense costs in the future could result in higher premiums for anesthesiologists.

In summary, the 2013 Committee on Professional Liability survey of malpractice premiums revealed slightly declining malpractice insurance premiums for anesthesiologists, with premiums 10 percent higher for chronic pain management physicians. As usual, premiums vary widely depending upon state, practice location and anesthesiologist claims history. With the economic recovery and increases in defense costs, the tranquility could be short-lived.

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Table: Defense Costs by Type of Resolution

	Dropped n=451	Settlement n=750	Judgment n=199
Median	\$30,670*	\$56,602*	\$101,726
Interquartile range	\$13,822 - \$63,839	\$29,783 - \$112,252	\$32,983- \$187,770
Maximum	\$556,000	\$2,052,658	\$1,362,125

* $p < 0.01$ compared to judgments



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