

PROFESSIONAL LIABILITY TRENDS IN 2016:

Things Are Stable, But Changes May Be Lurking

Christopher M. Burkle, M.D., J.D., Chair
Committee on Professional Liability

Each year, the ASA Committee on Professional Liability provides a report on changing trends in malpractice insurance premiums and characteristics impacting physician anesthesiologists. The Anesthesia Closed Claims Project conducted a survey of malpractice insurers from May-July 2016 on behalf of the committee. Twenty-eight medical liability insurance companies providing coverage to more than 19,500 anesthesiologists practicing in the United States responded to the query.

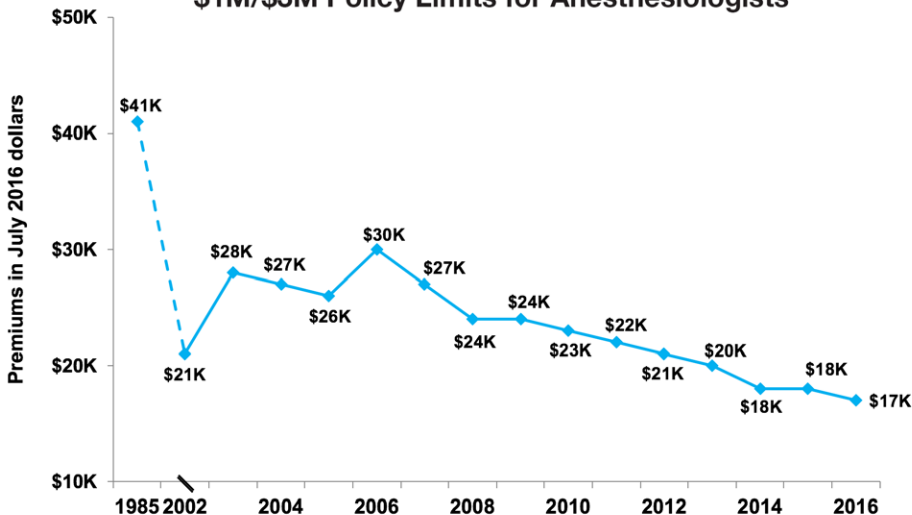
Policy Limits and 2016 Premiums

Consistent with the committee's 2015 report, insurance companies conveyed that most anesthesiologists continued to carry policy limits of \$1 million per occurrence and \$3 million per year.¹ In 2016, 64 percent of companies reported that their most common policy had limits of \$1 million/\$3 million, 32 percent reported that their most common policies had higher limits, and 4 percent (n=1 company) had lower policy limits (\$100,000/\$300,000). Three quarters of companies offered claims-made policies either exclusively or for the vast majority of their policyholders, while 21 percent mostly or exclusively wrote occurrence policies, and only one company wrote claims-paid policies. While claims-made policies remained most common, the committee has seen a



Christopher M. Burkle, M.D., J.D.,
is Associate Professor of Anesthesiology,
Mayo Clinic, Rochester, Minnesota.

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



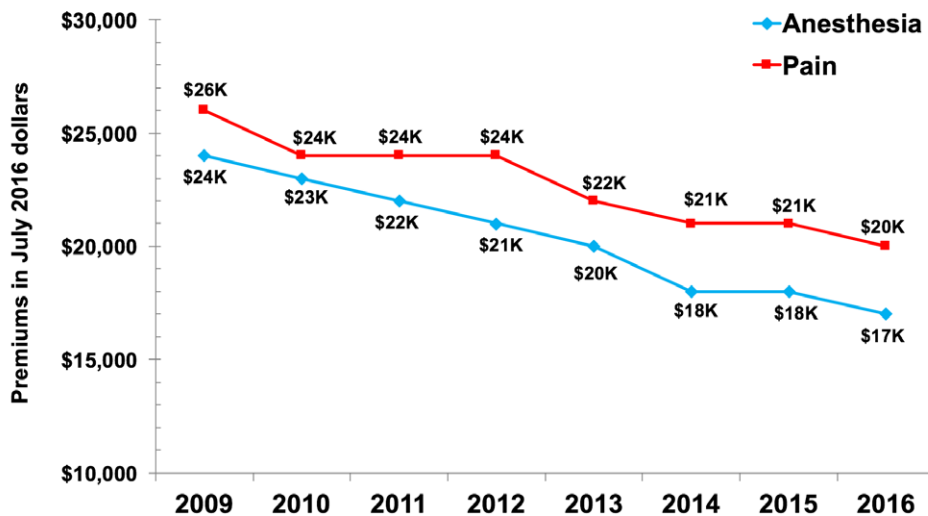
slow trend toward increasing occurrence policy options offered by insurers over the last three annual reporting periods.

Malpractice insurance premiums for non-pain practicing anesthesiologists have been declining steadily, albeit only slightly over the past several years (Figure 1). In 2016, the average premium for mature \$1 million/\$3 million policies for anesthesiologists was \$17,215 (range of \$1,760 to \$50,621), nearly identical to the 2014-15 averages (Figure 1). Premiums continue to vary markedly based upon state, rural versus urban practice and physician claims history. Again this year, Illinois remains the only state reporting an average premium of \$30,000 or above. Other regions with relatively high premiums (averages above \$25,000) were Connecticut, Florida and the District of Columbia, while more rural states (Idaho, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota and Wisconsin) continued to report average premiums of \$10,000 or less.

Premiums for Anesthesiologists Practicing Pain Medicine

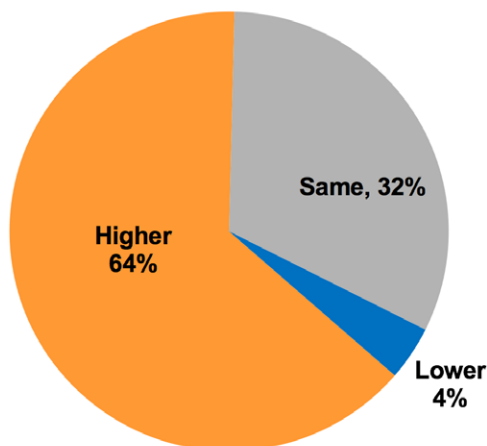
Premiums for mature \$1 million/\$3 million policy limits for pain management anesthesiologists continued their slight decline since the first survey of pain medicine premiums in 2009 (Figure 2). The 2016 national average premium for pain medicine anesthesiologists is \$19,920 as compared to a 2015 average of \$21,253. Despite a lower trend in premiums, the differential in cost for those anesthesiologists practicing

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



pain continues. Premiums for pain medicine anesthesiologists historically ran consistently about 10 percent higher than for other anesthesiologists from 2009-14, 20 percent higher in 2015, and remain 18 percent higher in 2016 (Figure 3). Two-thirds of companies (64 percent) reported higher malpractice premiums for pain medicine anesthesiologists compared to premiums for anesthesiologists who do not practice pain medicine (Figure 3). Slightly fewer than half of the reporting companies (46 percent) require physicians to meet special qualifications (e.g., fellowship training, board certification or special review of pain training/experience) before offering coverage for invasive chronic pain management.

Figure 3: Premiums for Pain Medicine Compared to Other Anesthesiologists, 2016



Increasing Trends

As conveyed in last year's committee report, despite policy premium decreases, medical malpractice payouts in the U.S. have been increasing over the last several years.¹ The year 2015 was no different, with payouts increasing another 1.68 percent from the year prior, bringing the total increase since 2012 to 10.78 percent.² As it has over the past five years, New York continued to see the highest payout total of any state. Interestingly, however, the total \$712 million paid out was a 4.2 percent decrease from 2014. While the Northeast region of the country accounted for almost 46 percent of all payouts in the U.S., the Midwest region saw the largest increase (6.05 percent) in payouts in

2015. The Western region of the U.S. had the second highest increase in payouts (5.54 percent) but had the lowest per capita payout rate. The only region of the country that reported a decrease in payout amounts was the South at -0.62 percent. However, within that collective group of states, West Virginia saw an alarming 65.3 percent increase in payouts in 2015 as compared to the year prior. While the largest percentage payout total in 2015 was for patient death (30 percent), the highest average payout (\$1,086,711) occurred for patients suffering quadriplegia, brain damage and those requiring lifelong care. Given that this average amount exceeds the most common mature \$1 million/\$3 million policy limit, anesthesiologists may want to follow this trend when considering whether to adjust their policy coverage maximum in the future.

Other Factors

Risk Reduction Education and Training

Half of all companies responding to the survey reported offering premium reductions or credits for anesthesiologists who complete simulation training or other patient safety educational activities. The most common activities contributing toward premium discounts or credits were completion of company-specific risk-reduction seminars or online educational courses. Three companies offered a reduction in premiums for simulation training.

Group Mergers and Acquisitions

As highlighted in last year's report from the committee, the past decade has seen an increase in practice mergers and

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acquisitions of physician-owned practices by hospitals and larger groups.¹ Acknowledging this changing trend, this year's survey asked companies whether they currently provide policies for anesthesia groups or corporations. Nearly all (27 of 28 respondents) reported that they do offer such policies in addition to individual anesthesiologist policies. Consistent with individual policies, the most common group policy limits were \$1 million/\$3 million (74 percent of companies that offer such policies). Premiums for corporate coverage are generally based on the number of providers covered along with other factors impacting risk adjustment.

Damage Caps on Awards

The last decade has seen growing activity directed at challenging the caps on damage awards previously set by some states. Whether the successful challenges to date and others that may follow will impact overall damage award payout amounts by malpractice insurers remains to be seen. Furthermore, the impact that any increasing award amounts may have on malpractice insurance premiums and the possible need for anesthesiologists to adjust coverage limits above the most popular \$1 million/\$3 million policies should be followed closely.

We've continued to see malpractice premiums remain relatively stable over the past several years. But there are challenges to that trend lurking that will need to be watched intently as we move forward.

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Disclaimer: The information provided here is not to be construed as practice management or legal advice. Please consult your legal advisor or other qualified professional for guidance and information specific to your situation.

References:

1. O'Leary CE. Professional liability trends, 2015: is change afoot? *ASA Monitor*. 2015;79(12):44-45.
2. Gower J. 2016 Medical Malpractice Payout Analysis. Diederich Healthcare website. <http://www.diederichhealthcare.com/the-standard/2016-medical-malpractice-payout-analysis>. Published April 18, 2016. Accessed August 28, 2016.



A New Patient Safety Grant Announcement

The APSF announces a new patient safety grant in collaboration with the following:

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Anesthesiologists®

American Society of
Anesthesiologists



Foundation for
Anesthesia Education
and Research



Orthopedic Research
and Education
Foundation



American Academy
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These organizations encourage proposals that study unique safety issues in orthopedic surgical patients and the potential impact of various perioperative surgical home models on their outcomes. The grant partners invite applications that identify and mitigate risks. New and junior investigators who have demonstrated a sustained interest in research and excellence in their training are encouraged to apply.

The grant provides \$135,000 over a 2-year period. Applications must be received no later than March 14, 2017. Visit the OREF website at <http://www.oref.org/grants-and-awards/grant-programs/research-specific-grants> for more information.