

## Professional Liability Insurance: Are Higher Policy Limits Better for Some Anesthesiologists?

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Although the past year has been marked by a stall in recovery from the global economic crisis, high defense costs and jury awards in malpractice trials have made headlines. What does this mean for the practicing anesthesiologist? The ASA Committee on Professional Liability recently completed its annual survey of medical liability insurance companies who provide medical malpractice insurance for anesthesiologists. Twenty-seven U.S. medical liability insurance companies participated in the 2012 survey. Information was obtained concerning policy limits, costs of premiums, comparative costs of general anesthesiologists versus anesthesiologists specializing in chronic pain management, reductions or credits for risk management/patient safety training or use of electronic medical records, and any other trends in insurance.

### Policy Limits

Traditionally, policy limits have been \$1 million per occurrence and \$3 million per year. In the 2012 survey, more anesthesiologists acquired policies of greater than \$1 million per occurrence/\$3 million per annual compared to 2011 (Figure 1). In 2012, 32 percent had policy limits higher than \$1 million/\$3 million, compared to only 16 percent with higher limits in 2011 ( $p=0.002$ ). Fifty-six percent had the usual \$1 million/\$3 million policy limits. As in the past, there was a wide range of policy limits influenced by a variety of factors, including employer, hospital or state requirements; location and type of practice (e.g., obstetric anesthesia, pediatric anesthesia); cost; liability insurance company recommendations; and personal considerations and asset protection.<sup>1</sup> Lower limits were purchased in states with supplemental excess coverage liability insurance, patient compensation funds (e.g., Kansas) or states

### Most Common Policy Limits

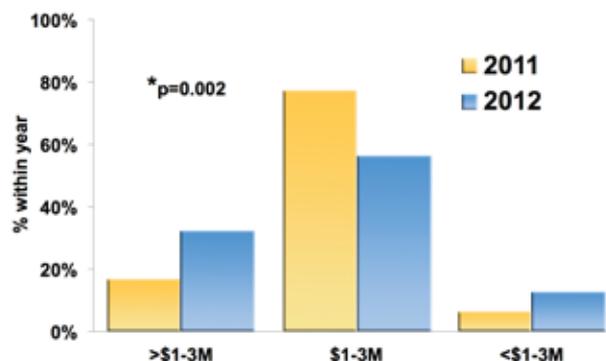


Figure 1

with excessively high costs of liability insurance premiums.

In addition, nearly all (96 percent) companies offered corporation policies to cover both locum tenens employees and permanent anesthesia group members. More than half of the companies had usual limits of \$1 million/\$3 million, but higher limits were common in high-liability states (e.g., \$2 million/\$6 million).

Why the trend for purchasing increasing amounts of personal and corporation professional liability insurance? Defense costs are high. The ASA Closed Claims Project database reports defense costs for anesthesiologists for claims since 2000 (based on 1,232 claims) averaged \$75,427 (range \$10 to \$1,700,000). Jury awards have also increased dramatically over the past several years. An article in the July 23, 2012 AMA American Medical News [www.amednews.com](http://www.amednews.com) titled "The rise of sky-high jury awards" reported that some of the highest jury awards in history occurred in the past year (e.g., \$74 million awarded for delay in Cesarean section resulting in newborn brain damage).<sup>2</sup> This article also described data from the Physician Insurance Association of America (PIAA), which found that payments to the plaintiff of more than \$1 million increased from less than 1 percent of awards in 1985 to 9.3 percent in 2010.<sup>2</sup>

A similar trend for increasing numbers of high awards in recent years is observed in data from the Closed Claims Project. In the 2000s, 15 percent of total payments to the plaintiff were more than \$1 million, compared to only 5 percent in the 1970s (Figure 2,  $p<0.001$  for trend over decades). In the 2000s, 8 percent of anesthesia payments on behalf of the anesthesiologist were more than \$1 million. The median value for payment in this group of high awards (more than



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### Total Closed Claims Project Payment > \$1M

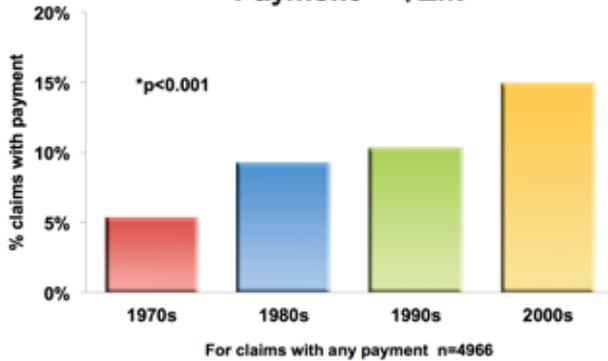


Figure 2

\$1 million) was \$1.8 million (range of \$1,000,200 to \$15,225,000). Due to the usual \$1 million/\$3 million personal policy limits, an increasing number of payments have been made by the anesthesia group or corporation, or additional lawsuits have been filed involving other partners or group chiefs.

High awards occur in cases involving severe disability requiring long-term care in children and young adults. Specific recommendations for policy limits vary with risk (e.g., pediatric anesthesia, high-liability state), and some anesthesiologists in the higher-risk practices may prefer \$2 million/\$6 million limits. However, anesthesiologists should note in general that payments are only made up to the policy limits. Hence, some liability insurance companies do not recommend higher than standard policy limits. In most cases of high awards, the insurer pays for the excess awards.<sup>2</sup> The exception is that if the insurer proposes

a settlement and the physician insists on a trial, the physician may be responsible for the award above the policy limit.<sup>2</sup> Most states have laws that protect against personal assets, such as homes and retirement funds, being used to pay a professional malpractice award.

### Premiums for Anesthesiologists

Average premiums in 2012 for mature \$1 million/\$3 million policy limits for anesthesiologists remained about the same as 2011 premiums in most states. The average premium for 2012 was \$20,380 (range of \$3,911 to \$51,109). However, there are marked differences in individual premiums based upon location of practice, state and physician claims history. States with average yearly premiums above \$30,000 or more were the District of Columbia, Florida and Illinois, as in the past. The lowest average yearly premiums were Midwest states with many rural regions (e.g., Iowa, Minnesota, Nebraska, South Dakota and Wisconsin).

Premiums for anesthesiologists have been fairly stable for the past several years. Figure 3 compares 2012 average U.S. premiums with those obtained in previous Committee of Professional Liability surveys. Factors contributing to the escalation of premiums between 2003 and 2006 were consolidation within the insurance industry, declining investment income, increased defense costs and higher awards. The more recent decline in premiums is associated with the soft market within the economic downturn. Continued recovery of the economy, further consolidation in the insurance industry and volatile jury awards are likely to result in higher premiums in the future.

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

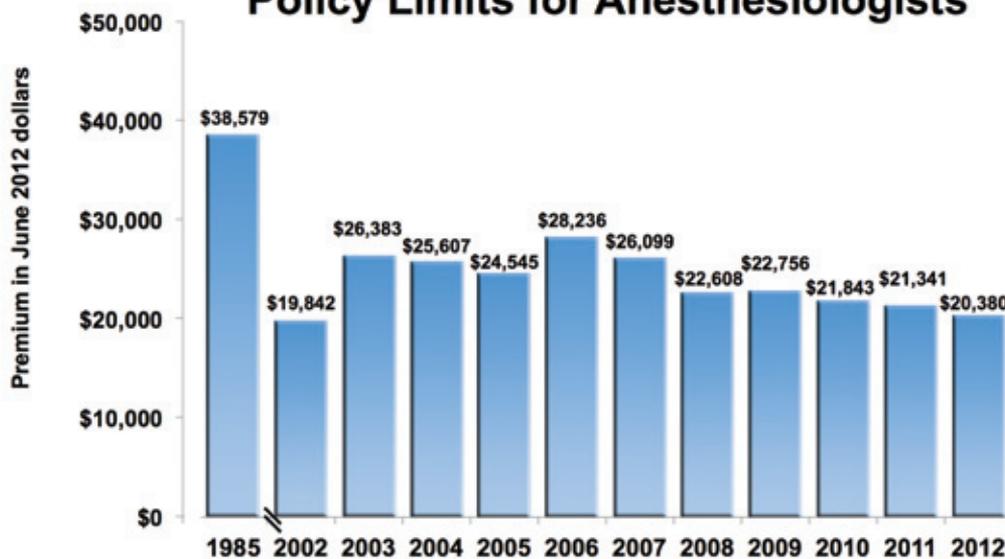


Figure 3

## Premiums for Anesthesiologists Performing Chronic Pain Management

As noted in previous surveys,<sup>3,4</sup> premiums for anesthesiologists who specialized in chronic pain management were higher than for general anesthesiologists. The increased premiums reflected the higher risk of liability for invasive pain management anesthesiologists, including the risk of quadriplegia and other cervical spine injuries after cervical epidural blocks or injections reported in a Closed Claims analysis.<sup>5</sup> Many professional liability insurance companies now require fellowship training and board certification in pain management and an assessment of types of procedures performed within the practice.

In more than half of the regions, the average premiums for chronic pain management specialists were higher than for anesthesiologists (Figure 4). While this proportion is reduced compared to 2011 (67 percent regions higher,  $p < 0.05$ ), the average premium was \$23,233, approximately \$2,900 higher than for anesthesiology. However, in some states, premiums were markedly higher (\$10,000-\$15,000), particularly for specialists performing invasive surgical pain procedures (e.g., implantation and removal of pumps and stimulators).

### State Average Premiums for Chronic Pain Medicine Specialists Compared to Anesthesiologists

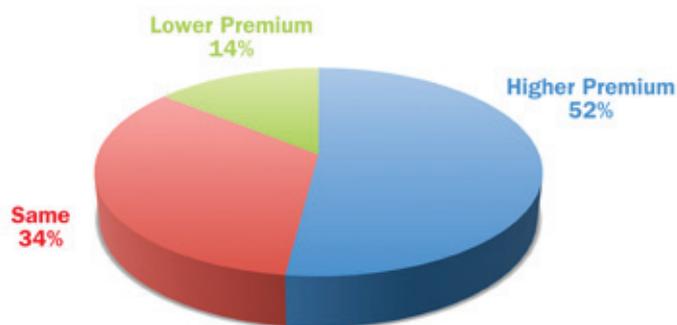


Figure 4

### Additional Trends in Liability Insurance for Anesthesiologists

*Credits for patient safety training and electronic medical records:* Of the 24 companies that provided information concerning credits for stimulation and patient safety training, 13 provide credits or discounts in premiums for physicians

who participated in company-sponsored patient safety and risk management training activities. Some companies provided credits for anesthesiologists who did not have a paid claim over a certain amount (e.g., \$50,000). Four companies provided discounts for EMRs. A recent study suggested that use of electronic medical records was associated with a reduction in malpractice claims.<sup>6</sup> More companies may adopt the credit for EMRs in the future.

*Impact of hospital-employment of anesthesiologists:* As more anesthesiologists are employed by hospitals or health care systems, two important trends are potentially important. A recent *New York Times* article pointed out that some hospitals in poor financial condition may drop malpractice coverage.\* This practice may leave anesthesiologists who have liability insurance coverage at risk. Another trend of hospital employment is that their liability insurance coverage is often provided by the health care system, which is often self-insured among a multigroup specialty. Claims and settlements would be made on behalf of the health care system rather than the individual physician. In addition, premiums may be lower for a self-insured multidisciplinary group rather than by commercial professional liability insurance, as liability risks are spread among many practitioners. How this trend affects the liability insurance marketplace in the future will be interesting to observe.

In summary, more anesthesiologists are obtaining policies with higher-than-traditional \$1 million/\$3 million policy limits due to concern over high jury awards, especially for younger patients requiring lifelong care. However, for most anesthesiologists, malpractice insurance premiums have remained fairly stable in 2012. The exception remains anesthesiologists practicing in high-liability states and pain management specialists performing invasive pain management.

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