

## Professional Liability Trends, 2015: Is Change Afoot?

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Committee on Professional Liability

### The ASA Committee on Professional Liability reports annually on trends in malpractice insurance costs for physician anesthesiologists.

The Closed Claims Project conducted a survey of malpractice insurers from May-July 2015 on behalf of the committee. Twenty-three medical liability insurance companies providing professional liability insurance to more than 16,000 physician anesthesiologists in the U.S. responded to our questions.

### Policy Limits, Types and 2015 Premiums

Similar to survey results from 2014,<sup>1</sup> insurance companies reported that most anesthesiologists have policy limits of \$1 million per occurrence and \$3 million per year. Twenty-six percent of insurance carriers reported that their most common policy had higher limits, while 9 percent reported lower limits. Eighty-two percent of responding carriers offered claims-made policies either exclusively or for the majority of their insureds, while 18 percent wrote mostly or exclusively occurrence policies. In 2014, 14 percent of carriers offered occurrence policies.<sup>1</sup> In addition to offering individual policies, 22 of the 23 responding insurance companies reported offering malpractice coverage for anesthesiology groups or corporations, most commonly with policy limits of \$1 million/\$3 million. Premiums for this additional coverage varied based on the number of individuals in the group and risk adjustment calculations.

Malpractice insurance premiums for non-pain practitioner anesthesiologists have been declining slightly but steadily since 2009 (Figure 1). In 2015, the average premium for a mature \$1 million/\$3 million policy was \$17,739, which was on average \$106 less expensive than in 2014. Premiums vary



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

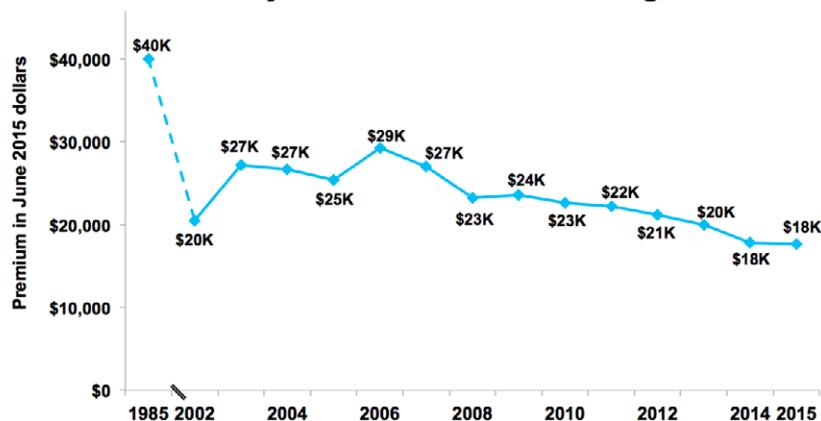


Figure 1: Average premiums for anesthesiologists have been declining slightly, but steadily, for the past several years. Average premiums in 2015 remained nearly identical to 2014 average premiums.

considerably (range \$3,911-\$50,621) based on geography, urban versus rural practice site and a physician's personal claims history. Illinois was the only state reporting an average premium of greater than \$30,000. Other relatively high-cost states were Connecticut, Florida and the District of Columbia. States serving largely rural populations (Idaho, Minnesota, Nebraska, North Carolina, South Dakota and Wisconsin) had average premiums of \$10,000 or less. Fifty seven percent of insurance companies responding to our survey offered premium reductions or credits for those anesthesiologists completing patient safety educational activities such as simulation.

### Premiums for Anesthesiologists Practicing Pain Medicine

In contrast to premiums for other anesthesiologists, the cost for a mature \$1 million/\$3 million policy for pain management anesthesiologists **increased by 6 percent** in 2015 compared to the inflation-adjusted 2014 rate (Figure 2). The 2015 national average premium for this group of practitioners was \$21,253. Paralleling trends for other anesthesiologists, premiums for pain practitioners were steady or declined slightly from 2009-14, but ran approximately 10 percent higher than for other anesthesiologists. In 2015, pain practitioners paid on average 20 percent more for their malpractice protection. Seventy-four percent of companies responding to our survey reported higher premiums for pain medicine anesthesiologists compared with their non-pain practicing peers (Figure 3). Fifty-two percent of companies required special qualifications (e.g., fellowship training, other pain

management training, board certification) for physicians performing invasive procedures for chronic pain. Only 43 percent of responding carriers offered premium reductions for pain-related patient safety training.

### What's on the Horizon?

#### Payout Trends

Claims frequency has remained relatively flat, but claims severity is increasing. Diederich Healthcare performs an annual analysis of medical malpractice payouts in the U.S. utilizing data from the National Practitioner Data Bank.<sup>2</sup> In March 2015, Diederich reported that, following a national decline in award payouts from 2003-12, *payouts increased* by 4.4 percent in 2014 to a total of \$3,891,743,050. This follows a 4.7 percent increase in 2013. In 2014, New York and New Jersey saw the highest payout rates, and the 12 northeastern states (including the District of Columbia) accounted for 46.17 percent of the nation's total payouts. Payouts in New York State alone were greater than for the entire Midwest! North Dakota saw the lowest payout rate. Payments varied by malpractice allegation, with 33 percent involving errors in diagnosis, 24 percent involving surgical claims and 11 percent involving obstetric claims. Severity of outcome impacted payouts with 30 percent of payouts associated with death. The average payout was highest (\$944,644) to individuals suffering quadriplegia, brain damage and those requiring lifelong care. Forty percent of payouts were for care rendered in the outpatient setting. Given that malpractice premium rates follow payout trends, Deiderich postulates that professional liability carriers will examine their rates to ensure they are adequate in an increasing trend environment. This could mean higher premiums in the future.

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

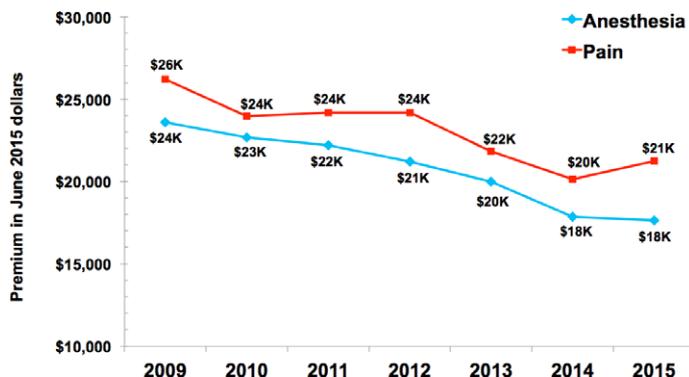


Figure 2: Average premiums for pain medicine anesthesiologists are consistently higher than premiums for other anesthesiologists and increased in 2015.

### Premiums for Pain Medicine Compared to Other Anesthesiologists 2015

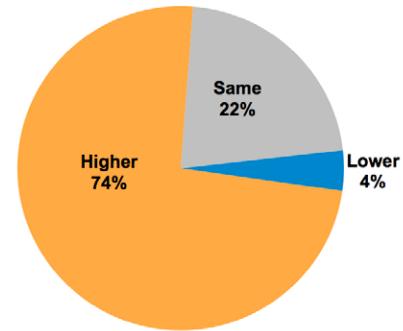


Figure 3: Almost three-quarters of companies have higher premiums for pain medicine anesthesiologists than for other anesthesiologists.

### Other Factors:

#### Group Mergers and Acquisitions

The past five to seven years have seen practice mergers as well as the purchase of physician-owned practices by hospitals or larger groups. Hospitals, large groups and hospital systems frequently self-insure; this dramatically changes competition in the medical malpractice insurance industry.<sup>3</sup> The impact of this trend on premiums will bear watching.

#### Affordable Care Act (ACA)

Under the ACA, it is estimated that an additional 11 million Americans have health insurance and will seek medical care. The effect of this influx of potential new patients on health care delivery systems and the professional liability of the practitioners serving their needs is uncertain.<sup>3</sup>

We've enjoyed relatively calm waters over the past decade with respect to malpractice insurance premiums. There are some subtle signs emerging in the market that the tide is turning and that we may again see a rise in premiums.

### References:

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