

LIABILITY INSURANCE MORE THAN DOUBLES FOR MANY NEUROLOGISTS

By Orly Avitzur, MD, MBA

When neurologists consider office overhead, professional liability insurance has always been one of the highest costs of doing business. But over the past two years, insurance rates have doubled for many neurologists – making this the most rapidly rising expense in medical practice.

In some parts of the US and among some specialties, these expenses have been combined with declining reimbursements from Medicare and managed care. The double whammy has made it difficult for practices to stay solvent.

Neurology Today spoke to neurologists in several states considered to be in crisis – Florida, Oregon, Texas, and Pennsylvania – to see how this situation is affecting neurology – and we learned just how serious this predicament is now.

QUADRUPLED RATES

Augustin Castellanos, MD, a solo neurologist in Jupiter, FL, who has been in practice for 15 years, said, "Southern Florida has been especially hard hit by rising liability costs and the problem is spreading to affect the entire state."

Last summer, Dr. Castellanos was told that his liability insurance carrier was leaving the state and that no other insurer was willing to underwrite the policy. He contacted other brokers as well as one insurer but only received one response.

With no other option but to accept this insurer, his rate quadrupled – in spite of reducing his policy limits from \$1 million/\$3 million to \$250,000/\$750,000. He is currently paying a total of \$39,000 for his premium, which includes tail coverage. He said, "This is a cost that cannot be made up."

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TEXAS: RATES DOUBLING

Robert E. McMichael, MD, JD, a neurologist in Austin, TX, said his insurance premiums have more than doubled in two years. His premiums in 2000 were \$10,376 – for coverage for a \$2 million to \$3 million policy – and have risen to \$19,500 plus a surcharge of \$5,000 in 2002.

"I was told that this had included a 10 percent discount for not having any claims," he said. Reducing the

coverage to \$200,000/\$600,000 would have resulted in a savings of only about \$3,000 despite 90 percent less coverage for a claim.



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Other neurologists, like Dr. Castellanos, believe they must reduce coverage. Roy D. Elterman, MD, is one of four child neurologists in a private practice group based at a tertiary care hospital in Dallas, TX. He said his group had been carrying \$1 million/\$2 million of coverage and in 20 years of practice, has *never* had a claim. "Over the past two to three years, our rates have gone from approximately \$5,000 per physician per year to \$14,000 per physician this year."

Dr. Elterman's group decided to re-

duce coverage to \$600,000/\$1,000,000 but they expect *another* rate hike when they renew in April. To make matters worse, their current company is leaving Texas, so they will need to find another carrier.

WHY RATES INCREASE

Why have malpractice costs risen so dramatically? Dr. McMichael, who has worked in malpractice defense,

said that, in Texas, the mean indemnity on paid claims has doubled over the past five years. "Texas physicians are being sued more often and are paying larger judgments."

neys' fees, defense costs, and the cost of any settlement or judgment paid by Aetna. This would be the case *even if a jury ruled in our favor at a trial*. No physician can get insurance to cover that

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In addition, most malpractice insurance companies have pulled out of Texas. Two years ago there were 18 companies, only three remain, and more than 6,000 doctors are now scrambling to find insurance. Unfortunately, the underwriters cannot process so many applications in a short time, he said.

risk. We decided not to take that risk."

And even in states not directly affected by such a law, it is clear that the impact of managed care is partially responsible for a rise in liability costs. According to the Conning and Company report – *Medical Malpractice Insurance: A Prescription for Chaos and Medical Malpractice Insurance: Ills Diagnosed, Cures Elusive* – managed care rationing of medical services has changed the focus of malpractice from *committed* acts to *omitted* acts, broadening the scope of malpractice to include failure to detect.

NO RISE IN MALPRACTICE CLAIMS REPORTED

"It seems clear to me that the medical liability crisis has less to do with malpractice litigation and more to do with insurance company economic losses in other areas," said neurologist Mark S. Yerby, MD, MPH, Chairman of the AAN Legislative Affairs Committee. "Increasing our rates is a good way to offset these costs."

Dr. Yerby, who has a private practice in Portland, where he also holds an appointment at the Oregon Health Sciences University, has seen his malpractice insurance double this year. These rates are going up *without* a corresponding increase in malpractice claims, a change in practice patterns, or the risk of new technology to explain this rise, he added.

Dr. Yerby called and wrote to almost 12 insurers to seek an alternative to his liability carrier, but found that there are no viable alternatives in Oregon unless physicians work for a large institution that self-insures such as Kaiser-Permanente or the university.

The problem for practicing neurologists couldn't come about at a worse time. Like many states, Oregon has been gravely affected by the downturn in the economy. The state has an unemployment rate of seven percent,



Dr. Roy D. Elterman

Texas also has a managed care liability law, another factor that adds risk and cost for physicians. "Managed care insurance companies are vicariously liable for any act by a contracted physician. Naturally, these insurance plans are fat targets. Some of them, such as Aetna, insist that the doctors sign indemnification agreements." If they refuse, they are dropped from the plan.

ATTORNEY FEES FOR INSURERS

Dr. McMichael added: "Aetna told our group that, in the event of a suit, we would have to agree to pay *their* attor-

Dr. Orly Avitzur will be serving as faculty along with Dr. Neil Busis for the Technology Program at the 2003 Winter Conference January 17-19, 2003 in Florida.

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which means that many patients are unable to pay for their healthcare.

Dr. Yerby, who is committed to providing their care nevertheless, is feeling financially squeezed by Medicare cuts that further reduce practice revenues.

bers regarding this issue and I am hearing more about it from them at meetings. Neurologists are clearly having difficulties in some parts of the country, contemplating moving, and trying to figure out how to stay in business."

excellent record), causing difficulty in recruitment, loss of two neurosurgeons to cities with lower rates, and more thoughts of early retirement by many."

Dr. Elterman noted that rising malpractice costs and mounting financial pressures have prompted his office to take around a 10 percent pay cut and reduce office staff. "Am I starting to think of other options when our lease is up for renewal in 3 years? – yes!"

Dr. Castellanos said he, too, has considered relocating and has changed the way he practices neurology. "I order more tests, advise patients to go to the emergency room if even vague symptoms suggestive of a stroke recur, and

'My group's cost has doubled in the past year to \$16,000 per person (despite an excellent record), causing difficulty in recruitment, loss of two neurosurgeons to cities with lower rates, and more thoughts of early retirement by many.'

"Doubling our malpractice insurance, in addition to all these factors, makes practice very difficult."

Dr. Yerby believes that many neurologists will elect to take early retirement, and that neurologists who are fresh out of training will elect to practice elsewhere.

HARD DATA?

Where are the hard data on the number of physicians dropping risky procedures, practicing without insurance, or relocating to less litigious areas? Collective liability data is not readily available for public review. The Physician Insurers Association of America maintains a partial database of malpractice claims but does not compile premium data or practice pattern information.

Rod Larson, AAN Director of the Center for Health Policy, said there appears to be no aggregate data of this type for neurologists, but the Academy is working with the American Medical Association (AMA) to get this information.

He noted that the AMA is in the process of surveying physicians to disclose their liability insurance premiums, as well as practice patterns. He said this information will ultimately be shared with the AAN and will provide neurology-specific data.

Mr. Larson added, "The AAN is receiving more telephone calls from mem-



A June 2002 report by the AMA analyzed malpractice premiums in 50 states, and found that medical liability had reached crisis proportions in 12 states, with more than 30 others experiencing problem signs. The AMA analysis was based on survey responses from state medical associations as well as reviews of state laws, and other independent research. The "crisis" states were identified as Florida, Georgia, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, and West Virginia.

CHANGING PRACTICE PATTERNS?

Lawrence Levitt, MD, a neurologist in Allentown, PA, who retired from clinical practice after 30 years, said, "Pennsylvania is being affected big time! My group's cost has doubled in the past year to \$16,000 per person, (despite an

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have discharged two patients who have been borderline noncompliant. I used to be more laid back, but now I have seizure patients acknowledge in writing that I have advised them not to drive." He has also given up emergency room call and said that neurosurgical coverage in his area has been drastically reduced and that the neurosurgeons that are left have all "gone bare."

TORT REFORMS

States with malpractice reform, such as California with its Medical Injury Compensation Reform Act (MICRA) of 1975, have been able to restrain rising premium costs. James S. Grisolia, MD, a solo practitioner who is Chief of Neurology at Scripps-Mercy Hospital in San Diego and a trustee of the Califor-



Dr. Mark S. Yerby

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nia Medical Association, believes that the \$250,000 cap on non-economic damages is responsible for more stability, because losses are more predictable.

"Our relative freedom from fear of unreasonable suits seems to allow us to practice more cost-effective medicine, without having to order unnecessary tests to cover ourselves," he said.

IS CAPPING ENOUGH?

Although California is one of the oasis states that enjoy a quieter malpractice atmosphere, the battle is far from over. In an editorial published in the *San Diego Physician* in September, Dr. Grisolia wrote that California trial lawyers are busily plotting MICRA's doom. "In [last] March's primary elections," he wrote, "a last-minute campaign by plaintiff's lawyers raised \$3 million in three weeks, adding several anti-MICRA votes to the California State Legislature."

Indeed, Dr. Yerby does not believe that capping damages will be enough. "Even if awards are capped, there is still no guarantee that we will see malpractice insurance rates fall. It is more likely that the insurance industry will see this as a way to further increase profits, take the savings and maintain the higher rates. After all, there is no true competition in this industry!" ★

WHY INSURERS RAISE COSTS

According to the Insurance Information Institute, insurance companies have suffered a decline in investment income, which they use to cushion against losses. Moreover, reinsurance – insurance for insurers – has become much more expensive, and the reduced market supply of available coverage as insurers exit the market is driving up prices. In addition to the growing size of claims and more frequent claims, rate increases have also been precipitated by skyrocketing defense costs.

"Malpractice lawsuits tend to have multiple defendants, so that the defense costs in one lawsuit may easily involve five to ten lawyers – sometimes up to 20 – for the corresponding number of defendants," Robert E. McMichael, MD, JD, explained.

"It costs ten times as much to defend ten doctors in a lawsuit as to defend one doctor. On the other side of that coin, plaintiffs' expenses are only somewhat greater when they sue many defendants. Their added cost consists of the expense of serving multiple defendants – a minimal cost – and hiring additional expert witnesses, if needed. Obviously, it costs just as much to defend a malpractice lawsuit when the jury rules in favor of the defendant as when the defendant loses."

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