

REPORT OF COMMISSIONER KEVIN M. McCARTY

FLORIDA OFFICE OF INSURANCE REGULATION



MEDICAL MALPRACTICE RATES IN FLORIDA

APRIL 2007

BACKGROUND / 2003 LEGISLATIVE REFORMS

Prior to the 2003 reforms, some experts claimed Florida was facing a “crisis” in the cost and availability of medical malpractice insurance in Florida. Not only were premiums increasing dramatically, but the Florida Medical Malpractice Joint Underwriting Association (FMMJUA), the residual market of last resort, had increased from insuring 25 policies in December 2001, to 1,018 by June, 2003.

Senate Bill 2-D was signed into law in 2003 and contained over 70 sections pertaining to changes in medical malpractice insurance laws aimed at reducing costs, and increasing availability. The key cost saving provision was contained in Section 54, which capped non-economic damages for legal settlements. Another key component was Section 40, which mandated a “presumed factor” savings to be calculated for the industry.

PUBLIC HEARING

The Florida Office of Insurance Regulation (Office) scheduled a public hearing to review medical malpractice rates in Florida at the behest of Florida’s former Insurance Consumer Advocate, Steve Burgess, following recent rate filings by leading medical malpractice insurers writing in Florida. The Office conducted the hearing in Tallahassee, Florida on January 30, 2007.

The Office heard testimony from insurance companies, industry experts, and the Consumer Advocate’s Office. At issue is the effect of the 2003 legislative reforms, the presumed factor calculation, and subsequent rate filings. Although several recent filings advocate a modest decrease in rates, analysis presented by Steve Burgess suggested the change in loss ratios following the 2003 reforms shows the industry as a whole should be reducing rates by as much as 40% statewide.

OFFICE OF INSURANCE REGULATION PRESUMED FACTOR REPORT

After a competitive bidding process, the Office of Insurance Regulation contracted with Deloitte & Touche, LLP to conduct [an objective analysis of the presumed savings](#). While Deloitte did produce a presumed factor savings of 7.8%, the report outlined several caveats to this analysis:

Due to the volatility of the loss exposures reviewed, the historical tracking of data by claim and not by claimant, and the limited amount of historical jury verdict data quantifying economic versus noneconomic damages, no assurance can be offered that actual savings will emerge according to the estimates contained in this report.

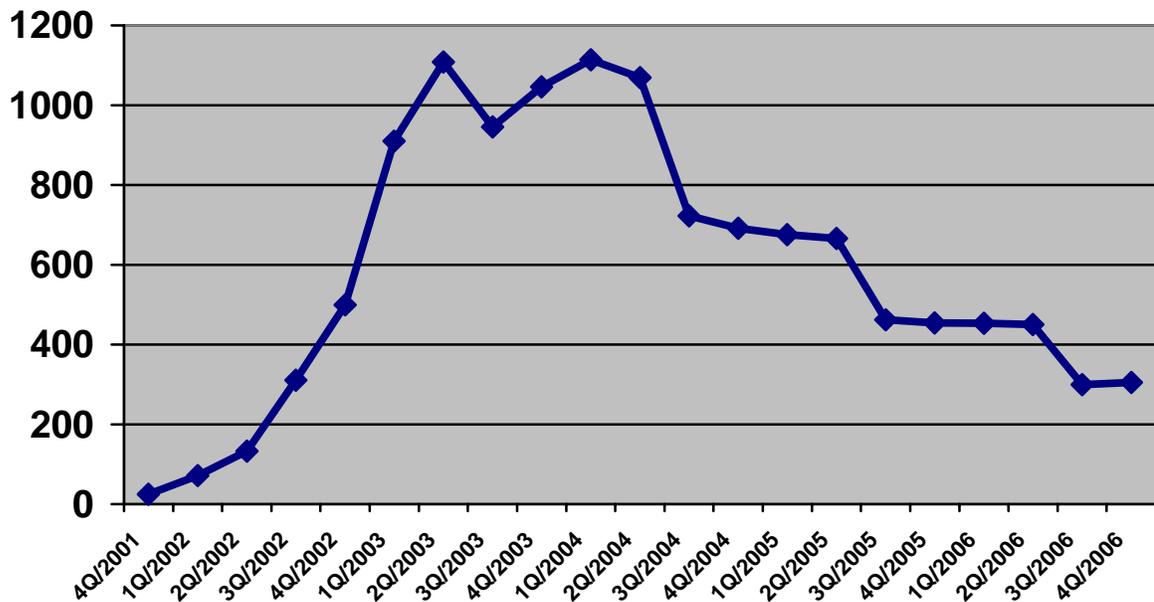
Implicit in these assertions was that the actual medical malpractice savings would need to be monitored, and potentially updated based on future legal interpretations of the new laws, and the reaction by industry actors including plaintiffs, attorneys, and insurance companies.

MARKET ACTIVITY SINCE 2003

The medical malpractice industry rebounded following the 2003 reforms. From January 1, 2004 to October 1, 2005, eighteen (18) new companies entered the marketplace. All economic indicators including net liability to surplus ratios, net written premium to surplus ratios and gross premium to surplus ratios showed dramatic improvement since these reforms.

Another telling sign is an analysis of the residual market for medical practitioners who cannot find medical malpractice insurance in the private market. After peaking at 1,114 policies in March, 2004, the number of policies in the JUA has dropped significantly which demonstrates more availability in the private market:

**FMMJUA Policy Counts
2001-2007**

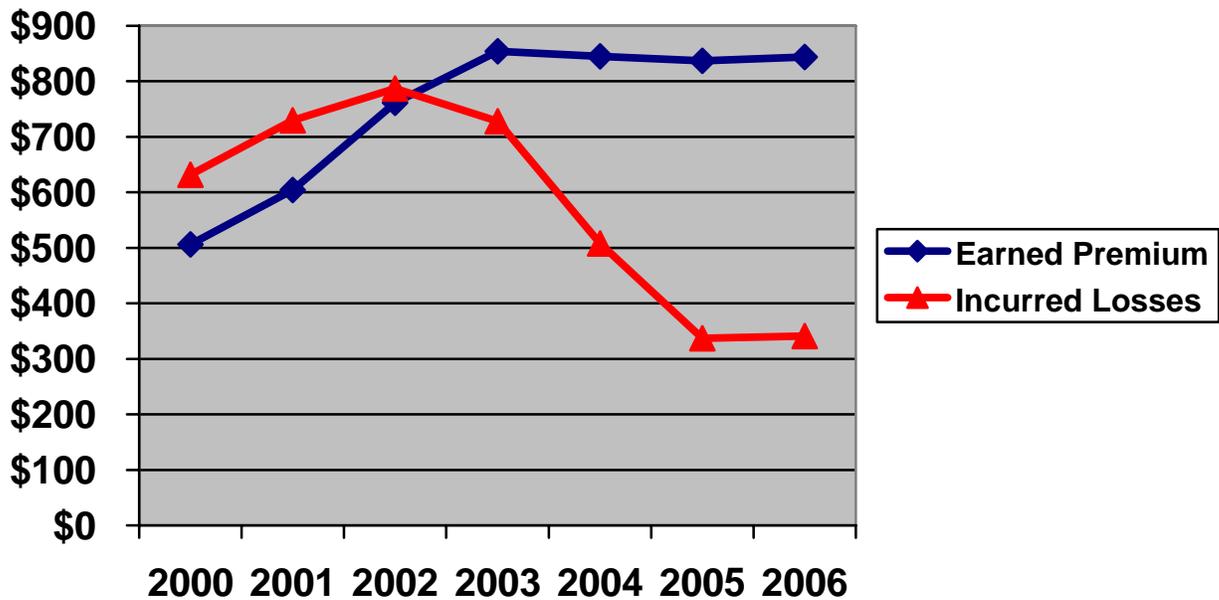


Source: Enrollment data reported directly to the Office by the FMMJUA.

TRENDS IN THE MEDICAL MALPRACTICE INSURANCE MARKETPLACE

The January public hearing focused on two differing trends: 1) the leveling of medical malpractice premiums collected in Florida; and 2) the dramatic decrease in incurred losses. These two elements of the marketplace combine to produce more favorable loss ratios for the industry, which should be accompanied by rate decreases.

Earned Premium & Incurred Losses in Florida 2000-2006 (in \$millions)



Source: Calculated based on annual data reported to the National Association of Insurance Commissioners (NAIC).

PREMIUM ACTIVITY SINCE 2003

Under Florida statute, medical malpractice insurers are required to make filings once a year. As noted in the annual Florida Medical Malpractice Reports mandated by Section 627.912, Florida Statutes, the medical malpractice marketplace in Florida is dominated by relatively few companies. In fact, the leading five writers comprise 60% of the market. The following is a history of the average premium increases for the five writers which constitute a majority of the marketplace:

Premium Increases/Decreases 2003-2006

Company	2004 Filings	2005 Filings	2006 Filings	2007 Filings	Cumulative
First Professionals	8.0%	8.0%	- 11.0%	N/A	- 3.9%
MAG Mutual	7.0%	8.9%	9.2%	- 7.2%	10.4%
ProNational	17.3%	6.4%	0.5%	- 15.8%	- 10.0%
Doctors Company	1.1%	5.0%	- 1.3%	N/A	3.8%
Medical Protective	45.0%	14.6%	4.6%	- 10.0%	-5.8%

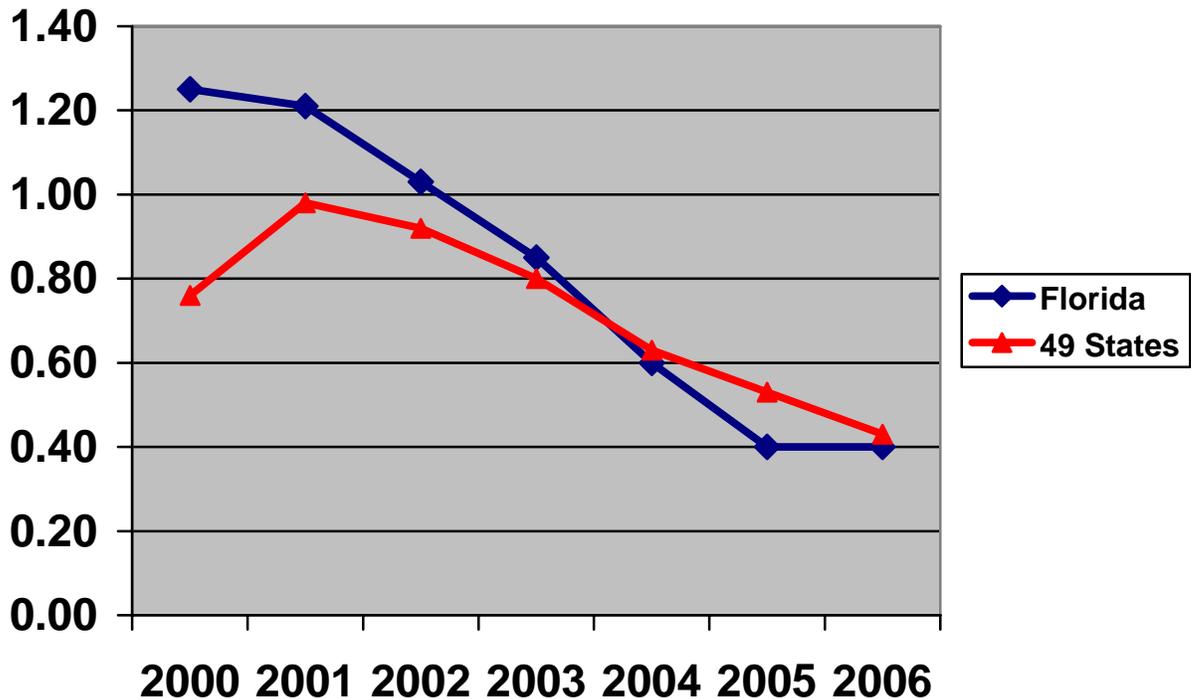
The 2004 filing *includes* the (- 7.8%) presumed factor decrease following the legislation. Moreover some companies have filed more than one filing per year. In these instances the rate factors were multiplied for that year's filing to produce the table above.

On the surface, it appears the Florida Insurance Consumer Advocate may have a point: the decrease in loss ratios from 2003 to present has not been accompanied by equivalent decreases in premium. The Florida Insurance Consumer Advocated hypothesized there could be additional synergistic savings based on a variety of related factors not originally anticipated in the Deloitte & Touche presumed factor savings in 2003.

The industry countered this argument during the public hearing by asserting that declines in loss ratios are a general national trend during the 2003-2006 timeframe, and cannot be attributed to specific legal changes in Florida. There is some statistical evidence to support this claim: While comparing national loss ratios between Florida and the rest of the United States, there is a similar trend.¹ However, the decline in loss ratios in Florida is more pronounced.

¹ A statistical comparison between loss ratios for Florida vs. the Nation from 2000-2006 shows a Spearman's formula for rank correlation of 0.75; and a Pearson's correlation of 0.88. Thus, the loss ratios between Florida and the Nation are statistically correlated.

Pure Loss Ratio 2000 – 2006



Source: Calculated based on annual data reported to the National Association of Insurance Commissioners (NAIC).

While loss ratios in Florida were clearly higher than the national average prior to 2003, this gap has narrowed. In fact, the pure loss ratio in 2006 was 40% for Florida, which was only slightly less than 43% for the remaining 49 states and U.S. territories.

A straightforward comparison between Florida's aggregate market numbers and data from the other 49 states is frustrated by the fact that some other states may *also* have implemented reforms. A more sophisticated analysis could attempt to compare Florida's declining loss ratios with states that have enacted reforms to discern the "legislative effect" on the trends noted above.

Another industry assertion is that the decline in loss ratios (in Florida and nationally) is not due to the severity of loss, but due to the frequency of loss. Regrettably the number of medical malpractice claims is not reported to the NAIC, and is therefore not readily available to analyze.

LEGISLATIVE CHANGES

Although the economic ramifications are unclear, the residents of Florida passed three ballot initiatives pertaining to medical malpractice insurance in 2004:

- **Amendment 3: Medical Liability Claimant's Compensation Amendment**
- **Amendment 7: Patients' Right to Know About Adverse Medical Incidents**
- **Amendment 8: Public Protection from Repeated Medical Malpractice**

The amendment with the most potential impact is Amendment 3, as it required patients in a medical malpractice case to receive 70% of the first \$250,000 awarded and 90% of the remainder, plus reasonable costs. However, this has been subject to multiple court challenges, and in September, 2006, the Florida Supreme Court ruled attorneys may circumvent these limits provided a client signs a consent form.

RECOMMENDATION

The issue of medical malpractice rates deserves additional study. The Deloitte & Touche report in 2003 emphasized the difficulties in predicting market reactions to the changes in Florida Statutes. Another study similar to the one conducted in 2003 should be undertaken to determine if the initial presumed factor savings of 7.8% has been realized, and whether additional savings should be passed on to the consumer in the form of premium reductions, as well as the effects of other legislative changes.