Minnesota Department of Commerce
Medical Malpractice Insurance in Minnesota
data as of 12/31/2006

Medical malpractice (med mal) insurance in Minnesota is characterized by a lack of competition, relatively low rates, and uncertainty about future costs. There is no immediate crisis, but there is an underlying concern that the situation could deteriorate suddenly and with little warning. In Minnesota, a large section of the traditional insurance market, as exemplified by the St. Paul Companies, has disappeared and has been replaced by various types of self-insurance programs, including a company owned by doctors, and state backed insurance via the Minnesota Medical Malpractice Joint Underwriting Association (JUA).

This report is prepared in response to MN statute Chapter 255, Sec. 76.

> "The commissioner of commerce shall provide to the legislature annually a brief written report on the status of the market for medical malpractice insurance in Minnesota. The report must summarize, interpret, explain, and analyze information on that subject available to the commissioner, through annual statements filed by insurance companies, information obtained under paragraph (c), and other sources…."

Medical malpractice insurance has been a problematic line for several years. In the early 1970's, several insurance companies left the market because of increasing losses and an inability to accurately estimate future costs. The introduction of claims-made coverage at that time improved the accuracy of the pricing process, allowing the major insurance companies to write for several more years. During the 1990's, although insurers found the business increasingly unprofitable and there were worrisome trends in litigation, insurance rates remained essentially flat. However, in 2001, the St. Paul Companies, the nation's leading med mal insurer with $583 million in premium, exited the market. This was a bombshell. Med mal insurance is a specialty line that is not written by very many insurers. Further, some of the subcategories in which the St. Paul had a major presence were not wanted by other med mal writers. Finally, even if another insurer did want part of the business, an insurance company cannot write new policies unless it has the staff and capital to support them. Consequently, the St. Paul's exit precipitated a crisis for many smaller groups, such as ambulance services and nursing homes, which scrambled to find some sort of liability coverage.

Over the past several years, as insurance availability has been a reoccurring problem, various options have surfaced.

- Doctors have formed their own companies; in Minnesota, Midwest Medical, our largest med mal insurer, is a doctor-owned company.
- In some instances, the state itself has stepped in and provided coverage of last resort. In Minnesota, we have the Minnesota Medical Malpractice Joint Underwriting Association where premiums jumped from $158,000 in 2001 to $3.5 million in 2005. As a result of the St. Paul's exit, the med mal JUA now insurers a large number of MN nursing homes.
- Several types of alternative markets, which operate outside the insurance regulatory framework, have also developed. In Minnesota, large groups that are either self-insured or part of a Risk Retention Group or have their own captive insurer include Park Nicollet, Allina, Fairview, Duluth Clinic, Mayo, University of Minnesota Physicians, Health Partners and the Emergency Physicians Professional Association (EPPA).

Note that the comments in this paper apply only to the insurance market in Minnesota.

Lack of Competition

Minnesota medical malpractice insurance has a total premium of $100 million and 51 insurers writing the business. In the total property/casualty insurance market, this premium is not very large. The largest P/C insurance line in Minnesota is personal automobile, with $2770 million in premiums and 180 insurers competing for the business. If the 51 med mal insurers were all active in the market, competition would be strong. However, Minnesota med mal has one dominant insurer. Midwest Medical Insurance Company (MMIC) is, by far, the major insurer with 53% of the premiums. MMIC is doctor-owned and returns unneeded profits to the physician policyholders. The company is carefully managed and conservatively reserved. MMIC markets to physicians and related exposures, including clinics, hospitals and health care systems. The company is not interesting in insuring some of the subgroups, such as ambulance services or stand alone nursing homes, which are listed in Section 76.

Minnesota Malpractice Insurance – Premiums and Market Share for 2006

The Minnesota Statute requires companies writing $2 million or more in premiums to file a special report with the Commissioner of Commerce. In 2006, there were six companies that met this criterion. We do not yet know whether or not these companies write the subgroups listed in Section 76.

NAIC Company Code	Company Name	MN 2006 Premium $(000)	MN Market Share
16942	Midwest Medical Ins Co	53,387	53%
19437	Lexington Ins Co (AIG)	7,498	7%
21199	Arch Specialty Ins Co (Bermuda)	6,974	7%
20443	Continental Casualty Co (CNA)	6,537	7%
31127	Columbia Casualty Co (CNA)	3,254	3%
10903	American Excess Ins Exchange RRG	3,059	3%
35378	Evanston Insurance Co	1,973	2%
20427	American Casualty Co of Reading PA	1,912	2%
15865	NCMIC Insurance Co	1,779	2%
23400	Physicians Insurance Co of WI	1,752	2%
	All Other Companies (41)	11,926	12%
	Minnesota Totals	$100,051	100%

Wisconsin Malpractice Insurance – Premiums and Market Share for 2006

The Wisconsin malpractice insurance market is similar to Minnesota's. There is somewhat more diversification, but most of the premium is written in one dominant company.

NAIC Company Code	Company Name	WI 2006 Premium $(000)	WI Market Share
23400	Physicians Ins Co Of WI	$41,947	36%
11843	Medical Protective Co	14,236	12%
20443	Continental Casualty Co	12,487	11%
16942	Midwest Medical Ins Co	12,119	10%
33405	Wisconsin Health Care Liab Ins Plan	5,660	5%
36234	Preferred Professional Ins Co	5,451	5%
19437	Lexington Ins Co	2,585	2%
31127	Columbia Casualty Co	2,267	2%
26387	Steadfast Ins Co	2,034	2%
20427	American Casualty Co of Reading PA	1,934	2%
	All Other Companies (46)	17,051	14%
	Wisconsin Totals	$117,771	100%

Relatively low rates for Doctors

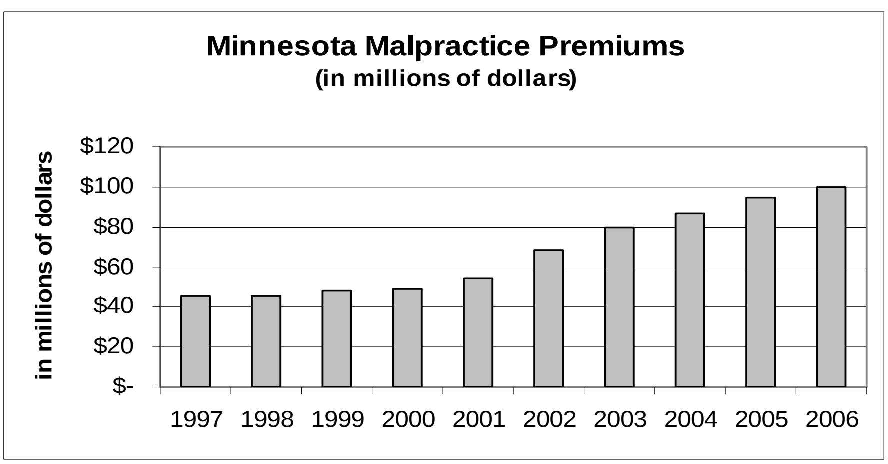
Each year in October, the *Medical Liability Monitor* publishes a rate survey comparing rates for physician's liability insurance in the various states. Per the *Monitor*,

> "Consistent with previous years, states in the upper Midwest still enjoy the lowest med mal premiums in the nation. Wisconsin, Minnesota, Iowa, Nebraska as well as North and South Dakota consistently have lower rates for all specialties than most other states."
>
> Minnesota had the lowest rate in the nation for internists, $3,375 reported by PIC Wisconsin. At the other end of the range, Florida's Dade County has an internist rate of $74,855, reported by First Professional Insurance Company. Minnesota general surgeons insured by PIC Wisconsin paid $11,306 vs. $299,420 in Dade County.

Insurance companies base their rates on the aggregate claim experience in geographical areas. The difference in rates between states reflects the difference in the number of injuries and the difference in the average cost of those injuries. The obvious question is "What makes the experience in Minnesota and the other upper Midwest states better?" In talking to med mal insurance professionals, the following possibilities were raised:

1. The quality of health care is higher in this region.
   A recent report by the federal Agency for Healthcare Research and Quality ranked MN second best in the nation, preceded only by WI. Three states in the northeast, ME, NH and RI, completed the top five list. The other states in the upper Midwest, ND, SD and IA, all ranked in the top 25%.
2. The legal climate results in fewer lawsuits and smaller average awards.
   Med mal is a liability line and is driven by lawsuits, more so than most other types of liability insurance. In May 2007, the U.S. Chamber of Commerce released the results of a survey on the tort liability system as perceived by U.S. business. Minnesota was ranked #2 in "creating a fair and reasonable litigation environment." Results for the other upper Midwest states were #4 IA, #10 WI, #11 SD, and #20 ND.
3. Finally, differences between who is insured may affect the rate comparison.
   In Minnesota, the larger hospitals and clinics, which probably have the most lawsuits, are outside of the insurance market because they self-insure. We have no comparable information on other states.

Even though MN rates for doctors may be low, premiums have more than doubled in Minnesota in the last ten years. Premiums increase when prices increase, when more policies are sold, or when medical providers buy higher amounts of insurance.



Uncertainty about Future Costs

The problems with medical malpractice insurance rates over the past 30 years all have the same basic cause: Changes in claim costs as a result of the litigation environment have made future costs unpredictable.

Estimating future costs is a two-step process:

1. First, an insurance company has to know whether or not it has made a profit.
   For a liability line like med mal, this is not as simple as it sounds. Claims reported during the policy period may take several years to settle and juries can be inconsistent and unpredictable in determining negligence and the seriousness of an injury. A late realization that the insurance company has not been charging enough has very serious consequences.
2. Secondly, the insurance company must be able to estimate how the future will be different. Inflation trends and steady changes in the number of claims can be predicted relatively accurately. However, changes in the legal system (for example, an expansion of the theory of negligence) cannot be accurately forecast and can bankrupt the company.

I asked one actuary for a med mal insurer if his company would consider expanding into Minnesota and he very quickly said no. His company only goes into states where there is a cap on non-economic losses and a statute that allows doctors to say “I’m sorry" without admitting legal culpability. This is primarily a statement about improving predictability.

Med mal is a liability line and is driven by lawsuits, more so than most other types of liability insurance. In med mal, the administrative costs associated with settling claims, averaged 34% of premium over the past ten years. For private passenger auto liability, the largest property-casualty insurance line, loss adjustment expenses averaged 14%.

Considering investment income, medical malpractice has been profitable for insurance companies over the past five years. The Operating Ratio (see table below) is a standard insurance industry measure of profitability and indicates that the med mal industry in MN has enjoyed an average profit of 11% of premiums written.

Medical Malpractice Insurance Premiums and Losses in Minnesota

	Number of Iinsurers	Direct Premium Written	Premium Growth	Loss Ratio Excluding all LAE	CW Loss Adjustment Expense	CW Underwriting Expense	CW Investment and Other Income	Operating Ratio
2002	61	68,280	26%	48%	37%	18%	(13%)	91%
2003	59	79,892	17%	48%	38%	17%	(16%)	87%
2004	56	86,953	9%	63%	31%	15%	(15%)	95%
2005	51	94,740	9%	51%	29%	17%	(13%)	84%
2006	51	100,051	6%	66%				
Total		478,380		56%				89%

data source: NAIC Annual Statements filed annually by Insurance Companies & Best’s Aggregates & Averages

In most businesses and in most lines of insurance, this level of profitability would indicate a healthy market. However, med mal is only temporarily healthy. At any time, a significant change in the legal environment could have a catastrophic effect on prices and availability.