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Gouging, numbers belie medical malpractice 'crisis' claims

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OLYMPIA -- After years of their lobbyists calling for caps on plaintiff's damage awards, squeezing lawyers' contingency fees and trying to throw litigation roadblocks in the way of injured patients and their families, the state's doctors may have found a legitimate way to cut medical malpractice premiums: Get their malpractice insurance company to quit gouging them.

State Insurance Commissioner Mike Kreidler announced Wednesday that he had ordered the state's largest medical malpractice insurer, Physicians Insurance and its affiliate, Western Professional Insurance Company, to refund more than \$1.3 million plus interest in excess premiums charged in 2003.

Nearly 2,400 doctors are in line for premium refunds as high as \$4,681. The average refund is expected to be \$534.

One insurance company spokesman called it a "paperwork error," and, sure, even a \$4,600 refund check won't make much of a dent in an obstetrician's \$80,000 annual medical insurance premium. But these are the folks who've been trying to literally blame the victims for the high cost of medical malpractice premiums.

The \$1.3 million refund order came just one day after Kreidler's office released a report analyzing a decade's worth of medical malpractice claims. The report appears to give lie to allegations of a "crisis" in medical malpractice.

The insurance commissioner's office asked the top five medical malpractice insurers to supply information on claims that were closed between July 1, 1994 and June 30, 2004. These five insurers account for more than 90 percent of the regulated malpractice market for the state's physicians and surgeons, according to Kreidler.

The 10-year period produced just over 10,000 closed claims. That number is probably a good place to start. Ten years, 10,000 claims. That's 1,000 a year.

Of those 10,000 cases, juries decided in favor of plaintiffs in just 50 cases. Not 50 percent of cases, but 50 cases total. Runaway juries? Lottery justice? Based on normal win-loss ratios in cases that go to trial, the final jury score was apparently patients: 50 and docs: 307.

In all, 3,248 of the 10,000 cases were closed without plaintiffs getting a dime and without defendants having to spend a dime to defend themselves. In about 6,100 of the cases, defendants incurred costs for attorneys and expert witnesses. But it was money well

spent. Defendants prevailed in 61 percent of those cases.

Only about 2,700 claims -- 27 percent -- resulted in any payment to the injured party.

And what about those blockbuster, multibillion-dollar jury awards? Over the 10 years, 200 claims resulted in compensation payments of more than \$1 million. And that's apparently for all compensation, including economic damages and the non-economic or "pain and suffering" awards that lobbyists have been pressuring lawmakers to cap at \$250,000 and that the current Initiative 300 to the Legislature would cap at \$350,000.

Lobbyists and initiative backers have lamented the "explosion" in medical malpractice claims.

The survey shows that the number of medical malpractice claims increased by 4.9 percent a year. Population growth alone would account for nearly 40 percent of that increase. The average amount of the compensation per claim increased by 4.1 percent a year, well below the rate of inflation in health care costs.

The "explosion" appears to be more of a poof than a boom.

Indeed, according to the Washington State Trial Lawyers Association, Physicians Insurance reduced its medical malpractice premium rate by 7.7 percent for 2005.

The insurers were asked to supply this survey data. Not ordered to. According to Kreidler, "no claims or settlement reporting requirements exist for medical malpractice insurers."

That's too bad. And that should be fixed. It may be too late for this legislative session, but next year should bring executive-request legislation from Kreidler, who said that this "limited survey" made it clear that "we need more reliable claims and settlement information from all of the parties providing medical malpractice coverage," information that would allow us to "make public policy based on facts rather than anecdotes."

Imagine that.

Look, we all admire and respect physicians; those catchers in the rye whom we ask to keep us from death's precipice. We want the few bad docs weeded out, preferably before they work on our loved ones, or us, and we want the many good docs to get a break on their malpractice insurance. But we want that to come out of insurers' hides rather than patients'.

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