

**PHYSICIAN CLOSED CLAIMS ANALYSIS
OREGON MEDICAL ASSOCIATION – CNA HEALTHPRO
FEBRUARY 2008**

Introduction

This report represents an update of an ongoing/periodic claims analysis provided to the Oregon Medical Association (OMA) by CNA HealthPro. Previous analyses were published in July 1999 and in November 2005. It should be noted that the time frame for this investigation is more limited (two years) than in previous studies where data was drawn respectively over a five-plus and six-plus year period. Thus, drawing conclusions based on frequency should be approached with caution.

A change in the current analysis includes the addition of the category “corporate non-physician” to the “Claims by Specialty—Table 4” section of the report. These claims represent allegations of negligence against persons employed by a physician or medical group corporate entity. Healthcare professionals named in these lawsuits included physician assistants, nurse practitioners, radiology technicians, pharmacy technicians, and registered nurses.

CNA has been providing professional liability insurance to Oregon physicians for more than 35 years. The claims database provides an instrument to review cases and identify and analyze frequency and severity trends in the state. The group of insured physicians has been stable over the period of time examined, relative to the number of physician insureds and the medical specialty mix.

Methodology

The methodology utilized for the past and present analysis reports has remained consistent. The database consists of medical professional liability claims of physicians insured by CNA through the OMA-sponsored program. This review studied claims that were closed between October 11, 2005 and October 10, 2007. The total number of claims closed during this time frame was 833. Excluded from the study period number were:

- Open claims
- Closed claims with a paid indemnity of less than \$5,000
- Closed claims with an expense payment but no indemnity payment
- Mass tort claims

After refining the database, 74 claims remained for analysis.

It should be noted that indemnity payments are only those paid by CNA on behalf of one of its insureds and do not represent amounts paid by other non-CNA defendants in a claim.

The data were analyzed to identify trends in both frequency and severity of specific claim categories. Some of the areas examined include:

- Location of incident
- Physician specialty
- Alleged medical error

Claims Analysis

Table 1 – Claims with Indemnity Payment: Frequency and Severity

	Number Closed Claims	Total Paid Indemnity	Average Paid Indemnity	Total Paid Expense	Average Paid Expense
February 1, 1994 – June 30, 1999	146	\$33,180,723	\$227,265	\$4,208,859	\$28,828
July 1, 1999 – October 10, 2005	211	\$70,323,068	\$333,285	\$8,537,063	\$40,460
October 11, 2005 – October 10, 2007	74	\$22,797,748	\$308,078	\$3,928,605	\$53,089
Total	431	\$126,301,539	\$293,043	\$16,674,527	\$38,688

Average indemnity payments have decreased slightly, while expenses continue to increase.

Table 1 highlights that average paid indemnity decreased by more than 7.5 percent from the 2005 study, but it remained significantly higher than the initial study levels. Average paid expenses have increased in all three study periods and have risen 31 percent since the previous analysis of November 2005.

Table 2 – Claims with Paid Expense Only: No Paid Indemnity

Note: This table is based on closed claims with zero paid indemnity. All other tables in this report are based on closed claims with paid indemnity of \$5,000 or higher.

	Number Closed Claims Paid Expense Only	Total Paid Expense	Average Paid Expense
February 1, 1994 – June 30, 1999	864	\$10,510,776	\$12,165
July 1, 1999 – October 10, 2005	1,305	\$15,762,063	\$12,078
October 11, 2005 – October 10, 2007	407	\$7,510,579	\$18,454
Total	2,576	\$33,783,418	\$13,115

Average paid expenses increased.

Table 2 illustrates that, when *averaged per month, the frequency of closed claims with expense payments with zero indemnity payments have not changed significantly from the previous period. Average paid expenses, however, escalated by more than 50 percent, rising from \$12,078 to \$18,454.

*Study one ending June 30, 1999: 65 months
Study two ending October 10, 2005: 75 months
Study three ending October 10, 2007: 24 months

Table 3 – Claims by Location

Location	February 1, 1994 – June 30, 1999			July 1, 1999 – October 10, 2005			October 11, 2005 – October 10, 2007			Change from 2005 Average Paid Indemnity	Change from 2005 Average Paid Expense
	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense		
Labor and Delivery	9 (6%)	\$279,857	\$46,446	23 (11%)	\$757,303	\$67,859	2 (3%)	\$1,000,000	\$121,794	32%	79%
Physician Office	58 (40%)	\$217,554	\$32,213	84 (40%)	\$308,428	\$39,399	34 (46%)	\$255,825	\$50,983	-17%	29%
Surgical Suite	45 (31%)	\$215,826	\$23,130	82 (39%)	\$272,923	\$36,429	27 (36%)	\$309,372	\$54,073	13%	48%
Radiology Department	30 (14%)	\$301,146	\$26,407	11 (5%)	\$163,477	\$28,725	10 (14%)	\$345,500	\$49,035	111%	71%

By location, the physician office was the only area to experience a decline in average paid indemnity from the previous 2005 study but was still above the initial study levels. The trend of increasing average paid expense is demonstrated.

Table 3 shows frequent locations where medical malpractice claims occurred and reflects the following:

- The physician office remains the most common location where an alleged medical error occurred.
- Increases in average paid indemnity have occurred in all study periods for labor/delivery and surgery.
- Decreases in average paid indemnity for the radiology department noted in the 2005 report were not sustained. Radiology claims are a combination of diagnostic and therapeutic practice.
- Average paid expense increased in all listed locations with a range of 29 to 79 percent.

Table 4 – Claims by Specialty

Specialty	February 1, 1994 – June 30, 1999			July 1, 1999 – October 10, 2005			October 11, 2005 – October 10, 2007			Change from 2005 Average Paid Indemnity	Change from 2005 Average Paid Expense
	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense		
Neurology/Neurosurgery	7 (5%)	\$364,849	\$26,970	19 (9%)	\$373,681	\$39,050	8 (9%)	\$362,500	\$77,927	-3%	100%
Obstetrics/Gynecology	15 (10%)	\$295,638	\$44,263	31 (15%)	\$601,296	\$70,992	11 (15%)	\$439,565	\$84,178	-27%	19%
Orthopedics	14 (10%)	\$82,764	\$15,024	12 (6%)	\$164,625	\$11,968	4 (5%)	\$300,333	\$21,487	82%	80%
Internal Medicine	26 (18%)	\$206,235	\$35,744	10 (5%)	\$249,638	\$28,024	2 (3%)	\$250,000	\$88,394	0%	215%
Radiology	10 (7%)	\$218,070	\$25,246	13 (6%)	\$237,128	\$35,626	9 (12%)	\$269,489	\$36,245	14%	2%
Family Practice	18 (12%)	\$244,940	\$23,914	25 (12%)	\$270,616	\$45,055	3 (4%)	\$139,433	\$34,938	-48%	-22%
General Surgery	17 (12%)	\$263,130	\$37,467	32 (15%)	\$318,298	\$38,434	8 (11%)	\$305,813	\$60,062	-4%	56%
Pediatrics	*	*	*	*	*	*	4 (5%)	\$98,750	\$17,775	*	*
Corporate Non-Physician	*	*	*	*	*	*	7 (10%)	\$309,143	\$35,987	*	*

* Due to the absence of claims in one of the periods, change in average paid indemnity and average paid expense was not calculated.

Obstetricians/Gynecologists continue to be the specialty with the highest number of claims, followed by radiologists.

Table 4 reflects several of the more common medical specialties of physicians involved in medical malpractice claims. Highlights include:

- For the first time, the ongoing study examines non-physician malpractice (corporate non-physician). Of significance:
 - These claims represented almost ten percent of the total claims in the review.
 - Average indemnity paid was \$309,143, the third highest among the selected specialties.
 - Average paid expense equaled almost \$36,000.
- Average paid indemnity for Obstetricians/Gynecologists fell 27 percent from the 2005 study. The decrease appears to correlate to a change in the case mix.
- Orthopedics average paid indemnity increased 82 percent from the previous study. Since the initial study year, the average paid indemnity has increased from \$82,764 to the current \$300,333.

Table 5 – Claims by Medical Error

Medical Error	February 1, 1994 – June 30, 1999			July 1, 1999 – October 10, 2005			October 11, 2005 – October 10, 2007			Change from 2005 Average Paid Indemnity	Change from 2005 Average Paid Expense
	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims	Average Paid Indemnity	Average Paid Expense		
Birth-related	10 (7%)	\$255,371	\$43,429	27 (13%)	\$702,418	\$63,619	3 (4%)	\$416,667	\$46,960	-41%	-26%
Diagnosis-related	58 (40%)	\$272,364	\$26,714	65 (31%)	\$332,034	\$39,721	26 (35%)	\$324,765	\$56,247	-2%	42%
Surgery-related	43 (29%)	\$222,878	\$21,829	84 (40%)	\$260,602	\$35,358	23 (31%)	\$334,698	\$59,199	28%	67%
Improper performance of test, treatment or procedure	13 (9%)	\$204,687	\$28,567	15 (7%)	\$112,371	\$34,452	14 (19%)	\$259,393	\$31,741	131%	-8%
Medication-related	10 (7%)	\$198,362	\$64,611	11 (5%)	\$190,228	\$32,376	8 (11%)	\$221,788	\$64,917	17%	101%

Among the alleged medical errors listed above, diagnosis and surgery-related claims remain the most common.

Table 5 reflects the more common medical errors resulting in medical malpractice claims. Highlights include:

- A significant decrease in average paid indemnity for “improper performance of test, treatment, or procedure” noted in the 2005 report was not maintained and, in fact, increased by 131 percent to almost \$260,000.
- The number of birth-related injuries during the two-year study period was three.
- Average paid expenses relating to medication claims doubled from the previous study.

Table 5A – Birth-Related Allegations

Birth-Related Allegations	February 1, 1994 – June 30, 1999			July 1, 1999 – October 10, 2005			October 11, 2005 – October 10, 2007			Change from 2005 Average Paid Indemnity	Change from 2005 Average Paid Expense
	Number (Percent) Closed Claims *	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims *	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims *	Average Paid Indemnity	Average Paid Expense		
Improperly managed labor	2 (20%)	\$50,000	\$19,605	13 (48%)	\$622,731	\$68,549	1 (33%)	\$1,000,000	\$104,134	61%	52%
Delay in induction	5 (50%)	\$435,743	\$56,576	3 (11%)	\$915,999	\$92,175	0 (0%)	\$0	\$0	**	**
Failure to identify fetal distress	0 (0%)	\$0	\$0	6 (22%)	\$268,074	\$44,679	2 (67%)	\$125,000	\$18,734	**	**

* Percentages are not a percentage of total claims, but rather a percentage of birth-related claims as noted in Table 5. Total number of cases may not correlate exactly as every allegation was not captured for further analysis.

** Due to the absence of claims in one of the periods, change in average paid indemnity and average paid expense was not calculated.

Since only three birth-related cases were in the database for the study period, further analysis is not provided.

Table 5B – Diagnosis-Related Allegations

	February 1, 1994 – June 30, 1999			July 1, 1999 – October 10, 2005			October 11, 2005 – October 10, 2007				
Diagnosis-Related Allegations	Number (Percent) Closed Claims*	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims *	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims *	Average Paid Indemnity	Average Paid Expense	Change from 2005 Average Paid Indemnity	Change from 2005 Average Paid Expense
Delay in diagnosis	19 (33%)	\$310,155	\$26,564	31 (48%)	\$388,658	\$51,093	11 (44%)	\$449,848	\$90,204	16%	77%
Failure to diagnose	32 (55%)	\$257,943	\$26,985	32 (49%)	\$294,120	\$30,298	14 (56%)	\$249,326	\$33,576	-15%	11%

* Percentages are not a percentage of total claims, but rather a percentage of diagnosis-related claims as noted in Table 5. Total number of cases may not correlate exactly as every allegation was not captured for further analysis.

Diagnoses-related claims with delay in diagnosis allegations experienced an increase in severity.

Table 5B reflects the two most common diagnosis-related allegations. Average paid indemnity increased for delay in diagnosis and decreased for failure to diagnose. The average paid expense for delay in diagnosis jumped 77 percent from the previous study.

Table 5C – Surgery-Related Allegations

Surgery-Related Allegation	February 1, 1994 – June 30, 1999			July 1, 1999 – October 10, 2005			October 11, 2005 – October 10, 2007			Change from 2005 Average Paid Indemnity	Change from 2005 Average Paid Expense
	Number (Percent) Closed Claims*	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims *	Average Paid Indemnity	Average Paid Expense	Number (Percent) Closed Claims *	Average Paid Indemnity	Average Paid Expense		
Surgical accident as a result of technique	14 (33%)	\$241,900	\$20,875	56 (67%)	\$328,661	\$41,096	9 (39%)	\$354,080	\$36,783	8%	-10%
Improper management of surgical patient intraoperatively	6 (14%)	\$558,194	\$17,849	6 (7%)	\$147,500	\$49,877	11 (48%)	\$355,455	\$81,051	141%	63%
Retained foreign body	10 (23%)	\$97,874	\$39,639	4 (5%)	\$27,505	\$20,018	0 (0%)	\$0	\$0	**	**

* Percentages are not a percentage of total claims, but rather a percentage of surgery-related claims as noted in Table 5. Total number of cases may not correlate exactly as every allegation was not captured for further analysis.

** Due to the absence of claims in one of the periods, change in average paid indemnity and average paid expense was not calculated.

There were zero closed claims relating to a retained foreign body during the current study period which is favorable.

Table 5C reflects the most common surgery-related allegations. Average paid indemnity for improper management/intraoperatively escalated aggressively from the 2005 study to nearly \$356,000, but remains below initial study levels of \$558,194.

Conclusion

Overall, the average paid indemnity for the current review decreased slightly from 2005 but remained 35 percent higher than the initial study levels. Expense payments have continued to increase in all areas. As noted earlier, conclusions regarding frequency cannot be drawn conclusively due to the disparity in time frames utilized for the three study periods.

The current study results continue to reveal a significant opportunity to improve risk/quality/safety systems in the physician office setting. While this location does not represent the highest average paid indemnity per claim, it has consistently topped the frequency list in all three study periods.

While severity in obstetrical cases always remains a concern, other specialties, such as orthopedics, should be closely monitored. In addition, future studies should separate diagnostic and therapeutic to provide greater depth of knowledge.

The issue of non-physician negligence should remain a primary focus as the review highlights both frequency and severity concerns. It should be noted that trends for specific allied health professionals were not present.

Analyzing and understanding claims data are key components in the development of effective risk management programs. The data presented in this report are valuable in understanding the claims experience of Oregon physicians insured by CNA, and also in the formulation of risk management interventions targeted at mitigating risk in the identified areas.

Disclaimer

This report is a confidential communication and may be shared with appropriate individuals as designated by the organization. It is not intended to be a comprehensive study of risk management practices and/or potential liabilities and is not to be considered legal advice. Please note that physicians insured by CNA through the Oregon Medical Association-sponsored program have the responsibility of developing and maintaining an adequate risk control program, and this report shall not be construed as diminishing that responsibility in any manner. CNA accepts no liability from any use or reliance on the report or its contents, including appended materials. CNA HealthPro strongly recommends that an attorney be consulted on specific issues related to the organization's legal obligations, including compliance with applicable federal and state laws and regulations.

Please note that these recommendations focus on risk management strategies that can be implemented to help reduce the organizational exposure to professional liability claims. They are presented to assist you with the enhancement of operational and administrative processes that may help prevent loss and support defense efforts in the event of liability allegations.