

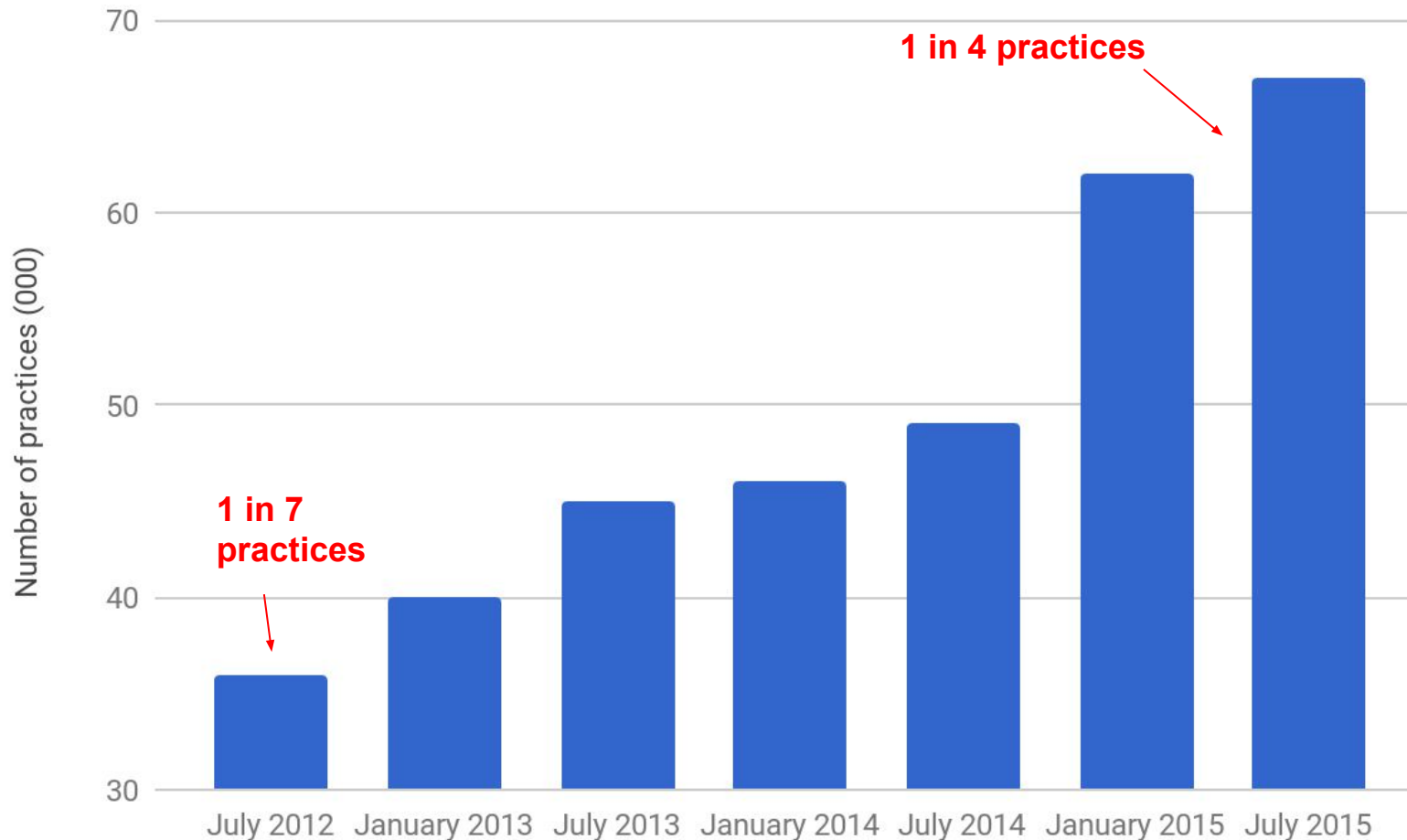


Hospital Professional Liability

Trends and Issues

Joshua Youdovin
CASE Fall Meeting
September 18, 2017

More physician practices are being owned by hospitals....



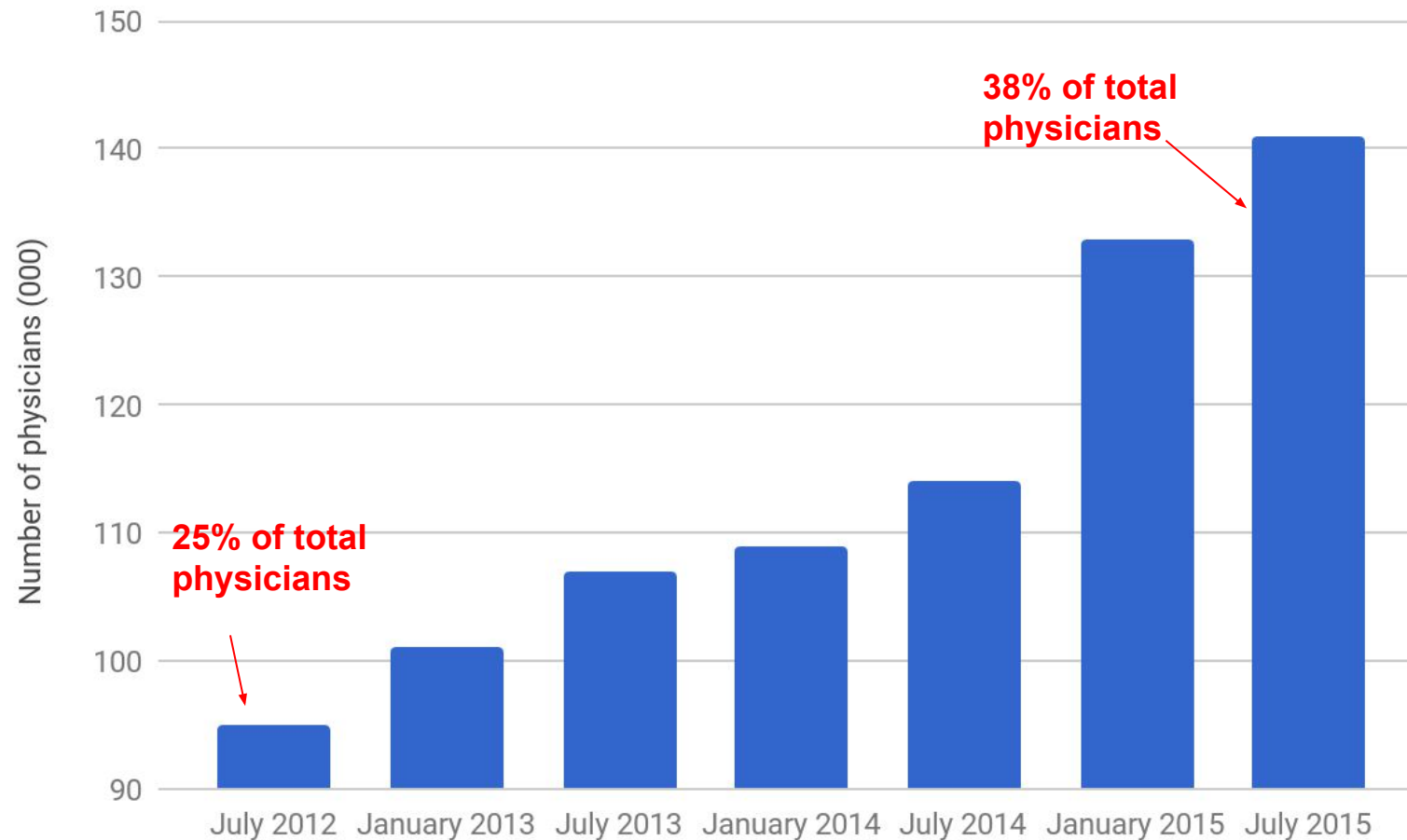
7/12 - 7/15: +86%

Primary drivers:

- Stable income
- Changing reimbursement models
- Regulatory burden
- Technology
- ACOs/Integrated Health Models

Sources: Physicians Advocacy Institute;
The Physicians Foundation 2016
Survey of America's Physicians

...Leading to growth in hospital-employed physicians.



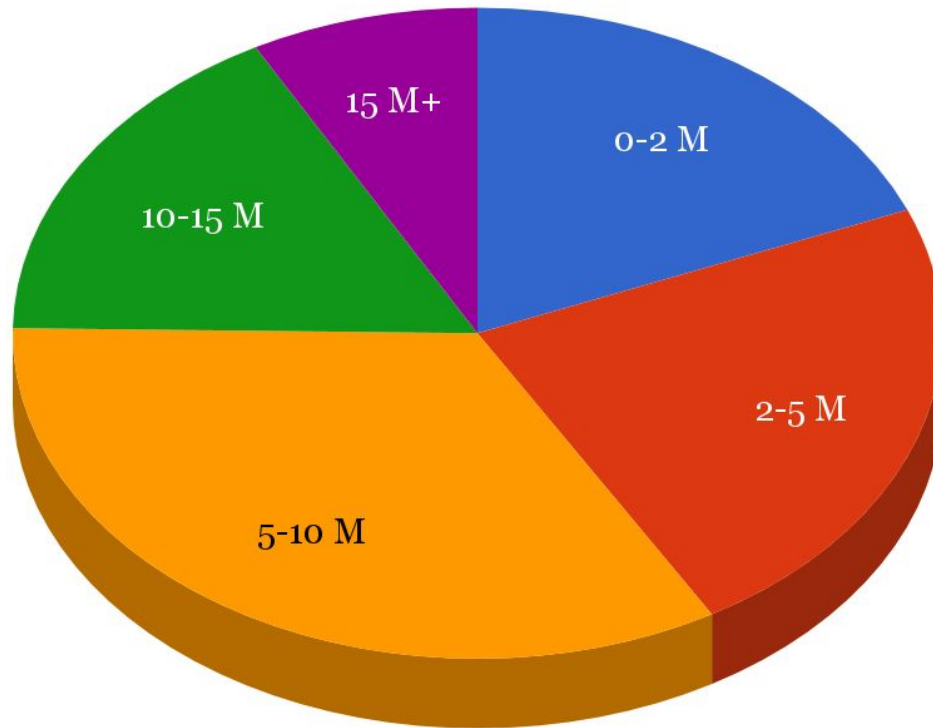
7/12 - 7/15: +49%

According to one survey, less than 33% of all physicians identified themselves as independent practice owners or partners in 2016.

Sources: Physicians Advocacy Institute;
The Physicians Foundation 2016
Survey of America's Physicians

Hospitals self-insure a large percentage of exposures.

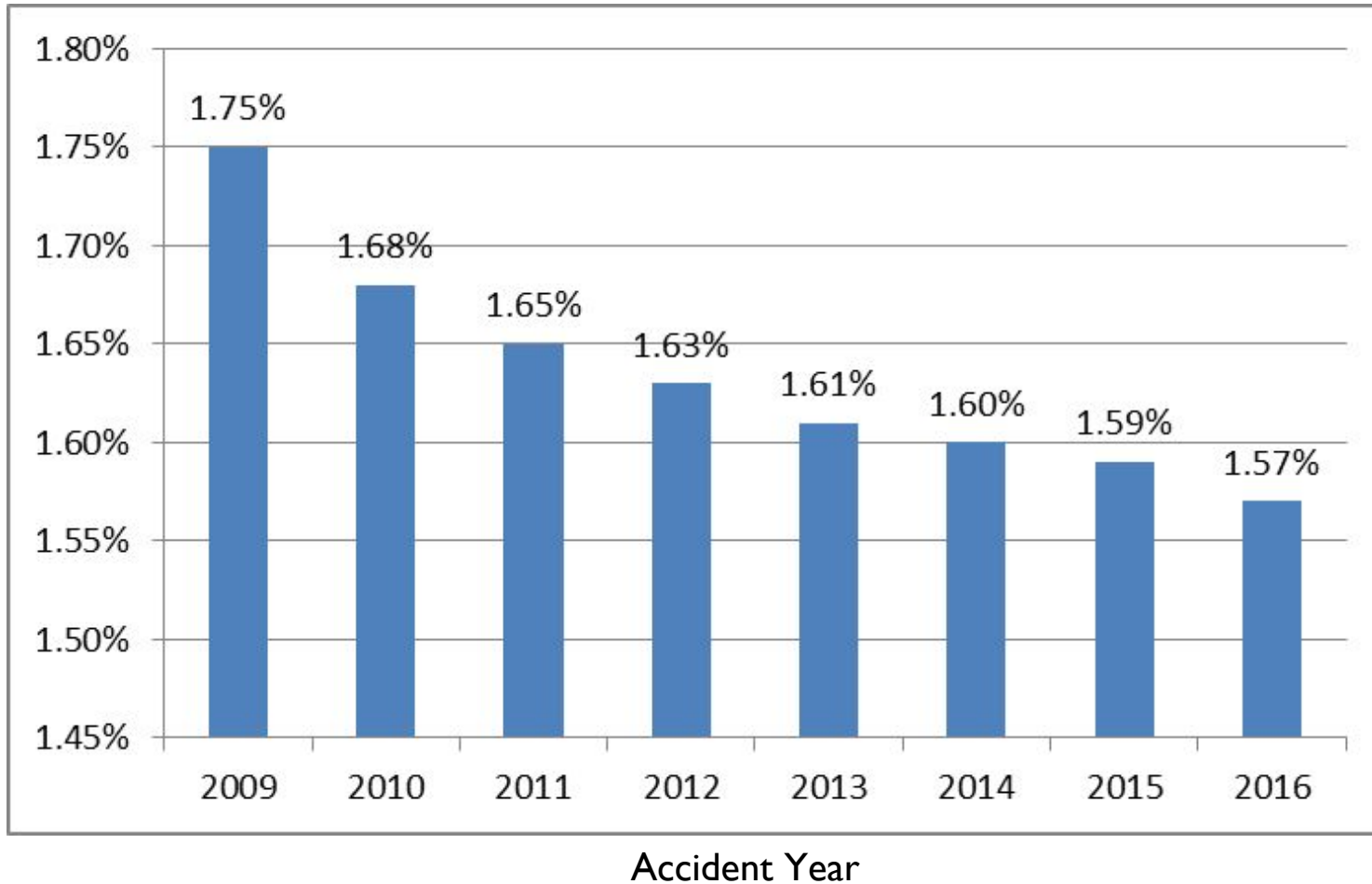
Distribution of Attachment Points (\$)



Self-insured programs include hospital-owned captives and risk retention groups.

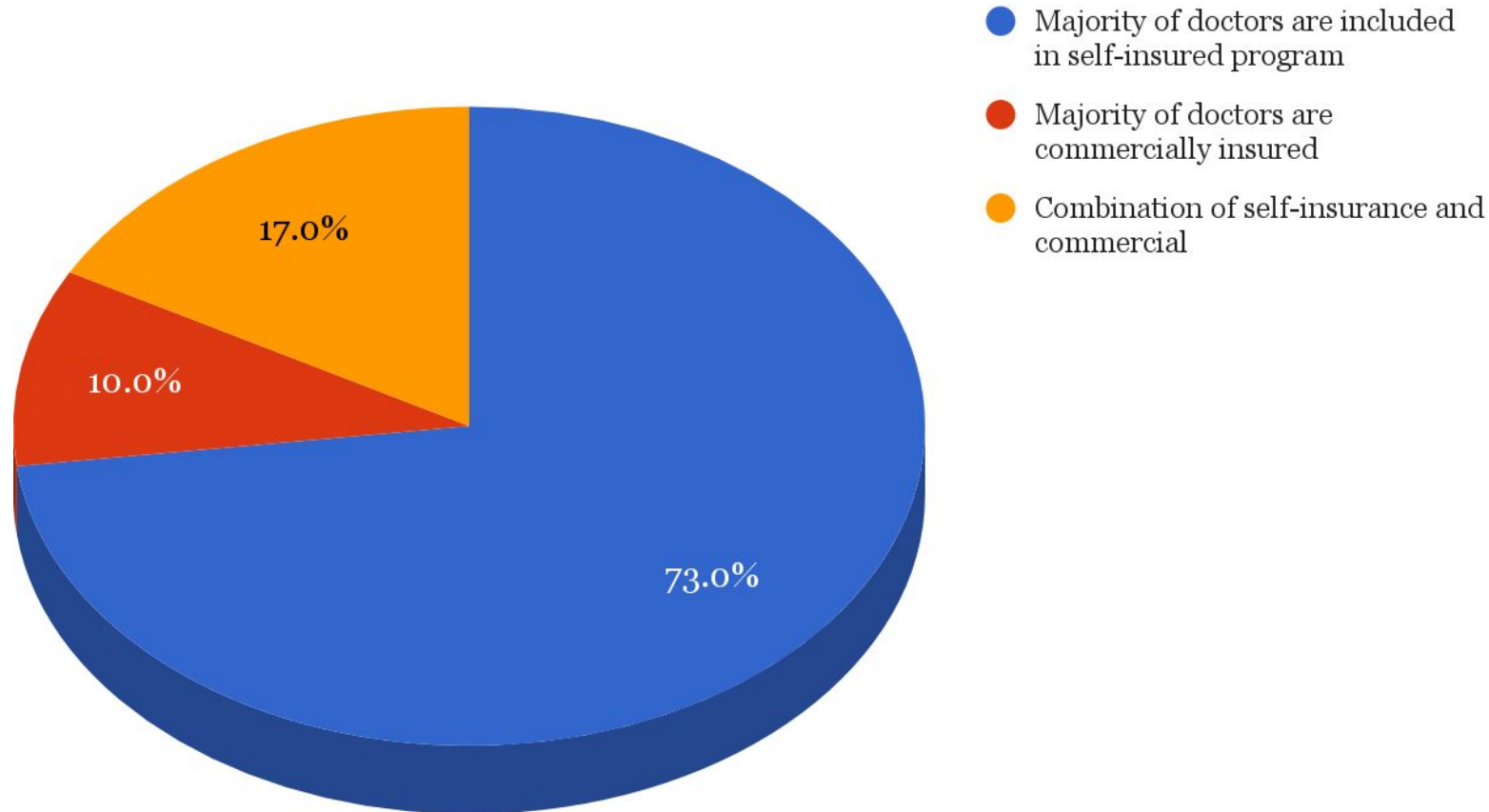
Hospital Professional Liability: Frequency

Frequency per
Occupied Bed
Equivalent



Strong patient safety culture for hospitals, especially ones that self-insure, leads to reduced frequency of liability claims.

Most physicians are included in self-insured programs.



Self-insured programs include hospital-owned captives and risk retention groups.

Physicians lay the “golden eggs” for the lawyers.



Hospitals are bigger “birds.”



Source: *The Emu That Laid the Golden Egg*, by Yvonne Morrison, published in 2013 by Little Hare Books

And they keep growing....



May 2, 2017:

Baptist Memorial and Mississippi Baptist merge. The combined entity runs 21 hospitals in TN, MS, and AR.

Source: Healthcare Finance News

Recent Hospital/Health System M&A

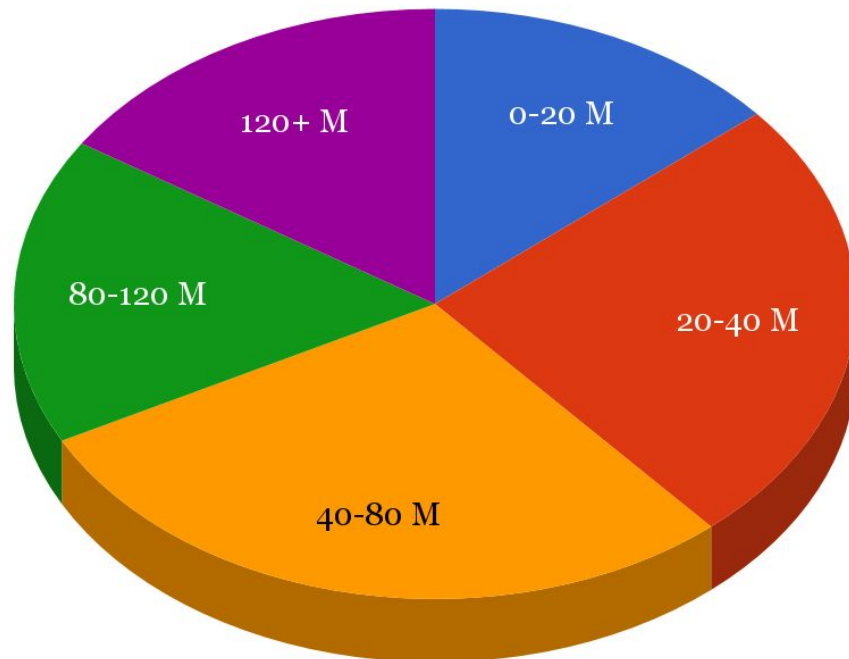
- 102 announced transactions in 2016 (up from 66 in 2010)
- 7 announced deals targeting organizations with \$1B+ in revenues between January 2016 and March 2017
- 6 of 21 deals announced in 2017 Q1 involved for-profit acquirers

Private Insurer Responses to Hospital Trends

- Integration of physician and hospital coverages
- Alternative risk management services for captives/RRGs
- Risk sharing (e.g., excess coverage over SIRs)
- Additional products (e.g., cyber liability, D&O, E&O, WC, GL)
- “Nose” coverage
- M&A (e.g., Berkshire Hathaway & MLMIC)

Hospitals have higher coverage limits....

Distribution of Total Professional Liability Coverage (\$)
Includes Both Self-Insurance and Commercial Excess Coverage



...and the lawyers are taking advantage.



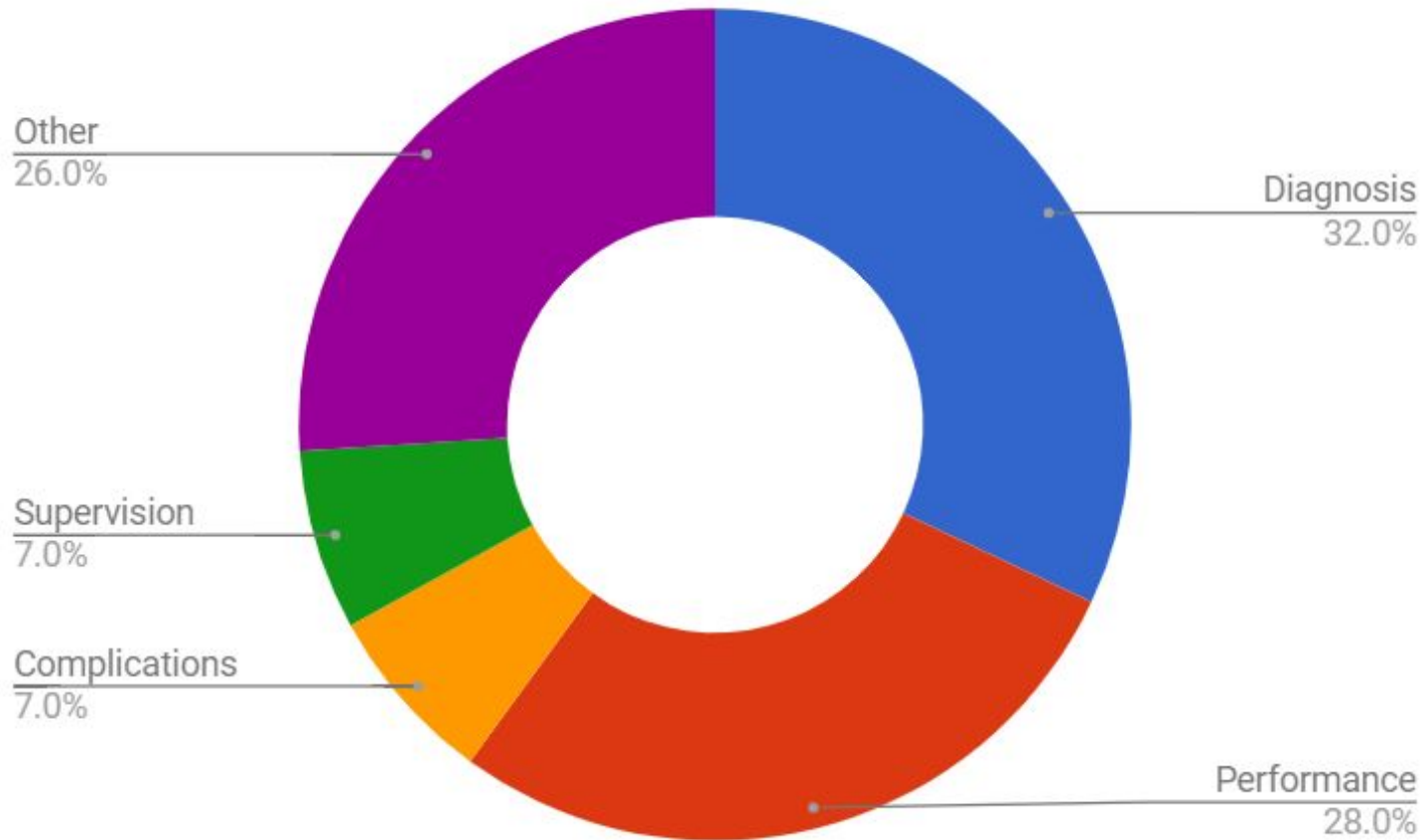
**WELCOME TO THE
REVOLUTION**

THE MOST POWERFUL TOOL IN THE
FIGHT AGAINST TORT REFORM

Recent Large Verdicts: 2016

- \$53 million jury award: Brain injury at birth (largest ever in Cook County, IL)
- \$30 million settlement: Brain damage to 6-year-old boy resulting from surgery complications
- \$44 million jury award: Failure of hospital staff to notice adverse reaction to medicine, resulting in paralysis
- \$20 million settlement: Brain damage in NICU due to improper operation of machinery (largest ever in CA)
- \$16 million settlement: False advertising and negligence awarded to a woman who had suffered nerve damage after childbirth

Top Causes of Claims > \$1M



Top Causes/Outcomes of Large Claims

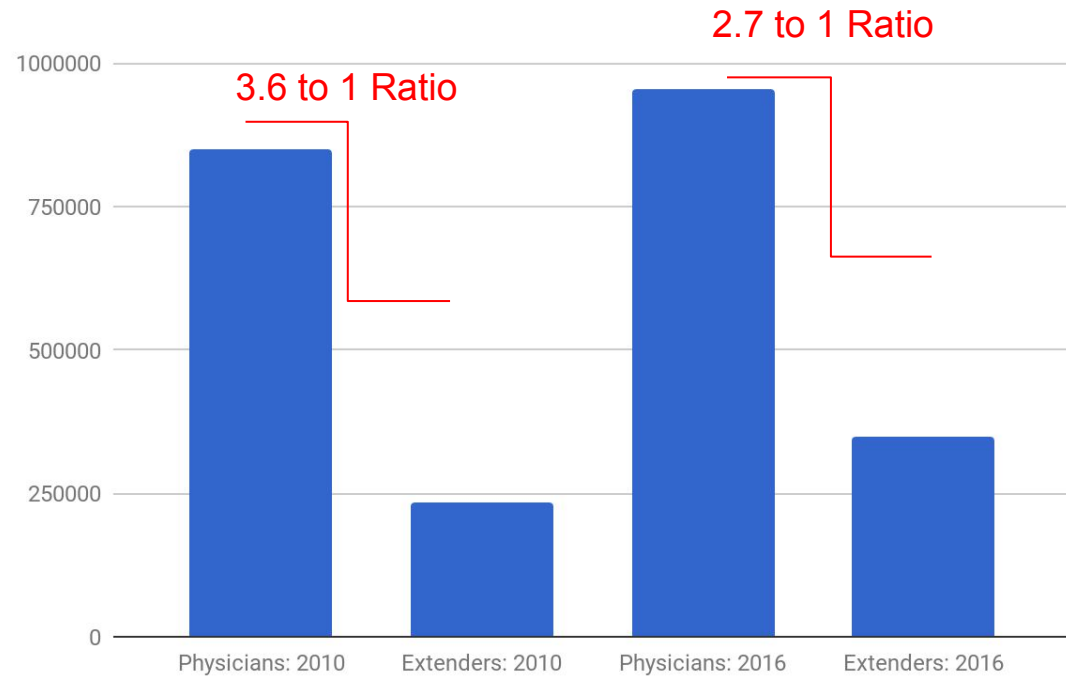
- **Error in Diagnosis**
 - cancer
 - heart disease
- **Improper Performance of a Procedure**
 - baby deliveries
 - spinal cord
 - joint structures
- **Failure to Recognize Complications of Treatment**
 - Brain-damaged infant
 - Accidental puncture/laceration
 - Intestinal disorder
- **Failure to Supervise or Monitor Case**
 - Brain damage
 - Heart disease

Batch Claims

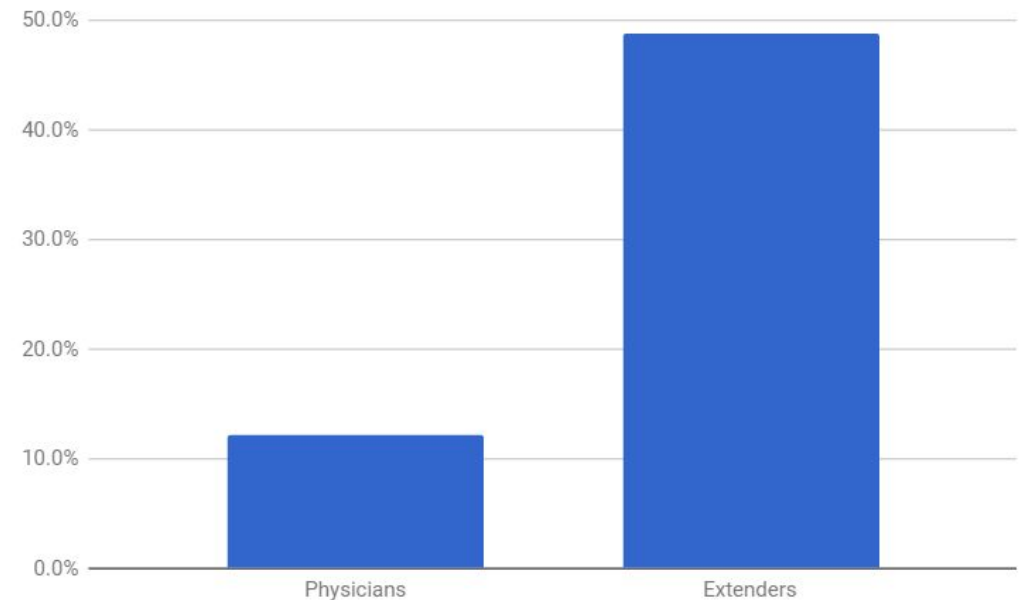
- Catastrophic incidents
- Products (e.g., medicine, food, machinery)
- Incorrect procedures done to multiple patients
- Construction-related incidents
- Negligent employment, supervision, or credentialing
- July 2016: \$8 million settlement involving unnecessary procedures and fraudulent billing for 43 patients in 3 different hospitals/health systems

Physician extenders are a rapidly growing segment

Number of Physicians & Extenders in U.S.: 2010-16



Percentage Growth in Physicians & Extenders: 2010-16



Sources: U.S. Census, American Association of Nurse Practitioners, National Commission on Certification of Physician Assistants

Other Potential Game Changers for Hospitals

- The Affordable Care Act (ACA)
- Value-Based Payments
- Technology
 - Electronic Medical Records (EMRs)
 - Computerized Physician Order Entry (CPOE)
 - Cyber Liability/Data Breaches
- Telemedicine
- Aging Population
- Urgent care clinics
- *Cefaratti v. Aranow* – CT Supreme Court decision permits tort liability for *apparent* agent



Thank You

A special thanks to Bob Allen, President of Pro-Praxis Insurance, for his help in preparing this presentation.