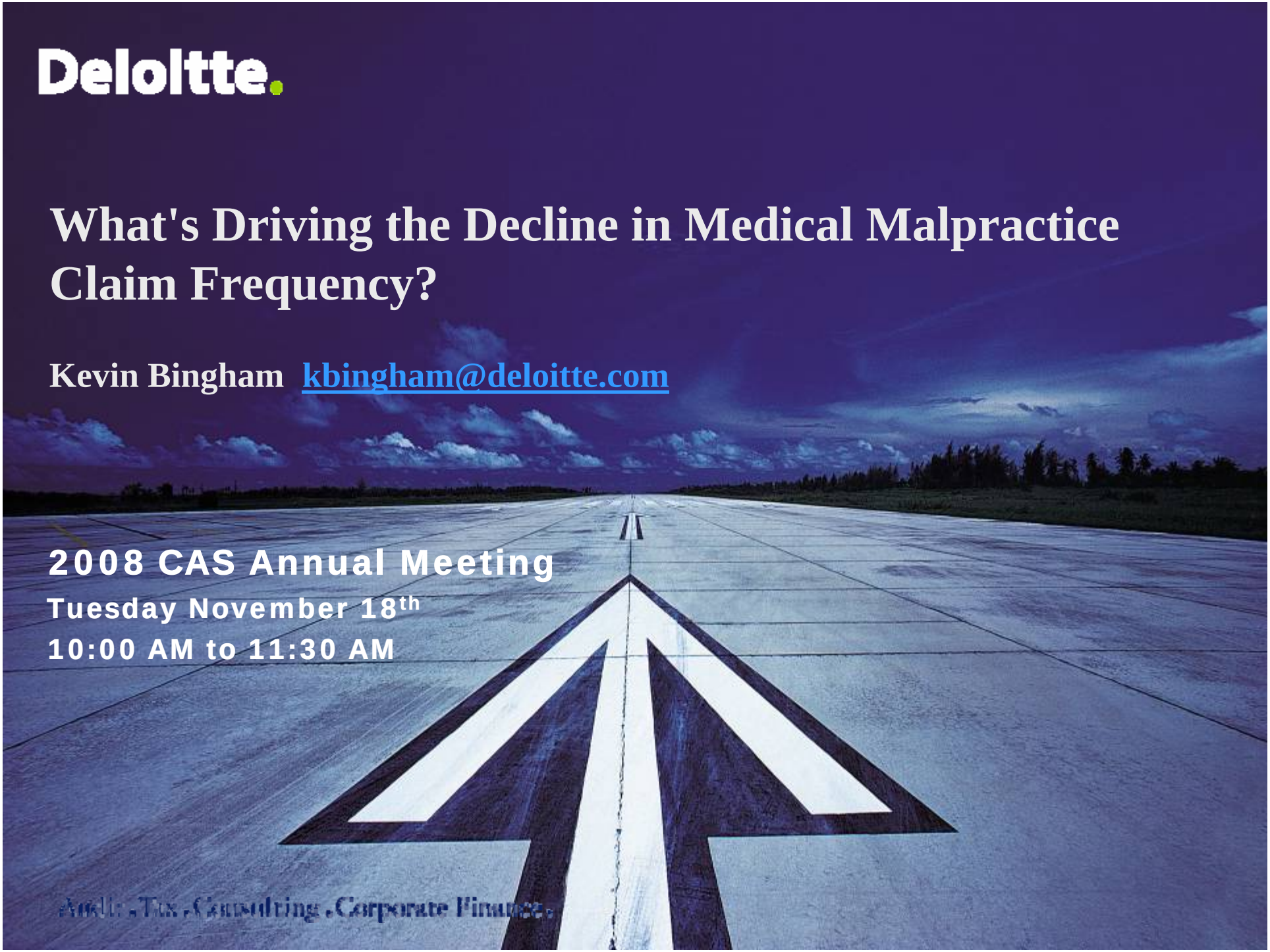
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What's Driving the Decline in Medical Malpractice Claim Frequency?
Kevin Bingham kbingham@deloitte.com
2008 CAS Annual Meeting
Tuesday November 18th
10:00 AM to 11:30 AM
Audit • Tax • Consulting • Corporate Finance

Agenda

- Declining Frequency – Setting the Stage
- Never Events – The Cure for Declining Frequency?
- Physician Extenders
- Industry Examples
- Q&A

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What Has Driven the Decline in Frequency

- Media coverage
  - Physicians' struggle (e.g., struggling to survive, "want to apologize", care, etc.)
  - Patient safety, EMR, CPOE, reimbursements, tort reform, FightingDocs.Com
  - Patient safety organizations getting the message out…
    - "Physicians and hospitals care"
    - "Physicians and hospitals want to make things better"
    - "Physicians and hospitals want to do the right thing"
    - Joint Commission, IHI's 5 Million Lives Campaign, PA Patient Safety Advisor, Leapfrog
- Apology movement
  - COPIC's 3R program – (R)ecognize patient injury, (R)espond soon after event, (R)estore
  - Healing Words – The Power of Apology in Medicine, Michael S. Woods
  - Sorry Works!, Doug Wojcieszak, James W. Saxton, Maggie M. Finkelstein
  - I'm Sorry Works (www.sorryworks.net)
  - Increasing number of states with apology laws

What Has Driven the Decline in Frequency

- Patient safety organizations
  - Joint Commission (patient safety goals, wrong site surgery protocols, etc.)
  - Robert Wood Johnson Foundation/Institute for Healthcare Improvement
    - 100,000 Lives Campaign (six key interventions: rapid response teams, focus on heart attacks, prevent ADEs, preventing infections, etc.)
      - 3,000 hospitals and 122,000 lives saved
    - 5 million Lives Campaign (six + preventing pressure ulcers, reducing surgical errors, preventing harm from high-alert medicines, etc.)
      - Targeting 4,000 hospitals
- Tort reform (e.g., Texas, Florida, Illinois, etc.)
- CPOE/EMR
  - "At your fingertips" access to medical records
  - Drug interaction and allergic reaction alerts
  - Better follow-up
    - Provider to provider
    - Provider to patient
- Medical malpractice and hospital risk management programs
  - Communication boot camps and delivering difficult messages
  - Informed consent/referral management/chart documentation/etc.

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Never Events
History

- 2002 report from the National Quality Forum (NQF): “Serious Reportable Events in Healthcare.”
  - The report identified 27 preventable, identifiable, and measurable adverse events that should never occur in the healthcare setting.
  - Examples include surgery performed on the wrong body part, surgery performed on the wrong patient, and patient death associated with a fall while being cared for in a healthcare facility.
  - Since the 2002 report was issued, 11 states have required public reporting on the NQF reportable events.
- In its 2007 Quality and Safety Survey, the Leapfrog Group announced that it would grant public recognition to hospitals if they agreed to follow four specific steps if a Never Event occurred in their facility:
  - Apologize to the patient and/or family
  - Report the event
  - Perform root cause analysis
  - Waive all costs directly related to the event.

NQF
National Quality Forum

THE LEAPFROG GROUP
Informing Choices. Rewarding Excellence.
Getting Health Care Right.

Never Events
History

- CMS announced that Medicare will stop paying for eight “Never Events” as of October 1, 2008:
  - Foreign object retained after surgery
  - Air embolism
  - Blood incompatibility
  - Pressure ulcers
  - Patient falls and trauma
  - Catheter-associated urinary tract infection
  - Vascular catheter-associated infection
  - Surgical site infection—mediastinitis after coronary artery bypass graft (CABG).
- On April 14, 2008, CMS proposed an expansion of the list, to include nine new hospital-acquired conditions (HACs)
- On July 31, 2008, CMS added three new “Never Events” to its non-payment list.
  - Surgical site infections following certain elective procedures, including certain orthopedic surgeries, and bariatric surgery for obesity
  - Certain manifestations of poor control of blood sugar levels
  - Deep vein thrombosis or pulmonary embolism following total knee replacement and hip replacement procedures
- Next on the list?

Source: www.cms.hhs.gov/apps/media/fact_sheets.asp

Never Events
Where Are We Heading

- CMS announcement has opened the floodgate for health benefit companies and hospitals to begin implementing never event policies
  - Some hospitals are well prepared
  - Some are not
- Older adults are more prone to never events
  - Do you insure physicians with a heavier panel mix focused on older patients
- Unlike apology movement, medical malpractice insurers have no choice but to deal with various never events policies
  - Business as usual for some (i.e., apology not mandated under CMS never events announcement)
  - Leapfrog driven apologies for others
  - Health benefit billing statement “apology” for others

Could “Never Events” be the cure for declining frequency?

- Plaintiff attorneys are already preparing for this amazing opportunity
  - Negligence per se/res ipsa loquitur
  - When will the first never events bill board arrive?

Never Events
August 14th Wall Street Journal

"**Hospital infections will cause the next wave of class-action lawsuits, bigger than the litigation over asbestos.**"

"Beth Israel Medical Center in New York City reports that it hasn't had a central line bloodstream infection in the cardiac intensive care unit in over 1,000 days. Dr. Brian Koll, chief of infection control there, explains that the key is using a checklist that doctors and nurses must follow. **Implementing the checklist cost $30,000 and saved $1.5 million in treatment costs. Lives saved: priceless**.

Other hospitals -- from Johns Hopkins Medical Center in Baltimore to Sutter Roseville Medical Center in Sacramento -- have reached the goal of zero central line bloodstream infections. **No wonder Medicare calls these infections "never events." Why should jurors reach a different conclusion in a lawsuit?**"

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Physician Extenders (PE)
Background

- Physician Assistants (PA), Certified Registered Nurse Practitioners (CRNP), Certified Nurse Midwives (CNM), Certified Registered Nurse Anesthetists (CRNA) and Anesthesiology Assistants (AA) are increasingly used as front line defenders in the delivery of medical care
  - Performing physicals
  - Recording of medical histories
  - Telephone triage
  - Ordering medication, lab tests and x-rays,
  - Providing patient education
  - Providing referrals within the health care system
  - Performing minor surgery
  - Providing preventative health care services
  - Acting as first or second assistants during surgery
  - Responding to life-threatening emergencies

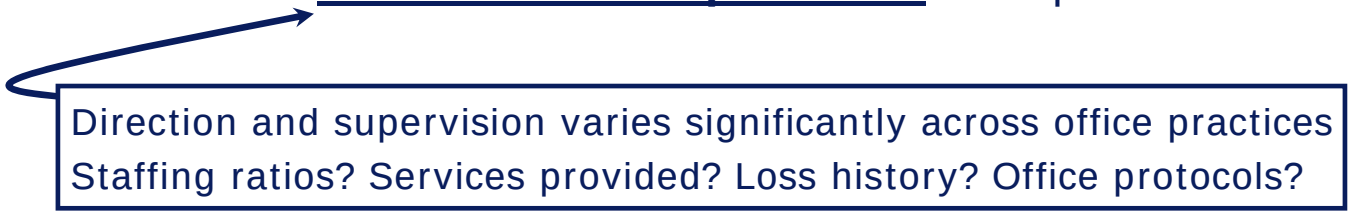
- PE benefits
  - Free up a physician's time to focus on higher need patients
  - Increase patient access to care
  - Decrease waiting time
  - Improve patient satisfaction

Physician Extenders
Medical Malpractice Pricing – Shared Limits or Not?

- Front line means higher exposure
  - "I can't remember the last time I saw my doc…"
- Offering shared limits
  - Depends on state (e.g., PA requires separate limit and coverage)
  - Some hospitals require separate limits
- Pricing
  - Shared limits (e.g., no charge, % of supervising physician rate, etc.)
  - Separate limits
    - Filed rates
    - Sample class structure
      - Class A - Assist the physician in the diagnostic management of patients
      - Class B - Assisting in Surgery – GP/FP; Exposure to Trauma/Emergency room procedures or responsibilities thereof (10 hours or less a week); OB exposure limited to prenatal or postnatal care; and assisting in anesthesiology
      - Class C - Assisting in Surgery - Orthopedic Surgeon, OB/GYN Surgeon, Cardiovascular Surgeon, Thoracic Surgeon, Neurosurgeon and/or Plastic Surgeon; Exposure to Trauma/Emergency room procedures or responsibilities thereof (more than 10 hours a week); Exposure to OB including delivery room responsibilities; and Exposure to cardiac catheterization lab
      - Class D – Students
    - CRNP rates available from Nurses Service Organization (https://www.nso.com)

Physician Extenders
Challenges

- RRGs and insurers struggling with pricing PE exposure
- Level of supervision varies by state (e.g., physician must be present on site, direct oversight for new practitioners, available for consultation in person or by phone, weekly meetings, etc.)*
- Works under the **direction and supervision** of a qualified licensed physician



- Tail conversion issues
- Proper due diligence when hiring PEs
- Rapidly rising premiums
  - West Virginia - The Charleston Gazette – "When two physician assistants in Morgantown got their renewal notices for medical liability insurance in the mail this week, they had a serious case of sticker shock. The bill for a one-year policy for a full-time physician assistant jumped from $905 to $4,830 -- more than five times as much. The tab for a part-time assistant went from $588 to $3,139."

* - Abridged summary of physician assistant state laws available at the American Academy of Physician Assistants web site: (www.aapa.org)

Physician Extenders
Insurers Going Forward

- Heavier focus on underwriting PEs
  - Consider level of risk associated with the supervising physician
  - More thorough review of office protocols put in place by supervising physician/office practice
    - PE work load
    - PE autonomy (varies by state)
    - PE involvement in high risk procedures
    - PE training/education
    - Due diligence performed when hiring PEs

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Building Reserve Strength

Medical Professional Liability

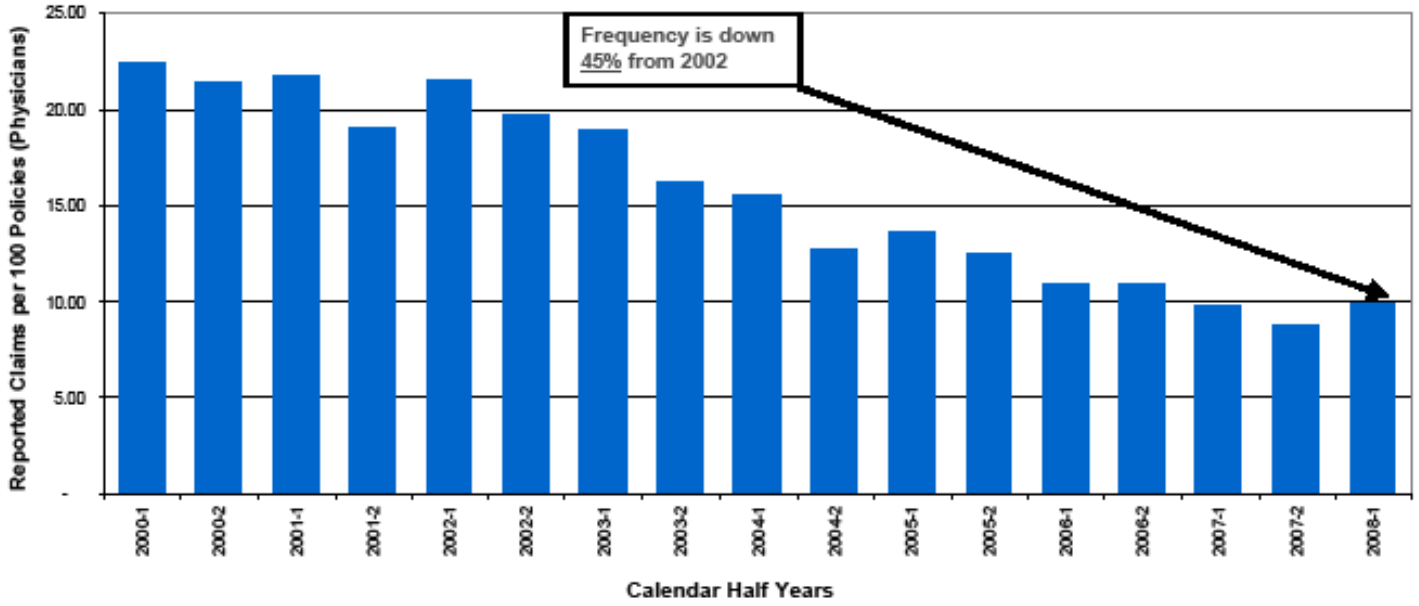
Date	Net Case Reserves (thousands)	Open Claims	Average Case Per Open Claim	Net IBNR* (thousands)	IBNR/ Case
12/31/2003	$ 393,995	4,447	$ 88,598	$ 83,449	21.2%
6/30/2004	393,622	3,885	101,318	106,505	27.1%
12/31/2004	391,048	3,342	117,010	108,309	27.7%
6/30/2005	373,545	3,211	116,333	127,917	34.2%
12/31/2005	366,138	2,991	122,413	140,523	38.4%
6/30/2006	348,717	2,558	136,324	163,617	46.9%
12/31/2006	311,142	2,256	137,918	201,319	64.7%
6/30/2007	289,332	2,124	136,220	214,918	74.3%
12/31/2007	252,017	1,741	144,754	239,310	95.0%
6/30/2008	245,903	1,639	150,032	243,986	99.2%

*Incurred but not reported reserves (excludes death, disability and retirement, and unallocated loss adjustment expenses)

APCapital 12

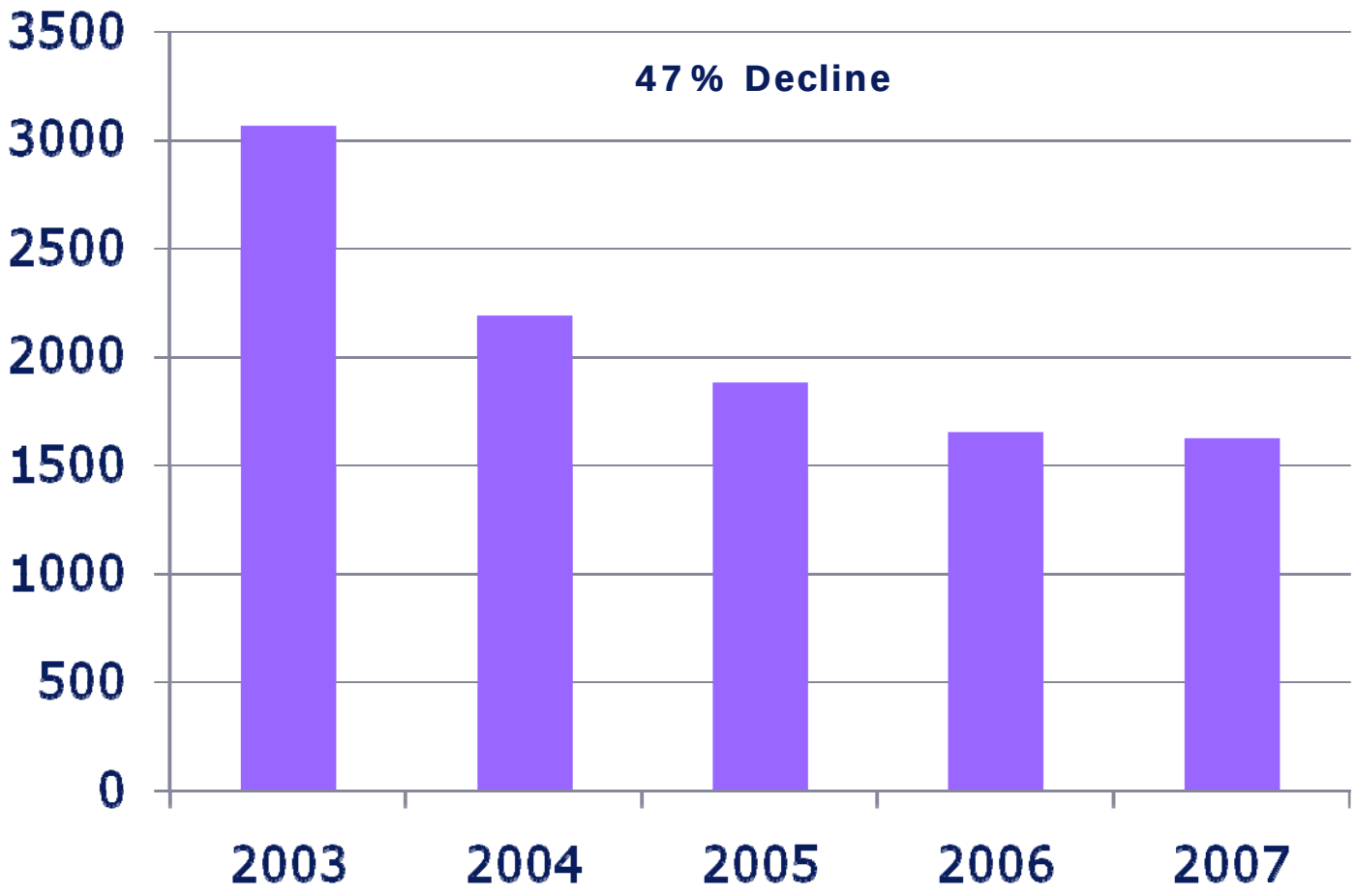
Claims Reported Per 100 Insureds

Reported Frequency Trend
Professional Liability Excluding Florida and Tails



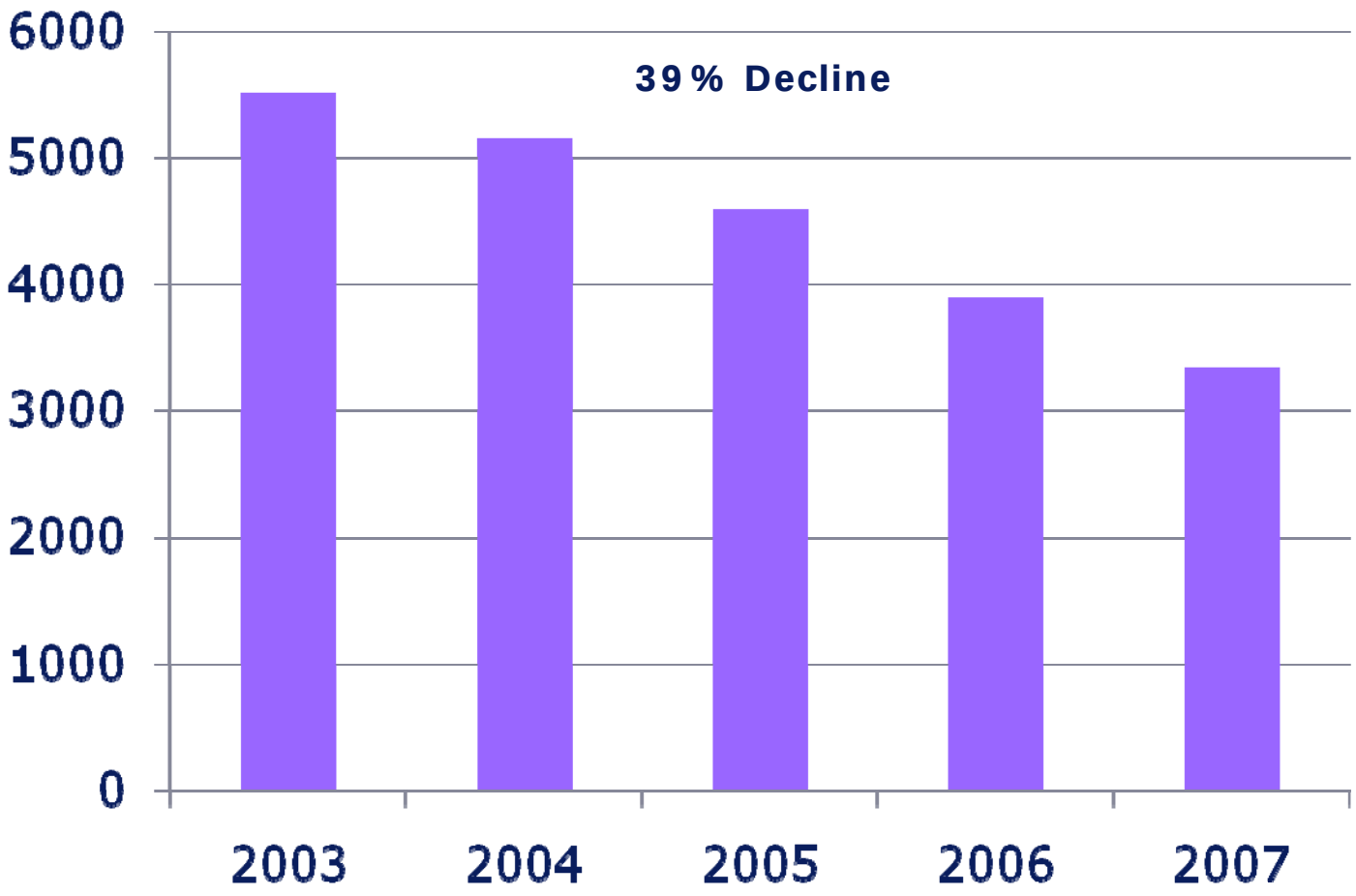
APCapital 14

FPIC Insurance Group Reported Claims & Incidents



Note: 879 claims & incidents reported through 6/30/2008 (versus 806 through 6/30/2007)

FPIC Insurance Group Open Claims & Incidents



Note: 3,600 claims & incidents open as of 6/30/2008 (versus 3,735 as of 6/30/2007)