



# Trends in Physician Liability Claim Frequency (or, “Where Have All the Claims Gone?”)

September 15, 2010

# Relative Number of Paid Physician Claims (Base - 1991)



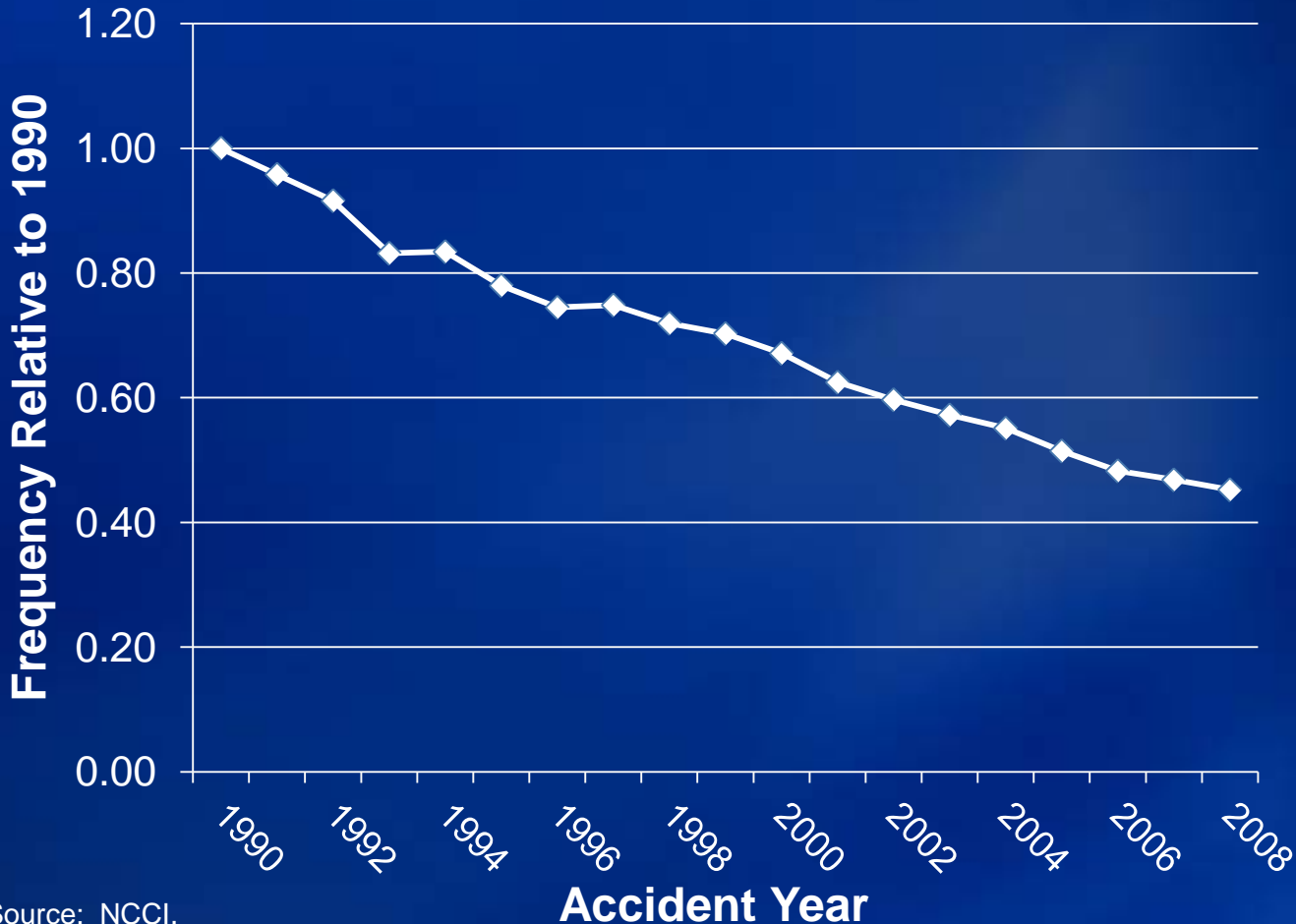
Source: NPDB Public Use File

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**Q: Are decreases in claim frequency unique to medical malpractice?**

**A: No, other liability lines also saw significant decreases.**

# Relative Number of WC Lost-Time Claims (Base - 1990)



Source: NCCI.

# Percentage Changes in Personal Auto Claim Frequency by Coverage 2000-2006



Source: Insurance Research Council

# Why did Frequency drop for WC and Personal Auto?

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## Workers Compensation

- Improved technology to make workplaces safer
- Economic slowdown

*(Source: NCCI)*

## Personal Auto

- Efforts to make vehicles, roads and highways safer
- Higher gas prices

*(Source: IRC)*

# Two part question:

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**Why did claim frequency drop in med mal and why has it stayed down?**

**To try to answer this question - informal survey of 15 people in the industry including:**

- **Company executives**
- **Claim adjusters (all very seasoned)**
- **Brokers/consultants**
- **Defense attorney**
- **Firm that works only for plaintiff attorneys**

**What did they have to say?**

# Caveats

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**The opinions expressed in the next several slides are not necessarily the view of the presenter or of KPMG. They represent a summary of views collected from a group of individuals with extensive experience in medical professional liability insurance.**



# Possible Reasons for Decreases in Medical Malpractice Claim Frequency.

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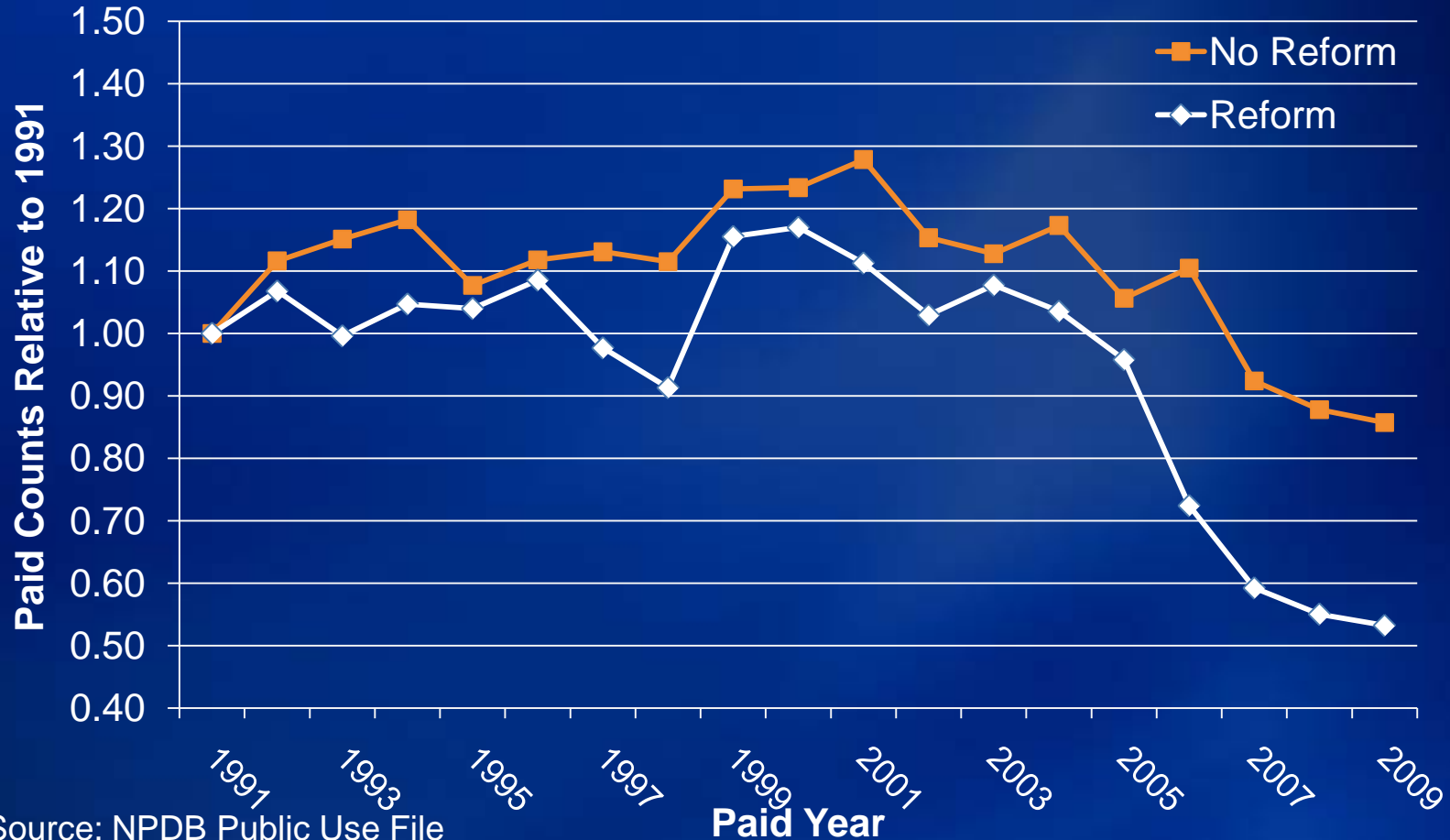
- We don't know
- Tort reform
- Changes in how companies handle claims
- Changes in strategy by plaintiff attorneys
- Changes in public attitudes
- Patient safety initiatives

# Tort Reform

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- **Caps on noneconomic damage**
- **Joint & Several Liability**
- **Punitive Damages**
- **Collateral Source Rule**
- **Certificate of Merit**

# Relative Number of Paid Physician Claims (Base - 1991)



Source: NPDB Public Use File

# Observations about Tort Reform

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- **Frequency decreased in states with and without tort reform**
- **The decrease was greater in those states that implemented caps on noneconomic damages (causation)**
- **We might be able to measure the impact on frequency due to the implemented caps on damages**
- **But what about the states that did not implement caps?**

# Other Potential Factors

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- **Changes in how companies handled claims**
  - **More aggressive in defending claims**
- **Changes in strategy by plaintiff attorneys**
  - **Not taking on low severity cases**
  - **Have they moved onto more fertile ground?**
- **Changes in public attitudes**
  - **Fear of losing access to health care providers**
  - **Aware of med mal crisis in 2002/2003**

# Patient Safety Initiatives

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## Examples of specific initiatives:

- **Sentinel Event Reporting (2001)**
- **Do Not Use list (initiative started 2001; implemented 2004)**
- **Speak Up program**
- **Sorry Works! Coalition**

# Patient Safety Initiatives (Cont.)

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- **Many of the initiatives started between 2000 and 2005**
- **Not uniform across multiple states or even within states**
- **Studies showing effectiveness of patient safety measures**
  - **Institute for Healthcare Improvement (2006)**
  - **RAND Institute (2010)**

# RAND Corporation Study (2010)

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- **Presumed a relationship between the occurrence of preventable injuries (patient safety events) and malpractice claims**
- **Compared the frequency of patient safety events with the number of claims filed in counties in CA**
- **Study showed that changes in annual patient safety events is significantly associated with changes in the volume of medical malpractice claims occurring in the same counties in the same years**
- **Study suggests a causal relationship between patient safety efforts and reduced malpractice claims**



# Observations

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- All reasons have pros and cons
- Very little quantitative support for several of the reasons
- Quantitative impacts on claim frequency could potentially be determined using tort reform and patient safety efforts
- Have we missed anything?

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# What about....defensive medicine?

# Defensive medicine

- According to the Office of Technology Assessment, defensive medicine occurs when doctors order tests, procedures, or visits, or avoid high-risk patients or procedures, primarily (but not necessarily) to reduce their exposure to malpractice liability.
- Types of defensive medicine include:
  - Plain film x-rays
  - Imaging tests (MRI, PET, CT)
  - Specialty referrals
  - Lab tests
  - Hospital admissions

*(Source: Massachusetts Medical Society study 2007)*

# Defensive Medicine (Cont.)

- **PET scans are used to diagnose/treat cancer, Alzheimer's, cardiac disorders**

**Per [www.petscan.com](http://www.petscan.com)**

- **900,000 in 2004**
- **2,000,000 in 2010 (estimated)**
- **Q: Is it possible PET scans and other forms of defensive medicine have helped contribute to a decrease in claim frequency due to both:**
  - **The nature of defensive medicine**
  - **A reduction in medical misadventures (e.g., failure to diagnose)**

# Reasons Why Doctors Practice Defensive Medicine

	Good Outcome	Bad Outcome
Test	Patient: "Thank you"  Doctor: "You're welcome"	Patient: "You did everything you could"  Doctor: "I did everything I could"
No Test	Patient: "I worried for a bit, but I'm glad I'm fine"  Doctor: "I worried for a bit, but I'm glad you're fine"	Patient: "You're going to pay for your mistake"  Doctor: "I should have ordered the test"

Source: [www.kevinMD.com](http://www.kevinMD.com)

# What conclusions can we make?

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- **The impact of some of the reasons given – in particular, tort reform and patient safety - seem to suggest that their impact can be measured**
- **Certain of the reasons may have merit but their impacts on frequency do not seem to have been measured**
- **If we think these – or other factors - are the drivers of the decreases in claim frequency then we should make a concerted effort to measure their individual contributions**
- **Payoff - if/when these measure start to change direction we will be able to sooner anticipate the upward movement in frequency**

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"When you can measure what you are speaking about, and express it in numbers, you know something about it. But when you cannot measure it, when you cannot express it in numbers, your knowledge is of a meager and unsatisfactory kind: it may be the beginning of knowledge, but you have scarcely, in your thoughts, advanced to the stage of science, whatever the matter may be.

Lord Kelvin (1824-1907)

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# Questions and Comments?