

## CASE Meeting

### Observations on Medical Malpractice

James D. Hurley  
September 25, 2007

This document is incomplete without the accompanying discussion.

© 2007 Towers Perrin

## Observations on Medical Malpractice

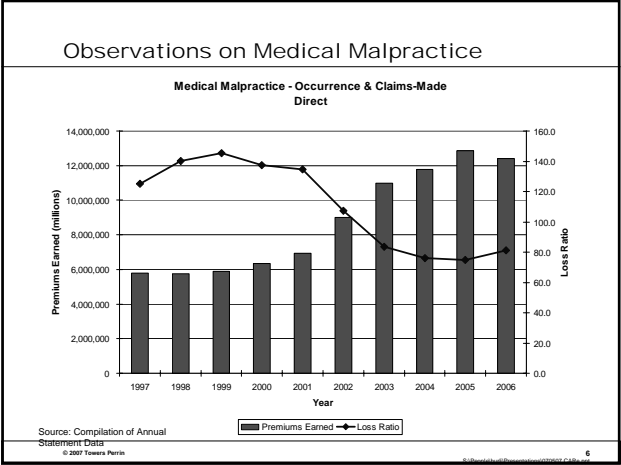
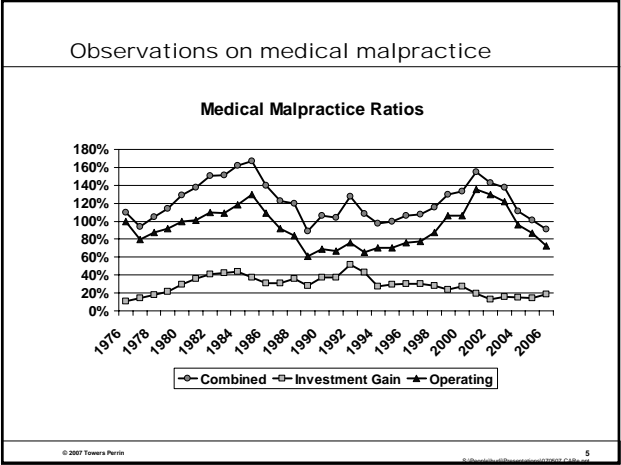
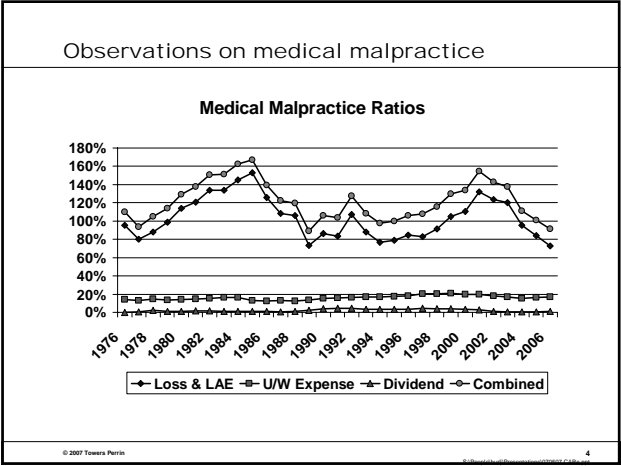
- Financial results
- Tort reform
- Insurance reform

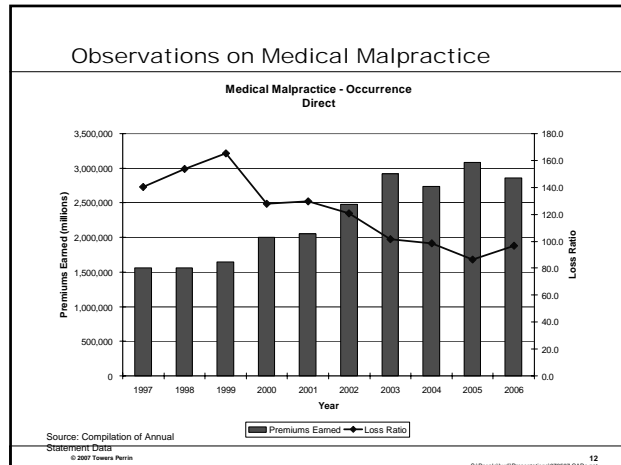
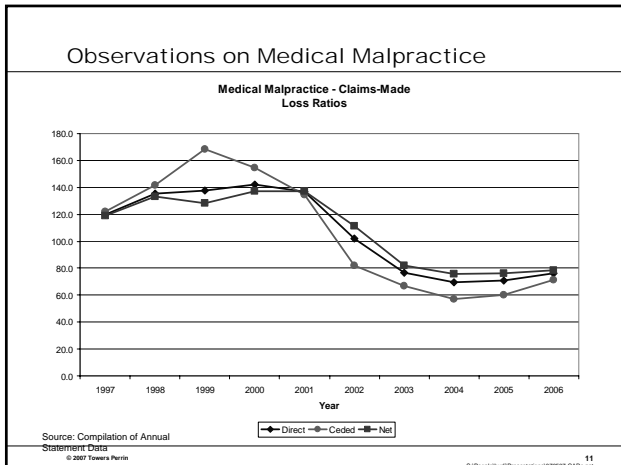
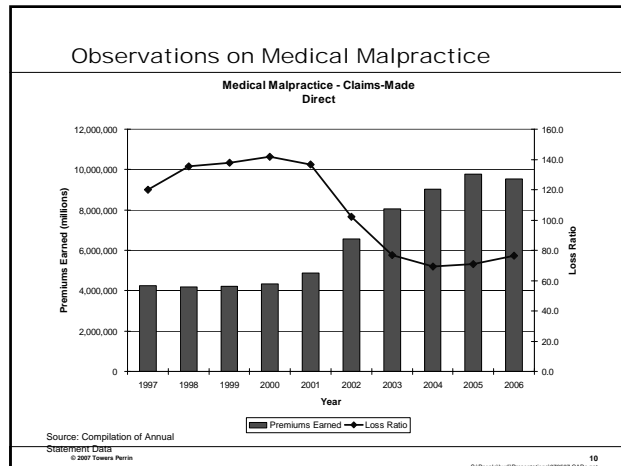
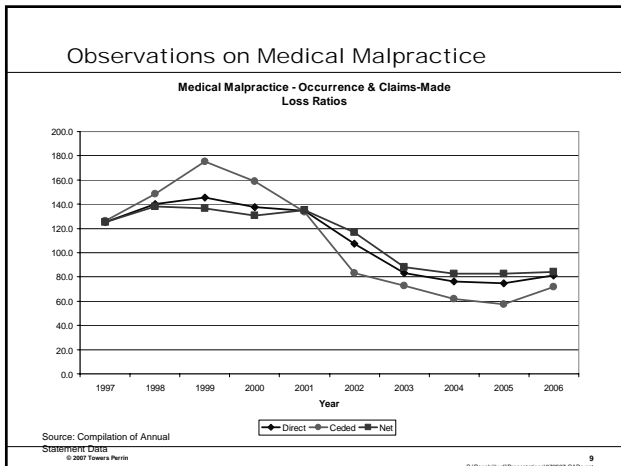
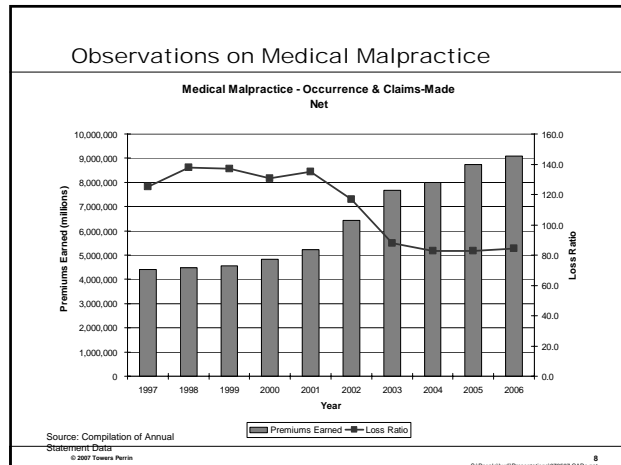
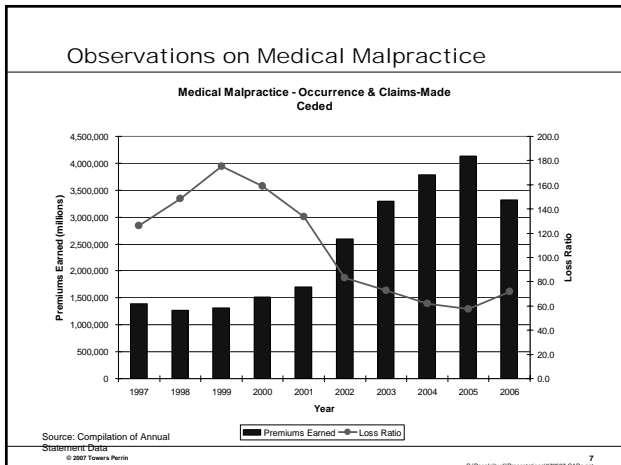
© 2007 Towers Perrin

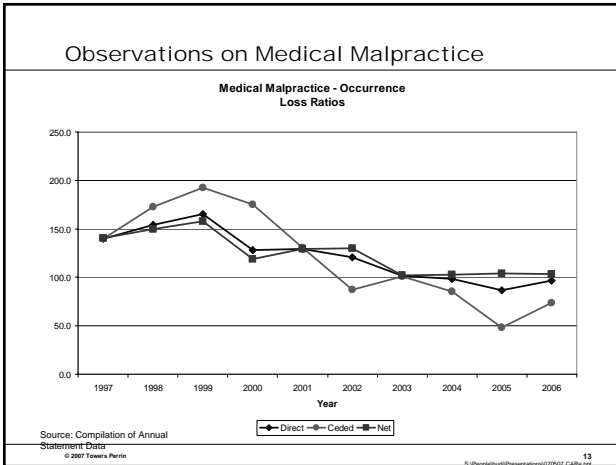
## Observations on Medical Malpractice

- Financial results impacted by...
  - 1990's
    - modest loss trends
    - favorable reserve development
    - relatively high investment returns
    - expansion
    - slippage in pricing
  - 2000's
    - loss trends pick up
    - unfavorable reserve development
    - investment returns turn
    - rates adjusted
  - 2003 - 2006
    - rates/prices tight
    - tort reform
    - loss trends
    - investment returns stabilize

© 2007 Towers Perrin







- ### Observations on Medical Malpractice
- Frequently discussed tort reforms**
- Caps on non-economic loss
  - Collateral source offsets
  - Limitations on joint-and-several liability
  - Punitive damage restrictions
  - Periodic payments
  - Frivolous suit penalties
  - Limitations on attorneys' fees
  - Immunity statutes
- Continued...
- © 2007 Towers Perrin

- ### Observations on Medical Malpractice
- Frequently discussed tort reforms (cont'd)**
- Changes in pre-judgment interest
  - Establishment of pre-trial hearing panels
  - Establishment of state-operated funds to handle certain claims
  - Changes to the statute of limitation or statute of repose
  - Mandatory mediation
- © 2007 Towers Perrin

- ### Observations on Medical Malpractice
- Frequently discussed tort reforms (cont'd)**
- MICRA reforms
    - \$250,000 non-economic cap
    - collateral source offset
    - periodic payments
    - 1/3 statute of limitations/repose
    - joint and several liability
    - limitations on attorney fees
- © 2007 Towers Perrin

- ### Observations on Medical Malpractice
- Tort reform
    - Federal
      - several attempts
      - DBA
    - State
      - many discussed
      - several passed
      - likely impacts
        - e.g., TX, PA, FA, IL, OH
        - frequency/severity
- Continued...
- © 2007 Towers Perrin

- ### Observations on Medical Malpractice
- Tort reform (cont'd)
    - Issues/risks
      - limited data to evaluate
      - prospective credit?
      - interpreted as expected
      - upheld
      - current loss projections
- Continued...
- © 2007 Towers Perrin

Observations on Medical Malpractice

- Tort reform
  - Issues/risks (cont'd)
    - specifics
      - non-economic limit: per defendant or per occurrence
      - collateral source: jury disclosure or after award
      - panels: admissible or not
      - PCF: who defends?

© 2007 Towers Perrin

Observations on Medical Malpractice

- Regulatory Update
  - California
  - Ohio
  - Rhode Island
  - DC
  - Florida
  - Miscellaneous

© 2007 Towers Perrin

Observations on Medical Malpractice

- California – Prop 103
  - implemented in 1989
  - all lines; formulaic approach
  - characteristics
    - 3 year experience period
    - direct data (no reinsurance)
    - development – latest 3
    - trend (some flexibility, but generic?)
    - no DD&R provision
    - expenses – efficiency standard
    - other items (e.g., inv yields, FIT) retrospective

© 2007 Towers Perrin

Observations on Medical Malpractice

- California – Prop 103 – proposed changes
  - med mal = commodity line
  - primarily impacts development/trend
    - 3 year experience period
    - 3 year weighted LDF's
    - trend procedure includes
      - data = premium and "...company specific paid loss, closed claim count and earned exposure data..."
      - "...most recent twelve quarters of rolling calendar year data..."
      - exponential line of best fit based on R<sup>2</sup>

© 2007 Towers Perrin

Observations on Medical Malpractice

- Ohio
  - 2003 reforms adopted/commission formed
  - findings (2005)
    - maintain reforms
    - rates are "well regulated"; companies should file annually
    - closed claim database
    - drop PCF concept/explore mediation
    - create Patient Safety Center

© 2007 Towers Perrin

Observations on Medical Malpractice

- Rhode Island – H 5437 (2005 proposal)
  - RI insureds "not disadvantaged"
    - exclude any expense excluded in any other state
    - unless justified by higher RI claims payments:
      - exclude any factor not included in all rate filings in last 12 months
      - no greater % of premium than filed in any state in last 12 months

© 2007 Towers Perrin

Observations on Medical Malpractice

- Rhode Island (cont'd)
  - Rate standards – establish range for:
    - expected rate of return
    - categories of expenses
    - number of years in determining
      - LDF
      - Trend
      - ILF
    - proper weights for different years experience
    - extent insurers may use judgment in projecting past cost data to future

© 2007 Towers Perrin

Observations on Medical Malpractice

- Rhode Island (cont'd)
  - Rate standards (cont'd)
    - compare initial vs. current estimate of ultimate losses for latest 8 policy years
    - require memo showing application of all investment income in determining proposed rates
  - Rates by specialty
    - base rate for highest rated specialty  $\leq$  500% of lowest rated specialty
    - may be done on-balance
  - Experience rating plan
    - each insurer shall file plan; revenue neutral
    - surcharges/discounts for indemnity payments in last 10 years

© 2007 Towers Perrin

Observations on Medical Malpractice

- Rhode Island (cont'd)
  - Use of RBC
    - total adjusted capital of med mal insurer is excessive if:
      - exceeds CAL
      - hearing finds unnecessarily large
    - excessive capital = no rate increase
      - DOI may order distribution of excessive surplus

© 2007 Towers Perrin

Observations on Medical Malpractice

- DC – Medical Malpractice Amendment Act of 2006
  - amend RBC Act of 1996 to consider a malpractice insurer's surplus in ratemaking if surplus is unreasonably large
  - enable physicians and consumers to challenge rate increases
  - prior approval for rate changes exceeding 7%

© 2007 Towers Perrin

Observations on Medical Malpractice

- Florida – proposed SB 1660
  - consumer protection laws apply to insurance
  - more rigorous requirements on experience rating individual physicians and schedule rating generally
  - ALAE/DCC shall be part of insurer's "rate base" only to extent they do not exceed "...the national average for such expenses, as determined by the office, for the prior calendar year..."
  - requires (apparently) a Florida income statement
  - policies effective on/after October 1, 2007, rates shall be 25% less than rates at October 1, 2004

© 2007 Towers Perrin

Observations on Medical Malpractice

- Florida – proposed SB 1660 (cont'd)
  - insurer, self-insurer or RRG filing a proposed rate change
    - must give notice to public
    - any insured can request a hearing within 30 days (any consumer may participate)
    - public counsel has standing to request hearing
    - med mal rates cannot be based on experience for 2003 and prior

© 2007 Towers Perrin

Observations on Medical Malpractice

- Miscellaneous
  - Other states
    - Missouri promulgates rules to comply with recent legislation
    - Illinois requires fully documented filings
    - Colorado debates prior approval

© 2007 Towers Perrin 31

Observations on Medical Malpractice

- Summary
  - Common ground
    - rules being promulgated apply to
      - med mal only
      - undefined "med mal" insurers
    - some states include self-insurers and RRG's
  - 2007 +
    - rates/prices
    - tort reforms
    - loss trends

© 2007 Towers Perrin 32