Data on liability claims offer bright spots for ObGyns—and sobering statistics

Twenty-five years of claims data from the Physician Insurers Association of America suggest that things are improving in obstetrics and gynecology—but the amount of dollars swallowed by indemnity payments remains extremely high

Janelle Yates, Senior Editor

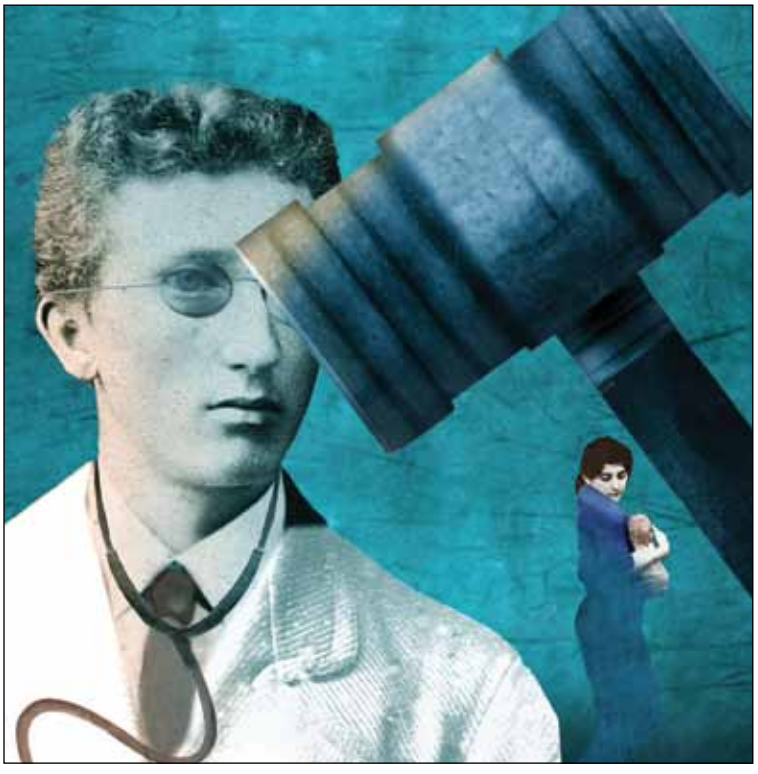

ILLUSTRATION: MICHAEL MORGENSTERN FOR OBG MANAGEMENT

Good news on the medical liability front, Doctor!

Yes, that's right, *good* news.

According to data from the Physician Insurers Association of America (PIAA), the number of claims that were paid in the ObGyn category between 2006 and 2011 was 44% lower than the number of claims paid between 1986 and 1991.

The *percentage* of claims that were paid also decreased over the same quarter century. During 1986–1990, 37.25% of all claims were paid in the ObGyn category, compared with 31.73% during 2006–2010.[1]

And when claims for both periods are calculated in 2010 dollars, the amount paid also declined—by more than $138 million!

These are three of the findings that reflect "significant improvement" in obstetrics and gynecology in medical liability, says John B. Stanchfield, MD, an endocrinologist who, for 25 years, was medical director of the Utah Medical Insurance Association (UMIA)—a member company of PIAA. PIAA is the insurance industry trade association.

PIAA member companies in the United States "include large national insurance companies, mid-size regional writers, single-state insurers, and specialty companies that serve specific health care–provider niche markets. Collectively, these companies provide insurance protection to more than 60% of America's private practice physicians and write approximately 46%, or $5.2 billion, of the total industry premium."[2]

The improvement in ObGyn comes as no surprise to Dr. Stanchfield because the specialty was "the first group that got 'risk-managed' almost universally across the country," he says. "In our little company out here in Utah, in 1985, we were told that if we didn't do something [about lawsuits in obstetrics and

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TABLE 1 Top 10 most prevalent ObGyn conditions for claims closed in 2010*

Category	Claims closed	Claims paid	Average indemnity	Total indemnity
Pregnancy	105	36.2%	$434,292	$16,503,079
Brain-damaged infant	48	37.5%	$710,014	$12,780,250
Disorders of menstruation and other abnormal bleeding from the female genital tract	44	29.6%	$135,923	$1,767,000
Normal delivery of singleton gestation	43	37.2%	$405,052	$6,480,839
Benign neoplasms of the uterus	40	30.0%	$200,708	$2,408,500
Endometriosis	31	25.8%	$205,178	$1,641,423
Indication for care or intervention related to labor and delivery	29	37.9%	$499,814	$5,497,950
Early onset of delivery	28	3.6%	$1,250,000	$1,250,000
Shoulder dystocia	27	44.4%	$459,021	$5,508,248
Symptoms involving abdomen and pelvis	24	50%	$120,368	$1,444,418

* In descending order of the number of claims closed in 2010. The highest amount in each column is highlighted.

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The total indemnity paid for claims involving a brain-damaged infant in 2010 was $12,780,250

gynecology], we weren't going to be able to insure that class anymore because we wouldn't be able to collect enough money. That's what the actuaries told us, but it wasn't unique to us—it was a nationwide problem."

Why was the ObGyn specialty, in particular, in need of aggressive risk management? What made ObGyn claims unique?

"It's infant injury," says Dr. Stanchfield. "It's injury to the baby. Those claims, you start talking at a million dollars."

Another reason may be that some claims in this specialty category involve doctors other than ObGyns who provide obstetric care—for example, family practice physicians.

A risk manager's perspective

After receiving the warning about ObGyn claims, UMIA got busy. First, it formed a committee comprising perinatologists, ObGyns, family practice physicians, claims specialists, and attorneys. "We analyzed all claims that were paid, looking for common denominators," says Dr. Stanchfield. Improvement was clearly needed in about 10 areas, so "we basically created a risk-management program and then mandated it." In the process, the organization published a booklet entitled *Insurance Recommendations for Obstetrical Practice*, of which Dr. Stanchfield was the editor.[3]

The booklet offers guidance on 10 potential "problem" areas:

- antepartum testing
- hypertension and pregnancy
- operative vaginal delivery
- breech delivery
- oxytocin administration
- vaginal birth after cesarean
- use of misoprostol
- shoulder dystocia
- preterm labor
- hospital standards.

Fewer claims and more physicians

The declining number and percentage of paid claims in obstetrics and gynecology over 25 years may be even more impressive than the figures suggest, says Dr. Stanchfield.

"Gestalt tells me that through the years there are more practicing physicians rather than fewer," so the denominator is increasing even as these claims are declining—making the decrease "even more powerful."

The numbers haven't improved to the same degree in other specialties, Dr. Stanchfield says. "If you look at global data, the decrease in paid claims might have been 10% to 15%. In ObGyn, if you compare the last 5-year

TABLE 2 Top 10 ObGyn procedures for which claims were filed in 2010*

Procedure	Claims closed	Claims paid	Average indemnity	Total indemnity
Operative procedures on the uterus	194	25.8%	$227,015	$11,350,773
Manually assisted deliveries	178	36.0%	$537,087	$34,373,550
Cesarean deliveries	177	33.3%	$632,439	$37,313,875
Miscellaneous manual examinations and nonoperative procedures	111	30.6%	$430,899	$14,650,579
Diagnostic interview, evaluation, or consultation	60	15.0%	$218,611	$1,967,500
Operative procedures on the fallopian tubes and ovaries, exclusive of sterilization	59	32.2%	$172,316	$3,273,998
Vacuum extraction	32	50.0%	$492,234	$7,875,750
No care rendered	29	13.8%	$510,375	$2,041,500
Diagnostic ultrasound	25	40.0%	$392,667	$3,926,667
Induction of labor	23	30.4%	$542,357	$3,796,499

* In descending order of the number of claims closed in 2010. The highest amount in each column is highlighted.

block of data with the first 5-year block, the number of paid claims is almost cut in half."

What brought about this improvement?

"There weren't any groundbreaking medical or surgical technological advances during this period. It was just doing it better. And the main push to doing it better in this country, in my opinion, is risk management."

Slicing the data

Now for the not-so-great news: In 2010 alone, more than $55 million was paid out in the ObGyn category for 10 patient conditions. Topping the list were "pregnancy" and "brain-damaged infant." The $55 million figure represents the money paid for the top 10 most commonly cited conditions in cases closed during 2010 (**TABLE 1**).

Claims categorized under the rather broad category of pregnancy usually were placed there because a more appropriate category was lacking, says Dr. Stanchfield. These claims typically involve "things that happen—usually to the baby—that result in a lawsuit other than brain damage per se." For example, a claim that involved skull fracture without brain damage might fall into this zone, he says.

Problematic procedures

Slicing the data a different way, problems related to the 10 most commonly cited ObGyn procedures cost PIAA companies more than $120 million dollars in 2010—and that figure is only for the top 10.[1] The top three procedures, in terms of number of claims closed in 2010, were operative procedures on the uterus, manually assisted delivery, and cesarean delivery (**TABLE 2**).

Manually assisted delivery does not include vacuum extraction or forceps delivery, notes Dr. Stanchfield. "Manually assisted delivery is basically standing there like a quarterback and catching the baby."

Top 10 "medical misadventures"

And another slice of data reveals the 10 most prevalent medical misadventures in the ObGyn specialty in 2010 (**TABLE 3,** page 48):

- improper performance of a procedure
- no medical misadventure (i.e., no misadventure was identifiable)
- errors in diagnosis
- failure to supervise or monitor a case
- delay in performance of a procedure
- failure to recognize a complication
- surgical foreign body left in a patient after a procedure

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The most common ObGyn "medical misadventure" in 2010 was improper performance of a procedure

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TABLE 3 Top 10 most prevalent ObGyn medical misadventures in 2010

Misadventure	Claims closed	Claims paid	Average indemnity	Total indemnity
Improper performance of a procedure	390	32.6%	$408,228	$51,855,957
No medical misadventure	206	3.4%	$529,679	$3,707,750
Errors in diagnosis	109	36.7%	$435,329	$17,413,165
Failure to supervise or monitor a case	89	39.3%	$589,984	$20,649,440
Delay in performance	77	42.9%	$578,091	$19,076,998
Failure to recognize a complication of treatment	67	50.8%	$381,274	$12,963,325
Surgical foreign body left in patient	46	34.8%	$79,667	$1,274,679
Procedure "not performed"	40	50.0%	$254,992	$5,099,839
Failure to instruct or communicate with a patient	23	39.1%	$371,111	$3,340,000
Medication errors	21	23.8%	$193,600	$968,000

* In descending order of the number of claims closed in 2010. The highest amount in each column is highlighted.

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The ObGyn category was responsible for the single largest indemnity payment in 2010—$13,000,000

- necessary treatment or management was "not performed"
- failure to instruct or communicate with a patient
- medication errors.

The total indemnity paid for these so-called misadventures was more than $136 million.[1]

Putting the dollars in perspective

PIAA also collects data on the number of claims reported, and indemnity dollars paid, for other specialties.

"Of the 28 specialty groups included in the database, ObGyn ranks second"—behind internal medicine—"in the number of claims closed between 1985 and 2010," a PIAA report notes. The ObGyn specialty also ranks second—behind dentists—in the percentage (35%) of those claims that were paid (for dentists, the figure was 46%). Obstetrics and gynecology was also responsible for the single largest indemnity payment—$13,000,000.[1]

Medical liability: A national disaster?

According to figures from the PIAA Data Sharing Project, an ongoing claim study that includes 22 PIAA member companies, $19.7 billion in losses (total indemnity plus expenses) were reported during the period from 1985 through 2008. Those losses represented approximately 25% of the physicians who were practicing during that time.

"So if you multiply that $19.7 billion figure by four"—to extrapolate it to the full spectrum of physicians practicing between 1985 and 2008—"you've got almost $80 billion coming out of the pockets of the doctors in this country," says Dr. Stanchfield. If you compare that $80 billion figure to the World Trade Center disaster, which involved approximately $42 billion in losses, the need for federal tort reform is highlighted, he says. In 24 years, the physicians "in this country have paid for almost two World Trade Center disasters. That's an incredible dollar cost."

From Dr. Stanchfield's perspective as a risk manager, the best thing physicians can do to protect themselves is to practice medicine wisely.

"One of our speakers used to say, 'Look, just practice good, middle-of-the-road medicine. Don't get yourself out on the fringes where you're doing something questionable. Just practice rock-solid, conservative, safe medicine.'"

References

1. Physician Insurers Association of America. 2011 Risk Management Review. Rockville, Md: PIAA; 2011.
2. Physician Insurers Association of America. PIAA Backgrounder. Rockville, Md: PIAA; 2011.
3. Stanchfied JB, ed. Insurance Recommendations for Obstetrical Practice. Revised ed. Salt Lake City, Utah: Utah Medical Insurance Association; 2009.