

# Medical Liability Reform

## A Case Study of Mississippi

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Mississippi enacted medical negligence and other tort reform legislation that generally became effective for causes of action filed on or after January 1, 2003, and September 1, 2004. Data regarding lawsuits against physicians insured by the Medical Assurance Company of Mississippi (MACM), the largest medical liability insurer in the state, and MACM-insured Obstetrician–gynecologists (ob–gyns) in particular, were compared by year from 1986 to 2010. The data encompassed the periods before and after the implementation of Mississippi's tort reform legislation. In addition, MACM medical liability premiums were compared by year from 2000 to 2010. Mississippi's tort reform laws were associated with a steep drop in lawsuits against MACM-insured physicians, particularly MACM-insured ob–gyns, as well as medical liability premium reductions and refunds.

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Ten years ago, Mississippi had a national reputation as an unfavorable legal forum for civil defendants.<sup>1</sup> The state was known as the “lawsuit capitol of the world.”<sup>2</sup> Physicians were negatively affected, especially those practicing certain specialties such as obstetrics. Obstetrician–gynecologists (ob–gyns) and other obstetric providers are frequently involved in professional liability claims that often result in the highest awards, even though maternal, fetal, and neonatal morbidity and mortality continues to fall to record lows.<sup>3</sup> Mississippi was “perhaps the hardest hit of the [American College of Obstetricians and Gynecologists] ‘red alert states’”—most Mississippi cities with populations of less than 20,000 people had no

local obstetricians.<sup>4</sup> Some specialists paying \$10,000 to \$15,000 annually for insurance in the late 1980s saw their rates skyrocket in 2001 and 2002.<sup>5</sup>

In late 2002, a special session of the Mississippi legislature responded by passing legislation, House Bill (HB) 2,<sup>6</sup> which generally became effective for causes of action filed on or after January 1, 2003, and made important changes to the state's medical liability laws. The core of HB 2 was a \$500,000 limit on noneconomic damages, such as pain and suffering, applicable to most medical negligence cases.<sup>7</sup> HB 2 also generally requires medical malpractice plaintiffs' attorneys to consult with an expert before filing suit,<sup>8</sup> although “a complaint, otherwise properly filed, may not be dismissed, and need not be amended, simply because the plaintiff failed to attach a certificate or waiver.”<sup>9</sup> In addition, HB 2 requires plaintiffs to give defendants 60 days' written notice before commencing a medical liability lawsuit,<sup>10</sup> abolished joint liability for noneconomic damages for any defendant found to be less than 30% at fault,<sup>11</sup> and provides heightened pleading requirements for cases involving medical professionals who prescribe prescription drugs.<sup>12</sup>

In the same special session, the legislature enacted HB 19, which also became effective for causes of action filed on or after January 1, 2003.<sup>13</sup> Among other things, HB 19 requires lawyers to file lawsuits in counties with some relationship to the facts of the case,<sup>14</sup> provides for modest caps on punitive damages,<sup>15</sup> prevents duplicative recovery of “hedonic” or lost enjoyment of life damages,<sup>16</sup> limits advertising by out-of-state attorneys,<sup>17</sup> and authorizes a small penalty for frivolous pleadings.<sup>18</sup>

In June 2004, another special session of the legislature enacted a comprehensive civil justice reform bill, HB 13, for causes of action filed on or after September 1, 2004.<sup>19</sup> The 2004 law includes several reforms that strengthen and go beyond the legislation enacted in 2002. For instance, HB 13 creates a hard limit of \$500,000 on noneconomic damages in medical liability cases, removing exceptions found in the

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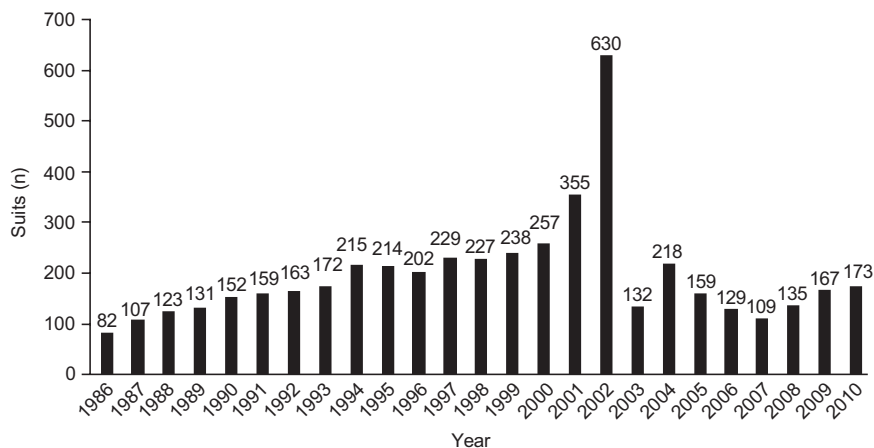
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**Fig. 1.** Suits filed against all Medical Assurance Company of Mississippi-insured physicians, 1986–2010 (excluding mass tort).

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2002 law as well as scheduled increases to the cap.<sup>20</sup> The legislation also provides that a medical negligence suit against a licensed health care provider shall be brought in the county in which the alleged act or omission occurred,<sup>21</sup> and venue must be proper as to each plaintiff.<sup>22</sup> In addition, the legislation limits punitive damages that may be awarded against medium and small businesses,<sup>23</sup> abolishes joint liability for all defendants,<sup>24</sup> provides innocent product sellers with greater protection against being pulled into lawsuits directed at manufacturers,<sup>25</sup> and limits noneconomic damages for civil defendants (other than health care liability defendants) at \$1 million, keeping in place the \$500,000 limit for medical liability actions.<sup>26</sup>

This investigation examines data regarding lawsuits filed against physicians insured by the Medical Assurance Company of Mississippi (MACM), and MACM-insured ob-gyns in particular, by year from 1986 to 2010. (By examining lawsuit filings, issues of underreporting are avoided that could arise with respect to alleged events that are not presently time-barred under Mississippi's statute of limitations [Miss Code Ann § 15-1-36{2}]). The data encompasses the periods before and after the implementation of Mississippi's tort reform legislation. The Medical Assurance Company of Mississippi is the largest medical liability insurer in Mississippi, insuring more than 75% of all physicians in the state. MACM only insures physicians with medical practices based within Mississippi. Thus, MACM's data does not reflect the medical liability claim experience of other insurers or any venue outside of Mississippi.

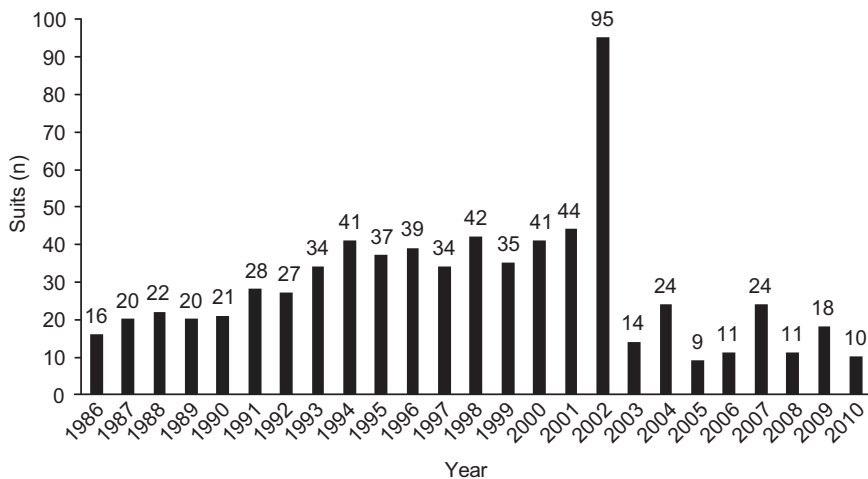
Only lawsuits were included in the data provided by MACM. A lawsuit is a court-filed civil action seeking damages; MACM classifies a claim as any demand for money in which a lawsuit has not been filed. Many claims never become lawsuits because they are dropped

or settled. Mass tort cases were also excluded. In the subject context, these cases typically would involve product liability actions targeting pharmaceutical companies; Mississippi physicians have been named in these lawsuits simply for the strategic purpose of defeating federal court diversity-of-citizenship jurisdiction. Federal courts have jurisdiction to hear state common law tort cases if all of the plaintiffs are from a different state than all of the defendants.<sup>27</sup> Thus, by naming a local physician in the lawsuit, a plaintiff's attorney can block the out-of-state corporate defendant from removing the case to federal court.

Figure 1 shows the number of lawsuits filed against all MACM-insured physicians from 1986 to 2010. The number of lawsuits against MACM-insured physicians increased almost steadily from 1986 until the implementation of Mississippi's tort reform laws. Lawsuits against MACM-insured physicians peaked in 2000–2002, the years immediately preceding the tort reform legislation that generally became effective in Mississippi in 2003. Physicians insured by MACM experienced an average of 410 lawsuits per year during this period. During the years in which tort reform became effective (2003–2004), the number of lawsuits dropped to an average of 175 per year. During the 5-year period (2000–2004) leading up to and including the implementation of tort reform, MACM-insured physicians experienced an average of 318 lawsuits per year, with the pre-tort reform years accounting for the vast majority of the lawsuits. In the 5-year period (2005–2009) after the implementation of tort reform, the average number of lawsuits against MACM-insured physicians fell substantially, averaging about 140 lawsuits per year.

Figure 2 shows the number of lawsuits filed against MACM-insured ob-gyns from 1986–2010. The number of lawsuits against MACM-insured physicians in-





**Fig. 2.** Obstetrician-gynecologist suits filed against Medical Assurance Company of Mississippi-insured physicians, 1986–2010 (excluding mass tort).

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creased at a fairly steady pace from 1986 until the implementation of Mississippi’s tort reform laws. In 2000–2002, the years immediately preceding the implementation of Mississippi’s tort reform legislation, MACM-insured ob-gyns experienced an average of 60 lawsuits per year. In the peak year, 2002, there were 95 suits against MACM-insured ob-gyns. During the years in which tort reform became effective, 2003–2004, the number of lawsuits dropped to an average of 20 lawsuits per year. During the 5-year period (2000–2004) leading up to and including the implementation of tort reform, MACM-insured ob-gyns experienced an average of 44 lawsuits per year, with the pre-tort reform years accounting for most of the lawsuits. In the 5-year period (2005–2009) after the implementation of tort reform, MACM-insured ob-gyns experienced a sharp drop in lawsuits, annually averaging almost 15 lawsuits.

Mississippi’s tort reform laws were associated with a steep drop in lawsuits against MACM-insured physicians, particularly MACM-insured ob-gyns. The Mississippi Supreme Court also appears to have contributed to improvements in the state’s civil litigation climate.<sup>28</sup> For example, in 2005, the court reversed prior case law and held that “a plaintiff must produce expert testimony to establish the material risks and available alternatives of a medical procedure. Absent such expert testimony, a jury may not consider whether a physician conducted a medical procedure without informed consent.”<sup>29</sup>

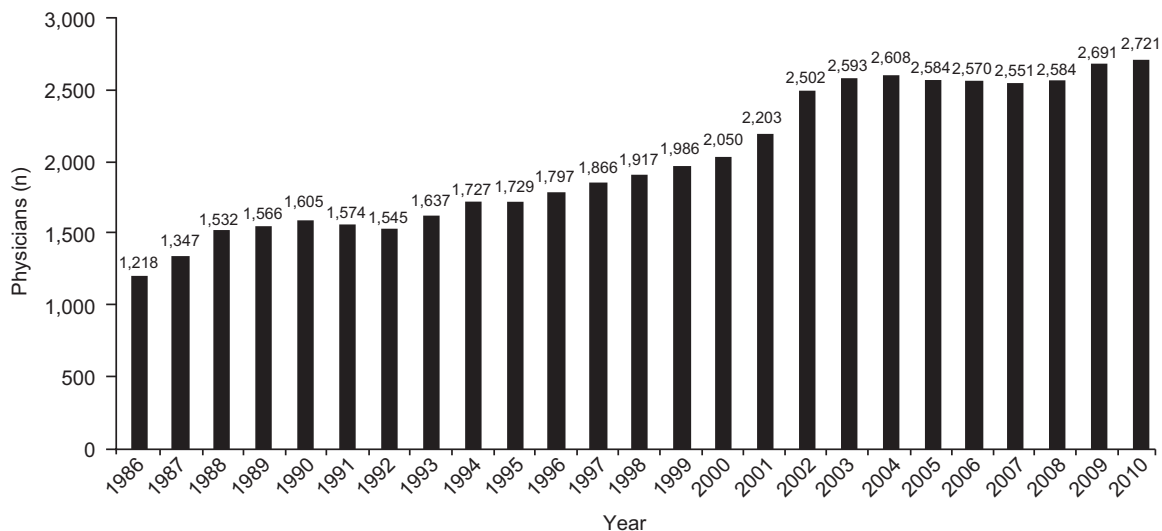
The data do not establish the extent to which any particular reform may be credited with improving Mississippi’s medical liability climate, but the \$500,000 limit on noneconomic damages was perhaps the most significant reform.<sup>30</sup> The U.S. Department of Health and Human Services has concluded that “there is a substantial difference in the level of medical malpractice premiums in states with meaningful caps ... and states without meaningful caps.”<sup>31</sup>

It is noteworthy that the number of MACM-insured physicians increased in Mississippi after the implementation of tort reform (Fig. 3). The data is consistent with studies finding that statutory limits on noneconomic damages have a positive effect on where physicians locate their practices.<sup>32</sup> Figure 3 also refutes any theory that fewer physicians practicing in Mississippi in recent years resulted in fewer medical accidents and thus fewer lawsuits. More physicians practicing in the state presumably would be associated with more lawsuits in the absence of tort reform, not fewer.

Furthermore, it is unlikely that changes in settlement procedures could account for fewer lawsuit filings after tort reform. Specifics regarding the number of claims settled have not been made available by MACM. According to MACM, however, their data indicates that the number of claims fell significantly after tort reforms became effective, including those claims that did not later become lawsuits. Although tort reforms (particularly the limit on noneconomic damages and presuit notice) reportedly have enabled MACM to resolve some claims more easily, these reforms have also significantly reduced the frequency of both claims and lawsuits.

It also does not appear that the decline in medical negligence lawsuits was simply a function of changes in safety measures that could have resulted in fewer injuries and thus fewer lawsuits. For decades (both before and after the passage of tort reforms), MACM’s risk management department has been involved in aggressive risk management with its insured physicians. MACM reports that, although these efforts are believed to help reduce errors, they have no data or information indicating that risk management or safety measures account for the reduction in frequency of claims and lawsuits after the passage of tort reforms in Mississippi.





**Fig. 3.** Number of Medical Assurance Company of Mississippi–insured physicians, 1986–2010. *Behrens. Medical Liability Reform. Obstet Gynecol 2011.*

To further examine the effect of tort reform on the medical liability climate in Mississippi, MACM medical liability premiums were compared by year from 2000 to 2010. Box 1 shows the overall physician premium change from 2000 to 2010. From 2000 to 2004, MACM insurance premiums escalated 98%, reflecting the frequency and cost of medical liability litigation in Mississippi before the passage of tort reform. By late 2004 “the problems in malpractice insurance seem to have abated.”<sup>33</sup> Doctors covered by MACM did not receive an increase in premiums in 2005. Premiums were reduced, and refunds were given each year from 2006 to 2010. Overall, there has been a significant decrease in premiums, as well as refunds, for MACM-insured physicians since Mississippi’s tort reform laws took effect. As recently summarized by the American Medical Association:

In Mississippi, the Mississippi State Medical Association reports that the liability climate has improved significantly since the enactment of [medical liability reform.] Liability premiums have decreased for the largest liability carrier by five percent in 2006, 10 percent in 2007, 15.5 percent in 2008, 20 percent in 2009 and 10 percent in 2010. Insured physicians also received significant refunds during this time period as well. This is in stark contrast to the crisis years when premiums increased 12.5 percent in 2000, 11.1 percent in 2001, 10 percent in 2002, 45 percent in 2003 and 19.4 percent in 2004.<sup>34</sup>

## CONCLUSION

Data regarding lawsuits against physicians and ob–gyns insured by MACM, Mississippi’s largest medical liabil-

ity insurer, indicate an association between the implementation of tort reform legislation in Mississippi and a sharp reduction in the number of medical negligence lawsuits. In the 5-year period (2005–2009) after the implementation of tort reform, the average number of lawsuits per year against all MACM-insured physicians (regardless of specialty) dropped 227% (from 318 to 140)

### Box 1. Premium Change for Medical Assurance Company of Mississippi–Insured Physicians: 2000–2010

- 2000: 12.5% premium increase
- 2001: 11.1% premium increase
- 2002: 10% premium increase
- 2003: 45% premium increase
- Jan. 2003: First phase of tort reforms
- 2004: 19.4% premium increase
- Sept. 2004: Second phase of tort reforms
- 2005: No change in premium
- 2006: 5% premium decrease, Refunded 15% of 2005 premium
- Dec. 2006: Refunded 20% of premium paid in 2006
- 2007: 10% premium decrease
- Dec. 2007: Refunded 25% of premium paid in 2007
- 2008: 15.5% premium decrease
- Dec. 2008: Refunded 20% of premium paid in 2008
- 2009: 20% premium decrease
- Dec. 2009: Refunded 25% of premium paid in 2009
- 2010: 10% premium decrease
- Dec. 2010: Refund 25% of premium paid in 2010



compared with the years immediately preceding the implementation of tort reform (2000–2004). The contrast between pre–tort reform years and post–tort reform years is even more dramatic for MACM-insured ob–gyns. In the period from 2005 to 2009, the average number of lawsuits per year against MACM-insured ob–gyns dropped 293% (from 44 to 15) compared with the period from 2000 to 2004. Medical liability insurance premiums for MACM-insured physicians have been both reduced and refunded each year for the past 5 years (2006–2010).

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