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Nevada State Medical Association
Position
Regarding
Senate Bill 97

Presentation Outline
By
Larry Matheis, Executive Director
Nevada State Medical Association
To
Assembly Committee on Judiciary

May 13, 2003

I. Introduction

- a. It is the position of the Nevada State Medical Association that the "Nevada medical liability crisis" continues and additional action must be taken to provide short-term relief to physicians, as well as to add statutory revisions to assure the effectiveness of the long-term reforms. These actions must be taken to mitigate additional loss of physician services and to avoid permanent structural damage to the Nevada health care system.
- b. NSMA basically supports the range of legislation under consideration this Session to address the complex factors (the health care system, the medical liability insurance industry and the civil justice system) which contributed to the creation of the crisis, which has deepened and widened it and which need to be addressed to forestall future repeats of the crisis in the future.

II. What Caused the Nevada Crisis?

- a. Nevada's crisis resulted from unsustainable Medical Professional Liability Insurance premium increases charged to Nevada's physicians.
- b. These premium increases resulted from MPLI carrier losses, nationally and in Nevada. (As reported by the Legislative Counsel Bureau, nationally in 2001 National Medical Malpractice Loss Ratios averaged 79.51% in 2000. This rose to 97.4% in 2001. Nevada carriers went from 84.83% in 2000 to 133.6% in 2001. As a comparison, California had 65.7% in 2000 and 45.77% in 2001. Another non-crisis State is Colorado with 46.7% in 2000 and 43.19% in 2001.)

ASSEMBLY JUDICIARY

DATE: 5/13/03 ROOM: 3138 EXHIBIT Δ

SUBMITTED BY: Larry Matheis

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Annual Closed Claims, 1996-2001

Year Paid	Claims Closed /Indemnity Pay.		Claims Closed/ALAE Only		Total	
	# Claims	Amt Paid	# Claims	Amt Paid	# Claims	Amt
1996	63	\$24,381,724.00	116	\$1,818,242.00	179	\$26,199,966.00
1997	74	\$22,665,817.00	150	\$2,716,837.00	224	\$25,382,654.00
1998	70	\$24,182,915.56	149	\$2,237,759.71	219	\$26,420,675.27
1999	80	\$27,110,942.15	90	\$1,639,979.74	170	\$28,750,921.89
2000	105	\$42,385,331.09	124	\$2,362,517.20	229	\$44,747,848.29
2001	107	\$41,547,792.00	118	\$1,865,651.37	225	\$43,413,443.37
Total	499	\$182,274,521.80	747	\$12,638,987.02.02	1246	\$194,915,508.82

(Source: Nevada State Division of Insurance, February 8, 2002)

(Large) Claims Distribution, 1998-2002

(Source: Nevada State Division of Insurance, February 8, 2002)

Year	Claims With \$250k-1mill	Claims >\$1million	Claims Indemnity		Total	Indemnity
			Claims Paid	Indemnity Paid		
1998	70	27	0	\$20,046,000	\$20,805,485	
1999	80	25	6	\$19,348,208	\$21,676,622	
2000	105	33	10	\$32,431,223	\$34,412,214	
2001	107	34	11	\$33,003,264	\$35,316,333	

III. Elements of Senate Bill 97

SB97 "Makes various changes relating to certain actions against providers of health care."

Section 1 limits attorney "contingency fees" to: (a) 40% of the first \$50,000 recovered; (b) 33.3% of the next \$50,000 recovered; (c) 25% of the next \$500,000 recovered; and (d) 15% of the amount of recovery that exceeds \$600,000.

This section (regarding NRS 7) and Section 3 (regarding NRS 41A) defines: "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility." This replaces the current definition of "medical malpractice" found in NRS 41A.009 ("Medical malpractice" means the failure of a physician, hospital or employee of a hospital, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances").

Section 5 limits noneconomic damages to \$350,000 with no exceptions. (The provisions of AB1 are repealed.)

Section 6 applies "several" liability to all economic and noneconomic damage awards in medical liability cases, extending the abrogation of the joint and several doctrine that was done in AB1. (A Southern Nevada physician was found by a jury to be 5 percent liable based on his limited involvement in a case was ordered to pay \$5 million out of the \$6 million judgment. Section 6 would require the physician to pay 5 percent of the damages, consistent with the 5 percent of fault attributed to him by the jury. The National Conference of Commissioners on Uniform State Laws approved the "Uniform Apportionment of Tort Responsibility Act" in October 2001, which would establish several liability rather than joint liability as the general rule for allocating responsibility in tort actions.)

Section 8 changes the statute of limitations from 2 years to 1 year from the time the plaintiff discovers or should have discovered an injury.

Section 9, Subsections 1 and 2, permits the defendant to introduce at trial any collateral source payments (currently required to be applied at a separate hearing following a court determination of an award.)

Section 9, Subsection 3ff, requires the court to apply a periodic payment schedule for future awards over \$50,000 at the request of either party (currently only the plaintiff may request future periodic payments).

Section 11 is a severability clause.

IV. Why SB97 and Why A Ballot Initiative?

- a. The confidence expressed by the MPLI carriers that the Nevada market has stabilized. (In September, 2002, The Doctor's Company was approved for a 26% rate increase. In November 2002, The Doctors' Company was approved for a 45.9% premium rate increase on a program covering psychiatrists and counselors. In November, 2002, American Continental (CNA) was approved for a 4.2% premium rate increase for Advanced Practitioner of Nursing policies. In January 2003, Physician's Insurance Company of Wisconsin, Inc was approved for a 25% increase in Clark County and a 10% increase in the remainder of the State. Also in January, Continental Casualty Company received a 93% rate increase and The Doctor's Company received a 16.9% rate increase.)
- b. Physician confidence has not been restored. Continued practice closures and restrictions.

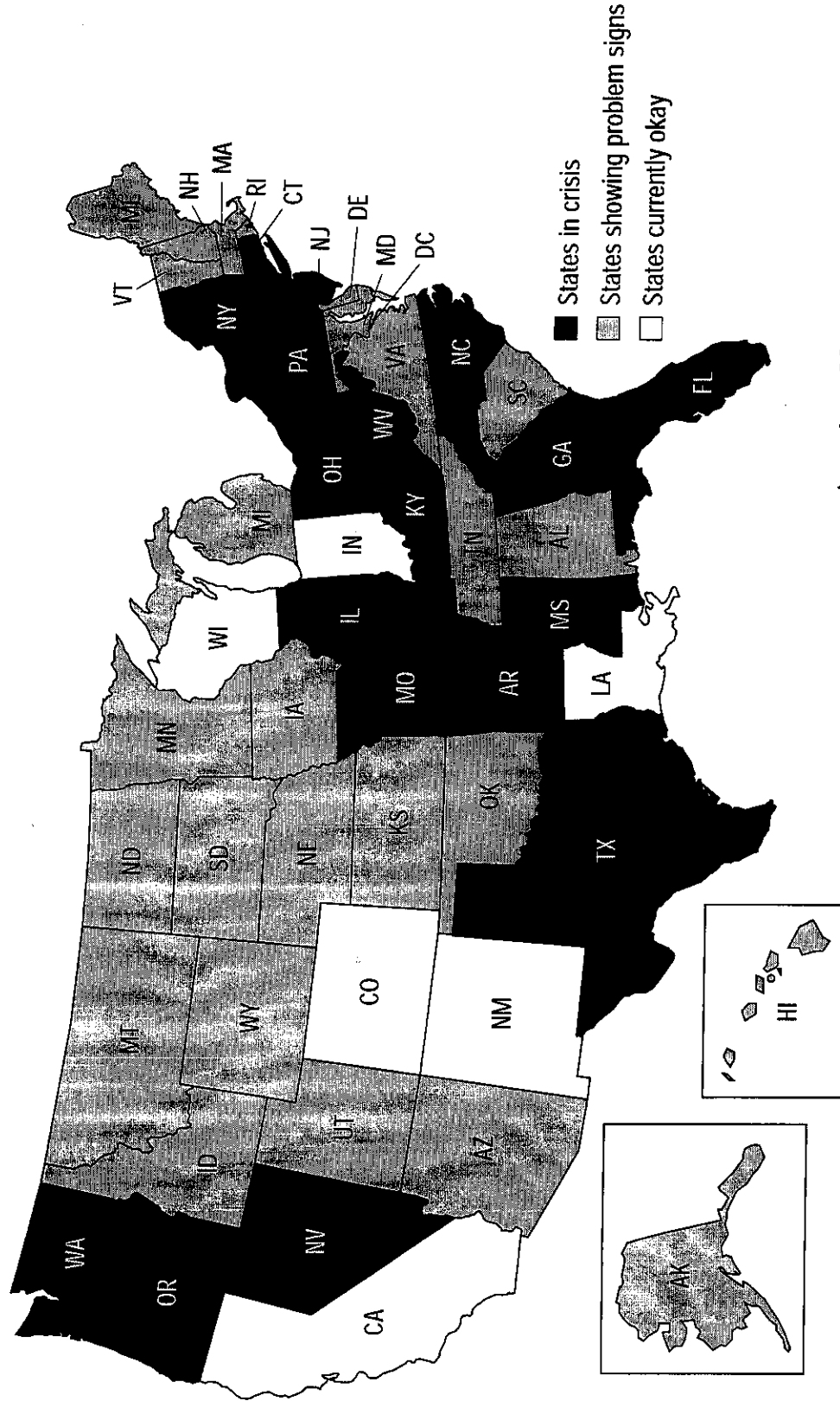
Medical Liability Insurers Profit or Losses, 1999-2000

(Source: Nevada State Division of Insurance)

Company	Profit/(Loss) 1999	Profit/(Loss) 2000
St Paul Medical Liability	\$2,988,386	\$(4,980,000)
St Paul Fire & Marine Ins	\$(9,184,088)	\$(595,000)
The Doctors Company	\$6,941,335.19	\$4,313,000
PIC of Wisconsin	\$625,782	\$1,382,000
TIG Insurance Co	\$1,069,160	\$525,000
American Continental (CNA)	\$(72,341)	\$1,067,000
MIEC	\$(5,199,896)	\$(1,053,000)
Medical Protective Co	no policies	\$12,000
American Phys Assurance Co	no policies	\$(362,000)
Health Care Ind.	No policies	\$314,000
Chicago Insurance Co.	No policies	\$673,000
Fireman's Fund Insurance Co	no policies	\$334,000
NCMIC Insurance Co	no policies	\$256,000
National Union Fire Insurance Co	no policies	\$102,000
Utah Medical Insurance Assoc.	no policies	\$(451,000)

- c. These losses were associated with medical liability costs exceeding premiums and consequences of the general economy.
- i. Actual MPLI losses in Nevada resulted from a series of 1996-2001 District Court (mostly in Clark County) verdicts in cases of medical negligence. (It is difficult to assess the impact of Nevada court cases on the MPLI crisis, because the numbers are quite small and Southern Nevada accounts disproportionately for these cases. According to the Legislative Counsel Bureau's review of the Clark County District Court records, there have been only 23 Clark County court cases involving medical malpractice in the period 1996-2001 decided in favor of plaintiffs. (*Background Information on Medical Malpractice. Volume 3: "Claims and Cases in Nevada" pp. 63-112. Legislative Counsel Bureau: Carson City, NV. July 29, 2002*). The Legislative Counsel Bureau adjusted these data and concluded that there were \$39,329,352 in total awards (\$8,145,821-economic/\$17,137,500-non-economic). Therefore for the cases where economic and non-economic damages are available, 67.8% are non-economic damage awards.)
 - ii. The escalation in these court awards increased the costs associated with settlement of claims. Together, they resulted in unpredictable future claims costs (particularly for those specialties involved in the large court awards)

America's Medical Liability Crisis: A National View



American Medical Association
Physicians dedicated to the health of America

March 2003

D 508

Nevada Medical Liability Insurance Carriers and Rate Actions
(Through February 11, 2003)

In 1999, the following companies had policies covering Nevada physicians:

1. St Paul Medical Liability
2. St Paul Fire & Marine Ins
3. The Doctors Company
4. Physician's Insurance Company of Wisconsin, Inc
5. TIG Insurance Co
6. American Continental (CNA)
7. Medical Insurance Exchange Company

In 2000, the following companies had policies covering Nevada physicians:

1. St Paul Medical Liability
2. St Paul Fire & Marine Insurance
3. The Doctors Company
4. Physician's Insurance Company of Wisconsin, Inc
5. TIG Insurance Company
6. American Continental (CNA)
7. Medical Insurance Exchange Company
8. Medical Protective Company
9. American Physicians Assurance Corporation
10. Health Care Ind.
11. Chicago Insurance Company
12. Fireman's Fund Insurance Company
13. NCMIC Insurance Company
14. National Union Fire Insurance Company
15. Utah Medical Insurance Association

According to the Nevada Division of Insurance, there are 9 companies that are licensed in Nevada and MLAN, which was created pursuant to the Nevada Essential Insurance act. The number of physicians covered by each as of December 2002 is also noted if it has been included in material published by the Division of Insurance.

1. Medical Liability Association of Nevada (MLAN) (550 insureds)
2. Nevada Mutual Insurance Company (approximately 500 insureds)
3. The Doctors Company (788 physicians/53 ancillary providers)
4. Physicians Insurance Company of Wisconsin (323 insureds)
5. American Physicians Assurance Corporation (146 insureds)
6. Medical Insurance Exchange of California (36 insureds).
7. The Medical Protective Company (unknown)
8. TIG Insurance Company (unknown)
9. Truck Insurance Company (unknown)
10. Continental Casualty Company (137 insureds)

The following list is based on Division of Insurance press releases and/or media reports regarding premium rate increases that have been approved affecting Nevada physicians. The list may be incomplete and some of the amounts may have been incorrectly or incompletely reported.

September 2000

- St Paul Group received approval for a 7.5% premium rate increase for Clark County physicians.

January 2001

- The Doctor's Company was approved for a 13.9% premium rate increasing affecting only Clark County.
- Insurance Services Office, Inc. was approved for a 20% increase.

May 2001

- The Physician's Insurance Company of Wisconsin, Inc. was approved for a 7.5% increase affecting Clark County only.

August 2001

- American Continental (CNA) received approval to increase its rates 52%.

September 2001

- St Paul Group received approval of a 3 step 70% rate increase affecting Clark County physicians.
- The Nevada Division of Insurance suspended the license of Phico.

October 2001

- Medical Insurance Exchange of California was approved for a 19.5% rate increase.

December 2001

- Insurance Services Office, Inc was approved for an additional 20% rate increase.
- Physician's Insurance Company of Wisconsin, Inc. was approved for an additional 20.7% rate increase affecting Clark County only.

December 12, 2001

- St Paul Companies issued a national press release announcing that it would exit its medical malpractice business.

May 2002

- Medical Insurance Exchange of California was approved for 30% increase for premium rates on Clark County physicians
- American Physicians Assurance Corporation approved for up to 147% increase in Clark County.

September, 2002

- The Doctor's Company was approved for a 26% rate increase.

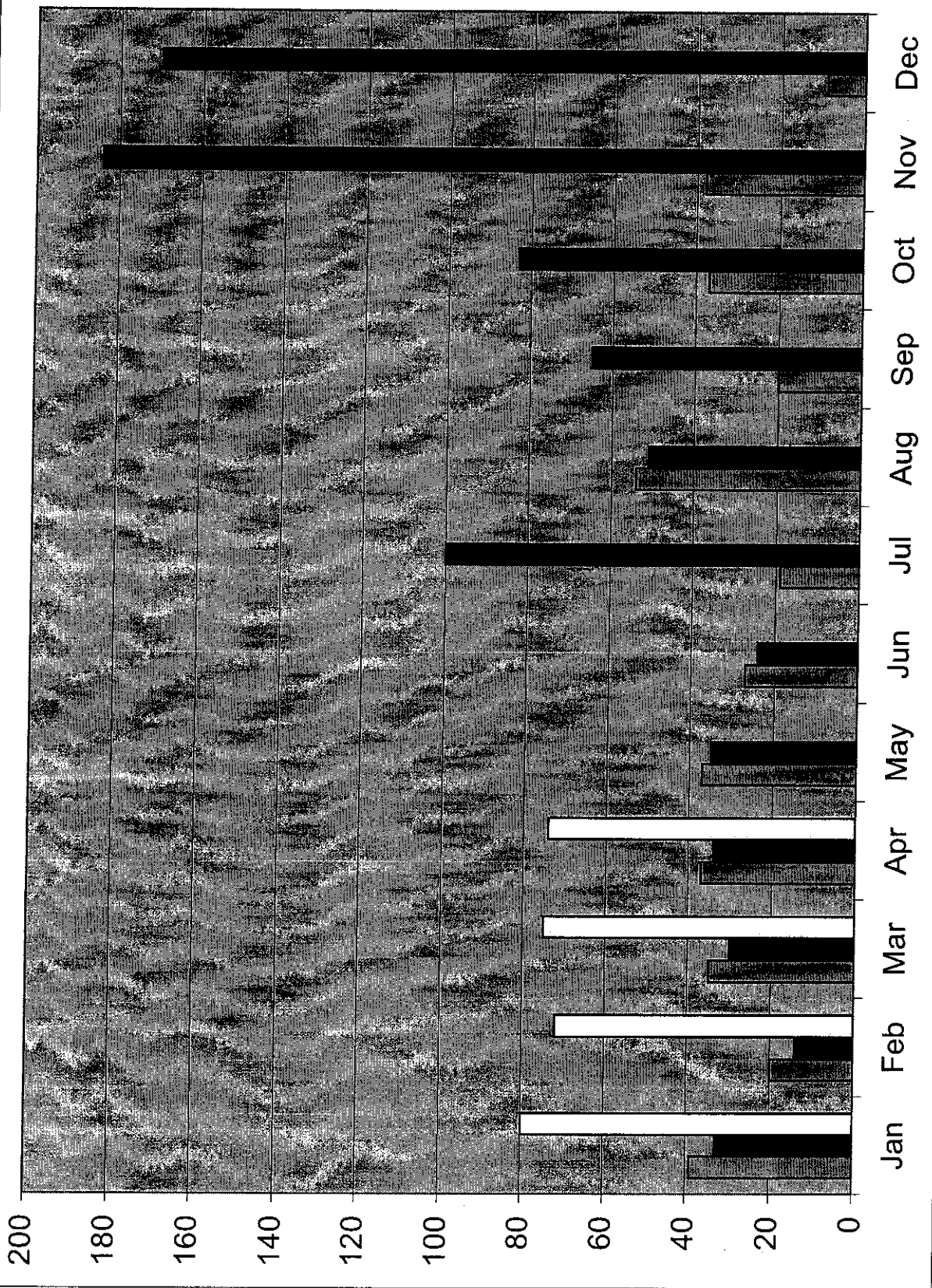
November 2002

- The Doctors' Company was approved for a 45.9% premium rate increase on a program covering psychiatrists and counselors.
- American Continental (CNA) was approved for a 4.2% premium rate increase for Advanced Practitioner of Nursing policies.

January 2003

- Physician's Insurance Company of Wisconsin, Inc was approved for a 25% increase in Clark County and a 10% increase in the remainder of the State.
- Continental Casualty Company received a 93% rate increase.
- The Doctor's Company received a 16.9% rate increase.

■ 2001
 ■ 2002
 □ 2003



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