Healthcare Professional Liability: OHIO
Trends and Updates

Presented by:
Judy L. Klein, CPHRM
OSHRM President
Manager, RM

OSHRM/SOHA Conference
March 20, 2015
Objectives

• Review of the professional liability environment for healthcare providers
• Discuss the professional liability insurance marketplace for healthcare providers
• Examine industry claims/claim trends in healthcare professional liability
Recap of Ohio Professional Liability Landscape/Trends

- Ohio Healthcare Landscape
- Ohio Professional Liability Market
- Ohio Claims
Healthcare Landscape

- Time of Major and Rapid Transformation in the Healthcare Industry
  - Levin Associates
    - 78% of hospitals exploring a merger or in midst of a merger in 2013
    - >50% of hospitals planning purchase of physician practices
  - Physician Foundation
    - 62% physician groups deemed independent in 2008
    - 35% in 2014
Hospital Consolidations and Employment of Physicians Continues to Impact Market in Ohio
Healthcare Landscape

• Emerging Risks and New Exposures
  • Continued migration of delivery of care to outpatient and nontraditional settings
    • Retail Clinics
  • Morphing of who is doing what in healthcare
    • Expanded utilization of Advanced Practice Providers (APPs)
      • By the end of 2014, more than ½ of states were weighing in on expanding clinical duties of APPs
  • Changes in roles/procedures can lead to communication challenges
  • Collaborative review of care/quality review process lacking in many outpatient settings
Healthcare Landscape

- Emerging Risks and New Exposures
- New Medical Technologies
  - Mobile Apps
- Continued emphasis on Electronic Medical Records (EMR)/Metadata/Audit Trails
  - More organizations sharing EMR
  - OHA
    - 80% of hospitals are on the same system
Healthcare Landscape

• Emerging Risks and New Exposures
  • Cyber Risks
    • Privacy and theft concerns
  • 2013 Survey: Healthcare sector contributes the most cyber claims of any sector, 29% worldwide
Ohio Professional Liability Market/Landscape

• Competitive
  • For all types of providers
• Frequency Stable
  • Caps drive down number of filings
  • Don’t see “nuisance cases” anymore
• Claim Costs-continue to rise
Ohio Professional Liability Claims

Severity.....Under Control

• Some larger plaintiff verdicts since 1/1/15 including in more conservative venues and smaller communities
  • This is a change/ If did see a large plaintiff verdict it was isolated
  • Will this trend continue?
• Has public opinion of healthcare providers and tort reform changed?
• Is the hangover from med mal reform over?
• Access to internet/24 hr. news cycle allows potential jurors to be much more familiar with larger verdicts
• Increase in “national” plaintiffs’ firms advertising and pursuing cases in smaller markets
Ohio Professional Liability Claims

• Lucas County-$10.9 mil plaintiff verdict – 1/14/15
• Largest med mal verdict in the county
• 7 day trial/jury deliberated 4 hours
• Damages included past and future economic and noneconomic losses
• Over $8 mil awarded in economic damages
• Toledo husband/wife with 3 dependent children sue OB/GYN and Corp. alleging med mal
• Allegation-Plaintiff suffered stroke during pregnancy after consulting with physician who told her she didn’t need to go to hospital
• Mom suffered permanent physical, cognitive and emotional injury from stroke
Ohio Professional Liability Claims

• Clark County-$8.3 mil plaintiff verdict – 1/20/15
  - Medical Center, a Medical Center Physician and Nurse-found 39% at fault (although no longer a party)
  - Case proceeded against physician-found 61% at fault

• One of the largest med mal awards in Clark County

• 7 day jury trial

• Allegation-Plaintiff’s guardian alleged medical officials (hospital and an internist) failed to properly monitor and manage plaintiff’s blood sugars, allowing them to go down to critically low levels resulting in permanent brain damage.

• Plaintiff with permanent brain damage-unable to work and live independently-requires 24 hr/day care
Ohio Professional Liability Claims

- Lucas County-$4 mil plaintiff verdict against hospital and general surgeon-2/18/14 (Defense Verdict-Radiologist)
- Actual award-$3 mil (due to statutory cap) in a 9 day trial
- Allegation-Wrongful Death; Medical Malpractice - Surgeon, Radiologist, Failure to Diagnose, Negligent Treatment
- Plaintiff alleged failure to diagnose and treat a blood clot in the superior mesenteric vein, with significant bowel ischemia of the small intestine, which led to sepsis, multisystem organ failure and death.
- Plaintiff alleged initial CT Scan showed evidence of blood clot which was not diagnosed
- Plaintiff-39 y/o male who left a wife and 2 children
- $1 mil medicals, $2.4 mil future loss of earnings, wrongful death
Ohio Professional Liability Claims

• Case made “Top 10 Medical Malpractice Verdicts of 2014” in the country and was published in Jury Verdict Round Up
• Cuyahoga County-$14.5 mil plaintiff verdict – 6/10/14
• 11 day jury trial against facility and physician
• Suit filed in 2004; case dismissed without prejudice in 2006; refiled in 2011
• Alleged pre-term labor was not properly managed and defendants were negligent in failing to keep the mother hospitalized to properly manage her pregnancy with anti-labor medications and fetal monitoring during her earlier admissions, which she maintained would have prolonged the pregnancy. It was further alleged they failed to meet accepted standards of obstetric care by not timely delivering resulting in child suffering a brain hemorrhage when delivery was delayed.
• Plaintiff is now 11 and has cerebral palsy, neurological deficits, cognitive delays, visual impairment and requires life long care.
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

- 9th Annual Report
- Analysis of Closed Claims from Calendar Year 2013
- [http://www.insurance.ohio.gov/Legal/Reports/Pages/ReportsIndex.aspx](http://www.insurance.ohio.gov/Legal/Reports/Pages/ReportsIndex.aspx)
- Maureen Motter Ph: 614-644-3361
- maureen.motter@insurance.ohio.gov
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

• The number of med mal claims being filed
  • From 5,051 Claims in 2005
  • To 3,019 Claims in 2013
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

- 79.22% Claim not paid
- 18.82% Claim Paid - Settlement Agreement
- 0.54% Claim Paid - Alternative Dispute Alternative
- 0.14% Claim Paid - Trial or Jury Verdict
- 0.14% Claim Paid - Summary Judgement/Directed Verdict
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

- A total of $267 mil was paid to 708 plaintiffs, an average of $376,679 /plaintiff
- Nearly 4 in 5 claims resulted in no med mal payment
- Nearly all cases included investigation and defense costs, averaging $35,493/claim
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

- Where in Ohio did the claims come from?
  - Northeast – 1,550
  - Central – 1,376
  - Southwest – 589
  - Northwest – 347
  - Southeast – 143
  - Unknown – 14
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

Top 5 Claims by Injury Type

- Failure to Treat/Delayed/Improper Treatment - 963
- Diagnosis Related - 665
- Surgery Related - 564
- Blood Related - 154
- OB - 122
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

Top 5 Claims by Highest Average Indemnity Payment

- Anesthesia related - $1.5 mil/claim
- OB related - $1.3 mil/claim
- Patient Monitoring - $605,000
- Breach of Confidentiality - $466,341
- Surgery related - $375,314
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

Top 6 Claims by Physician Specialty:
Total Claims - 1,339

- Internal Medicine - 155
- Emergency Medicine - 120
- Radiology - 118
- Family Practice - 96
- General Surgery - 95
- OB - 92
Ohio Department of Insurance (ODI) Closed Claims Report Highlights

Average Indemnity – Physicians
$345,988 / claim

Cardiovascular Specialty - Highest Average Indemnity - $733,333 / claim

Average Indemnity - Hospitals
$459,950 / claim
Aon/ASHRM
Hospital/Physician Professional Liability
Benchmark Analysis
October 2014

- Database includes 110 Healthcare Systems across the country
  - Ohio is 5.34% of database
- Frequency Stable
- No growth projected in number of HPL claims for healthcare organizations
- Claims Severity, including defense costs, growing at a rate of 2.5%
Aon/ASHRM
Hospital/Physician Professional Liability Benchmark Analysis
October 2014

Frequency of Claims by Cause of Loss

treatment related
improper performance
misdiagnosis
medication error
failure monitor
delay
birth related
otherwise classified
skin ulcer
## Aon/ASHRM Hospital/Physician Professional Liability Benchmark Analysis

### October 2014

<table>
<thead>
<tr>
<th>Rank</th>
<th>Cause of Loss</th>
<th>Percentage of All Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>improper performance</td>
<td>16.40%</td>
</tr>
<tr>
<td>2</td>
<td>treatment related</td>
<td>14.60%</td>
</tr>
<tr>
<td>3</td>
<td>misdiagnosis</td>
<td>13.35%</td>
</tr>
<tr>
<td>4</td>
<td>fall</td>
<td>7.10%</td>
</tr>
<tr>
<td>5</td>
<td>medication error</td>
<td>5.68%</td>
</tr>
<tr>
<td>6</td>
<td>birth related</td>
<td>5.37%</td>
</tr>
<tr>
<td>7</td>
<td>failure monitor</td>
<td>3.80%</td>
</tr>
<tr>
<td>8</td>
<td>delay</td>
<td>3.10%</td>
</tr>
<tr>
<td>9</td>
<td>skin ulcer</td>
<td>2.81%</td>
</tr>
<tr>
<td>10</td>
<td>emergency department</td>
<td>1.91%</td>
</tr>
</tbody>
</table>
Aon/ASHRM
Hospital/Physician Professional Liability Benchmark Analysis
October 2014
### Severity of Claims by Cause of Loss

<table>
<thead>
<tr>
<th>Rank</th>
<th>Injury Type</th>
<th>Average Claim Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>birth related</td>
<td>$434,000</td>
</tr>
<tr>
<td>2</td>
<td>anesthesiology</td>
<td>$290,000</td>
</tr>
<tr>
<td>3</td>
<td>delay</td>
<td>$226,000</td>
</tr>
<tr>
<td>4</td>
<td>premature discharge</td>
<td>$191,000</td>
</tr>
<tr>
<td>5</td>
<td>failure to monitor</td>
<td>$188,000</td>
</tr>
<tr>
<td>6</td>
<td>airway</td>
<td>$177,000</td>
</tr>
<tr>
<td>7</td>
<td>medication error</td>
<td>$173,000</td>
</tr>
<tr>
<td>8</td>
<td>psychological</td>
<td>$171,000</td>
</tr>
<tr>
<td>9</td>
<td>misdiagnosis</td>
<td>$166,000</td>
</tr>
<tr>
<td>10</td>
<td>treatment related</td>
<td>$158,000</td>
</tr>
</tbody>
</table>
Aon/ASHRM
Hospital/Physician Professional Liability Benchmark Analysis
OHIO

<table>
<thead>
<tr>
<th>Accident Year</th>
<th>Ohio</th>
<th>National Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>$1,630</td>
<td>$2,500</td>
</tr>
<tr>
<td>2008</td>
<td>$1,910</td>
<td>$2,500</td>
</tr>
<tr>
<td>2009</td>
<td>$1,650</td>
<td>$2,500</td>
</tr>
<tr>
<td>2010</td>
<td>$2,370</td>
<td>$2,500</td>
</tr>
<tr>
<td>2011</td>
<td>$2,600</td>
<td>$2,620</td>
</tr>
<tr>
<td>2012</td>
<td>$2,820</td>
<td>$2,700</td>
</tr>
<tr>
<td>2013</td>
<td>$2,360</td>
<td>$2,500</td>
</tr>
<tr>
<td>2014</td>
<td>$2,430</td>
<td>$2,500</td>
</tr>
</tbody>
</table>
Aon/ASHRM Hospital/Physician Professional Liability Benchmark Analysis OHIO

Ohio Claim Severity and Frequency per OBE

Claim Severity

<table>
<thead>
<tr>
<th>Accident Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claim Severity</td>
<td>121,000</td>
<td>137,000</td>
<td>119,000</td>
<td>177,000</td>
<td>163,000</td>
<td>176,000</td>
<td>144,000</td>
<td>148,000</td>
</tr>
</tbody>
</table>

- Indemnity Claims: 0.66% - 0.85%
- Total Claims: 1.35% - 1.64%
Aon/ASHRM
Hospital/Physician Professional Liability Benchmark Analysis
OHIO

Closed Year Statistics

<table>
<thead>
<tr>
<th>Closed Year</th>
<th>Average Indemnity Payment</th>
<th>Average Expense on Indemnity Claims</th>
<th>Average Expense Only Claims</th>
<th>% Closing with Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>198,000</td>
<td>251,100</td>
<td>16,100</td>
<td>43%</td>
</tr>
<tr>
<td>2010</td>
<td>236,000</td>
<td>53,300</td>
<td>19,100</td>
<td>30%</td>
</tr>
<tr>
<td>2011</td>
<td>159,000</td>
<td>62,700</td>
<td>20,600</td>
<td>28%</td>
</tr>
<tr>
<td>2012</td>
<td>171,000</td>
<td>76,200</td>
<td>21,900</td>
<td>32%</td>
</tr>
<tr>
<td>2013</td>
<td>272,000</td>
<td>119,900</td>
<td>17,000</td>
<td>32%</td>
</tr>
</tbody>
</table>
OHIO Professional Liability Trends 2015
Conclusion

- Consolidation of organizations to continue
- Facilities continuing to acquire physician practices
- Despite large verdicts, Ohio stable
- Focus RM/Patient Safety Efforts on Emerging Risks and New Exposures