

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Senator Elwaine F. Pomeroy at  
Chairperson10:00 a.m./p.m. on January 27, 19 83 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes  
Mike Heim, Legislative Research Department

## Conferees appearing before the committee:

Ron Todd, Kansas Insurance Department  
Robert Hayes, Kansas Insurance Department

Senator Gaines moved that the minutes of January 26, 1983, be approved; Senator Werts seconded the motion, and the motion carried.

The chairman introduced Ron Todd who presented to the committee the Products Liability Statistics and Closed Claims Report for the reporting year 1981 (See Attachment #1). He explained the report to the committee. He stated they feel comfortable with getting information they have requested; the reports have been coming in good. Following the explanation, Mr. Todd responded to various questions by the committee members. A committee member referred to the last page in the summary and inquired if Mr. Todd had any opinion as to what caused the dramatic changes in amounts in 1981, and the significant decline in premiums from 1980 to 1981. Mr. Todd replied he had no idea personally; it may more or less follow a trend. He stated there is a great deal of competition with the commercial fire and casualty industry. A committee member asked when the insurance companies would roll back their premiums; Mr. Todd said their office sent a letter out to the companies that stated premiums should coincide with their experience. He stated a limited number of companies write products liability. Another committee member inquired if they had data concerning the claims that were paid and the year the premiums were paid which related to those claims, Mr. Todd replied, not by company. A committee member inquired when could the committee get information on premium and loss rates. Mr. Todd replied this information has been included in recent statistical gathering from the insurance industry. He referred to Bob Hayes, who stated they could make the information available at a later date; you can take data out of some filings; they can furnish some information that was not available in 1976. A committee member commented the data provided indicated the time between filing and closing claims has really narrowed; he inquired if this was the result of the policy by the court system to move cases along. Mr. Todd replied he had not heard that's necessarily the case. A committee member inquired in the determination of premiums allowed and approved, is the department using nationwide experience rather than state experience. Mr. Todd answered, yes.

The chairman asked Mr. Todd to return when Mr. Hayes has the information that was requested.

Mr. Todd also distributed information concerning the status of the Health Care Stabilization Fund (See Attachment #2), and a 1982 report on the Health Care Provider Insurance Availability Act (See Attachment #3). He did not have time to discuss these with the committee but will when he next appears before the committee.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
JEFF SHARP	LAURENCE	Sen. Mulick
Mike Dutton	Topeka	Kansas Insurance Dept
Tom Joss	TOPEKA	secy of Hdl
ROBERT D. HAYES	TOPEKA	KANSAS INS. Dept
Ron Todd	"	" " "
Ed [unclear]	"	Kan assoc of Pk Ins Co
Mark Bennett	Topeka	ASA
JERRY MAGILL	"	I.I.A.K.
DAVID ROSS	MISSION, Ks.	FIG
Louise [unclear]	Topeka	Ks Co-op Council
Henry Humes	STAFF	SENECA
William Seldin	Topeka	KTIA
John [unclear]	Monon	KCFD

KANSAS INSURANCE DEPARTMENT

Products Liability Statistics

and Closed Claims

Report

(K.S.A. 40-1130)

FOR REPORTING YEAR 1981

October, 1982

This narrative has been prepared in order to explain and clarify some of the information contained on the attached Kansas Products Liability Information Report for claims closed in 1981. The information which is reported and compiled pursuant to K.S.A. 40-1130 cannot, in all practicality, be considered conclusive, nor can it be used as a vehicle for determining whether or not products liability rates established in Kansas are excessive, inadequate or unfairly discriminatory.

First of all, Item 11 of the Products Liability Information Report includes only those claims which were actually disposed of from January 1, 1981 through December 31, 1981, inclusive, and does not include claims which were reported but not yet paid or the incurred but not reported (IBNR) claims. When considering Item 11, it is important to realize these claims which were closed in 1981 were not necessarily related to the premium dollar collected during that year.

Secondly, the total countrywide premium shown in Item 5 (\$1,236,496,627) should not be compared with the total amount of countrywide reserve shown in Item 9 (\$2,352,429,753). This comparison should not be made because the reserve shown in Item 9 may have been established for losses attributable to policy years other than 1981.

As you will note, we were unable to compile the information requested in Item 16 of the attached report. While the companies are able to report the amounts awarded the plaintiffs, they cannot, in most cases, determine the portion of the judgment which was attributable to attorney fees.

We have already stated the reasons for which a comparison cannot be made between the total countrywide premium collected for 1981 and the total countrywide reserves. Likewise, the total amount of claim payment in 1981 (Line 12) cannot be compared to the total Kansas premium collected in 1981 (Item 5). The amounts paid out in 1981 were, in most cases, attributed to policies issued in prior years. The premium dollar collected in 1981 is allocated to pay claims, regardless of when the claim is made, for occurrences which occurred in 1981.

The total number of suits in 1981, Item 13 does not balance with the total of Items 14 and 15, since some suits were withdrawn or otherwise dismissed before final court action was concluded.

Atch. 1

Items 12 and 17 can be compared. These items indicate that the initial reserves (\$3,415,993) and the reserves at disposition (\$5,939,516) were greater than the actual amounts paid (\$3,771,329) for the claims closed during 1981.

Items 11 through 13 can be utilized to develop some interesting averaged Kansas closed claims figures such as:

1. Average claim cost of product liability closed claims was \$5,110 (divide Item 12 by Item 11c).
2. Average claim cost of product liability closed claims which produced a claim payment was \$8,145 (divide Item 12 by Item 11a).
3. Percentage of product liability closed claims initiated through filing suit was 17.1% (Item 13 divided by Item 11c).
4. Percentage of product liability closed claims without payment 37.3% (Item 11b divided by Item 11c).

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**KANSAS PRODUCTS LIABILITY INFORMATION REPORT**

AS REQUIRED BY K.S.A. 40-1130 (Instructions contained in Bulletin 1980-11). These questions must be answered by each insurer licensed in Kansas even if the insurer has no product liability insurance in force anywhere.

Name of Company: composite (1981)  
 Company NAIC Code: \_\_\_\_\_  
 Name and Telephone Number of Company \_\_\_\_\_  
 Representative Completing This Form: Compilation of 185 companies reporting Products Liability in Kansas or Countrywide  
**DO NOT REPORT GROUP INFORMATION ON THIS FORM**

1. List the names of all other companies associated with your company, including holding or parent companies, wholly owned subsidiaries or divisions, or through interlocking directorships:

Unable to compile in composite form; however, responses are on file by company.

2. List of the lines of insurance your company writes in any jurisdiction (lines of business designated on Page 14 of the Annual Statement may be utilized for identifying):

Unable to compile in composite form; however, responses are on file by company.

3. In what states is your company authorized to write products liability?

Unable to compile in composite form; however, responses are on file by company.

4. List the total premium dollar amount collected by your company for all lines of insurance, both Kansas and Countrywide, for 1981: (Schedule T of Annual Statement, Column 2, excluding foreign countries):

Kansas: \$771,393,877 Countrywide (Including Kansas): \$59,097,670,881

5. What is the dollar amount your company collected for Products Liability, both Kansas and Countrywide for the year 1981? (The amount must include Products Liability premium for Composite Rates, Loss Rated, Large A Rated and commercial package policies except homeowners, farmowners and garage keepers liability.) If precise figures are not obtainable, a reasonable estimate will be permitted if separately disclosed and identified.

	<u>Monoline 1981</u>	<u>Other than Monoline 1981</u> (Include policies for which there is no identifiable products premium)	<u>Total 1981</u>
Kansas	10,536,024	4,098,244	14,634,268
Countrywide (Including Kansas)	850,932,552	385,564,075	1,236,496,627

6. State the dollar amount of Product Liability premiums collected in Kansas and Countrywide in 1981 for (a) primary coverage and (b) excess coverage.

	<u>Primary (1981)</u>	<u>Excess (1981)</u>	<u>Total (1981)</u>
Kansas	13,858,210	776,058	14,634,268
Countrywide (Including Kansas)	1,151,450,861	85,045,766	1,236,496,627

7. Does your company set reserves for Products Liability claims filed?  
183 Yes      2 No; if no, state reason (Companies are small writers with no claims to date)
8. Does your company set reserves for Products Liability claims which have been incurred but not reported?  
171 Yes      14 No; if no, state reason (IBNR established for general liability and allocated to products liability based on premiums)
9. What total amount of reserves has your company established for Products Liability claims countrywide?  
 \$2,352,429,753
10. In reference to Questions 7, 8 and 9; how are these reserves treated for Federal Income Tax purposes?

Unable to compile in composite form; however, responses are on file by company (Questions 11 through 17 relate only to products liability claims reported on the Kansas Closed Claims Reports.) The figures reported here must correspond with information submitted to this department on the individual closed claim reports.

- 11a. Total Number claims closed with payments in 1981 (Number of attached closed claim reports with an amount entered on Line 12)      463
- 11b. Total Number claims closed without payment in 1981 (Number of attached closed claim reports with no amounts (-0-) entered on Line 12)      275
- 11c. Grand total of claims closed in 1981 (Total number of closed claims attached to this report. Must agree with the total of line 11a and 11b above.)      738
12. Total amount of claim payment in 1981: 2,885,668 +885,661 (other costs\*) = \$3,771,329 (Total line 12 of the individual closed claims and enter amount here.)
13. Total number of suits filed in 1981: 126 (Number of individual closed claims that have dates entered on line 4d?)
14. Total number of verdicts or judgments for defendants in 1981: 33 (Total line 8a of the individual closed claim reports.)
15. Total number of verdicts or judgments for plaintiffs in 1981: 29 Total line 8b of the individual closed claim reports.)
16. Total amounts for plaintiffs 1981: Companies unable to determine (See 8b of the individual closed claim reports.)
17. Aggregate of amounts reported under items 7(a) and 7(b) of Kansas Closed Claims Reports (1981 only) 7(a) \$5,939,516 (Reserves at Disposition) 7(b) \$3,415,993 (Initial Reserves)
18. What is the value of all securities held in your investment portfolio as of December 31, 1981: (Total of items 1, 2, 3 and 5, Page 2, Annual Statement)

\$97,954,488,164

19. Please attach your annual report to Shareholders or Policyholders as a supplement to this report.

\* Includes defense, settlement, and all other costs attributable to claim payments and other claim files with claim payment.



KANSAS PRODUCTS LIABILITY CLOSED CLAIMS REPORT  
 October, 1982  
 COMPILATION OF CLOSED CLAIMS SUBMITTED IN ACCORDANCE  
 WITH K.S.A. 40-1130

I. <u>Distribution of Company Costs</u>	<u>Claims Closed in 1981</u>	<u>Claims Closed 1976 through 1981</u>
Total costs to companies for all closed claims	\$ 3,771,329	\$ 26,109,827**
a. Defense costs, settlement costs, and all other costs*	\$ 885,661	\$ 4,868,367
b. Total of settlements or awards	\$ 2,885,668	\$ 21,241,460
c. Average settlement based on closed claims producing payment to claimant	\$ 6,233	\$ 8,022
d. Average settlement based on total number of closed claims	\$ 3,910	\$ 5,054

The total premium dollar amount collected in Kansas for products liability for the period 1977 through 1981 was \$75,850,688.

\*These figures include Loss adjustment, Interest Expense, Company Expense but exclude Settlements or Awards. It is important to note that many expenses which were incurred were not readily identifiable. For example, companies advised of employees' salaries but dollar amounts were not given.

\*\*The reporting law was initially enacted with a retroactive reporting date of July 1, 1976. K.S.A. 40-1130 was subsequently amended to require reporting for only 1977 closed claims. At the time of amendment we had already received a small number of closed claims for 1976 which are included in the report. The amendment occurred prior to receiving premium information for 1976, thus explaining the discrepancy between the years of cumulative information for closed claims (1976-1981), and premiums collected (1977-1981).

II. Distribution of Claims by Range of Payment

<u>Range of Payment</u>	<u>Claims Closed in 1981</u>		<u>Claims Closed 1976 through 1981</u>
	<u># of Claims</u>	<u>% of Total</u>	<u>% of Total</u>
No Payment	275	37.3%	37.2%
\$1 - \$9,999	417	56.5%	56.8%
\$10,000 - \$19,999	19	2.6%	2.1%
\$20,000 - \$29,999	9	1.2%	1.0%
\$30,000 - \$39,999	6	.8%	.7%
\$40,000 - \$49,999	0	0%	.4%
\$50,000 - \$59,999	2	.3%	.3%
\$60,000 - \$69,999	0	0%	.2%
\$70,000 - \$79,999	3	.4%	.2%
\$80,000 - \$89,999	0	0%	0%
\$90,000 - \$99,999	2	.3%	.1%
over \$100,000	5	.7%	.9%
Totals	738	100%	100%



III. Claims Resulting in Settlements Over \$100,000 - Closed in 1981

<u>Incident Giving Rise to Claim</u>	<u>Settlement</u>	<u>Defense Costs</u>	<u>Settlement Costs</u>	<u>Other Costs</u>
BI - Drug or Pharmaceutical	\$ 135,000.00	\$ 1,173.00	\$ .00	\$ .00
BI - Completed Operations	155,000.00	15,486.00	.00	50.00
BI - Product Explosion	303,292.00	9,063.00	.00	579.00
BI - General Product Malfunction	325,000.00	28,400.00	.00	.00
BI - Food or Beverage	108,325.00	2,000.00	167.00	.00
TOTALS	\$1,026,617.00	\$ 56,122.00	\$ 167.00	\$ 629.00

\*Note: For 1976, 1977, 1978, 1979, and 1980, Closed Claims Over \$100,000 refer to previous report.

IV. Date of Incident to Date Claim Made

<u>Years</u>	<u>Claims Closed in 1981</u>		<u>Claims Closed 1976 through 1981</u>
	<u>No. of Claims</u>	<u>% of Total</u>	<u>% of Total</u>
Over Six Years	3	.4%	.8%
Five - Six Years	5	.7%	.5%
Four - Five Years	8	1.1%	.6%
Three - Four Years	20	2.7%	1.7%
Two - Three Years	66	8.9%	8.0%
One - Two Years	167	22.6%	19.4%
Under 12 Months	469	63.6%	69.9%
TOTAL	738	100%	100%

V. Date of Incident to Date Claim Disposed

<u>Years</u>	<u>Claims Closed in 1981</u>	
	<u>No. of Claims</u>	<u>% of Total</u>
Over Six Years	16	2.2%
Five - Six Years	32	4.3%
Four - Five Years	38	5.1%
Three - Four Years	48	6.5%
Two - Three Years	69	9.3%
One - Two Years	202	27.9%
Under 12 Months	333	45.1%
Total	738	100%

VI. Distribution of Claims by Type of Incident

<u>Type of Incident</u>	<u>Claims Closed in 1981</u>		<u>Claims Closed *1976 through 1981</u>	
	<u>Number of Claims</u>	<u>% of Total</u>	<u>% of Total</u>	
BI & PD - Product Explosion	3	.4%	.7	
BI - Product Explosion	10	1.4%	1.3	
PD - Product Explosion	12	1.6%	1.9	
BI - Food or Beverage	129	17.5%	18.0	
PD - Food or Beverage	22	3.0%	2.1	
BI - Product Gave Rise to Fire	1	.1%	.3	
PD - Product Gave Rise to Fire	38	5.1%	5.0	
BI & PD - Product Gave Rise to Fire	3	.4%	.5	
BI - General Product Malfunction	68	9.2%	8.5	
PD - General Product Malfunction	163	22.1%	20.9	
BI & PD - General Product Malfunction	9	1.2%	.9	
PD - Agricultural Crop or Livestock	121	16.4%	13.9	
BI - Cosmetic Preparation	1	.1%	.3	
BI - Completed Operations	34	4.6%	3.6	
PD - Completed Operations	108	14.6%	15.3	
BI & PD - Completed Operations	1	.1%	3.5	
BI & PD - Under Storekeepers Liability Policy	0	0 %	.6	
BI - Drug or Pharmaceutical	12	1.6%	1.9	
Other	3	.4%	1.2	
Total	738	100%	100%	

\*Items included in this column are only those compatible with the 1979 report.

VII. Distribution of Claims By Type of Product

<u>Type of Product</u>	<u>Claims Closed</u>	
	<u>Number of Claims</u>	<u>in 1981</u>
		<u>% of Total</u>
Aircraft	1	.1%
Animal Feed	43	5.8%
Auto	67	9.1%
Beverages	28	3.8%
Recreational	6	.8%
Chemicals	81	11.0%
Cleaning Products	8	1.1%
Clothing & Cosmetics	10	1.4%
Construction	85	11.5%
Domestic Outdoor Equipment	4	.5%
Elevators	3	.4%
Farm Equipment	40	5.4%
Firearms	1	.1%
Food	133	18.0%
Fuel	42	5.7%
Heating & Cooling Systems	38	5.1%
Home Furnishing & App.	49	6.6%
Installations & Repairs	58	7.9%
Lighters	2	.3%
Medical	7	.9%
Other	32	4.3%
TOTAL	738	100%

TOTAL COSTS PAID

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	TOTAL 1976 thru 1981
Defense Costs, Settlement Costs and All Other Costs	205,220	499,449	909,604	1,154,083	1,214,350	885,661	4,868,367
Total of Settlements or Awards	<u>646,230</u>	<u>2,450,291</u>	<u>3,707,883</u>	<u>3,655,981</u>	<u>7,895,407</u>	<u>2,885,668</u>	<u>21,241,460</u>
TOTAL COSTS For Closed Claims	<u>851,450</u>	<u>2,949,740</u>	<u>4,617,487</u>	<u>4,810,064</u>	<u>9,109,757</u>	<u>3,771,329</u>	<u>26,109,827</u>

TOTAL PRODUCTS LIABILITY PREMIUMS

	<u>1976 &amp; 1977</u>	<u>1978</u>	<u>1979*</u>	<u>1980</u>	<u>1981</u>	TOTAL 1976 Thru 1981*
Kansas Monoline Premiums	10,448,994	11,842,366	11,324,192	11,524,046	10,536,024	55,675,625
Other Than Monoline	<u>3,052,989</u>	<u>3,728,249</u>	<u>4,452,604</u>	<u>4,837,069</u>	<u>4,098,244</u>	<u>20,169,155</u>
TOTAL Premium	<u>13,501,986</u>	<u>15,570,615</u>	<u>15,782,704</u>	<u>16,361,115</u>	<u>14,634,268</u>	<u>75,850,688</u>

\*In 1979 two companies were unable to differentiate the products liability premium between monoline and other than monoline. Consequently, these amounts are not reflected in either the "monoline" or "other than monoline" categories. They are, however, included in the total premium which explains why the column does not "add".

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INSURANCE DEPARTMENT

TOPEKA

1-27-83

# 2

STATUS OF HEALTH CARE STABILIZATION FUND

AS OF DECEMBER 31, 1982

HEALTH CARE STABILIZATION FUND RECEIPTS

Surcharge Receipts Collected (less refunds)	\$11,233,061.31
Investment Income	5,792,504.21
HCIAP (Plan) Income	1,457,262.40
Reimbursements	<u>17,677.04</u>
Total Receipts	\$18,500,504.96

HEALTH CARE STABILIZATION FUND EXPENDITURES

Claim Payments	\$ 5,850,357.68
Doctor Fees	295.50
Hospital Services	540.50
Attorney Fees	480,170.78
Court Reporting	8,226.12
Depositions	4,591.75
Package Delivery	61.00
Data Processing	305.00
Other Fees	3.00
HCIAP (Plan) Payment	354,339.00
Salaries Paid	64,429.95
Salaries Encumbered	17,714.65
Actuarial Fees	<u>79,173.81</u>
Total Expenditures	\$ 6,860,208.74

HEALTH CARE STABILIZATION FUND BALANCE

Fund Balance as of December 31, 1982	\$11,640,296.22
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# 3

**REPORT ON THE HEALTH CARE PROVIDER  
INSURANCE AVAILABILITY ACT**

**FEBRUARY 16, 1982**

**Prepared By  
Fletcher Bell  
Commissioner of Insurance  
Kansas Insurance Department  
Topeka, Kansas**

Atch. 3



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SECTION I  
INTRODUCTION

Since the effective date of the Kansas Health Care Provider Insurance Availability Act on July 1, 1976, this department has issued six (6) reports which review the implementation and administration of the Act. Copies of previous reports are available from the Department upon request.

The purpose of this report is to provide a brief synopsis of the Health Care Stabilization Fund activities, the Health Care Provider Insurance Availability Plan and medical malpractice closed claims information.

SECTION II  
THE HEALTH CARE STABILIZATION FUND

In accordance with the provisions of the Health Care Provider Insurance Availability Act, the Health Care Stabilization Fund was established for the purpose of paying damages for personal injury or death arising out of the rendering, or failure to render, professional services by a health care provider who has complied with the basic coverage requirements of the Act. The Fund is administered by the Commissioner of Insurance and the following annual Fund surcharges have been levied:

<u>Fiscal Year</u>	<u>HCSF Surcharge Percentage</u>	<u>Ending Fiscal Year HCSF Balance</u>
1977	45%	\$ 2,555,055
1978	45%	\$ 6,224,939
1979	40%	\$ 9,253,570
*1980	15%	\$ 12,331,606
1981	0%	\$ 13,379,656
1982 (Current)	0%	\$ 13,184,481 * As of 12-31-

\*During Fiscal Year 1980 (effective April 21, 1980) the Kansas Legislature amended the Health Care Provider Insurance Availability Act to provide that health care providers who are complying with this law for the first time shall be subject to a minimum annual surcharge of twenty five (25) percent for the first twelve (12) month compliance period.

As of December 31, 1981, there were 195 open claim files being monitored by the Department. While open claim files are difficult to evaluate with regard to potential loss payments from the Fund, it is estimated that 25% of these claims will require some loss or expense payment from the Fund. The following charts and graphs present an overview of the HCSF's operations since the inception of the HCPIA Act.

TABLE I  
HEALTH CARE STABILIZATION FUND  
CLAIM FILES OPENED AND CLOSED  
(As of December 31, 1981)

<u>Fiscal Year</u>	<u>Opened</u>	<u>Closed</u>	<u>Files Pending as of the end of each FY</u>
1977	1	1	0
1978	5	2	3
1979	64	6	61
1980	81	16	126
1981	98	38	186
1982 (First 6 months)	62	53	195 as of 12/31/81

GRAPH I  
GROWTH OF HEALTH CARE STABILIZATION FUND  
(As of December 31, 1981)

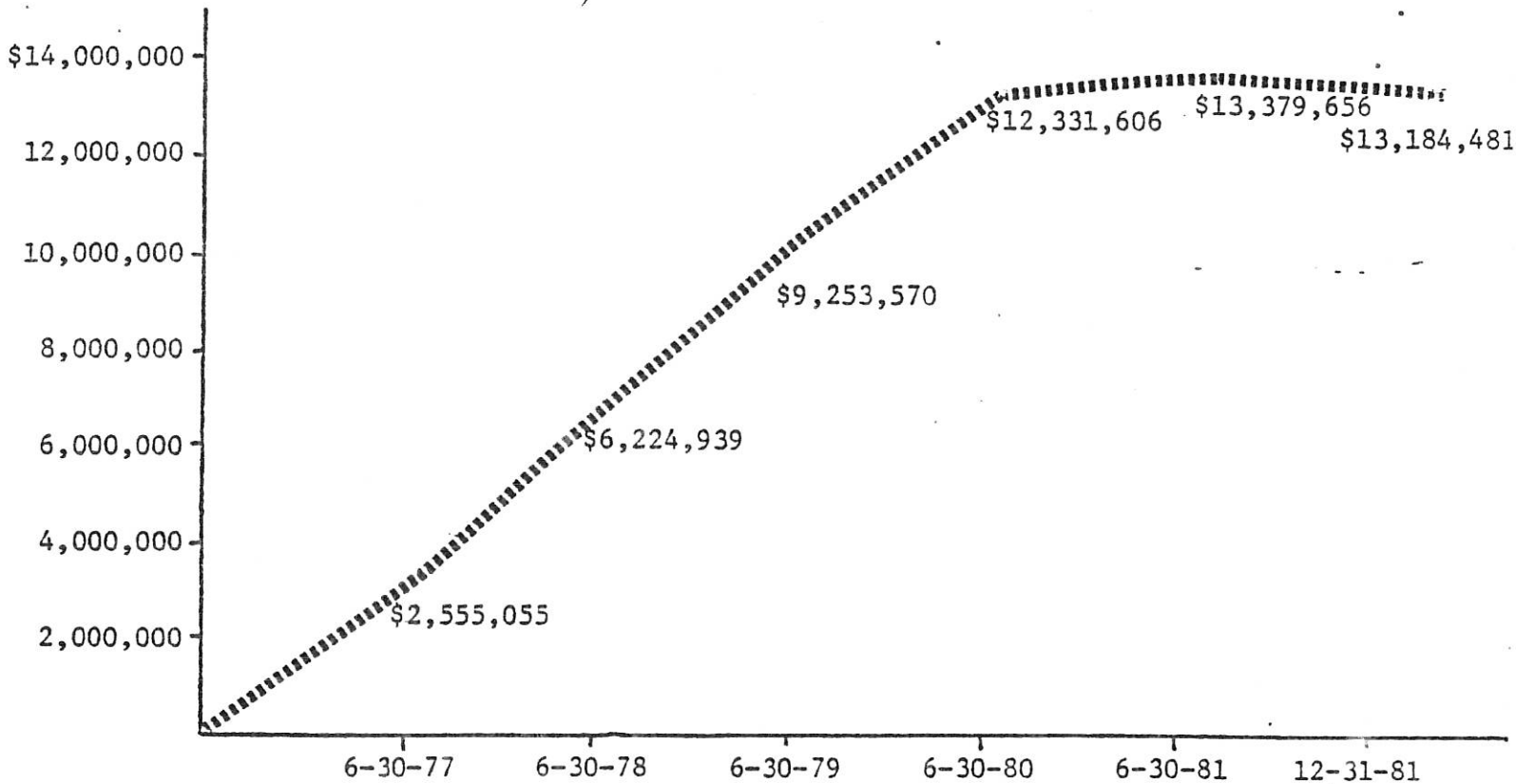


TABLE 2  
 STATUS OF HEALTH CARE STABILIZATION FUND  
 CUMULATIVE FROM JULY 1, 1976 THROUGH DECEMBER 31, 1981

HCSF Receipts:

Surcharge Payments Collected (less returns)	\$ 11,169,025.63
Investment Income	\$ 3,869,506.20
HCPIA Plan Income	\$ 1,457,262.40
Reimbursements	\$ 372.04
<b>Total Receipts</b>	<b>\$ 16,496,166.27</b>

HCSF Expenditures:

Claim Payments	\$ 2,898,783.72
Attorney Fees (Claim Expenses)	\$ 300,465.13
Data Processing & Actuarial Services	\$ 61,467.81
Salaries & Wages	\$ 50,968.60
<b>Total Expenditures</b>	<b>\$ 3,311,685.26</b>

<b>HEALTH CARE STABILIZATION FUND BALANCE AS OF DECEMBER 31, 1981</b>	<b>\$ 13,184,481.01</b>
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GRAPH 2  
 COMPARISON OF HCSF SURCHARGE  
 PAYMENTS BY TYPE OF  
 HEALTH CARE PROVIDER  
 (JULY 1, 1976 THROUGH DECEMBER 31, 1981)

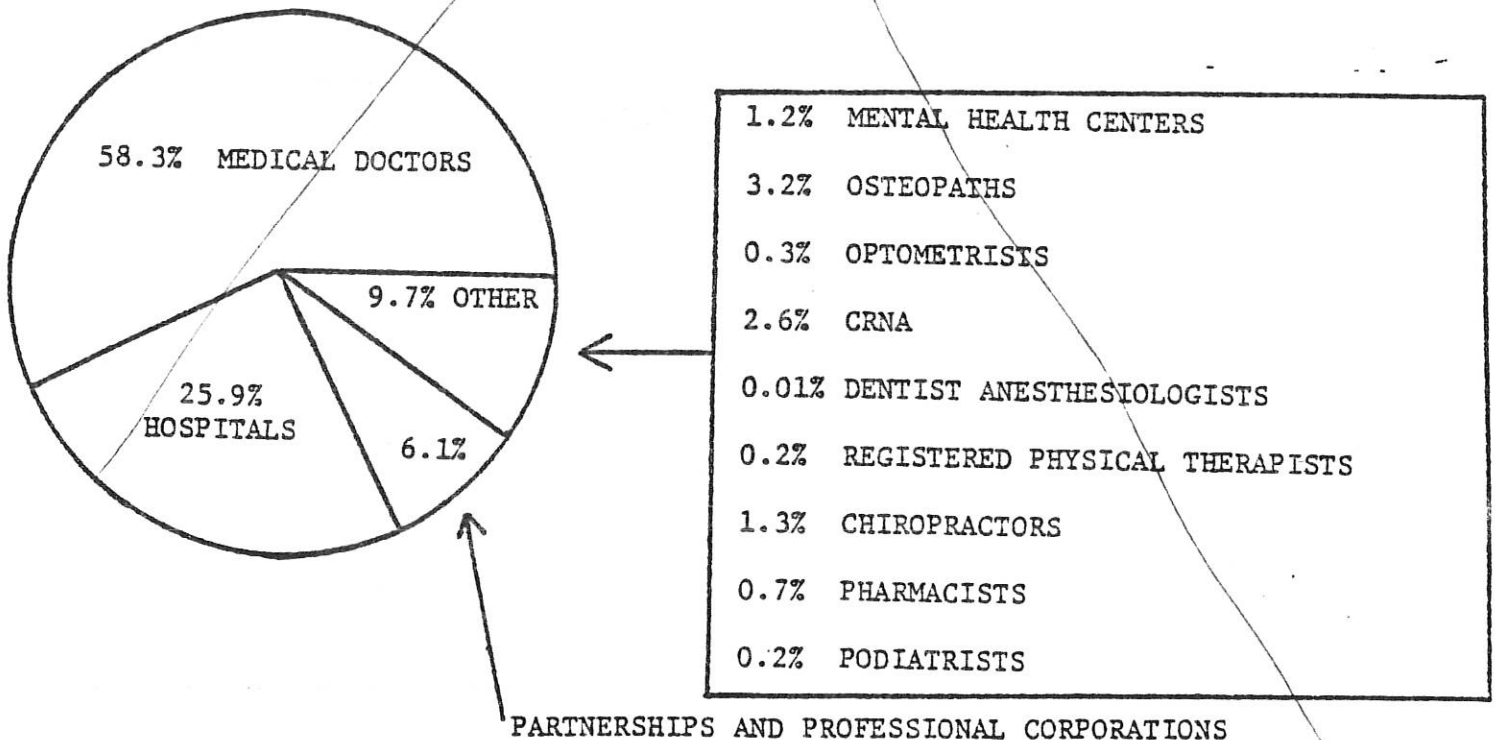


TABLE 3  
HEALTH CARE PROVIDER COMPLIANCE  
As of December 31, 1981

<u>Type of Health Care Provider</u>	<u>Number in Compliance</u>	<u>Number in Non-Compliance</u>	
		<u>Number who were in Compliance at Some Time*</u>	<u>HCPs which have Never Been In Compliance**</u>
Physicians, Surgeons (including Post Graduate)	3,725	1,931	544
Osteopaths	214	80	51
Chiropractors	404	210	40
Podiatrists	69	13	6
Physical Therapists	363	208	112
DDS Anesthesiologists (Certified by Board of Healing Arts)	4	0	0
Medical Care Facilities	118	29	3
Mental Health Centers	34	11	1
Pharmacists	1,110	1,016	498
Optometrists	208	113	9
Certified Registered Nurse Anesthetists	228	146	40
Professional Corporations of HCP's	654	180	18
Partnerships of HCP's	90	72	6

\*This column may include health care providers which have renewed the basic coverage, but the renewal notice had not yet been received by this department; inactive health care providers no longer required to maintain the basic coverage; or active health care providers which are no longer complying with the HCPIA Act.

\*\*These health care providers may be residents of other states; inactive health care providers; or active health care providers which have not complied with the HCPIA Act.

### SECTION III

#### THE KANSAS HEALTH CARE PROVIDER INSURANCE AVAILABILITY PLAN

The Health Care Provider Insurance Availability Plan (sometimes referred to as the Kansas JUA) was established in accordance with the provisions of the Health Care Provider Insurance Availability Act to provide professional liability insurance for health care providers who are in good faith entitled to such insurance but are unable to procure the required basic professional liability insurance from the normal markets.

The plan is administered on a "no-profit/no-loss" basis by a nine member Board of Governors, who are appointed by the Commissioner. Insurance policies are issued and serviced by the Western Casualty and Surety Company of Fort Scott, Kansas.

The population of the Plan does not appear to have exhibited unusual growth. During the second year of operation, the number of health care providers insured by the Plan increased by approximately 16%, however at the conclusion of the latest fiscal year the population was less than 4% above the first year's population.

TABLE 4  
SUMMARIZATION OF THE HCPIA PLAN'S POLICIES ISSUED  
TO HEALTH CARE PROVIDERS

<u>Type of Health Care Provider</u>	<u>Last Completed Fiscal Year FY 1981</u>	<u>First Fiscal Year FY 1977</u>
Physicians, Surgeons (includes Osteopaths)	326	398
Chiropractors	247	269
Podiatrists	57	36
Physical Therapists	0	14
Pharmacists	44	56
Optometrists	15	16
Certified Reg. Nurse Anesthetists	89	69
Medical Care Facilities	7	10
Mental Health Centers	8	0
Partnerships & Prof. Corp. of HCP's	105	0
	<u>898</u>	<u>868</u>



TABLE 5  
SUMMARIZATON OF THE HCPIA PLAN'S OPERATIONS

	<u>FY 1981</u>	<u>FY 1980</u>	<u>FY 1979</u>	<u>FY 1978</u>	<u>FY 1977</u>
I. Earned Premiums	\$1,168,717	\$1,183,156	\$1,414,784	\$1,311,442	\$736,377
II. Incurred Losses & Loss Reserves	500,974	501,308	715,288	277,568	166,534
III. Excess of Earned Premiums*	363,620	285,349	103,184	565,240	139,869

\*The total HCPIA Plan "profits" transferred to the Health Care Stabilization Fund since July 1, 1976 is \$1,457,262.

#### IV. KANSAS MEDICAL MALPRACTICE CLOSED CLAIMS SUMMARY

This report summarizes the data submitted by 35 insurers in accordance with K.S.A. 40-1126 and K.S.A. 40-1127. There were 1,646 claims closed against Kansas health care providers during the six year period beginning January 1976 and ending December 1981.

Total indemnity paid during this period was \$10,039,259. Of the total claims closed, approximately 49% resulted in payments. The average indemnity paid, based on claims closed with payment, was \$6,514 in 1976 and \$23,699 in 1981, an increase of 264%. The greatest portion of this increase is attributed to the year 1977 where the average payment rose 161% over the prior year. The figure dropped in 1978 but has continued to rise in the past three years. These figures are presented on Graph I. Chart II provides a distribution of claims by dollar amount paid in indemnity for each of the six years compiled.

The Kansas claims information indicates that the length of time between the date of an incident to the date a claim or legal action is filed, often referred to as the "tail" in Medical Malpractice, has lengthened during the past five years. In 1976, 92.7% of the claims were reported within the first 24 months after the date of incident. In 1981, only 66.4% of the claims had been reported within two years. The percentage of claims taking over 6 years to report has not increased, in fact, in 1981, less than 1% of the claims reported were in this category. Chart III provides a summarization.

On a total cost basis (i.e., indemnity, defense and all other costs), the distribution by type of health care provider is as follows: Physicians/Surgeons 63%, Medical Facilities 19%, Others 18%. Specific types of practitioners and claims costs for each are found on Chart IV.

By category of procedure or type of allegation producing claims, the greatest percentage of claims were attributed to surgery related procedures. Incorrect diagnosis was the second largest category, followed by improper care and birth related incidents. Although the incorrect diagnosis claims were second in number of claims, this category created the greatest cost in total dollars spent (settlements/awards, defense costs, etc.). Chart V provides further detail.

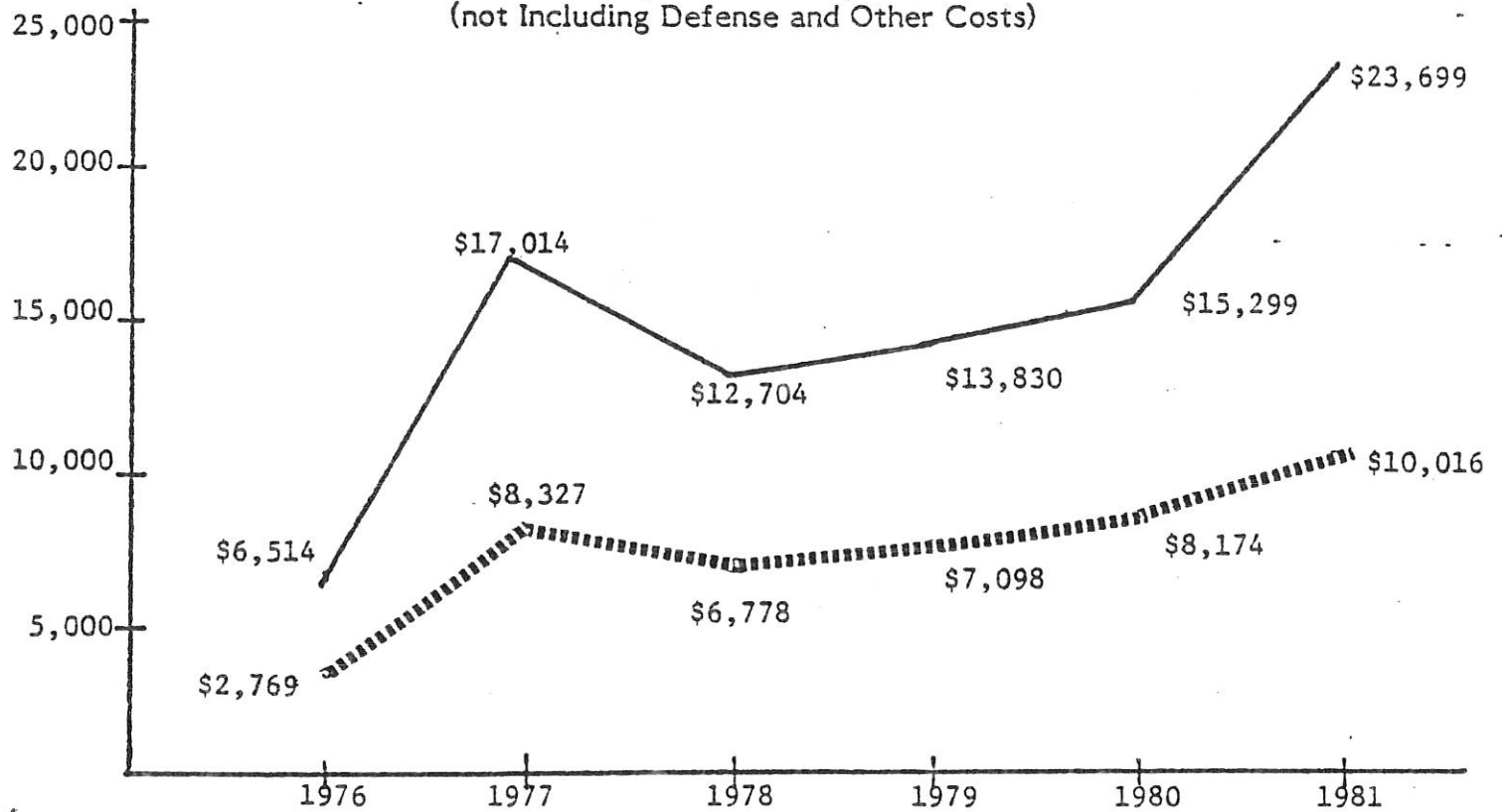
CHART I

Distribution of Company Costs By Percentage  
of Total Costs for all Closed Claims  
During Indicated Years

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
I. Defense Costs	24%	19%	24%	23%	21%	18%
II. Other Costs (includes loss adj., interest, company expenses)	9%	13%	4%	4%	4%	5%
III. Indemnity Paid	67%	68%	72%	73%	75%	77%
<b>ACTUAL TOTAL COSTS (I,II,III)</b>	<b>\$867,769</b>	<b>\$3,457,490</b>	<b>\$2,806,845</b>	<b>\$2,951,728</b>	<b>\$3,026,652</b>	<b>\$3,444,363</b>

GRAPH I

Severity of Claim Payments  
(not Including Defense and Other Costs)



———— Average Claim Payment Based on Claims Producing Payment

..... Average Claim Payment Based on Total Number of Claims

## CHART II

### Distribution of Claims by Range of Indemnity Payment By Percentage of Total Claims

<u>Amount of Payment</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
No Payment	57.5%	51.1%	46.6%	48.7%	46.6%	57.7%
\$1-\$9,999	32.9%	33.4%	36.2%	36.8%	35.0%	27.2%
\$10,000-\$19,999	4.8%	5.6%	8.1%	6.3%	9.4%	6.0%
\$20,000-\$29,999	1.4%	1.8%	2.7%	2.3%	4.3%	2.3%
\$30,000-\$39,999	0	.7%	2.7%	1.0%	1.1%	1.1%
\$40,000-\$49,999	0	1.4%	.3%	.7%	.7%	.8%
\$50,000-\$59,999	.5%	1.4%	.3%	1.3%	.7%	1.1%
\$60,000-\$69,999	.5%	.7%	0%	0%	0%	1.1%
\$70,000-\$79,999	0%	1.8%	1.3%	.3%	0%	0%
\$80,000-\$89,999	0%	.4%	0%	0%	0%	.8%
\$90,000-\$99,999	0%	.4%	0%	0%	0%	0%
Over \$100,000	<u>2.4%</u>	<u>1.0%</u>	<u>1.7%</u>	<u>2.6%</u>	<u>2.2%</u>	<u>1.9%</u>
<b>TOTAL</b>	100%	100%	100%	100%	100%	100%
<b># of Claims</b>	207	284	298	302	277	265

## CHART III

### Date of Incident to Date Claim was Filed

<u>Years</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Over 6	3.4%	1.8%	4.7%	2.3%	1.8%	.8%
5 to 6	.5%	.4%	1.3%	4.3%	2.2%	2.6%
4 to 5	.5%	2.1%	3.4%	3.6%	2.5%	1.5%
3 to 4	.5%	.7%	5.4%	5.6%	7.6%	6.8%
2 to 3	2.4%	8.8%	13.7%	23.8%	24.9%	21.9%
1 to 2	30.4%	29.9%	27.2%	29.5%	23.8%	26.4%
Under 1	62.3%	56.3%	44.3%	30.8%	37.2%	40.0%

CHART IV

Distribution of Total Costs and Total  
Claims by Type of Insured  
(July 1978 through December 1981)

<u>Types of Insured</u>	<u># Claims</u>	<u>% Total Claims</u>	<u>Total Costs</u>	<u>% Total Costs</u>
<b>*Physicians &amp; Surgeons</b>				
Group I	84	8.4%	\$1,133,135	10.2%
Group II	119	12.0%	1,156,347	10.4%
Group III	63	6.3%	1,051,402	9.4%
Group IV	150	15.1%	1,675,922	15.0%
Group V	57	5.7%	1,661,128	14.9%
Group VI	21	2.1%	391,456	3.5%
Subtotal - Physicians and Surgeons	494	<b>49.6%</b>	\$7,069,390	<b>63.4%</b>
Hospitals	299	30.0%	\$1,968,721	17.6%
Clinics	5	.5%	83,346	.7%
Mental Health Centers	9	.9%	46,418	.4%
Subtotal - Medical Facilities	313	<b>31.4%</b>	\$2,098,485	<b>18.7%</b>
Dentists	59	5.9%	\$ 289,731	2.6%
Chiropractors	10	1.0%	120,365	1.1%
Podiatrists	4	.4%	66,902	.6%
Physical Therapists	1	.1%	100,000	.9%
Nurses	15	1.5%	44,863	.4%
Pharmacists	14	1.4%	92,503	.8%
Optometrists	4	.4%	4,104	0%
Nurse Anesthetists	2	.2%	7,540	.1%
Prof.Corps./Partnerships	80	8.0%	1,273,958	11.4%
Subtotal - Others	189	<b>18.9%</b>	\$ 1,999,966	<b>17.9%</b>
<b>TOTAL</b>	<b>996</b>	<b>100%</b>	<b>\$11,167,841</b>	<b>100%</b>

**\*Physicians and Surgeons Grouped as Follows:**

- Group I - No Surgery  
Physicians - No Surgery, Psychiatry, Pulmonary Diseases, Family Practice
- Group II - No Major Surgery  
General Practitioners or Specialists Performing Acupuncture, Arteriography, Catheterization, Radiation Therapy, Shock Therapy, Geriatrics, Pediatrics, Family Practice
- Group III - No Major Surgery  
General Practitioners or Specialists Performing Colonoscopy, Laparoscopy, Needle Biopsy, Broncho-Esophagology, Emergency Medicine
- Group IV - Surgery  
Obstetrics-Gynecology, Emergency Medicine, Abdominal, Hand, Neck
- Group V - Surgery
- Group VI - Anesthesiology  
General Practitioners or Specialists Performing General Anesthesia or Acupuncture Anesthesia (Not Nurse Anesthetists)

Chart V

Distribution of Total Company Costs  
and Total Claims by Type of Alleged Injury  
(July 1978 through December 1981)

<u>Type of Injury</u>	<u># Claims</u>	<u>% Total Claims</u>	<u>Total Costs</u>	<u>%Total Costs</u>
Surgery	177	17.7%	\$1,882,485	16.9%
Incorrect Diagnosis	140	14.0%	2,992,814	26.8%
Improper General Care	121	12.1%	659,152	5.9%
Birth Related	71	7.1%	2,095,215	18.8%
Falls	58	5.8%	144,389	1.3%
Dental	56	5.6%	256,912	2.3%
Birth Control, Abortions	41	4.1%	218,442	2.0%
Miscellaneous	38	3.8%	243,093	2.2%
Anesthesiology	35	3.5%	618,671	5.5%
Prescription Error	35	3.5%	316,429	2.8%
Post-Op Infection	32	3.2%	522,097	4.7%
Hysterectomy	27	2.7%	202,915	1.8%
Personal Injury	27	2.7%	77,764	.7%
Illness from Drugs	26	2.6%	136,969	1.2%
Doctor's Advise	25	2.5%	244,737	2.2%
Psychiatric	20	2.0%	136,783	1.2%
X-Ray Therapy	18	1.8%	57,107	.5%
Improper Consent	17	1.7%	85,590	.8%
Optometry	11	1.1%	106,656	1.0%
Physical Therapy	11	1.1%	96,549	.9%
Vasectomy	10	1.0%	73,072	.6%
<b>TOTAL</b>	<b>996</b>	<b>100%</b>	<b>\$11,167,841</b>	<b>100%</b>