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## Medical Professional Liability Experience Fiscal Year 2023

By Rita Noll  
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This report for the Board of Governors of the Health Care Stabilization Fund summarizes medical professional liability litigation experience in Kansas during fiscal year 2023. (Fiscal year 2023 covers the period of time from July 1, 2022 through June 30, 2023.) The report reflects statistical data gathered by the HCSF in administering the Health Care Provider Insurance Availability Act and is based on all claims resolved during the fiscal year.

Medical professional liability refers to a claim made against a health care provider for the rendering of or failure to render professional services (K.S.A. 40-3403). Health care provider is defined in K.S.A. 40-3401 to include the following individuals: physicians, chiropractors, podiatrists, registered nurse anesthetists, nurse midwives, and physician assistants. "Health care provider" also includes the following entities: hospitals, ambulatory surgical centers, nursing facilities, assisted living facilities, and residential health care facilities. Certain professional corporations and professional limited liability companies may also be defined as a "health care provider".

It should be noted that dollar amounts will not necessarily correspond with the agency's accounting and budgeting documents because claims are not necessarily paid in the same fiscal year that the settlement was approved by the court, or the judgment was rendered by a jury. Data in this report reflects the status of cases at the end of the fiscal year. Data for prior years is for comparison purposes only, as case outcomes may have changed due to subsequent court proceedings.

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## MEDICAL PROFESSIONAL LIABILITY EXPERIENCE

### A. Jury Verdicts

From HCSF data, 21 medical malpractice cases involving 24 Kansas health care providers went to trial during fiscal year 2023. These trials took place in the following jurisdictions:

Johnson County	5
Sedgwick County	3
Saline County	2
Barton County	1
Pratt County	1
Riley County	1
Shawnee County	1
Wyandotte County	1
Jackson Co., MO	6

Seventeen cases resulted in defense verdicts. One case ended in mistrial. In three cases the jury found for the plaintiff. In these cases the amount awarded by the jury was greater than primary coverage limits, resulting in Fund obligations totaling \$1,807,500.

The following chart compares this year's experience to previous fiscal years:

Fiscal Year	Total Trials	Defense Verdict	Plaintiff Verdict	Split Verdict	Mistrials
2023	21	17	3		1
2022	16	9	6		
2021*	4	4			
2020*	12	11	1		
2019	10	9			1
2018	12	9	3		
2017	16	14	1	1	
2016	14	12	1		1
2015	18	13	2		3
2014	27	23	3		1
2013	18	14	4		
2012	21	19	1		1
2011	19	16	2	1	
2010	32	21	7	1	3
2009	27	20	5	1	1
2008	34	25	4	1	4
2007	36	31	5		
2006	29	23	6		
2005	34	22	7	3	2
2004	28	23	3	2	

\*There were no trials the last four months of fiscal year 2020 due to the pandemic.

\*The courts were closed most of fiscal year 2021 due to the pandemic.

## B. Settlements

**Claims settled by the HCSF.** During FY 2023, 95 claims in 85 cases were settled involving the HCSF. Settlement amounts incurred by the HCSF for the fiscal year totaled \$33,419,872.84. This amount does not include settlement contributions by primary or excess insurance carriers. The settlement amounts are payments made, or to be made, by the HCSF in excess of primary coverage or on behalf of inactive health care providers.

<u>Fiscal Year</u>	<u>Number of Claims/Cases</u>	<u>HCSF Amount</u>	<u>Settlement Average</u>
FY 2023	95/85	\$33,419,872.84	\$351,788
FY 2022	75/64	\$28,612,433.86	\$381,499
FY 2021	50/40	\$17,352,000.00	\$347,040
FY 2020	73/69	\$27,121,225.00	\$371,524
FY 2019	74/61	\$23,407,875.00	\$316,323
FY 2018	73/58	\$24,238,950.00	\$332,040
FY 2017	64/53	\$21,745,583.00	\$339,775
FY 2016	76/66	\$23,539,687.07	\$309,733
FY 2015	60/53	\$24,322,582.00	\$405,376
FY 2014	63/52	\$24,005,914.00	\$381,046
FY 2013	79/62	\$27,610,000.00	\$349,494
FY 2012	67/62	\$21,431,000.00	\$319,866
FY 2011	61/57	\$17,518,727.54	\$287,192
FY 2010	61/54	\$19,745,200.00	\$323,692
FY 2009	81/72	\$23,867,283.72	\$294,658
FY 2008	65/57	\$17,352,500.00	\$266,962
FY 2007	61/53	\$20,929,250.00	\$343,102
FY 2006	89/81	\$24,917,984.00	\$279,977
FY 2005	90/74	\$23,544,658.00	\$261,607
FY 2004	79/64	\$18,905,505.00	\$239,310

HCSF settlement amounts fall within the following ranges and are compared to individual claim settlements in previous years:

	FY 23	FY22	FY21	FY20	FY19	FY18	FY 17	FY 16
\$1 - \$50,000	10	8	5	6	7	8	11	14
\$50,001 - \$250,000	37	27	20	22	30	23	21	26
\$250,001 - \$600,000	30	19	13	32	26	31	19	23
\$600,001 - \$1,000,000	18	21	12	13	11	11	13	13
Total Claims	95	75	50	73	74	73	64	76

Of the 95 claims, (1) primary insurance carriers tendered their policy limits to the HCSF in 76 claims; (2) the HCSF provided primary coverage for inactive health care providers in 13 claims; and (3) the Fund “dropped down” to provide coverage for six claims in which aggregate primary policy limits were reached. Nine claims involved contribution from an insurer whose coverage was excess of HCSF coverage.

<u>FY</u>	<u>Primary Carriers</u>	<u>HCSF</u>	<u>Excess Carriers</u>	<u>Total</u>
2023	\$15,200,000.00	\$33,419,872.84	\$ 9,135,377.16	\$57,755,250.00
2022	\$13,105,866.14	\$28,612,433.86	\$14,850,000.00	\$56,568,300.00
2021	\$ 8,800,000.00	\$17,352,000.00	\$ 7,650,000.00	\$33,802,000.00
2020	\$12,400,000.00	\$27,121,225.00	\$ 7,700,000.00	\$47,221,225.00
2019	\$11,797,022.00	\$23,407,875.00	\$ 550,000.00	\$35,754,897.00
2018	\$12,755,050.00	\$24,238,950.00	\$ 2,895,000.00	\$39,889,000.00
2017	\$11,057,500.00	\$21,745,583.00	\$ 1,425,000.00	\$34,228,083.00
2016	\$11,000,000.00	\$23,539,687.07	\$ 3,400,000.00	\$37,939,687.07
2015	\$11,200,000.00	\$24,322,582.00	\$14,400,000.00	\$49,922,582.00
2014	\$10,135,000.00	\$24,005,914.00	\$ 3,875,000.00	\$38,015,914.00
2013	\$13,310,000.00	\$27,610,000.00	\$ 6,000,000.00	\$46,920,000.00
2012	\$10,800,000.00	\$21,431,000.00	\$ 5,083,500.00	\$37,314,500.00
2011	\$10,400,000.00	\$17,518,727.54	\$ 4,350,000.00	\$32,268,727.54
2010	\$ 9,400,000.00	\$19,745,200.00	\$14,972,500.00	\$44,117,700.00
2009	\$11,471,170.00	\$23,867,283.72	\$ 4,954,830.00	\$40,293,283.72
2008	\$10,612,500.00	\$17,352,500.00	\$ 2,425,000.00	\$30,390,000.00
2007	\$ 9,488,750.00	\$20,929,250.00	\$ 3,125,000.00	\$33,543,000.00
2006	\$14,580,000.00	\$24,917,984.00	\$ 5,089,425.00	\$44,587,409.00
2005	\$15,800,000.00	\$23,544,658.00	\$10,450,000.00	\$49,794,658.00
2004	\$12,600,000.00	\$18,905,505.00	\$ 8,550,000.00	\$40,055,505.00

**Claims settled by excess insurers.** In addition to the above 95 settlements, seven claims were settled by an excess insurance carrier when both primary and HCSF coverage were exhausted. (This is the first time in Fund history that aggregate Fund coverage for a policy year was exhausted.)

**Claims settled within primary coverage limits.** Along with the above settlements, the HCSF was notified that primary insurance carriers settled an additional 114 claims in 102 cases.

<u>Fiscal Year</u>	<u>Claims/Cases</u>	<u>Primary Insurance Carriers</u>
2023	114/102	\$11,388,362.00
2022	101/91	\$11,475,868.00
2021	98/88	\$ 9,336,634.00
2020	106/98	\$ 9,868,875.00
2019	120/107	\$ 8,779,783.00
2018	110/97	\$10,537,420.00
2017	82/74	\$ 8,622,021.00
2016	98/93	\$ 8,968,479.00
2015	89/80	\$ 7,268,626.00
2014	97/86	\$ 8,909,740.00
2013	88/76	\$ 6,664,000.00
2012	98/81	\$ 6,603,521.00
2011	99/83	\$ 7,865,915.00
2010	110/92	\$ 8,958,622.00
2009	90/80	\$ 7,182,241.00
2008	104/88	\$ 8,486,032.00
2007	167/146	\$10,870,339.00
2006	110/98	\$ 8,545,218.00
2005	103/88	\$ 8,058,894.00
2004	99/85	\$ 6,978,801.00

**C. HCSF Total Settlements and Verdict Amounts**

During fiscal year 2023, the HCSF incurred \$33,419,872.84 for 95 claim settlements and \$1,807,500 as a result of three jury verdicts. The following figures show total Fund settlements and jury awards since the inception of the Health Care Stabilization Fund.

<u>Fiscal Year</u>	<u>Total Claims</u>	<u>Settlements &amp; Jury Awards</u>	<u>Average Per Claim</u>
FY 2023	98	\$35,227,372.84	\$359,462.98
FY 2022	79	31,394,662.56	397,400.79
FY 2021	50	17,352,000.00	347,040.00
FY 2020	73	27,121,225.00	371,523.63
FY 2019	74	23,407,875.00	316,322.64
FY 2018	75	25,219,320.00	336,257.60
FY 2017	65	22,545,583.00	346,855.12
FY 2016	76	23,539,687.07	309,732.72
FY 2015	62	24,904,319.61	401,682.57
FY 2014	66	25,559,409.00	387,263.77
FY 2013	79	29,382,484.69	371,930.19
FY 2012	67	21,431,000.00	319,865.67
FY 2011	63	19,118,727.54	303,471.87
FY 2010	65	20,970,021.10	322,615.71
FY 2009	85	25,505,208.67	300,061.28
FY 2008	68	19,085,004.00	280,661.82
FY 2007	64	22,589,655.27	352,963.36
FY 2006	90	25,017,984.00	277,977.60
FY 2005	97	26,119,569.91	269,273.30
FY 2004	81	19,055,505.00	235,253.15
FY 2003	90	18,295,320.32	203,281.34
FY 2002	71	17,467,033.19	246,014.55
FY 2001	58	17,114,748.80	295,081.86
FY 2000	73	20,868,192.91	285,865.66
FY 1999	71	21,344,368.15	300,624.90
FY 1998	66	12,834,705.13	194,465.23
FY 1997	41	13,653,618.34	333,015.08
FY 1996	70	23,258,406.14	332,262.94
FY 1995	45	17,023,882.17	378,308.49
FY 1994	65	21,194,765.96	326,073.32
FY 1993	48	24,614,093.06	492,281.86
FY 1992	35	8,824,834.14	252,138.11
FY 1991	49	19,666,797.32	401,363.21
FY 1990	48	13,627,222.20	283,700.46
FY 1989	58	18,713,543.00	315,750.00
FY 1988	51	13,402,756.00	262,799.00
FY 1987	47	13,296,808.00	282,910.00
FY 1986	42	11,492,857.00	273,639.00
FY 1985	41	15,152,042.00	369,562.00
FY 1984	34	9,538,741.00	280,551.00
FY 1983	25	6,522,369.00	260,894.00
FY 1982	24	3,060,126.00	127,505.00
FY 1981	8	1,760,645.00	220,080.00
FY 1980	0	0.00	-
FY 1979	3	203,601.00	67,867.00
FY 1978	0	0.00	-
FY 1977	1	137,500.00	137,500.00

**D. New Cases by Fiscal Year**

The Health Care Stabilization Fund was notified of 307 new cases during fiscal year 2023. The following chart lists the number of new cases opened in each fiscal year since the HCSF was created.

<u>Fiscal Year</u>	<u>Number of Cases</u>
2023	307
2022	274
2021	318
<u>2020</u>	<u>302</u>
2019	323
2018	300
2017	276
2016	248
<u>2015</u>	<u>235</u>
2014	268
2013	229
2012	260
2011	267
<u>2010</u>	<u>290</u>
2009	310
2008	329
2007	304
2006	457
<u>2005</u>	<u>336</u>
2004	368
2003	392
2002	361
2001	341
<u>2000</u>	<u>294</u>
1999	319
1998	293
1997	318
1996	296
<u>1995</u>	<u>326</u>
1994	247
1993	263
1992	245
1991	230
<u>1990</u>	<u>205</u>
1989	251
1988	285
1987	320
1986	276
<u>1985</u>	<u>245</u>
1984	175
1983	153
1982	124
1981	98
1980	87
1979	50
1978	19
1977	02



**University of Kansas Foundations and Faculty; Residents  
 Self-Insurance Programs/Primary Coverage  
 Reimbursement to the Health Care Stabilization Fund**

**I. KU Foundations and Faculty**

**Foundation Self-Insurance Program Costs**

FY 2023	FY 2022	FY 2021	
\$1,437,000.00	\$1,307,134.02	\$1,050,000.00	Settlement Amounts
<u>\$1,606,025.77</u>	<u>\$1,073,575.00</u>	<u>\$ 713,603.18</u>	Attorney Fees and Expenses
\$3,043,025.77	\$2,380,709.02	\$1,763,603.18	Totals
13	10	6	Number of settlements
46	59	54	Number of pending claims (end of FY)

**Reimbursable Amounts**

FY 2023	FY 2022	FY 2021	
\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	Reimbursement Private Practice Reserve
<u>\$2,543,025.77</u>	<u>\$1,880,709.02</u>	<u>\$1,263,603.18</u>	Reimbursement State General Fund
\$3,043,025.77	\$2,380,709.02	\$1,763,603.18	Totals

Foundations and Faculty:

Amounts up to \$500,000 are reimbursed from the Private Practice Reserve Fund.

Amounts over \$500,000 are reimbursed from the State General Fund.

**II. Residents in Training**

**Residents Self-Insurance Program Costs**

FY 2023	FY 2022	FY 2021	
\$ 200,000.00	\$0	\$231,000.00	Settlement Amounts
<u>\$ 803,621.97</u>	<u>\$865,070.17</u>	<u>\$517,420.73</u>	Attorney Fees and Expenses
\$1,003,621.97	\$865,070.17	\$748,420.73	Totals
2	0	3	Number of settlements
35	36	41	Number of pending claims (end of FY)

Residents in Training: All amounts are reimbursed from the State General Fund.

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**III. Expenditures by Fiscal Year**

<b>Fiscal Year</b>	<b>Foundations and Faculty</b>	<b>Total Number Faculty</b>	<b>Residents in Training</b>	<b>Total Number Residents</b>
2023	\$ 3,043,025.77	1,014	\$ 1,003,621.97	897
2022	2,381,209.02	1,004	865,070.17	864
2021	1,763,603.18	955	748,420.73	902
2020	1,565,444.80	919	933,533.33	820
2019	2,761,718.05	807	1,877,296.97	843
2018	1,631,654.34	735	1,628,132.34	849
2017	2,673,879.29	650	642,342.05	825
2016	1,028,751.91	652	693,324.56	856
2015	1,917,190.41	583	690,599.54	814
2014	2,175,457.87	573	799,363.81	789
2013	1,537,668.29	557	934,695.09	809
2012	1,759,733.60	506	1,201,108.99	787
2011	1,184,218.79	514	455,621.25	812
2010	1,445,658.21	412	1,201,718.01	698
2009	2,693,099.94	404	812,492.66	712
2008	966,327.58	366	648,269.80	692
2007	2,037,227.63	348	1,194,968.11	682
2006	1,407,837.70	361	871,719.27	675
2005	1,706,763.57	336	1,749,032.25	670
2004	1,825,116.29	317	2,787,112.99	627
2003	1,113,326.84	308	1,418,927.85	643
2002	583,566.19	307	723,834.54	645
2001	1,540,133.41	298	953,304.62	625
2000	691,253.39	310	735,633.12	645
1999	1,371,640.73	295	645,997.65	669
1998	1,018,435.78	283	1,072,324.05	637
1997	1,111,787.72	279	999,388.16	647
1996	4,003,062.51	285	1,331,521.75	641
1995	255,117.85	286	534,124.84	532
1994	1,959,284.79	287	574,758.65	603
1993	1,453,444.21	287	650,033.67	594
1992	645,670.10	281	810,703.77	592
1991	435,540.69	288	458,561.65	615
1990	261,035.55	277	120,796.12	546

**IV. Monies Paid by the Health Care Stabilization Fund for Excess Coverage Claims**

	<b>FY 23</b>	<b>FY 22</b>	<b>FY 21</b>	<b>FY 20</b>	<b>FY 19</b>
Residents	0	0	\$ 800,000	\$300,000	\$ 622,500
Faculty, Foundations	<u>\$450,000</u>	<u>\$1,482,500</u>	<u>\$ 290,000</u>	<u>\$535,000</u>	<u>\$2,110,000</u>
Total	\$450,000	\$1,482,500	\$1,090,000	\$835,000	\$2,732,500