Minnesota Department of Commerce
Medical Malpractice Insurance in Minnesota
Data as of 12/31/2008

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MEMO

Date: **January 29, 2010**

To: **Commissioner Glenn Wilson**

From: **Nancy Myers, Property-Casualty Actuary**

Re: **Medical Malpractice Report**

Pursuant to MN Chapter 255, Sec. 76, this is our periodic written report on the status of the medical malpractice insurance in Minnesota. As you will see from the report, not much has changed since the last time we reviewed the state of the marketplace.

Summary: First, a caveat about the contents of this report. This report provides information on the standard insurance marketplace. There are some non-standard insurance options for providing medical malpractice coverage in Minnesota. With that caveat in mind, here are my observations about the state of the market:

- Medical malpractice (medical malpractice) insurance in Minnesota is a relatively small insurance line with $96 million in annual premiums (compared to the total Minnesota insurance marketplace of $8.7 billion).
- The marketplace is characterized by a lack of competition (almost 60% of the premium is written by a doctor-owned company, Midwest Medical Insurance Company).
- Minnesota's malpractice rates continue to be among the lowest in the nation.
- We continue to have uncertainty about future costs.

I will discuss each of those observations in further detail.

History: Medical malpractice insurance had been a turbulent line for several years. In the early 1970's, several insurance companies left the market because of increasing losses and an inability to accurately estimate future costs. The introduction of claims-made coverage at that time improved the accuracy of the pricing process, allowing the major insurance companies to write for several more years. During the 1990's, although insurers found the business increasingly unprofitable and there were worrisome trends in litigation, insurance rates remained essentially flat. That spread between costs and revenues proved to be unsustainable and in 2001, the St. Paul Companies, the nation's leading medical malpractice insurer with $583 million in premium, exited the market.

The St. Paul's departure precipitated a substantial dislocation in the marketplace. Medical malpractice insurance was (and continues to be) a specialty line not written by very many insurers. Further, some of the subcategories in which the St. Paul had a major presence were not wanted by other medical malpractice writers. Finally, other medical malpractice insurers, even if interested, did not have the staff and/or capital to absorb a large amount of new business. Consequently, the St. Paul's exit created a crisis for many smaller groups, such as ambulance services and nursing homes, which scrambled to find some sort of liability coverage.

Since that dramatic disruption in the late 1990's and early 2000's, we've seen a gradual recovery in the marketplace with relatively stable rates, but with continued vulnerabilities.

Lack of Competition

Minnesota medical malpractice insurance has a total premium of $96 million and 56 insurers writing the business, although only seven of these have more than $2 million in premium. The top ten insurers write 87% of the market.

One company, Midwest Medical Insurance Company (MMIC) is, by far, the major insurer with 59% of the premiums. MMIC is doctor-owned and returns unneeded profits as dividends to the physician policyholders. The company is carefully managed and conservatively reserved. MMIC markets to physicians and related exposures, including clinics, hospitals and health care systems. The company is not interesting in insuring some of the subgroups, such as ambulance services or stand alone nursing homes, which are listed in the statute.

Minnesota Malpractice Insurance – Premiums and Market Share for 2008

NAIC Company Code	Company Name	MN 2008 Premium $(000)	MN Market Share
16942	Midwest Medical Ins Co	$56,719	59%
20443	Continental Casualty Co	5,944	6%
21199	Arch Specialty Ins Co	4,490	5%
19437	Lexington Ins Co	3,812	4%
10903	American Excess Ins Exchange RRG	2,788	3%
31127	Columbia Casualty Co	2,248	2%
20427	American Casualty Co of Reading PA	2,131	2%
15865	NCMIC Ins Co	1,910	2%
33111	MHA Ins Co	1,853	2%
23400	ProAssurance WI Ins CO	1,677	2%
	All Other Companies (41)	12,918	13%
		$96,490	100%

The Minnesota market structure is not unusual. In particular, the Wisconsin malpractice market looks a lot like ours. There is somewhat more diversification, but most of the premium is written in one dominant company.

Wisconsin Malpractice Insurance – Premiums and Market Share for 2008

NAIC Company Code	Company Name	WI 2008 Premium $(000)	WI Market Share
23400	ProAssurance WI Ins Co	$31,636	29%
11843	Medical Protective Co	16,182	15%
16942	Midwest Medical Ins Co	14,746	14%
20443	Continental Cas. Co	14,105	13%
33405	Wisconsin Health Care Liability Ins Plan	5,604	5%
33111	MHA Ins Co	3,519	3%
20427	American Casualty Co Of Reading PA	2,027	2%
15865	NCMIC Ins Co	1,888	2%
31127	Columbia Casualty Co	1,861	2%
14460	Podiatry Ins Co Of American A Mutual Co	1,710	2%
	All Other Companies (41)	15,672	14%
		$108,950	100%

For another perspective on market activity, we looked at the number of medical malpractice rate/form filings in the last few years. There were 97 medical malpractice filings in 2006, 37 in 2007, 47 in 2008 and 63 in 2009. Again, outside of the current carriers, there does not appear to be significant market interest in this line.

Relatively low rates in Minnesota

As noted earlier, the national medical malpractice marketplace has stabilized with most states reporting flat rates or decreases over the past three years. The *Medical Liability Monitor* annually surveys major writers of liability insurance for physicians, representing 65% to 75% of the market. The survey asks for rates for three specialties, internal medicine, general surgery and obstetrics/gynecology. A key finding from the 2009 survey is that "more than 70 percent of responding companies reported filing rate reductions in 2009".

Historically, the upper Midwest has had the lowest rates in the country. Per the 2008 *Monitor*,

> "As in 2007, the upper Midwest – Minnesota, Wisconsin and South Dakota – enjoyed the lowest rates."

This same pattern continued into 2009. Rates for Minnesota, Wisconsin and South Dakota were unchanged and these remain among the lowest in the nation.

The table to the right, from the *2009 Medical Liability Monitor, Inc*., illustrates the differences in rates among the states.

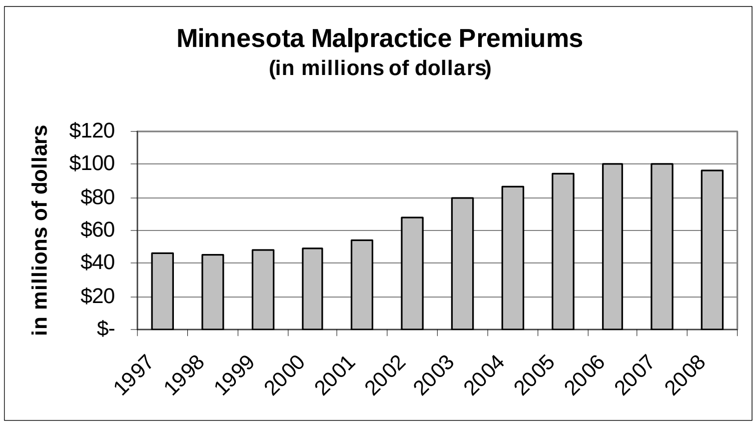
Sample Med Mal Rates for Major Writers

	Internal Medicine	General Surgery	Ob/GYN
Minnesota	4,500	13,501	20,626
Wisconsin	6,923	22,813	34,667
Missouri	16,553	89,142	130,921
Ohio	34,017	120,135	145,737
Colorado	13,577	48,456	55,574
California	10,343	41,775	49,804
Florida	57,589	191,422	191,422

The obvious question is "What makes the experience in Minnesota and the other upper Midwest states better?" In talking to medical malpractice insurance professionals, the following possibilities were raised:

1. The quality of health care is higher in this region.
   A recent report by the federal Agency for Healthcare Research and Quality ranked MN second best in the nation, preceded only by WI. Three states in the northeast, ME, NH and RI, completed the top five list. The other states in the upper Midwest, ND, SD and IA, all ranked in the top 25%.
2. The legal climate results in fewer lawsuits and smaller average awards.
   Medical malpractice is a liability line and is driven by lawsuits, more so than most other types of liability insurance. In May 2007, the U.S. Chamber of Commerce released the results of a survey on the tort liability system as perceived by U.S. business. Minnesota was ranked #2 in "creating a fair and reasonable litigation environment." Results for the other upper Midwest states were #4 Iowa, #10 Wisconsin, #11 South Dakota, and #20 North Dakota.
3. Minnesota Medical Insurance Company, the major insurer in Minnesota, and its associated companies stress patient safety and practices that minimize malpractice claim costs.

After increasing for several years, rates and premiums in Minnesota have been stable since 2005. This is consistent with the national picture.



Uncertainty about Future Costs

If you include investment income, Minnesota medical malpractice has been quite profitable for insurance companies over the past five years[1]. The Combined Ratio (see table below) shows that in three of the past five years, when the Ratio was less than 100%, premiums were more than sufficient to cover losses and all expenses. In addition, the investment income results provided additional funds. Midwest Medical reports that in 2008 "the company returned $5 million in dividends to its physician policyholders."

[1] As in many insurance lines, there is a delay between the time premiums are collected and claims are paid. During that time period, insurers invest the premiums with investment gains serving, in part, to moderate what would otherwise be charged for insurance.

Medical Malpractice Insurance Premiums and Losses in Minnesota

	Number of Insurers	Direct Premium Written	Premium Growth	(1) Loss Ratio Excluding all LAE	(2) CW Loss Adjustment Expense	(3) CW Underwriting Expense	Combined Ratio (1)+(2)+(3)	CW Investment and Other Income
2004	56	86,953	9%	63%	31%	15%	110%	15%
2005	51	94,740	9%	51%	31%	16%	98%	14%
2006	51	100,051	6%	66%	30%	17%	113%	19%
2007	52	99,980	0%	40%	26%	19%	85%	17%
2008	56	96,490	-3%	49%	24%	19%	92%	7%

Data source: NAIC Annual Statements filed annually by Insurance Companies & *Best's Aggregates & Averages*

In most businesses and in most lines of insurance, this level of profitability would indicate a healthy market. However, medical malpractice continues to have enough uncertainty to ensure cautious actions from the insurance community. The problems with medical malpractice insurance rates over the past 30 years all have the same basic cause: Changes in claim costs as a result of the litigation environment make future costs unpredictable.

Estimating future costs is a two-step process:

1. First, an insurance company has to know whether or not it has made a profit.
   For a liability line like medical malpractice, this is not as simple as it sounds. Claims reported during the policy period may take several years to settle and juries can be inconsistent and unpredictable in determining negligence and the seriousness of an injury. A late realization that the insurance company has not been charging enough has very serious consequences.
2. Secondly, the insurance company must be able to estimate how the future will be different. Inflation trends and steady changes in the number of claims can be predicted relatively accurately. However, changes in the legal system (for example, an expansion of the theory of negligence) cannot be accurately forecast and can bankrupt the company.[2]

The pricing in liability lines is understandably driven by the liability system in any given jurisdiction. In simplistic terms, the more generous a liability structure that exists, the more one would expect costs for liability coverage to be.

Medical malpractice is especially sensitive to the impact of litigation. In medical malpractice, the administrative costs associated with settling claims, averaged 24% of premium in 2008. For private passenger auto liability, the largest property-casualty insurance line, loss adjustment expenses averaged 13% in 2008. The level of litigation will continue to ensure that medical malpractice insurance is only written by a small segment of the industry which is willing to invest the time and money to specialize in a difficult line.

[2] For a sense of the impact of predictability on pricing, I asked one actuary for a medical malpractice insurer if his company would consider expanding into Minnesota and he very quickly said no. His company only goes into states where there is a cap on non-economic losses and a statute that allows doctors to say “I'm sorry" without admitting legal culpability.

Expansion of Non-Standard Options:

As noted earlier, this report identifies the experience in the traditional standard marketplace. There are a number of other options for financing this exposure:

- There is the Minnesota Medical Malpractice Joint Underwriting Association (MJUA). The MJUA was created by the 1986 Minnesota State Legislature. It provides liability insurance coverage to persons or entities unable to obtain insurance through ordinary methods if the insurance is required by statue, ordinance or otherwise required by law, or is necessary to earn a livelihood or conduct a business and serves a public purpose (Minnesota Statue 62I). The Legislature specifically authorized the MJUA to provide insurance coverage to day care providers, foster parents, foster homes, developmental achievement centers, group homes, sheltered workshops for mentally, emotionally, or physically handicapped persons and citizen participation groups. The MJUA writes $2.6 million in medical malpractice coverage for nursing homes.

- Large groups are usually either self-insured or part of a Risk Retention Group or have their own captive insurer. Examples include Park Nicollet, Allina, Fairview, Duluth Clinic, Mayo, University of Minnesota Physicians, Health Partners and the Emergency Physicians Professional Association (EPPA). We do not have data on their loss experience, costs and expenses.[3]

- There is some malpractice coverage available in the surplus lines marketplace.

Conclusion: The medical malpractice marketplace has recovered from the turbulent environment of the late 1990’s and early 2000’s. Rates have stabilized and the product is available. While we occasionally hear about prices, Minnesota’s rates are among the lowest in the country. Nonetheless, medical malpractice insurance is an inherently volatile line that can be dramatically affected by changes in the litigation environment, health care costs and investment income.

[3] Facilities do have to report “adverse health events” to the Commissioner of Health.