



From Texas to Washington



Closed Claims, Counterclaims, and Policy on Medical Liability

Randall R. Bovbjerg, J.D.
(Bó - berg)
The Urban Institute †

Presentation for Seminar on “Is There a Crisis in Medical Malpractice?
New Evidence from Texas,” American Enterprise Institute,
Wohlstetter Conference Center, Twelfth Floor, March 31, 2005

† standard disclaimer applies



Randy's Rules of Commentary



- ❑ Start with something nice
- ❑ Summarize the main message
- ❑ Look erudite
- ❑ Say something catty
- ❑ End with something nice

(add cartoons to taste, as time permits)

OFFICIAL SYMPATHY SURVEY

IN THE CONTINUING BATTLE OVER MEDICAL MALPRACTICE COSTS, WHOM DO YOU FEEL SORRY FOR?



(A) The poor, downtrodden doctors



(B) The lowly, underpaid lawyers



(C) The small, struggling insurance industry

NOTE: YOU CAN ONLY VOTE FOR ONE.

WASSERMAN FOR THE BOSTON GLOBE
© THE L.A. TIMES SYND.



1. Start Nice



- ❑ Study is clearly making waves
- ❑ Kudos for working on liabil. insur., law in action -- & this was painstaking work
- ❑ Closed-claim trend of NPDB seems similar
- ❑ Small print does recognize some key limitations
- ❑ Crisis-policymaking can indeed be short sighted, & better rationales support reform



2. Summarize message



- ❑ “Crisis” is a “false diagnosis”
- ❑ Malpractice closed claims are not rising
 - neither in frequency nor in \$\$, once adjusted for pop’n growth, inflation
- ❑ Frequency is down in some other states
- ❑ Premiums are nonetheless rising sharply
- ❑ What “Mr. Bush proposes is both overbroad and directed at the wrong problem”

(all from NY Times op-ed)



3. Look erudite



- ❑ Or at least quote the erudite:

"I often say when you can measure what you are speaking about and express it in numbers you know something about it; but when you cannot measure it, when you cannot express it in numbers, your knowledge of it is of a meagre and unsatisfactory kind."

-- Sir William Thomson, Lord Kelvin, 1824-1907, Baron Kelvin of Largs, scholar of thermodynamics, originator of Kelvin absolute temperature scale, and father of the first successful transatlantic telegraph cable.

- ❑ Paper does do numbers ... alas, these few comments can only scratch surface



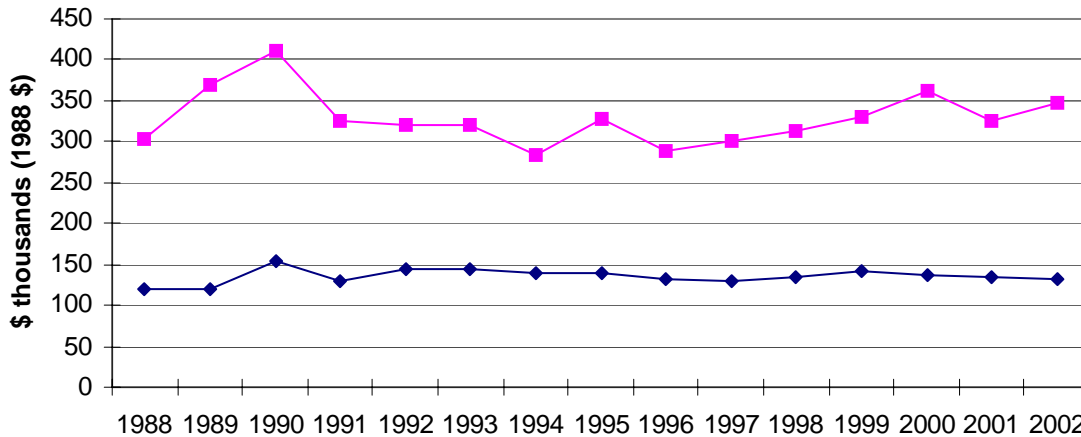
4. Meow



-
- ❑ Better to have reconciled ## with insurers in advance
 - ❑ Claims frequency analysis attacks straw man
 - ❑ Claims costs are adjusted, but not premiums
 - ❑ Competition probably main driver of cycle
 - ❑ Conclusions far outrun descriptive information presented



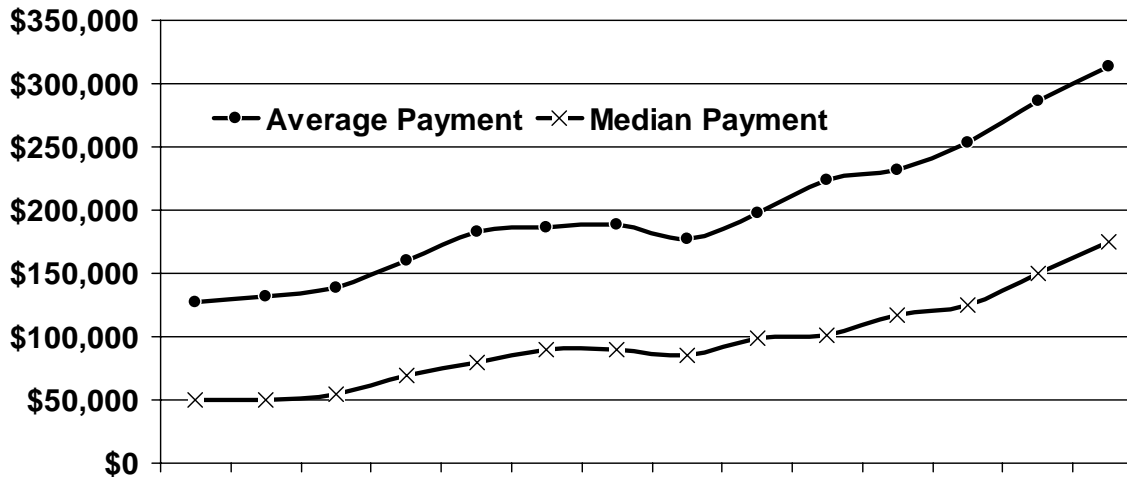
Severity Trends - TX, PIAA



closed claims data

TX DOI, adjusted

VS.



PIAA, nat'l,
unadjusted



More Work Needed - 1



- How explain divergences from insurers' rate making? (other than stupidity, cupidity)
 - Rate making uses projected, not past claims
 - Closed claims have “right censored” bias (unreported and in-pipeline claims)
 - Many docs may buy low-limit policies in TX
 - Rises in self-insurance, ARMs?
 - Premiums must exceed claims, b/c of run-off



One Day in NYT ... Forever at ATLA



Balancing the
Scales of Justice

Home Page Endowed By David Wm. Boone & William S. Stone

atla.org

ASSOCIATION OF TRIAL LAWYERS OF AMERICA

Protecting Your Rights

No Evidence of Malpractice Crisis

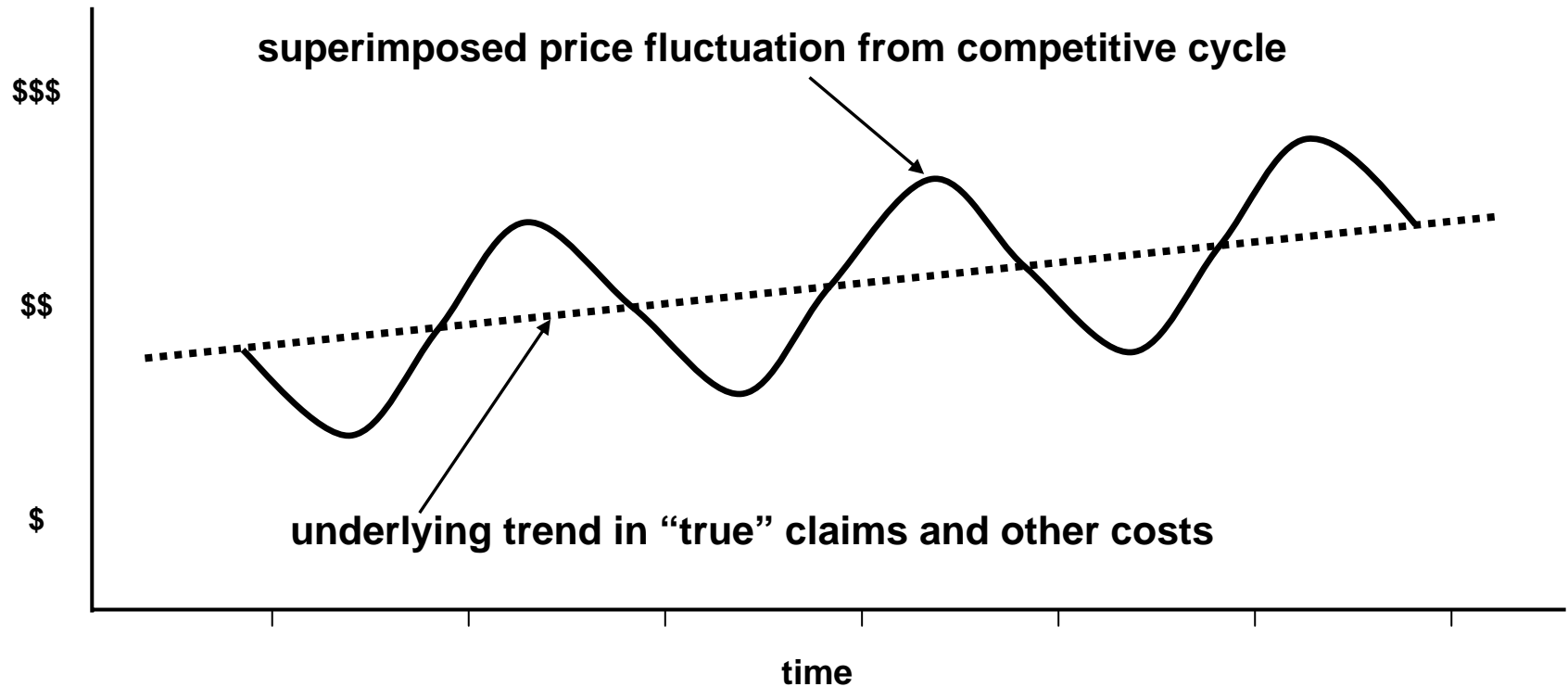
A new study finds that despite huge rate increases from insurance companies there is no evidence of a medical malpractice crisis in Texas. [Read more](#)



<http://www.atlanet.org/> 31 Mar 05



Crises: Cycles & Costs





More Work Needed - 2



- ❑ Real conundrum to answer is not why premiums differed from this study's rates, but:
 - why was there no insurer stampede into state?
 - why would physician mutuals rip off doctors?
 - how do base-year premiums relate to future claims run-off from that year, rather than to contemporaneous closed claims?
- ❑ Cycle can be “natural,” yet intervention still warranted.
- ❑ If tort reform is wrong, what's right?



5. End nice



- ❑ Should smoke out more proprietary data
- ❑ Should invest in more public data--both law and insurance lag medicine
- ❑ Paper, slides set out a good future research agenda
- ❑ Improvements still possible for this MS?

Now this is not the end. It is not even the beginning of the end, but it is perhaps the end of the beginning. ---Winston Churchill



New Systems



“We would like to request a change in venue to an entirely different legal system.”



End



□ Time for questions