

# Medical Professional Liability in Emergency Medicine

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# Disclaimer



"Is this seat taken?"

# Risks-Claims-Premiums



# Limitations to Liability (ME)

- Statute of limitations
  - Adults 3 years; Minors 6 years (or major + 3)
- Wrongful death cap \$750,000
- Non-economic damages
- Negligence vs gross negligence (willful, wanton)
- Punitive damages require malice
- Hurdles (declarations, qualifications, panel system)

# Maine Panel System

- 3 panel members (administrator, attorney, medical provider), 1 vote each
- 1-day proceeding
- Can be waived by agreement of both parties
- Standard of Care, Causation, Comparative Fault
- Admissibility for Plaintiff if unanimous on SOC and Causation
- Admissibility for Defense if unanimous on any

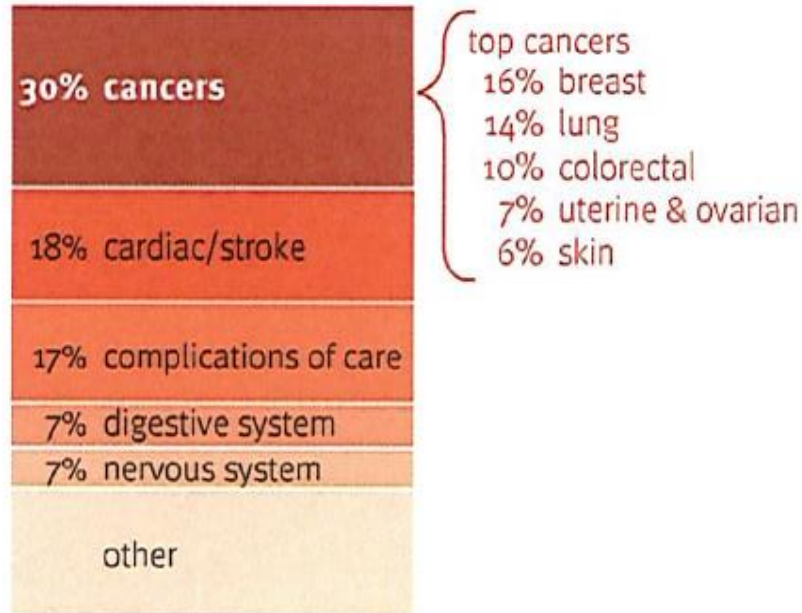
# National Data: Where are the Risks?

- **Diagnostic errors** = biggest EM risks
- Procedure errors
- Treatment errors

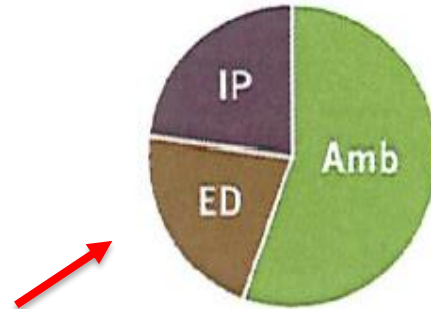
# Diagnosis Cases

**Cancer most prevalent overall; Cardiac/stroke most prevalent in EM**

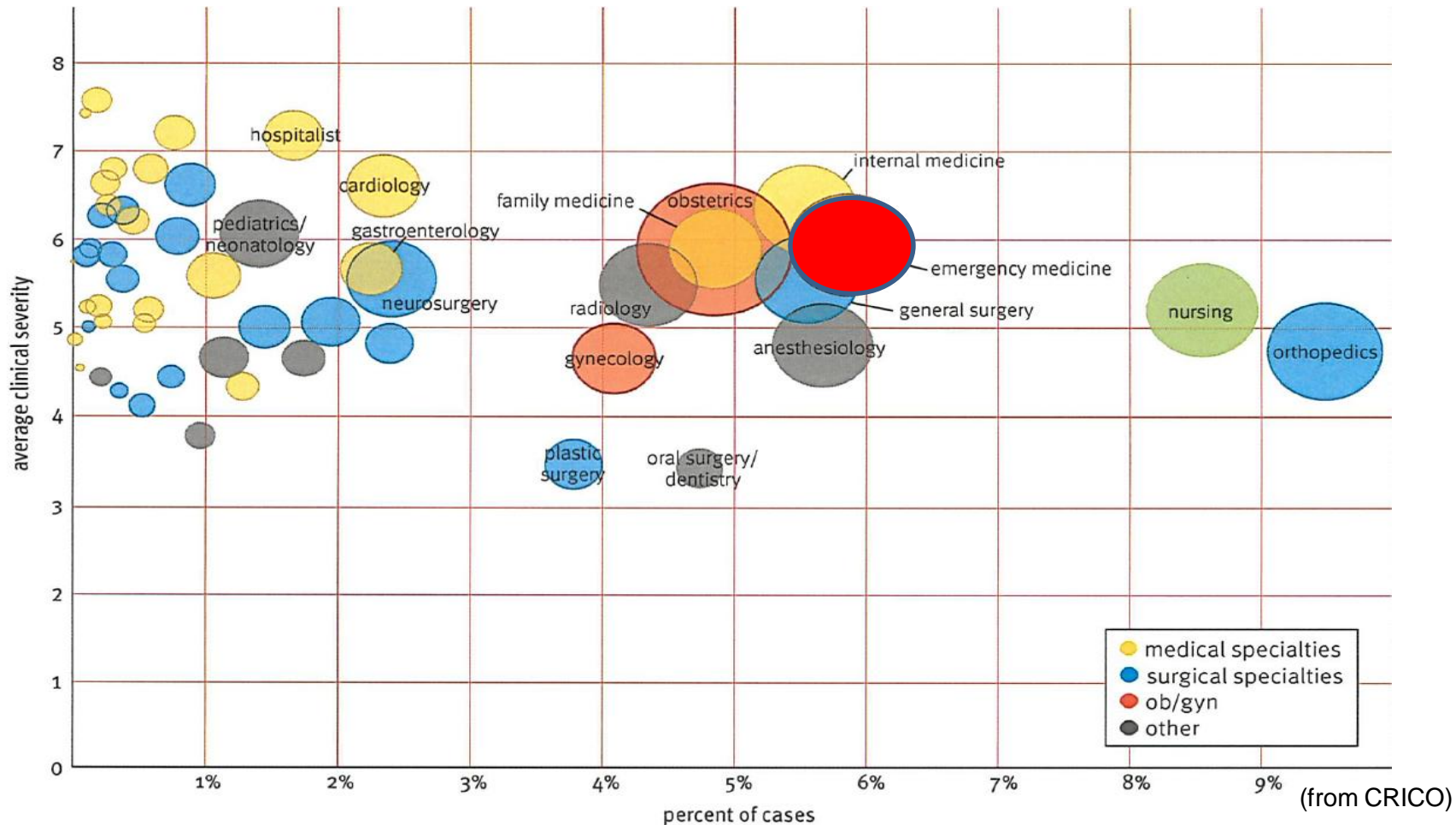
## FINAL DIAGNOSES IN MISSED/DELAYED DIAGNOSIS CASES



## CARE SETTING

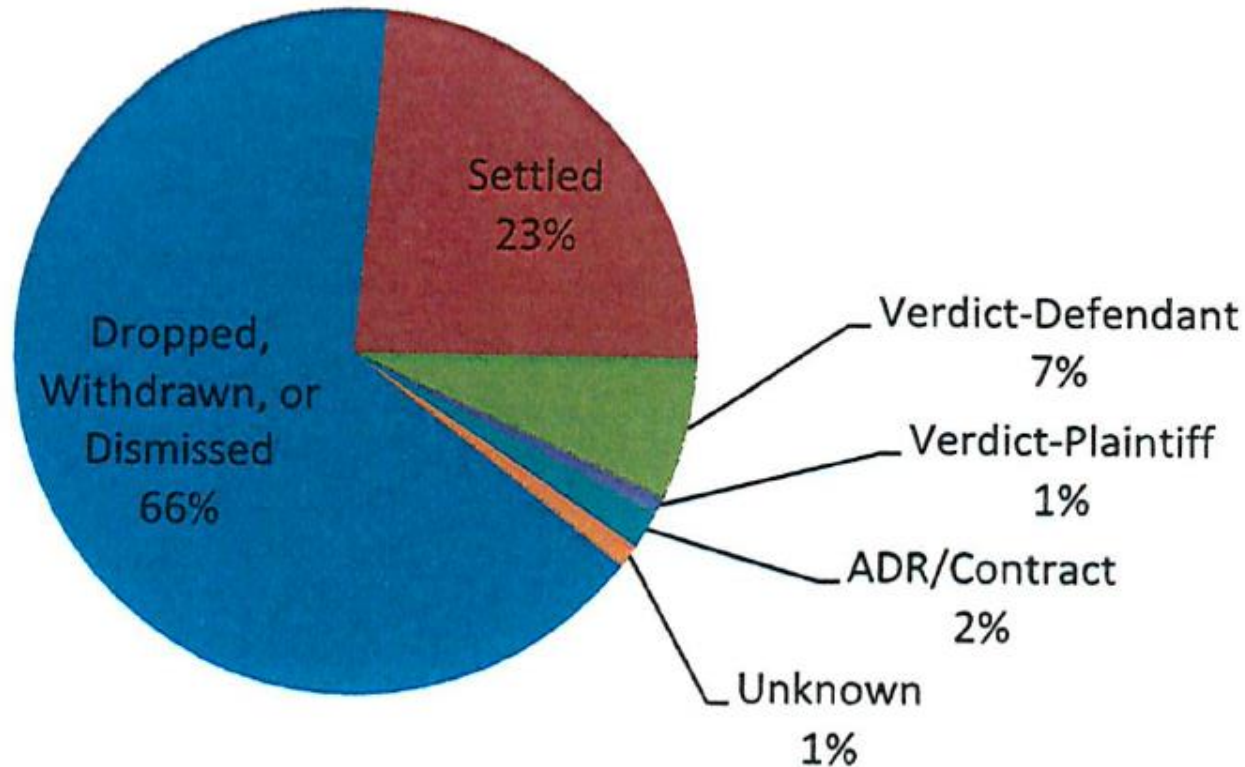


(from CRICO)





# PERCENTAGE OF CLOSED CLAIMS BY DISPOSITION



(from MPLA)

# Top Jury Verdicts – 10 years

\$178M	Florida	Surgical Injury
\$144M	Michigan	Birth Injury
\$130M	New York	Birth Injury
\$121M	New York	Neurology (Dx)
\$103M	New York	Birth Injury

# What about Maine?

- No statewide database
- Will use Medical Mutual data
  - 75% of physician premium (over 3000)
  - 93% of hospital premium (28 hospitals)

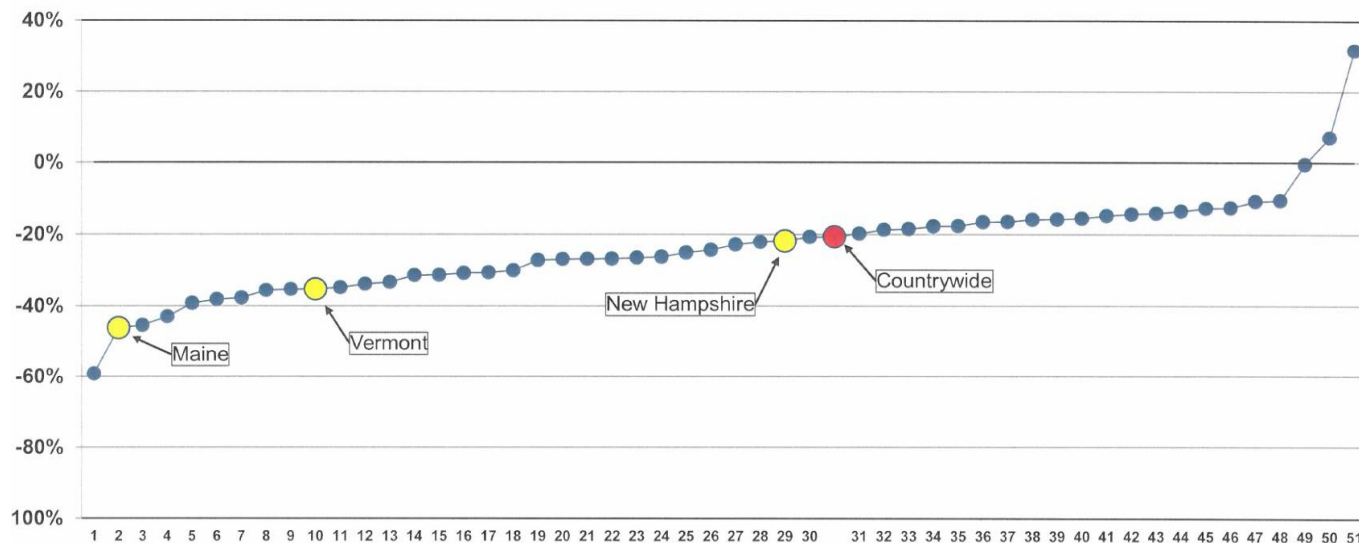
# Medical Mutual Maine Claims

	2019	2020	2021
Claims HPL	71	54	39
Claims PL	57	49	59
Claims TOTAL	128	103	98

# Change in Frequency

## Change in Closed Claim Frequency by State

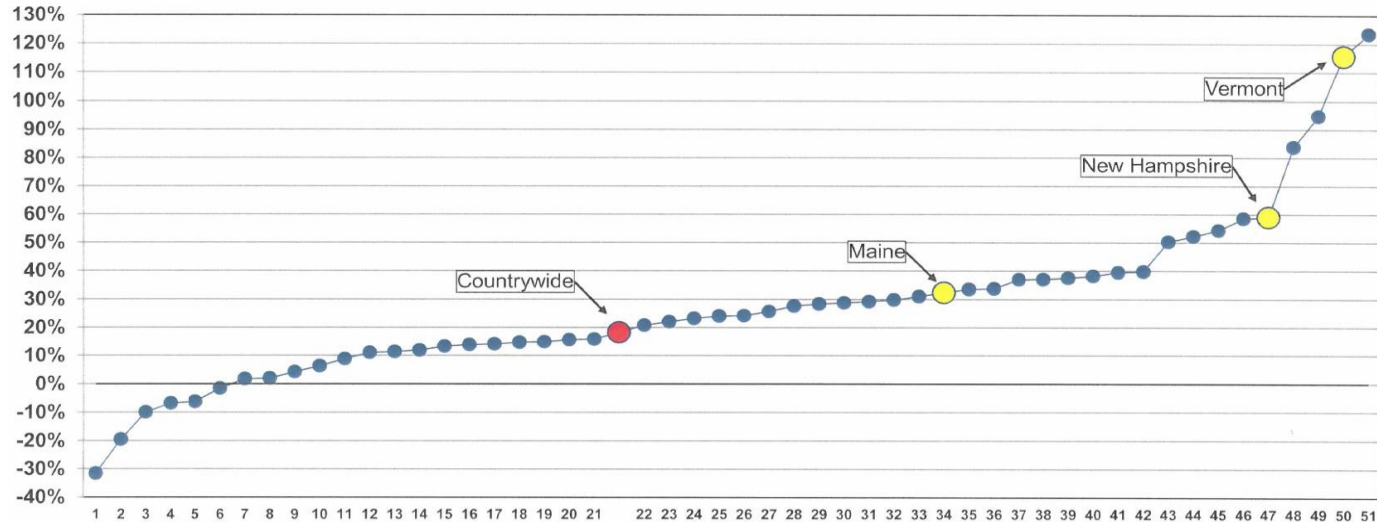
2016-2020 level relative to 2010-2014 level



# Change in Severity

## Change in Paid Indemnity Severity by State

2016-2020 level relative to 2010-2014 level



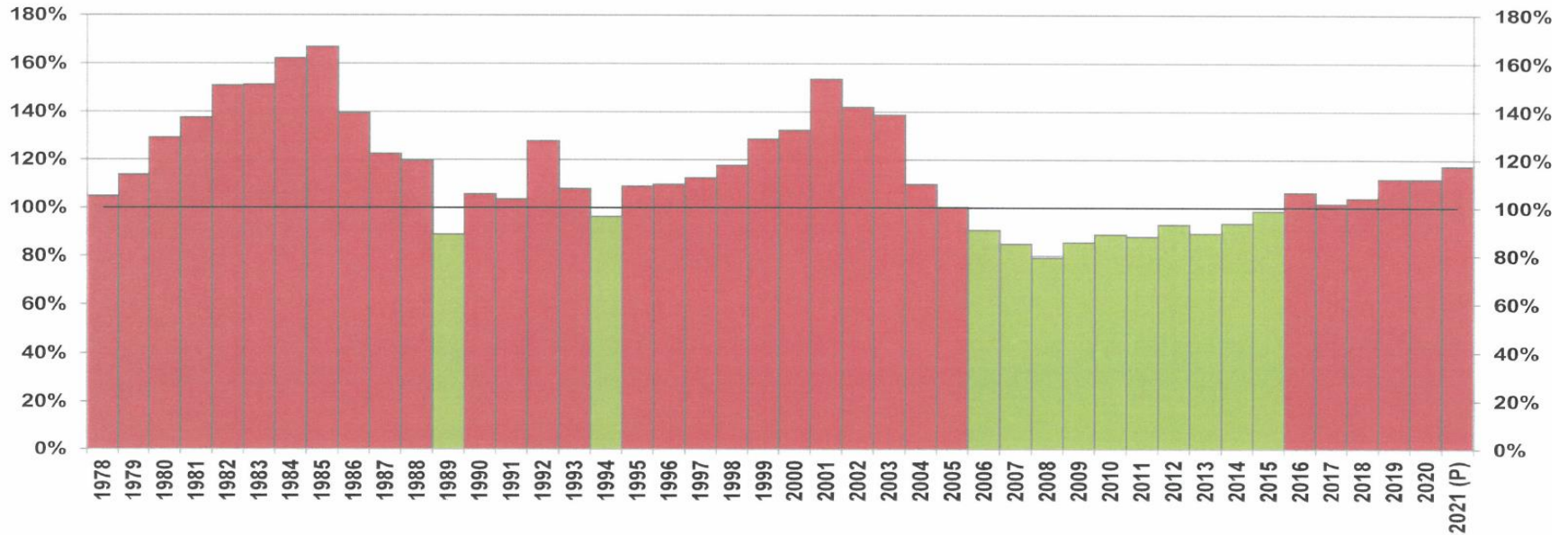
Source: Milliman analysis of National Practitioner Data Bank Public Use File; December 31, 2020

# Drivers of Severity

- General economic inflation
- Medical care inflation
- **Social inflation**
  - Plaintiff expectations - perfection
  - Jury/general population perspectives – generational changes

# Market Hardening

## MPL Combined Ratio (after Policyholder Dividends) *Industry Aggregate*





# Medical Mutual EM Claims

- 500 allegations over 4 years (15%)
- Top Risks
  - Missed Cardiac Event
  - Missed Stroke
  - Missed Perforation (viscus)
  - Missed Neurologic Event

# Spinal Abscess (epidural)

- Presentation may be atypical
- Must be considered in all non-traumatic back pain cases
- Diagnostic delays problematic
- Documentation critical

# Ancillary and Developing Risks

- Telemedicine risks -- **stable**
- Professional administrative risk -- **increase**
- Cyber liability -- **significant increase**

# QUESTIONS?



# CONTACT Medical Mutual

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