

ENTRY AND EXIT IN THE MALPRACTICE INSURANCE

MARKET FROM 1994 TO 2003

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ABSTRACT

In recent years, some medical malpractice insurance carriers have withdrawn from certain states or the entire market, causing disruption to the insurance market as well as the lives of health care providers and their patients. In this article, we provide an overview of the medical malpractice insurance market, using National Association of Insurance Commissioner (NAIC) data for the period 1994-2003. Our examination of insurer availability (measured by number of market participants, as well as number of market entries and exits) indicates some market contraction between 1998 and 2001, with fewer insurers and more exits. Our results also show that the market began to improve in 2002 and 2003.

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INTRODUCTION

Medical malpractice insurance has been the focus of public policy debate on and off for over thirty years. During that time, states have passed a variety of reforms, the federal government has considered similar legislation, and insurers have improved their understanding of appropriate underwriting standards. Yet the market seems continuously to be in flux. According to the American Medical Association (AMA), as of July 2005 twenty states were designated as “crisis” states, when just three years earlier, only 12 states were considered to be in crisis. The AMA based its assessment on price and availability of medical malpractice insurance, access to health care, and the general malpractice environment.

The issue, of course, is more than just a concern about an insurance market. It also relates to the availability of health care. The AMA contends, and a number of tort reforms have been passed on the belief, that the cost of medical malpractice insurance drives health care providers out of particular specializations and jurisdictions (Hellinger and Encinosa, 2005). Medical malpractice is also believed to fuel defensive medicine, which in turn leads to higher health care costs, resulting in lower availability of health insurance (GAO 2003).

In an effort to improve the health delivery system, researchers and policymakers have sought answers to the exact conditions and causes of the medical malpractice insurance problems. Most studies focus on affordability following rapid rises in

premiums, attempting to understand the causes and then to address those causes. Those studies focus on changes in underlying legal decisions, interest rates, and insurer underwriting practices. We know of no other published studies, however, to undertake a systematic examination of medical malpractice insurer exit and entry. A healthy market would draw in more new entrants than it loses; a sick market would, of course, show the opposite. Furthermore, the general economics of entry and exit indicate that incumbents typically have an advantage over entrants because of market position. In liability insurance, however, the long tail exposure may actually give advantage to an entrant. As a result, the market could look favorable to an entrant even when it is unfavorable to an incumbent, leading to entry and exit simultaneously.

We believe entry and exit are important parts of the medical malpractice insurance market. Our purpose with this article, therefore, is to investigate general movement into and out of the market over the period 1994-2003. This period is informative in that it is relatively recent and appears to include at least one underwriting cycle. Utilizing the 1994-2003 National Association of Insurance Commissioners (NAIC) data, we track the number of insurers selling medical malpractice insurance each year, trace market entry and exit, and identify whether there has been a contraction (or expansion) in the medical malpractice market during the study period 1994-2003. We consider both the overall number of insurers in the market over time as well as the relative movements into and out of the market.

To meet our objectives, we present the following. First is a presentation of general market characteristics, such as how many and what types of insurers were selling medical malpractice insurance in the period 1994-2003. We follow with evidence of insurer entry

and exit, again considering overall numbers, percentage changes, and organizational form of those firms entering and exiting the market. We also present data on premium volume of entry and exit and of the overall market. We summarize our findings in the conclusions section of the paper.

NUMBER AND TYPE OF MEDICAL MALPRACTICE INSURERS, 1994-2003

We define a medical malpractice insurer as one with positive net premiums written (NPW) in medical malpractice for any given year of study. An alternative measure is to use direct premiums written. We have conducted the analysis both ways and find similar overall results. We focus on NPW believing this measure to capture the total market more effectively.

In Tables 1A and 1B we present information about the medical malpractice industry. We present information about the number of companies, a break-down by organizational form, whether or not the insurer is part of a group, and the average insurer concentration in the medical malpractice market.¹ Table 1A presents this information according to number of companies; Table 1B by premium volume.

TABLE 1A
Characteristics of Med Mal Insurers with Positive NPW by Number of Companies

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
# companies	467	461	475	472	477	456	429	388	385	445
% stock	64.45	64.43	66.53	66.74	67.30	67.76	70.40	67.01	67.01	63.15
% non-stock	35.55	35.57	33.47	33.26	32.7	32.24	29.6	32.99	32.99	36.85
% group	77.30	79.18	80.63	84.53	85.74	85.31	86.01	84.54	82.08	78.43
% Concentration	29.2	42.8	30.8	28.8	25.9	27.5	26.3	28.6	31.3	33.4

Source: Analysis of NAIC Data

¹ An insurer's concentration is defined as its premiums written in the medical malpractice market divided by its premiums written in the entire property/casualty business.

TABLE 1B**Characteristics of Med Mal Insurers with Positive NPW by Premium Volume**

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
# companies	467	461	475	472	477	456	429	388	385	445
% stock premium	53.33	54.07	54.24	58.97	58.91	59.95	58.51	56.34	54.97	53.14
% non-stock premium	46.67	45.93	45.76	41.03	41.09	40.05	41.49	43.66	45.03	46.86
% group premium	44.80	52.32	55.93	77.21	77.91	76.87	76.57	75.00	73.67	73.51

Source: Analysis of NAIC Data

From Table 1A we observe that a majority of the companies (about 82.4% on average over time) belong to a group, and that this percentage increased and then decreased over the study period, resulting in 2003 representation just one percentage point above 1994. When considering premiums written as presented in Table 1B, however, an interesting divergence is observed. In 1994, the percent written by members of groups was under 45 percent. The percentage grew rapidly to a high of nearly 78 percent in 1998 and appears to have leveled at just under 74 percent. These data suggest that while medical malpractice has been dominated by specialized (probably localized) insurers, a move toward the larger insurers in premium volume may be occurring. We note, however, that the relative proportion of an insurer's business attributed to medical malpractice as represented by the concentration ratio, has not seen much change over the study period. While it has fluctuated between a low of 25.9 percent in 1998 to a high of 42.8² percent in 1995, no clear pattern over the study period exists. We also note that the distribution across stock and non-stock³ insurers has remained relatively stable in number

² This number looks quite different for concentration in other years. We do not know the cause for the unusual ratio in 1995.

³ We also conducted the analysis using a more expansive break down of ownerships form to differentiate mutuals from risk retention groups from reciprocals. We found, however, that the data are not especially accurate during the mid-1990s due to a computer system change for the NAIC. We do not wish to make conclusions based on these categorizations as a result. We also note that the NAIC data base does not

of companies and premium volume. Stock insurers account for a majority of companies and of premiums written, although less dominant in premiums than companies.

ENTRY INTO AND EXIT FROM THE MEDICAL MALPRACTICE MARKET

Numbers of Companies Moving into and out of The Market

The number of firms in a market is determined by market entry and exit. Movement into and out of an industry is an indication of profit experience and expectations as well as ease of entry and exit. Regulatory constraints could make such movements difficult, for instance. In Table 2 we present general information about entry and exit into and out of the medical malpractice insurance market from 1994-2003. Measurements are taken at the beginning of each year; hence, we do not count entries for 1994 nor exits for 2003. Note that the number of companies in a certain year equals the number of companies in the previous year minus number of exits in previous year plus the number of entries in that year. Using 1994 and 1995 to illustrate, we see that $461 = 467 - 53 + 47$.

TABLE 2

Entry and Exit of Medical Malpractice Insurers with Positive NPW 1994-2003

Year	Total number of companies	No. of entries	Entry rate	No. of exits	Exit rate
1994	467	Base year	Base year	53	Base year
1995	461	47	10.06%	41	8.78%
1996	475	55	11.93%	51	11.06%
1997	472	48	10.11%	55	11.58%
1998	477	60	12.71%	82	17.37%
1999	456	61	12.79%	81	16.98%
2000	429	54	11.84%	90	19.74%
2001	388	49	11.42%	78	18.18%
2002	385	75	19.33%	49	12.63%
2003	445	109	28.31%	End year	End year

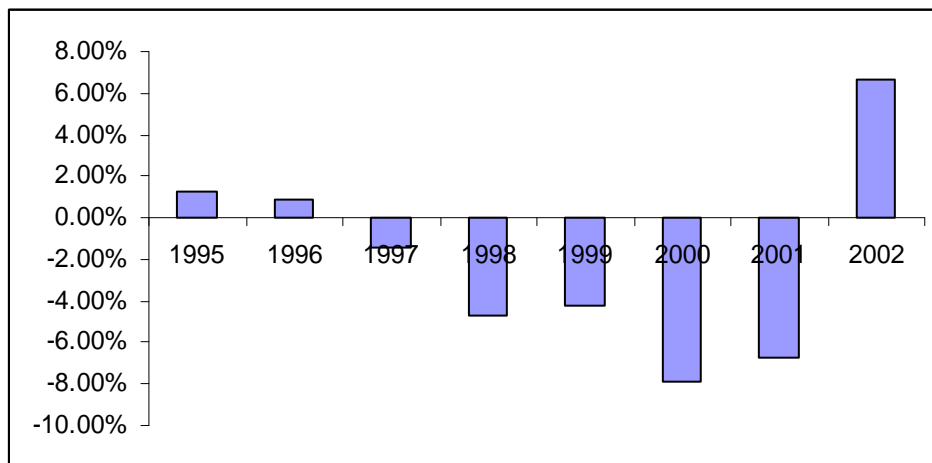
Source: Analysis of NAIC Data

contain all medical malpractice insurers, particularly limited in reporting from some captives and risk retention groups which are not required to report to the NAIC.

In Table 2 we also report the entry (exit) rate, which is defined as the number of entries (exits) each year, divided by the total number of medical malpractice insurers in the previous year. For example, in 1995 there were 47 entries and 41 exits,⁴ and the number of medical malpractice insurers in 1994 was 467. Therefore, the entry rate in 1995 was 10.06% (= 47/467) and the exit rate was 8.78% (= 41/467).

If we compare the number of entries with the number of exits, we see that since 1997 more exits than entries have occurred each year through 2001. In 2002, the trend reversed, with the number of entries exceeding the number of exits. A comparison of entry rates and exit rates also suggests that there was a market contraction between 1997 and 2001 and potentially a market expansion from 2002 onward. The entry rates in 2002 and 2003 are much larger than those in previous years. In fact, the entry rate in 2003 reaches the highest point of 28.31% during the entire study period. Figure 1 provides a visual representation of the net entry rate of medical malpractice insurers 1995-2002.

FIGURE 1
Net Entry Rate among Med Mal Insurers with Positive NPW



⁴ This means that 47 companies that did not write medical malpractice insurance in 1994 began to do so in 1995 and 41 companies that wrote medical malpractice insurance in 1995 ceased to do so in 1996.

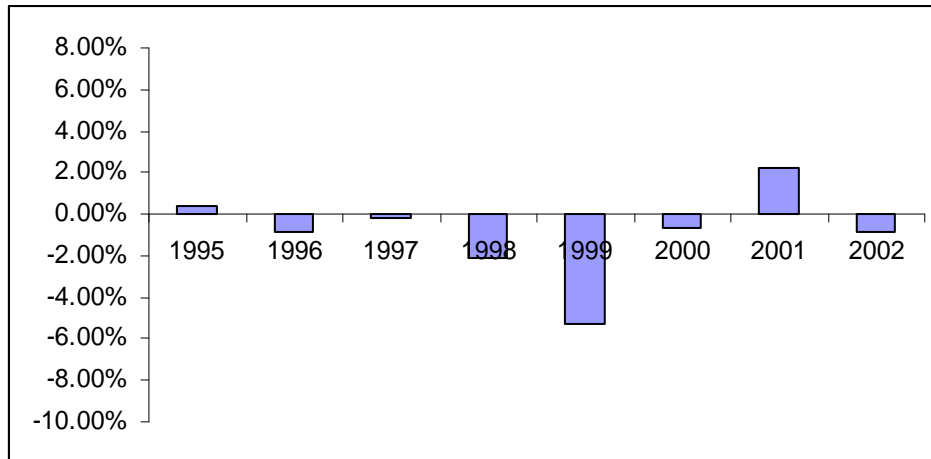
A relevant question is to ask how this experience compares with the property/liability market as a whole. Table 3 presents entry and exit information for the entire file of property/liability insurers with positive net premiums written as reported in the NAIC data tapes for 1994 to 2003. The data can be compared with what is presented in Table 2. Some interesting observations include the much higher volatility in the medical malpractice market than the market overall. Looking at the *number* of medical malpractice insurers relative to the total number of property and liability insurers, we see that medical malpractice accounts for approximately twenty percent of all the insurers. When considering the number of entries and exits, however, we observe that the medical malpractice insurers generally represent over thirty percent of the companies moving into and out of the market (sometimes exceeding fifty percent). Furthermore, the *relative* change in numbers of companies over the study period is greater in the medical malpractice market than the property/liability industry in total. Figure 2 provides a visual representation of the difference between entry rates and exit rates for the industry as a whole.

TABLE 3
Entry and Exit of P/L Insurers with Positive NPW 1994-2003

Year	Total number of companies	No. of entries	Entry rate	No. of exits	Exit rate
1994	2627	Base year	Base year	148	Base year
1995	2625	146	5.56%	135	5.14%
1996	2631	141	5.37%	164	6.25%
1997	2614	147	5.59%	151	5.74%
1998	2605	142	5.43%	198	7.57%
1999	2509	102	3.92%	241	9.25%
2000	2400	132	5.26%	148	5.90%
2001	2465	213	8.89%	159	6.63%
2002	2432	126	5.11%	147	5.96%
2003	2425	140	5.76%	End year	End year

Source: Analysis of NAIC Data

FIGURE 2
Net Entry Rates among P/L Insurers with Positive NPW



Characteristics of Market Entrants/Exiters

We report characteristics of market entrants by number of firms in Table 4A and by premium volume in 4B. As reported in Table 4A, the vast majority (about 87%) of entrants belongs to a group and more than two thirds of them (more than 69%) are stock companies. By premiums volume (Table 4B), however, we observe that other than the year 2000 the majority of premium volume written by entrants comes from non-stock insurers. In 2000, four insurers, all stock companies, accounted for 55 percent of the new written premium: Federal Insurance Co (23.53%), Mid-Century Insurance Co (16.69%), Hospital Underwriting Group Inc. (8.86%), and Pacific Indemnity Co (5.88%). We also note that a shift away from group insurers might be occurring toward the end of the study period. The number of group-affiliated entrants declined as a percent of all entrants in 2003, while the relative premium written by group entrants declined in both 2002 and 2003.

TABLE 4A**Characteristics of Medical Malpractice Insurer Entries for those with Positive NPW**

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003
# entrants	47	55	48	60	61	54	49	75	109
% stock	61.70	72.73	64.58	76.67	75.41	79.63	57.14	76.00	58.72
% non-stock	38.30	27.27	35.42	23.33	24.59	20.37	42.86	24.00	41.28
% group	87.23	83.64	83.33	93.33	98.36	100	89.80	82.67	66.97

Source: Analysis of NAIC Data

TABLE 4B**Characteristics Entrants by Relative Premium Written for Insurers with Positive NPW**

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003
# entrants	47	55	48	60	61	54	49	75	109
% stock premium	4.11	13.54	2.57	37.29	29.47	64.33	1.26	29.96	18.62
% non-stock premium	95.89	86.46	97.43	62.71	70.53	35.67	98.74	70.04	81.38
% group premium	98.20	66.85	97.51	99.71	99.72	100	97.69	67.89	68.42
Ratio*	1.09	0.48	1.11	0.55	5.71	1.48	2.32	3.11	2.26

*=% premium written by entrants/total premiums written in medical malpractice

Source: Analysis of NAIC Data

Information about insurers who exited from the medical malpractice market is provided in Tables 5A and 5B. As with entrants, we observe that stock companies dominate in numbers of exiters, while non-stock companies account for the vast majority of premiums written of exiters. The year 2001 is an exception with stock insurers also dominating exiters in terms of premiums volume, due primarily to the departure that year of American Continental Ins Co (41.72%), Lawrenceville Prop & Cas Co (12.76%). Notable in all of these analyses is the tremendous influence of one or two insurers. We find it interesting that stock insurers represented almost all of the entry by premium volume in 2000 and almost all of the exit by premium volume in 2001. The influence of just a few insurers is demonstrated by these results.

TABLE 5A**Characteristics of Medical Malpractice Insurer Exit for those with Positive NPW**

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002
# exiters	53	41	51	55	82	81	90	78	49
% stock	64.15	51.22	66.67	72.73	70.73	61.73	77.78	80.77	75.51
% non-stock	35.85	48.78	33.33	27.27	29.27	38.27	22.22	19.23	24.49
% group	83.02	80.49	82.35	83.64	97.56	91.36	94.44	96.15	87.76

Source: Analysis of NAIC Data

TABLE 5B**Characteristics Exiters by Relative Premium Written for Insurers with Positive NPW**

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002
# exiters	53	41	51	55	82	81	90	78	49
% stock premium	10.12	4.96	10.49	11.62	21.19	6.34	15.94	86.65	24.18
% non-stock premium	89.88	95.04	89.51	88.38	78.81	93.66	84.06	13.35	75.82
% group premium	47.16	95.85	86.23	99.45	100	99.00	97.19	98.89	70.88
Ratio*	2.20	0.28	7.17	1.65	5.37	3.05	12.87	5.52	2.95

*=% premium written by exiters/total premiums written in medical malpractice

Source: Analysis of NAIC Data

An important question about entrants and exits is the extent of the market affected. In Table 6, we present information about the total dollar value of NPW by entrants and exiters each year of our sample period. We also present total net premiums written for the entire medical malpractice market, both in nominal and real terms. The numbers are substantial in some cases, with almost 13 percent of the NPW represented by exiters in 2000. Five exiting insurers represent almost all of that business. Medical Liability Mutual Insurance Co. wrote 6.56 percent of the market; Mutual Assurance Co. wrote 1.29 percent of the market; Pennsylvania Hospital Insurance Co wrote 1.16 percent of the market; Phico Insurance Co. wrote 1.03 percent of the market; and Picom Group wrote 0.9 percent of the market.

Over the study period, exiter premiums sum to an amount significantly greater than the premiums of the entrants, nearly double, in fact. This outcome may be

unsurprising given that entrants are just developing their business while exiters often have been in the market for many years and already had developed a large block of business. Throughout the study period we observe that the total premium written does not decline or rise directly with the premium volume of the exiters or entrants. Even in 2000 with such a large premium volume represented by exiters, the total premium rose in nominal terms by approximately \$400 million and declined in real terms only by approximately \$15 million (in 2001, both values rose by approximately \$2 billion, even though exiters again accounted for more premium volume than did entrants). The incumbents, therefore, appear to be taking up the slack of the exiters.

Table 6

Total Medical Malpractice Premium Written by Entrants and Exiters with Positive NPW (in millions)

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Entry	-	127.58	56.09	126.10	64.53	675.51	180.20	338.12	562.61	473.66
Exit	244.71	32.61	834.45	186.70	632.07	360.93	1570.80	802.85	533.43	-
All*	11100.13	11742.06	11635.62	11348.68	11775.53	11824.60	12207.80	14546.43	18096.87	20962.64
All**	13781.54	14176.77	13645.34	13010.32	13292.62	13059.58	13044.34	15113.17	18509.31	20962.64

*all firms writing medical malpractice insurance; premiums in nominal dollar.

**total medical malpractice premiums in 2003 dollar.

Source: Analysis of NAIC Data

Market Retention

In addition to market entries and exits, the extent to which firms are retained in the market provides information about market health. That is, are the movements mostly on the fringes, with a core of continuing firms, or do we see general movement into and out of the market overall, leaving little sustained presence? To develop some understanding of firm retention, we measure how many of the firms writing medical malpractice business at the start of each of our study years continued to write such coverage in each succeeding year, as reported in Table 7.

TABLE 7
Retention Triangle of Firms with Positive NPW

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
1994	467									
1995	414	461								
1996	393	420	475							
1997	371	396	424	472						
1998	347	376	402	417	477					
1999	295	318	343	351	395	456				
2000	267	290	314	314	351	375	429			
2001	226	245	268	268	298	336	339	388		
2002	214	230	246	251	266	288	300	310	385	
2003	219	236	260	257	280	299	315	326	340	449

Source: Analysis of NAIC Data

In Table 7, each column traces the retention situation of a fixed group of insurers writing medical malpractice insurance for a certain base year. For instance, if we look at base year 1994, there were initially 467 insurers writing medical malpractice policies in that year. The second column of Table 7 tells us how many of these 467 firms still remain in medical malpractice business in each subsequent year. From the table we can see that 414 out of the 467 firms were still writing medical malpractice policies in 1995 and 393 out of the 467 firms were still in business in 1996. If we consider base year 1995, then 420 out of the 461 initial companies were still in business in 1996. Other columns of the table can be interpreted the same way.

Because each year begins with a different number of initial firms, the absolute change may not be as relevant in understanding market movements over time as will retention rates. Table 8 is an illustration of retention rates, which are calculated by dividing the number of firms in each year by the number of firms in the base year. For example, for the group of insurers initially writing positive NPW in 1994, the first year

(1994-1995) retention rate is 0.887 (=414/467), and the second year (1995-1996) retention rate is 0.842 (=393/467).

TABLE 8
Retention Rate of Firms with Positive NPW

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	Average
0	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
1	0.887	0.911	0.893	0.884	0.828	0.822	0.790	0.799	0.883	0.855
2	0.842	0.859	0.846	0.744	0.736	0.739	0.699	0.840		0.788
3	0.794	0.816	0.722	0.665	0.625	0.632	0.734			0.713
4	0.743	0.690	0.661	0.568	0.558	0.656				0.646
5	0.632	0.629	0.564	0.532	0.587					0.589
6	0.572	0.531	0.518	0.545						0.541
7	0.484	0.499	0.547							0.510
8	0.458	0.512								0.485
9	0.469									0.469

Source: Analysis of NAIC Data

The last column of Tables 8 gives the average retention rate for each year. For example, average first-year retention rate for NPW is 0.855.⁵ A lower retention rate across years seems to be occurring between 1996 and 2000. In 1996, .893 of the original insurers remained in year two; by 2001, only .790 of the initial (2000) insurers remained in year two. For 2002, however, the rate is back up to .883.

Over the entire study period, we observe a loss of over 50 percent of market participants. An interesting shift occurred in 2003 when a number of firms that had exited returned to the market. Note the rise in retention rates for each column (except for 2002), which reflects this shift. While we might anticipate new insurers as the market changes, the return of prior existing insurers was not anticipated.

We were also interested in observing any changing patterns across years in the speed with which the market changes. In Table 9 we present retention rates across policy

⁵ $0.855 = (0.887+0.911+0.893+0.884+0.828+0.822+0.79+0.799+0.833)/9$. Other average retention rates can be calculated similarly.

years. That is, we look at the change for each year from that to the next. For the row marked “1” below, we show the percentage of the insurers remaining in the market after one year of observation; therefore, 88.7 percent of the firms that wrote medical malpractice insurance in 1994 also wrote such insurance in 1995. Similarly, 91.1 percent of the insurers writing medical malpractice insurance in 1995 continued to write such insurance in 1996, etc. Through this analysis we observe that the change from one year to another is not uniform, as we would anticipate with changing market conditions. Unlike a loss triangle for workers’ compensation claims, which this representation mimics, the years do not behave similarly. As illustration, we note a much greater drop in year one for beginning years 2000 and 2001 than for other study years. These years seem to have had the greatest relative exit rates.

Table 9
Relative Retention Rate of Firms with Positive NPW⁶

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	Average
0	1	1	1	1	1	1	1	1	1	1
1	0.887	0.911	0.893	0.883	0.828	0.822	0.790	0.799	0.883	0.855
2	0.949	0.943	0.948	0.842	0.889	0.896	0.885	1.052		0.925
3	0.944	0.949	0.853	0.895	0.849	0.857	1.050			0.914
4	0.935	0.846	0.915	0.854	0.893	1.038				0.913
5	0.850	0.912	0.854	0.937	1.053					0.921
6	0.905	0.845	0.918	1.024						0.923
7	0.846	0.939	1.057							0.947
8	0.947	1.026								0.986
9	1.023									1.023

Source: Analysis of NAIC Data

⁶ Numbers in Table 9 are derived from Table 7. Take column marked “1994” as an example: 0.887=414/467, 0.949=393/414 and 0.944=371/393, etc. All other numbers in this table are calculated similarly.

CONCLUSIONS

What can be said from a review of market entrants and exits into and out of the medical malpractice business from 1994 to 2003? We observe evidence of the market cycle, with strong movements by market participants. Insurers do indeed make decisions to participate or not dependent on market performance, and appear able to move somewhat freely. The movement into and out of the medical malpractice market is much more volatile than in the property-liability industry in total.

In addition, the flow of funds into and out of the market is significant, which had been implied in industry news about rising costs and declining availability of medical malpractice insurance. We are seeing relatively large insurers depart the market, not just the smaller, potentially more fragile firms. Furthermore, the premium volume of exiters is approximately double that of entrants. Yet, the total premium volume in the market does not show a direct correlation with the flow of funds by entrants and exits. The continued interest in providing capital to the medical malpractice market may reflect what was said at a meeting of the Professional Liability Underwriting Society (PLUS). Paul F. McKeon, senior vice president, Transatlantic Reinsurance Company is quoted as saying “There are no barriers to entry on the reinsurance side. A lot of reinsurers are very bullish on this business. ... There’s so much competition that flows into this business so quickly that it doesn’t justify a long-term approach. The market doesn’t seem to allow that.” (PLUS news release, May 2005)

The NAIC data base is somewhat limited, however, with a good portion of the market unaccounted for because it is represented by firms that are not required to report to the NAIC. These firms are primarily the physician-owned captives and risk retention

groups. Better data on the market as a whole will aid in our understanding of underwriting cycles and incentives to participate in the medical malpractice insurance business.

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