



## Medical Liability Climate Hurts Patients and Ob-Gyns

*Survey Reveals Continuing Trend*

September 5, 2012

**Washington, DC** -- The medical liability climate continues to force ob-gyns across the US to reduce gynecologic surgeries, drop obstetrics, move their practice out of state, or abandon private practice to become hospital employees, according to the latest survey data released by The American Congress of Obstetricians and Gynecologists (ACOG). Survey results show that the near-universal fear of lawsuits coupled with the high cost of liability insurance not only negatively affects ob-gyns, but also harms patients and adversely impacts the entire health care system.

"Our survey results show no overall improvement of the medico-legal environment for ob-gyns," said ACOG President James T. Breeden, MD. "Ob-gyns continue to significantly limit their services and change how and where they practice due to the unreasonably high risk of litigation in our profession. As millions more women begin to access health care under the Affordable Care Act, it is imperative that the US Congress pass meaningful medical liability reform."

The [2012 ACOG survey](#) is the 11th professional liability assessment conducted by ACOG of its ob-gyn membership since 1983. Data included in the 2012 online survey were restricted to claims against ob-gyns that were opened, closed, or both, between January 1, 2009, and December 31, 2011. The survey's purpose is to assess the impact of the medical liability environment on the ob-gyn specialty and to provide trend data about ob-gyns' liability experiences and resulting changes in their practice patterns.

### **VIDEO: The impact of professional liability on ob-gyns and their patients.**

The 2012 survey results show that over half (51%) of ob-gyn respondents made one or more changes to their practices during the three-year period as a direct result of the high cost or availability of liability insurance. Among those practicing obstetrics, 15% increased the number of cesarean deliveries, 13.5% stopped performing vaginal birth after cesarean delivery (VBAC), 8% decreased the number of total deliveries, and 5% stopped practicing obstetrics altogether. Among those practicing gynecology, 12% said they had decreased gynecologic surgical procedures. An additional 5% of ob-gyns stopped performing major gynecologic surgery, and slightly more than 1% stopped performing all gynecologic surgery.

"When fewer doctors provide obstetric care because they can't afford the cost of insurance or the insurance coverage isn't available, women suffer," said Albert L. Strunk, JD, MD, ACOG deputy executive vice president and vice president of fellowship activities. "For example, our survey shows that women who want to attempt a VBAC find it difficult to locate an ob-gyn willing or able to take on this liability risk."

Even more striking was the finding that 58% of ob-gyns said they changed how they practiced due to the risk or fear of being sued. Slightly more than one out of four ob-gyns (27%) decreased the number of high-risk patients, 24% increased the number of cesarean deliveries, 19% stopped offering VBACs, and 6% dropped obstetrics altogether. Nearly one out of five ob-gyns (19%) decreased their overall gynecologic surgical procedures, 7% stopped performing major gynecologic surgery, and 2% stopped performing all surgery.

"It's not surprising that, when faced with the risk of lawsuits, physicians do what they can to minimize risk," said Dr. Strunk. "Unfortunately, when physicians limit what problems they treat, which surgeries they perform, or what services they continue to provide, it creates significant hardships for patients. This results in long waiting times for office appointments or surgery, associated inconvenience, and limitation of patients' choice."

The 2012 survey also found that medical liability concerns led 12% of ob-gyns to leave private practice and become salaried employees of hospitals, government, or other institutions. Other ob-gyns (4%) either moved their practice to another state or to another jurisdiction within the same state because of liability concerns. "The impact of fewer privately practicing physicians in urban and suburban areas where large hospitals and health care institutions exist is difficult to forecast," said Dr. Strunk. "However, there is often no such institutional presence in rural or other medically underserved areas where independent practitioners provide the only care."

### **Claims Experience**

The 9,006 survey respondents reported a total of 4,060 liability claims initiated between January 1, 2009, and December 31, 2011. Nearly two-thirds (63%) of these claims involved obstetric care; the remainder (37%) involved gynecologic care. During this three-year period, 42% of the respondents reported that they had one or more liability claim filed against them: 30% had one claim, 9% had two claims, 3% had three claims, and 1% had four or more claims.

"It should alarm everyone that more than three-fourths of ob-gyns will be sued at least once during a career," said Dr. Strunk. "In fact, 42% of ob-gyns report having been sued at least once during the survey's three-year period."

### **Obstetric Claims**

A total of 2,564 obstetric claims were reported in the 2012 survey. The leading primary allegation for obstetric claims was for "neurologically impaired infant," accounting for 29% of all obstetric claims. Stillbirth or neonatal death was the second most frequent primary obstetric claim (14%). Among the leading associated primary factors in obstetric claims were electronic fetal monitoring (21%) and shoulder dystocia/brachial plexus injury (15%).

### **Gynecologic Claims**

A total of 1,496 gynecologic claims were reported in the 2012 survey. "Patient injury-major" was the leading primary allegation for gynecologic claims at 29%. The second most frequent primary allegation was "delay in or failure to diagnose" (22%) followed by "patient injury-minor" (21%). Cancer was the leading allegation in "delay-in or failure to diagnose" claims, accounting for 42% of the total. Of these cancer-related claims, breast cancer was the most frequently cited (39%).

### **Claim Outcomes**

Of the 2,472 respondents who indicated how their liability claims were resolved, 44% reported that their claims were dropped or settled without any payment on behalf of the ob-gyn. Twenty-nine percent of all claims were dropped by the plaintiff, 11% were dismissed by the court, and nearly 4% were settled without payment by the ob-gyn. Of the remaining 56% of claims, 38% were settled with a payment on behalf of the ob-gyn in advance of trial or before a court verdict. Another 13% of cases were resolved through a jury or court verdict, and 4.5% were settled through arbitration or other dispute resolution.

Just over a third of cases (34%) that were resolved in court or through arbitration resulted in a paid settlement to a plaintiff. "Despite the fact that 66% of court and arbitration rulings result in no indemnity payment, even such meritless claims can take several years to resolve and cost the ob-gyn almost \$50,000 to defend," said Dr. Strunk. "Moreover, the severe psychological stress associated with the process can affect the physician's ability to practice both during and after the claim has been resolved."

The average for all paid claims against ob-gyns was \$510,473. For obstetric-related paid claims, the average payment involving a neurologically impaired infant was \$982,051 and \$364,794 for "other infant injury-major." For

gynecologic-related claims, the average payment for “failure to diagnose breast cancer” was \$407,500 and \$315,633 for a “patient injury–major.”

### **About the Survey Respondents**

Eligible respondents to the voluntary survey were limited to active, practicing ACOG Fellows and Junior Fellows in all 50 states, the District of Columbia, and Puerto Rico. The final data represent responses from 9,006 ob-gyns out of a total eligible membership of 32,238 individuals. This year’s survey yielded the second highest number of respondents since the survey began in 1983.

For the first time in the history of the survey, a slight majority (51%) of all survey respondents were female. The average age of survey respondents was 51. The majority of respondents were in group practice (44%), followed by solo practice (19%), hospital setting (15%), and teacher/faculty (12%). Of the total respondents, 46% practiced in suburban settings, 40% practiced in urban settings, and 14.5% practiced in rural settings. Nearly 3 out of 4 (72.5%) respondents provided both obstetric and gynecologic care. One out of five respondents (20%) provided gynecologic care only; a minority (7%) provided obstetric care only.

*The American College of Obstetricians and Gynecologists (The College), a 501(c)(3) organization, is the nation’s leading group of physicians providing health care for women. As a private, voluntary, nonprofit membership organization of approximately 55,000 members, The College strongly advocates for quality health care for women, maintains the highest standards of clinical practice and continuing education of its members, promotes patient education, and increases awareness among its members and the public of the changing issues facing women’s health care. The American Congress of Obstetricians and Gynecologists (ACOG), a 501(c)(6) organization, is its companion organization. [www.acog.org](http://www.acog.org)*