

# Arizona Department of Insurance

## 2011 Market Monitoring

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Medical Malpractice

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### I. Rate System:

Arizona's "open competition" law, applicable to medical malpractice ("MM") insurance, prohibits insurers from charging excessive, inadequate or unfairly discriminatory rates or rates that will destroy competition or establish a monopoly. By statute, a rate is not excessive if "a reasonable degree of price competition" ("RDPC") exists. A competitive market is presumed to exist unless the Director of the Arizona Department of Insurance ("ADOI"), after a hearing, determines that a RDPC does not exist. In determining whether a RDPC exists, the Director is required to consider relevant tests of competition pertaining to market structure, performance and conduct, including:

- The number of insurers actively engaged in the class;
- Insurers' market share and market share changes;
- The existence of rate differentials in a particular class; and,
- The ease of entry and latent competition of insurers capable of easy entry.

### II. Market Monitoring Methodology:

The ADOI relies upon insurers' rate filings, annual statements, responses to an annual survey, current trade press, various studies published by interested parties, and, A.M. Best data to monitor the market. The annual statements provide the per-company, state-specific losses and premiums. Survey responses provide insurers' input about their activity in and their perception of the market. ADOI collects and compiles the data and statistics, analyzes all information, identifies trends, and summarizes its findings.

### III. Annual Statement ("AS") Data:

On Line 11 of their AS "Exhibit of Premiums and Losses," insurers report Arizona MM writings for the calendar year. Line 11, "MM," embraces all categories of MM including, but not limited to: MM for dentists, hospitals, nursing homes, physicians, etc. The compiled AS data for all these MM segments evidence that overall in 2010:

- Premiums and incurred losses decreased.
- Fifty-seven insurers reported some MM written premium in their annual statements.
- Only 11 insurers wrote more than 1% of the market and 40 wrote \$100,000 or more.
- The number of insurers exiting and entering the market remained relatively stable.

#### Historical Experience (All Insurers Line 11, Annual Statement Data, Year Ending December 31)

	1	2	3
CY	Written Premium	Earned Premium	Paid Losses
2010	\$203,441,319	\$207,692,788	\$61,359,239
2009	\$210,388,142	\$208,550,390	\$67,208,930
2008	\$223,846,314	\$229,927,975	\$85,499,555
2007	\$230,114,649	\$221,255,355	\$82,266,894
	4	5	
CY	Incurred Losses	Incurred Loss Ratio (Col 4/ Col 2)	
2010	\$48,147,416	23.2%	
2009	\$90,949,897	43.6%	
2008	\$49,163,627	21.4%	
2007	\$93,745,826	42.2%	

The information above includes all MM segments, although this summary focuses on Physicians and Surgeons ("PS") and Hospitals ("HOSP") segments, which constitute 77.8% of the reported premium in Line 11.

### IV. Survey Responses:

Thirty-two insurers, with 100% of the market, responded to the 2011 survey. While the level of competition increased slightly in the PS market, competition in the HOSP market is extremely limited. The insurers reported the following information:

**Table A: Historical Physicians and Surgeons Experience**

1	2	3	4	5	6	7	8	9	10
CY	Written Premium	Policy Count for Active Insurers	Average Premium (Col 2/Col 3)	Paid Losses	# of Paid Losses	Average \$ Paid Claim Col 5/6	Incurred Losses	Incurred Loss Ratio	Combined Ratio
2010	\$157,077,554	7,444	\$21,101	\$47,918,190	195	\$245,734	\$39,429,262	24.5%	74.2%
2009	\$162,609,256	7,038	\$23,104	\$53,474,034	152	\$351,803	\$83,587,384	51.7%	93.5%
2008	\$177,637,520	7,009	\$25,344	\$56,391,661	210	\$268,532	\$40,526,843	22.0%	49.5%
2007	\$188,949,699	7,068	\$26,733	\$59,619,770	204	\$292,254	\$70,795,456	38.3%	78.2%
2006	\$187,342,906	7,168	\$26,136	\$51,303,479	236	\$217,388	\$86,956,658	49.1%	86.0%

**Table B: Historical Hospital Professional Experience**

1	2	3	4	5	6	7	8	9	10
CY	Written Premium	Policy Count for Active Insurers	Average Premium (Col 2/Col 3)	Paid Losses	# of Paid Losses	Average \$ Paid Claim Col 5/6	Incurred Losses	Incurred Loss Ratio	Combined Ratio
2010	\$1,231,424	6	\$205,237	\$2,609,250	6	\$434,875	-\$3,871,795	-311.1%	-285.6%
2009	\$1,094,314	3**	\$364,771	\$1,718,750	6	\$286,458	-\$3,914,451	-356.2%	-334.0%
2008	\$1,934,588	2**	\$967,294	\$8,878,003	14	\$634,143	-\$14,596,813	-713.6%	-704.5%
2007	\$2,940,970	31*	\$898,878	\$7,530,499	16	\$470,656	\$5,575,078	4323.1%	4392.8%
2006	\$3,168,020	10	\$334,534	\$4,791,694	22	\$217,804	\$1,639,857	11.5%	37.5%

\*Twenty-eight policies (with total premium of \$244,337) were written on hospice risks. Discounting these risks, only three hospital policies were written with total premium of \$2,696,633.

\*\*Represents actual hospital policies written.

**Other survey results:**

- **The majority of surveyed insurers said that:**
  - Price has decreased in 2011 as compared to 2010.
  - PS Coverage availability has increased in 2011 when compared to 2010, while HP coverage availability remains about the same.
- **The majority of the surveyed insurers said that their particular company:**
  - Is not actively seeking new business (i.e., they may write it if it comes to them, but they will not seek it).
  - Is not increasing the number of declinations or nonrenewals in 2010 as compared to 2009.
  - Has, historically, had neither high nor low underwriting profitability in MM in Arizona.
  - Does not find obtaining reinsurance to be problematic.

**V. MM Market Trends:**

**Trend # 1: The market is extremely concentrated.**

The PS market is concentrated in the Mutual Insurance Company of Arizona (“MICA”). MICA’s 2010 PS market share was 88.0% (89.0% in 2009). The Medical Protective Company (“MPC”) gained market share (5.8%, 2010; 5.6%, 2009). Medicus Insurance Company (“MIC”) also gained market share (1.2%, 2010; 0.7%, 2009). Two CNA companies (The Continental Casualty Company and Continental Insurance Company) are the only admitted insurers that wrote HOSP policies in 2010. These CNA companies will consider writing risks that meet their underwriting criteria. In 2010, five insurers controlled 98.3% (97.9% in 2009) of the PS market segment and two controlled 100% of the HOSP segment. With the exception of MICA, MPC, MIC and CNA, other insurers only write certain classes of the market (e.g., only podiatrists; only hospice facilities, etc.).

**Trend # 2. Rates continue to decrease.**

Between 1/1/10 and 6/30/11, insurers filed PS rate changes averaging -4% compared to -3% in the previous eighteen month period. Continental Casualty Company (“CCC”), filed two HOSP rate decreases during this time (-12.0% in 2010 and -9.2% in 2011). Its sister company, Continental Insurance Company (“CIC”), filed identical rates.

**Trend #3. Overall incurred loss ratios improved.**

The 2010 all-company Arizona all-segment MM incurred loss ratio of 23.2% is lower than 2009’s 43.6%. Specifically, the incurred loss ratio of the PS segment was 24.5% down from 51.7% in 2009 and HOSP was -311.1% slightly up from -356.2% in 2009. Due to an extremely small data base, the HOSP incurred loss ratio has very limited credibility. Severity continues to influence losses. Based on insurers’ responses to the ADOI’s survey, the average 2010 PS paid claim was \$245,734 (\$351,803 in 2009) and \$434,875 (\$286,458 in 2009) for HOSP. PS frequency also contributed to losses (195, 2010; 152, 2009), while HOSP frequency was flat.

**Trend # 4. Combined ratios (“CR”) improve.**

CR is the total of the incurred loss ratio, loss adjustment expense ratio and the underwriting expense ratio and determines underwriting profitability. The 2010 PS CR of 74.2% is down from 93.4% in 2009, while the 2010 HOSP CR of -285.6% is up from -334.0% in 2009. Evaluation of this trend requires considering the limited HOSP data base and the long-tail nature of the MM line of insurance.

**Trend # 5: Insurers continue to restrict writings.**

In 2010, the majority of insurers reported that they will

remain relatively conservative in their MM underwriting approach and limit writings accordingly. This response is the same as given in previous surveys. This is not to say, however, that these same insurers could not immediately chose to begin writing. They remain licensed in the state and most of them have forms and rates on file with the ADOI that could be used without delay. While insurers remain cautious, one new PS insurer (Capson Physicians Insurance Company) filed rates in 2011 and is positioned to enter the market.

**Trend # 6:** Coverage availability is limited. PS and HOSP coverage is generally still available, but only through a limited number of insurers. MICA, MPC and MIC will write PS business, and eight other insurers limit their writings to one or two specialties. CCC and CIC are the only two admitted insurers positioned to write new HOSP business.

**Trend # 7:** The number of insurers exiting the market remains stable. Eleven insurers had PS written premium in 2010, down from 13 in 2009. Of these 11 insurers, MIC moved from market position six to four, representing the most significant PS market shift in 2010. American Healthcare Indemnity Company and General Insurance Company of America exited the PS market. Exits can involve merely curtailing new business writings and/or nonrenewing existing business. Therefore, “exits” are, in fact, self-imposed moratoriums. The reason(s) for the moratorium is particular to each insurer and cover a range of causes (e.g., mergers, acquisitions, losses, changes in business philosophy, etc.).

Two insurers (CCC and CIC) wrote HOSP risks in 2009 and 2010.

## VI. Conclusions:

Both the PS and HOSP segments are markets with limited competition. These markets are concentrated in a few insurers. Rates continue to decrease. While PS loss ratios improved, HOSP loss ratios deteriorated. Only a few insurers are writing new business without limitations in all classes and types of risks. Coverage is available on a limited basis as most insurers continue to restrict their writings. As the number of insurers exiting the market is stable, PS coverage remains more available than HOSP coverage. Insurers are decreasing their PS and HOSP rates; however, this trend could change due to overall economic conditions.