



Tort Reform: the WMS perspective



Priced Out

A look back at 2004 and the turning point in Wyoming's medical malpractice insurance crisis

BY JOANNE MAI

PHOTOS FROM THE WYOMING MEDICAL SOCIETY ARCHIVES

In the heat of the early summer of 2004, Wyoming legislators took a landmark vote. For the first time in history, they invoked their right to convene a special legislative session to begin on July 12 of that year. It was the 20th special session since statehood in 1890, but the first time the legislature called themselves back to work. Previously, a special session could only be called by the governor. So what was the pressing issue that they felt compelled to discuss? The availability of medical malpractice insurance.

It was a subject that had been debated vigorously during the Legislative Budget Session held earlier that year. A variety of bills had been introduced, argued, amended and failed to pass. The dire situation remained. Physicians and medical clinics in the state were in crisis and something needed to be done.

“We got some traction during the 2004 budget session, but we didn’t ever quite get it over the finish line,” said then-Wyoming Medical Society Executive Director Wendy Curran. “It really mobilized physicians to push even harder for a special

session, so when the budget session ended, we and others continued to keep the pressure on them and they heard very loudly around the state from their constituents that this was a significant issue that wasn’t going away.”

In June of that year, legislators voted favorably to return to the Capitol the following month to discuss medical malpractice insurance in Wyoming. As the Legislature prepared to reconvene for a second session in 2004, Curran prepared for the questions the Wyoming Medical Society might be asked. She knew that the session could last a maximum of 20 days, which is not much time to solve such a large-scale problem. Curran collected data and stories from across the state and released a briefing sheet to the Legislature.

In the years running up to the special session, several sizable medical malpractice lawsuits in Wyoming, resulting in multi-million dollar court awards had caused medical malpractice insurance rates to skyrocket. Wyoming prohibits state

government from establishing limits on civil damage awards, so a constitutional amendment would be needed in order to place caps on medical malpractice claims.

“Without a limit on what a person could sue for and get, whether its \$5 million or \$250,000, when there’s no end point, it’s really hard for an insurance company to calculate risk,” said Curran, who eventually went on to work for Blue Cross-Blue Shield of Wyoming. “Our premiums were much higher than our neighboring states.”

According to analysis from the American Medical Association at the time, recruiting physicians to Wyoming had become even more difficult since the state had the least amount of medical liability reforms than any of its Rocky Mountain neighbors.

But the problem wasn’t just being felt by new recruits.

Faced with liability premiums increasing two to 10 times in cost, Wyoming physicians had some tough decisions to make.

One of those clinics was Cedar Hills Family Clinic in Newcastle.

“That was the time when we stepped away from delivering babies,” said Mike Jording, MD. “We were the only ones in the area providing obstetrical care.”

In 2003, faced with insurance premiums jumping suddenly from \$13,000 to \$29,000, the three physicians in the Newcastle clinic were forced to narrow the scope of their service.

Women had to drive a half hour to an hour and a half in order to see an obstetrician.

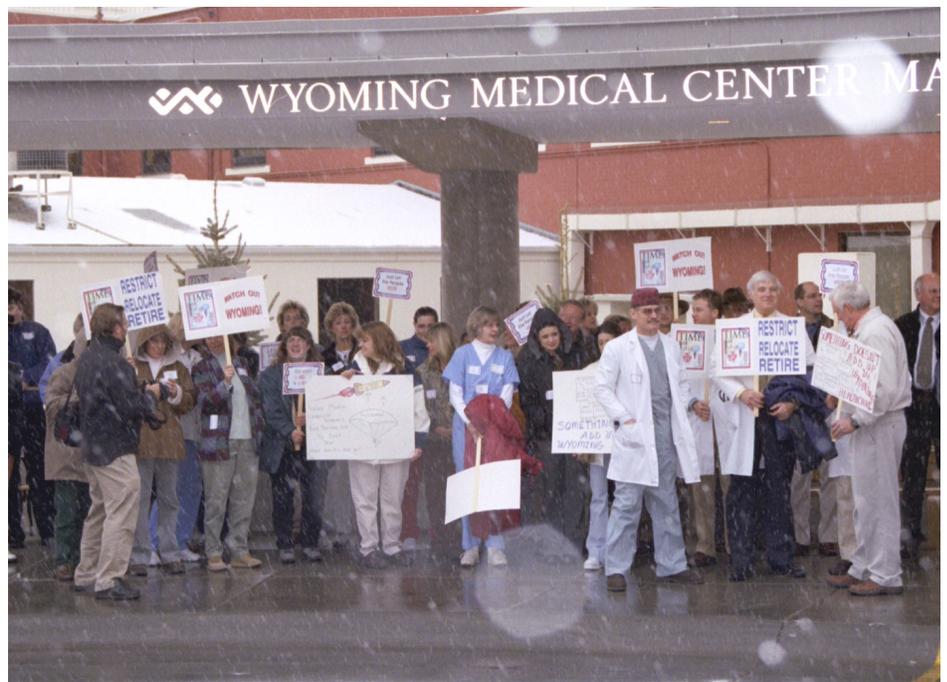
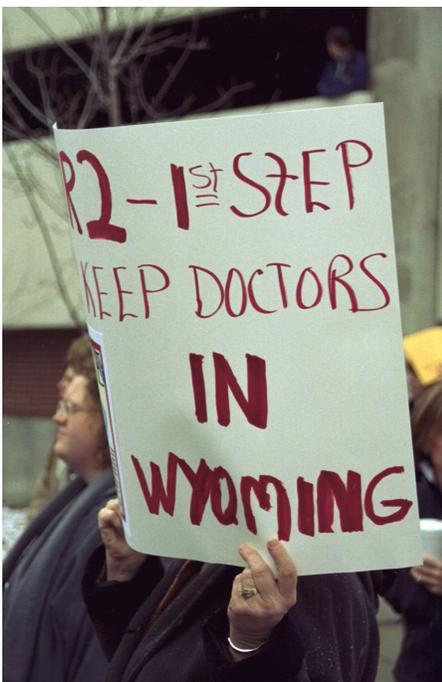
The problem wasn’t only impacting women in Newcastle.

In November 2002, OB/GYN Willard Woods, MD, had to give up the obstetrical portion of his practice because he couldn’t get liability coverage, according to the WMS release. He had delivered more than 2,000 babies in the Wheatland and Douglas areas over the previous 23 years.

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“With Dr. Woods no longer able to provide OB services, the burden shifted to the handful of family physicians in Wheatland,” said Curran, adding that in the spring of 2003, one of those physicians moved to Cheyenne, so the remaining doctors were on call every other night. “Some high-risk pregnant women were faced with driving 70 miles to get obstetrical care.”

A Casper OB/GYN, who provided nearly half of gynecological surgery and delivered nearly half of Casper babies at the time, was only able to find insurance coverage in 2003 at a cost of



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\$140,000 with \$69,000 in additional, “tail” coverage. Since nearly half of his patients were covered by Medicaid, that rate was unsustainable.

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Curran said those were just a few examples of the physicians providing obstetrical and gynecological care. The increases in premiums were being felt by other providers too.

The Doctor's Company reported that Wyoming OB/GYNs, family physicians who deliver babies, neurosurgeons, and orthopedic surgeons were paying at least \$20,000 to \$30,000 more than their counterparts in Colorado, which had a \$250,000 cap on non-economic damages.

The Jackson Hole News & Guide reported on June 11, 2003, that the St. John's Medical Center trauma unit was in jeopardy of closing as its surgeons were struggling to obtain affordable medical liability insurance. Without the trauma care in Jackson, patients would be forced to travel to Idaho Falls or Salt Lake City—travel that takes hours in good weather.

“Idaho Falls is a long hop if you are bleeding to death,” said James Balliro, MD, the director of the trauma unit who could not find affordable liability insurance.

St. John's Hospital had stepped in to assist with the premiums for 2002, but could no longer continue that assistance. Balliro said he paid \$16,000 for liability insurance the first year he practiced in Wyoming. His rate increased to \$164,000 in his second year—a business cost exceeding \$13,000 per month. The physicians' policies were up for renewal the summer of 2004, and would increase again. The hospital administrator was concerned that both surgeons would be forced to move to another state, leaving Jackson with only two surgeons -- one of whom was nearing retirement age.

On May 15, 2003, the Buffalo Bulletin reported that emergency and trauma care also was in jeopardy in Gillette, where two of the town's four general surgeons could not find affordable insurance. Without enough surgeons, patients would face hours of travel to Casper or Rapid City, South Dakota. Physicians in Wyoming are required by area hospitals to carry liability insurance to practice.

And according to Curran, two Gillette physicians specializing in internal medicine had been notified of the cancellation of their medical liability insurance effective July 31, at a time when Gillette was already dealing with a shortage of primary care doctors.

Memorial Hospital of Carbon County in Rawlins also was finding it difficult to maintain a fully-staffed emergency department, as insurance coverage for emergency department physicians was becoming increasingly scarce, said Curran.

“Doctors said, ‘I can't afford this anymore,’ and were moving out of state,” said Curran. “We were losing services in our local communities.”

A Casper-area surgeon, Brook Redd, MD, left Wyoming to practice in northwestern Minnesota. After practicing for more than nine years, Dr. Redd could no longer afford the cost of medical liability insurance in Casper, said Curran, explaining that in Minnesota, Dr. Redd's liability insurance cost him \$5,000 per year, compared to the \$94,000 per year he paid in Wyoming.

Jim Derrisaw, MD, a Riverton anesthesiologist, moved his young family to Ft. Collins, Colorado to practice medicine



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there. Dr. Derrisaw grew up in Cheyenne, graduated from the University of Wyoming, married a native of Encampment, and returned to Wyoming to raise his family and "practice medicine in the state I love." Curran said, student loan debt for medical school of more than \$100,000, coupled with insurance premiums that had escalated to \$52,000 per year, created a burden that his deep Wyoming roots could not overcome. His insurance coverage in Colorado, a state with caps on non-economic damages and other key liability reform measures, cost \$8,200.

"You're not only losing medical services, but each physician and medical professional that leaves has an impact on the community," said Curran. "This was something that was going to damage the state and its economy."

The Casper area of Natrona County had the greatest concentration of medical professionals in the state at the time, said Curran, explaining that Natrona County had its own local version of the Wyoming Medical Society. "They felt they could do something, so they initiated some events with legislators," said Curran. "They were well organized and very vocal."

Physicians showed up in their white coats.

"They came down by buses from all over the area and other parts of the state," said Curran. "(Casper) also had statewide news outlets so they got a lot of media coverage and then it really picked up."

By the time the special session convened on July 12, physicians and medical professionals were mobilized and held demonstrations at the Capitol and other locations throughout the state, dressed in their white coats.

"It's a big deal to wear your white coat," said Curran. "It really sent a strong message that we're here as professionals who are concerned about our society."

Not everyone agreed.

"Certainly everyone has their own opinion, but I think it was impactful," said Curran. "Many legislators thought it was too much. They thought it was grandstanding."

Whether the demonstrations helped, several measures passed in that short session, including legislation that established a state program to assist medical professionals in purchasing and renewing malpractice insurance and another bill enabling several studies to be undertaken by the state related to medical errors, malpractice insurance and tort reform.

"The goal of the WMS was to keep the issue in front of the Legislature, to take little steps towards addressing

the situation," said Curran. "But the biggest goal was the constitutional amendment."

At the time, it appeared that the only option to keep insurance rates from rising even higher was for Wyoming to change its constitution in order to allow state government to establish limits on non-economic damages. A constitutional amendment requires a vote by the citizens of the state.

"It was a one step, two step process," said Curran. "Before we could even start to consider what the monetary cap would be, we needed to get the constitution amended to allow caps."

During the special session, lawmakers agreed that two joint resolutions would be put before voters in the 2004 November General Election. Amendment C called for the creation of a medical review panel to screen medical malpractice claims before they could proceed to court. And Amendment D would allow the Legislature to impose caps on non-economic damages in medical malpractice lawsuits.

On July 17, then-Gov. Dave Freudenthal signed the resolutions during a ceremony at the Capitol, flanked by 12 legislators.

"I'm delighted that this bill is here on this desk and that it is in a form that will make clear to the voter what their choice is," said Freudenthal to legislators. "I want to commend you for the substance of the work that's been done. I know it has been a difficult and painful process from time to time, and much will be said about the content of the substance over the next months, but I think the remarkable thing is, it is done."

In the end, it took legislators a mere six days to approve the joint resolutions that would be placed on the ballot for voters of the state.

Curran attributes the speed to the fact that the special session was very targeted on just a few bills, which allowed lawmakers to really focus on the topic.

"Seeing the resolutions signed was really great," said Curran. "But we knew we had to get right to work against a very formidable and well-organized opposition."

Trial attorneys, unions and other groups opposed placing limits on civil damage awards, regardless of whether it was related to medical malpractice lawsuits.

"The Wyoming Medical Society launched a very coordinated, targeted campaign through our political action committee," said Curran. "We sought contributions and started running ads, op-eds, letters to the editor and took a tour around the state, meeting with physicians, hospitals, community leaders,

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and business leaders, trying to educate voters about what was at stake. It was intense.”

In the end, Amendment C passed. Amendment D did not. How did Curran and the rest of WMS feel?

“Horrible,” said Curran. “It was a very close vote.”

On Election Day, 46 percent of Wyoming voters said yes to the amendment, but 54 percent voted against it.

“We knew it was going to be a very tough battle,” said Curran. “However, it really succeeded in cementing the value of healthcare in Wyoming beyond just getting your baby delivered here. It cemented the realization that healthcare really impacts the economy when you can’t get your baby delivered locally.”

Curran said the passage of the smaller measures that special session helped improve the malpractice insurance situation in some ways. But it wasn’t enough for some medical professionals.

Cedar Hills Family Clinic in Newcastle sold their practice to Monument Hospital in Rapid City.

“One of the many reasons we quit was because of liability insurance,” said Larry Reimer, MD. “It was a lot of money a year. There were other factors, but it was a big deal because you never knew when a delivery was going to turn into a big problem—especially here in this rural area.”

Drs. Reimer, Jording and their partner, Charles Franklin, MD, continued to practice under the umbrella of Monument Hospital until the clinic was sold again in 2021 to the Newcastle

Hospital. Reimer and Franklin continued to see patients in the clinic operated by the local hospital.

“Under the old model, I did all the administrative paperwork in addition to doing medicine, but we could make our own decisions,” Dr. Reimer said. “When the hospital came in, they provided us with insurance, a computer system and handled personnel matters, bookkeeping, recruiting, so I was freed up of all of that.”

Curran said that is part of a trend statewide.

“We’ve entered into a phase now where physicians are employed by hospitals where they used to practice independently,” she said. “We have more of a corporate model and that has diminished the medical malpractice insurance issue.”

Because hospitals are often part of large chains, they can offer malpractice insurance to physicians at a lower cost than the open insurance market.

“Larger hospital chains can factor in the cost of business over a much larger pool,” said Curran. “It’s a matter of scale.”

Has it helped?

“It’s a different structure,” said Curran. “It’s become very segmented where you can get great specialized care, but finding someone to provide the overall care of the individual is harder.”

In the end, Curran said, “Wyoming still has a physician shortage.” 