

# Injury Schemes Seminar

Balancing Outcomes

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# A Relatively Risky Practice: Drivers of Common Law Payments

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# Separating underlying risk from environment

It is possible to isolate and measure the impact of legislative change

Yields insight into the true drivers of experience

The effect on different cohorts can be markedly different



# Claims-level industry dataset

Claims-level industry data not publically available in Australia

Have used comprehensive database of US medical malpractice claims

Covers different regimes before, during and after major reforms

By digging into the data, we can quantify the effects of various reform types

## National Practitioner Data Bank

- **Publically available** de-identified data
- Contains **all malpractice payments since 1992**
- Intended to track practitioners, so **strictly enforced**
- Only contains non-zero paid awards
- Analysis restricted to physicians, surgeons and GPs

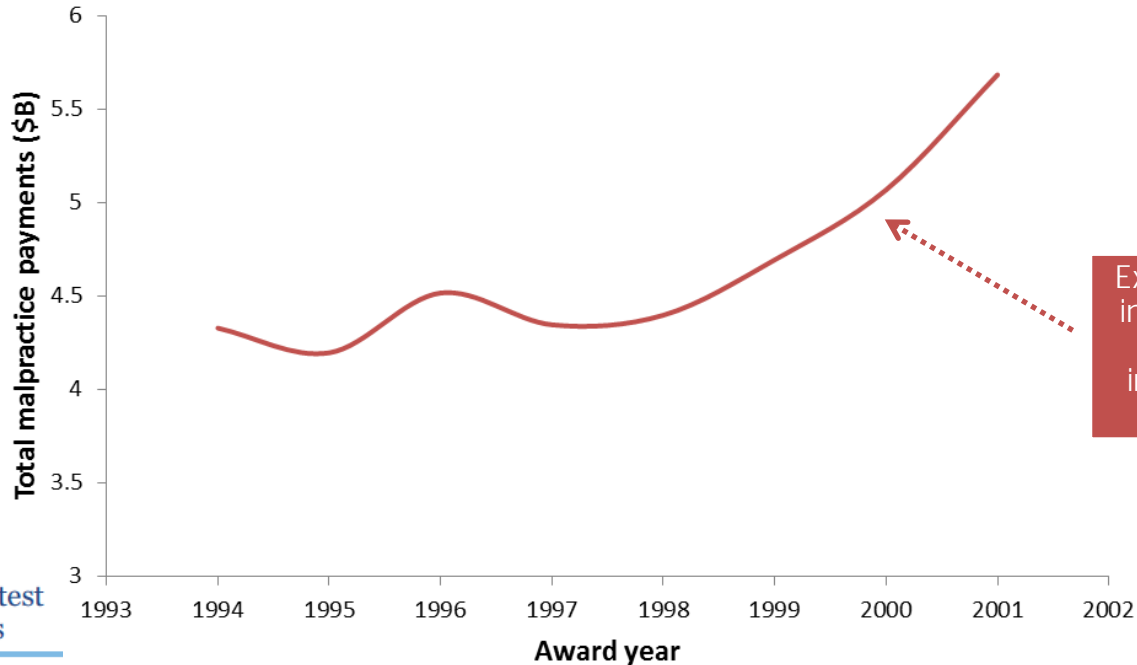
## Others...

- History of state tort reform changes
- Physician employment numbers
- Population estimates
- Insurer entries / exits



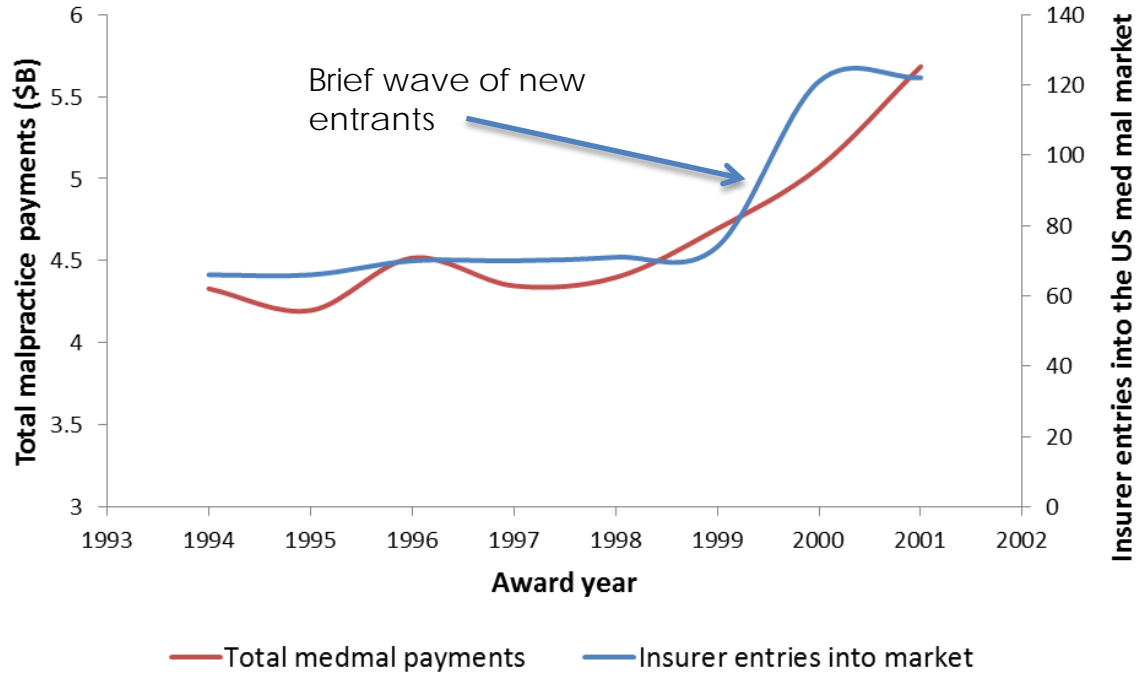
# Lead up to reforms

## US medical malpractice in 2001



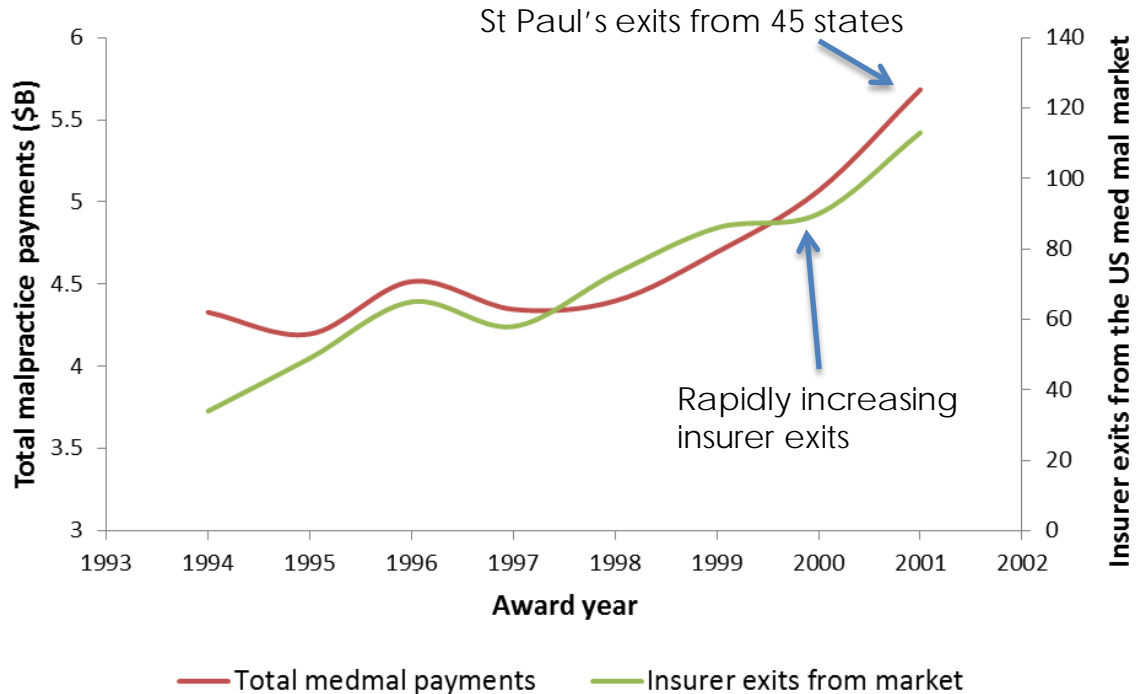


# Lead up to reforms





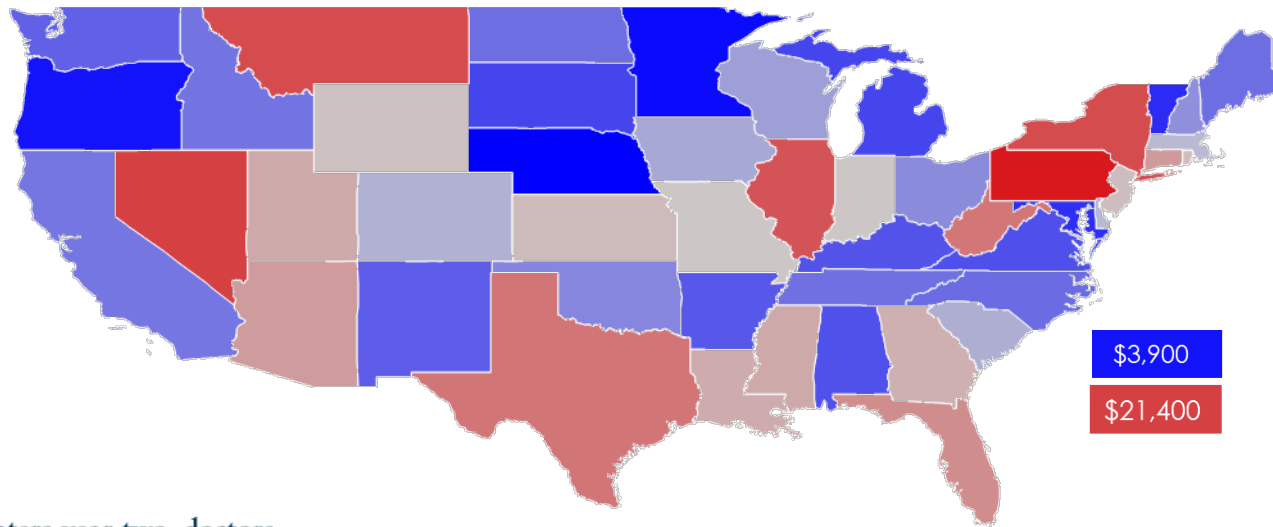
# Lead up to reforms





# Several states decided they had a crisis

Average award size per practitioner prior to 2003



**ACPINTERNIST**

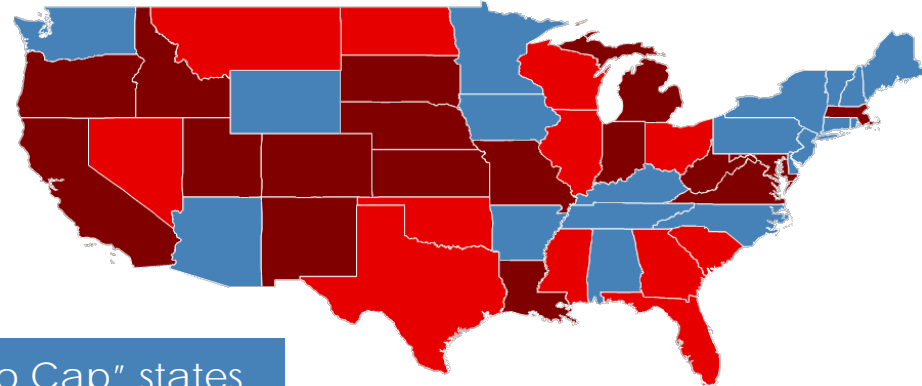
As the malpractice crisis enters year two, doctors and insurers flee some markets

*From the April ACP-ASIM Observer, copyright © 2002 by the American College of Physicians-American Society of Internal Medicine.*



# A variety of reforms were introduced

- **Changes to the settlement structure**
  - Damages caps
  - Minimum contribution for joint and several liability
  - Contingency fee limitations
- **Restrictions to court access**
  - Prevent venue shopping
  - Expert opinion requirements
- **Government subsidies**



"No Cap" states

"Old Cap" states

(In place prior to 2002)

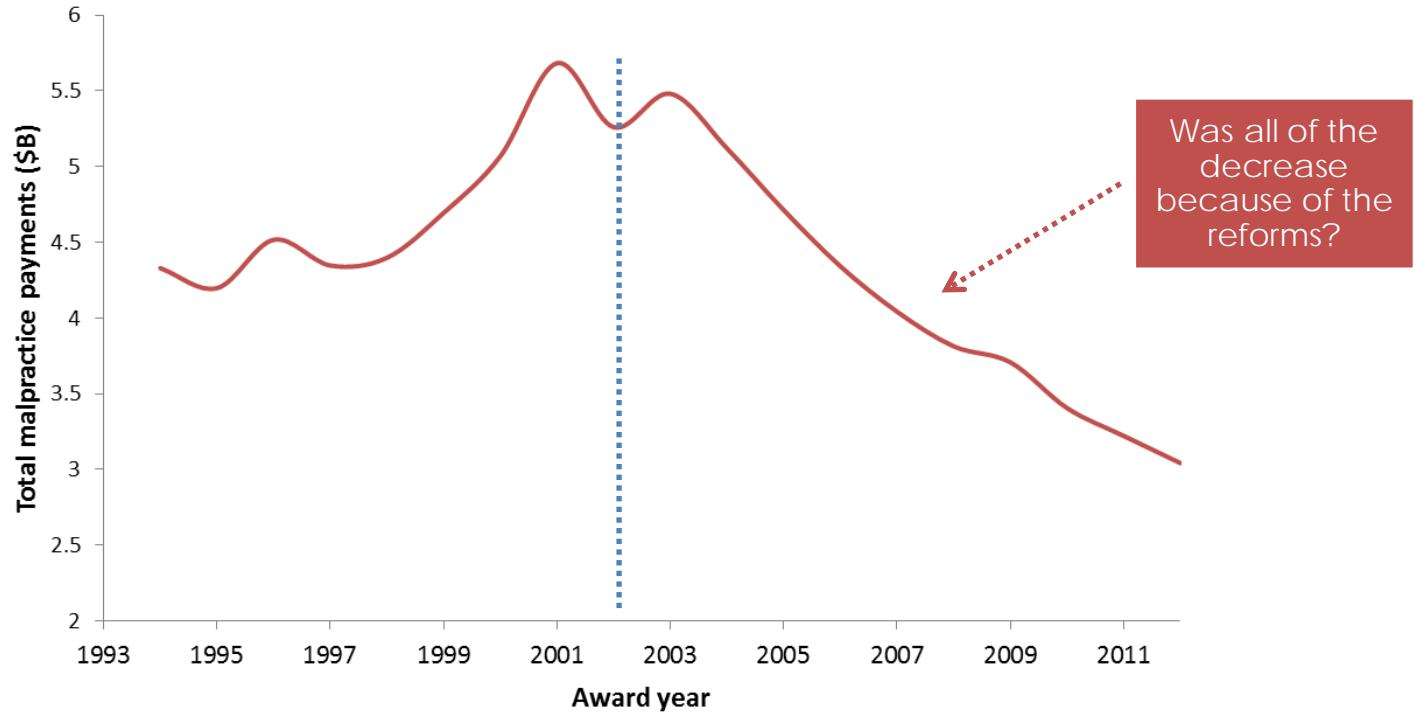
"New Cap" states

(Introduced after 2002)



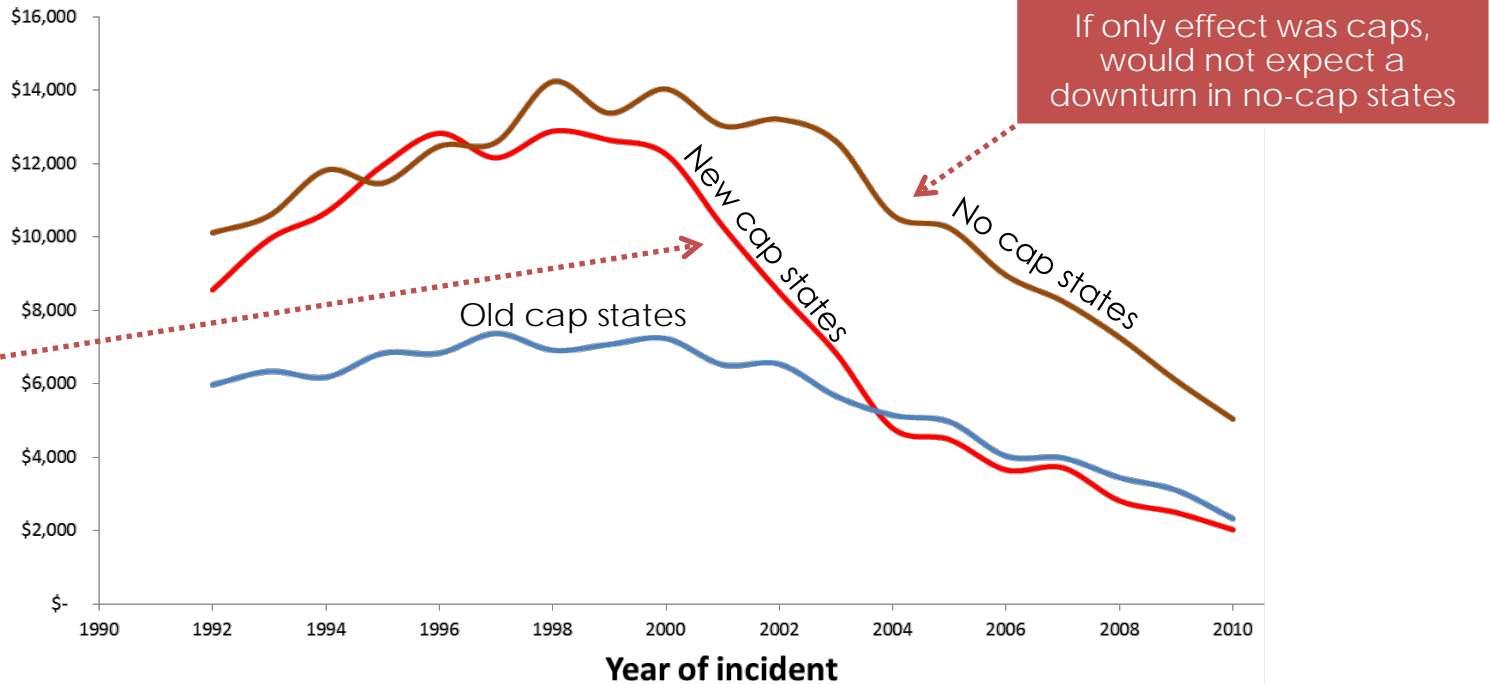


# The wave began to recede



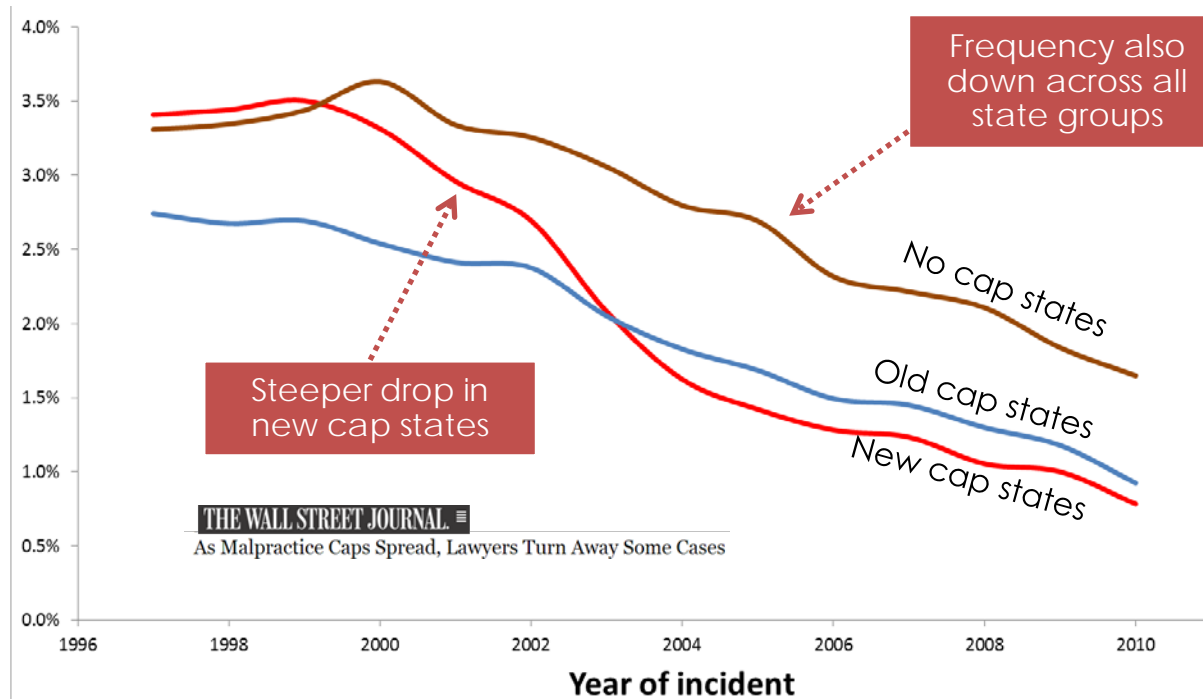


# Ultimate award size per practitioner





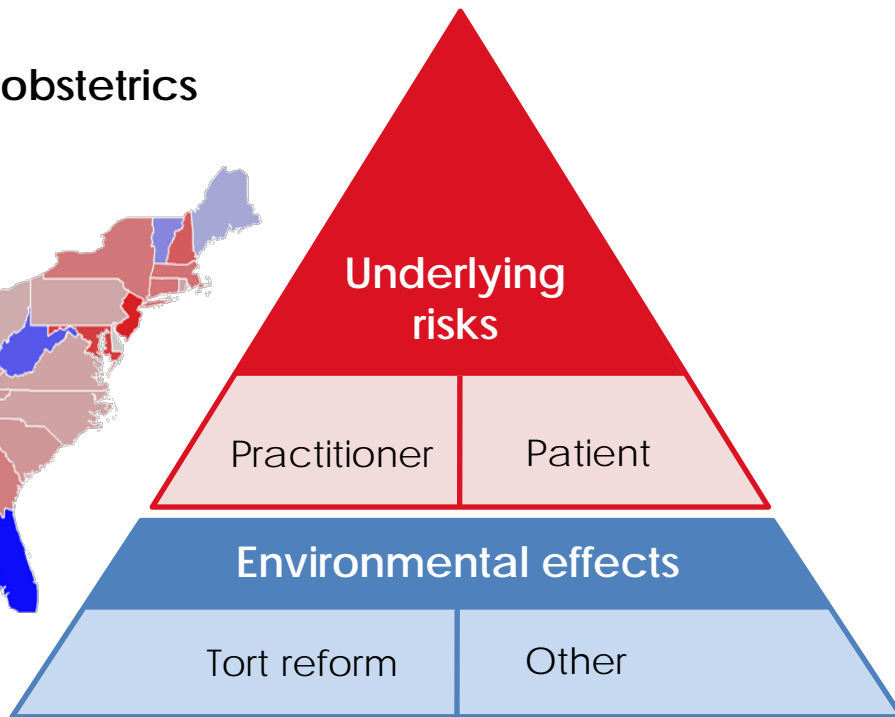
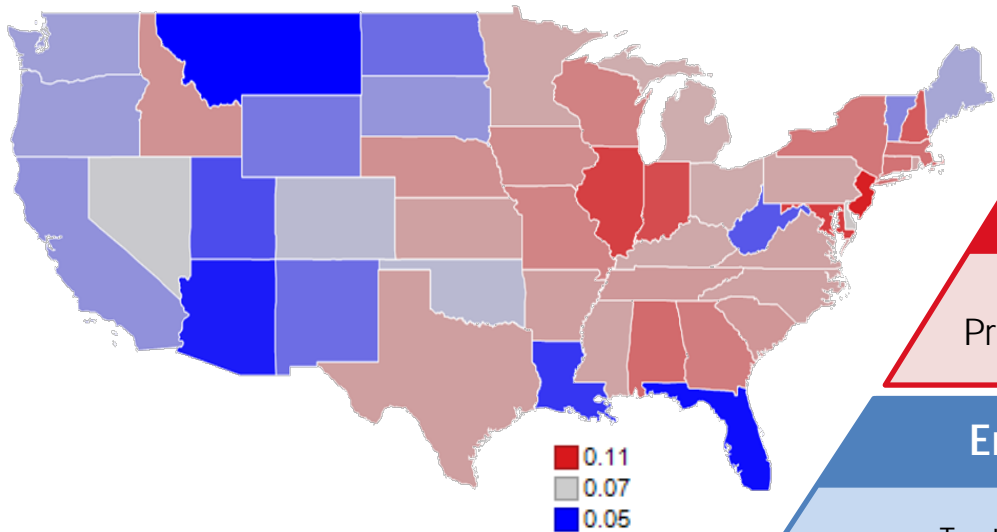
# Ultimate frequency of awards





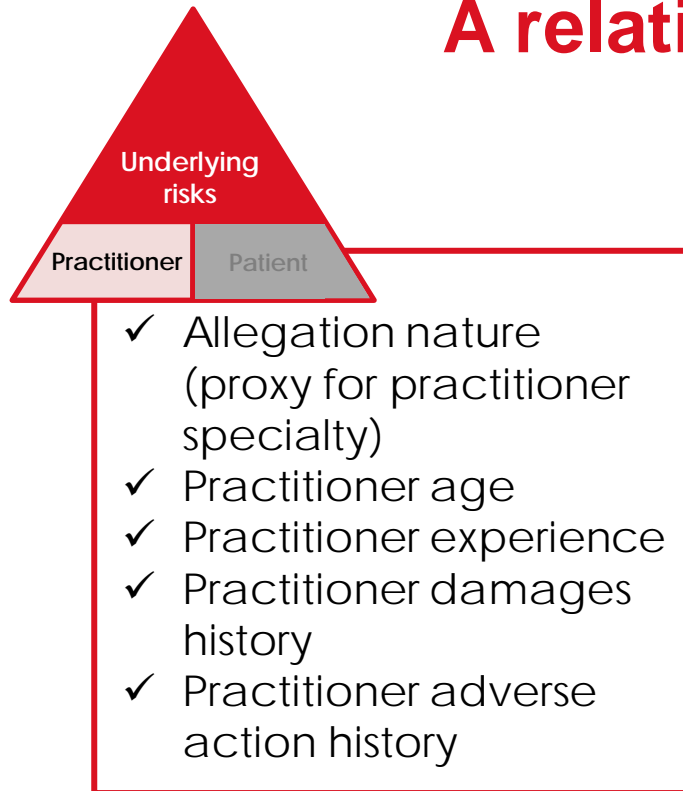
# Getting it under control

Proportion of claims related to obstetrics

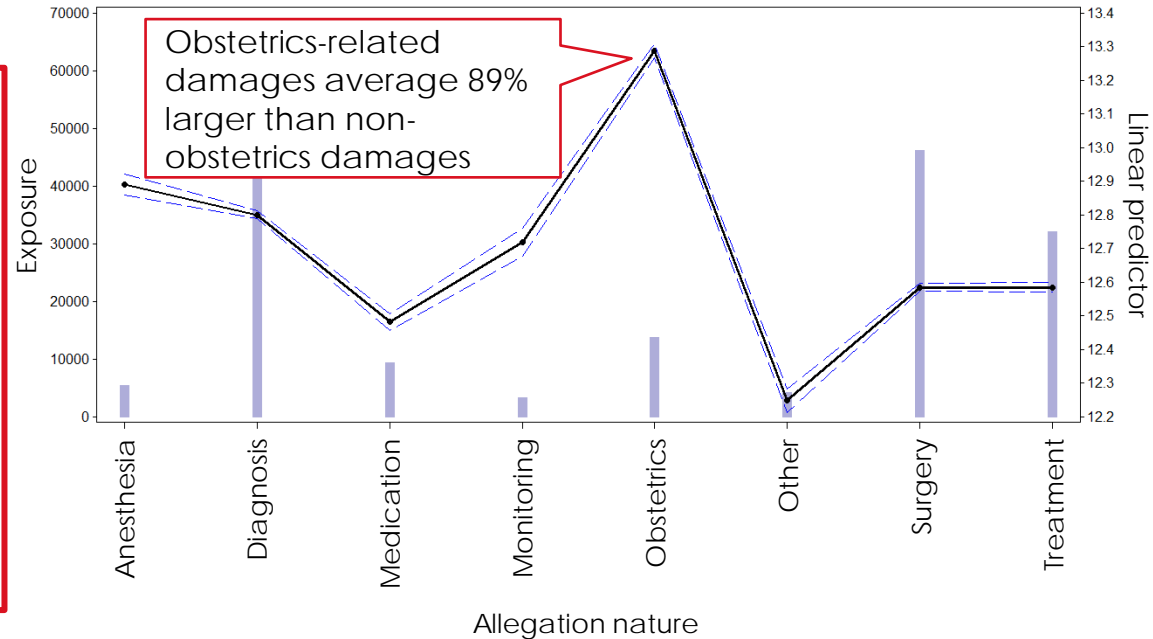




# A relatively risky practice



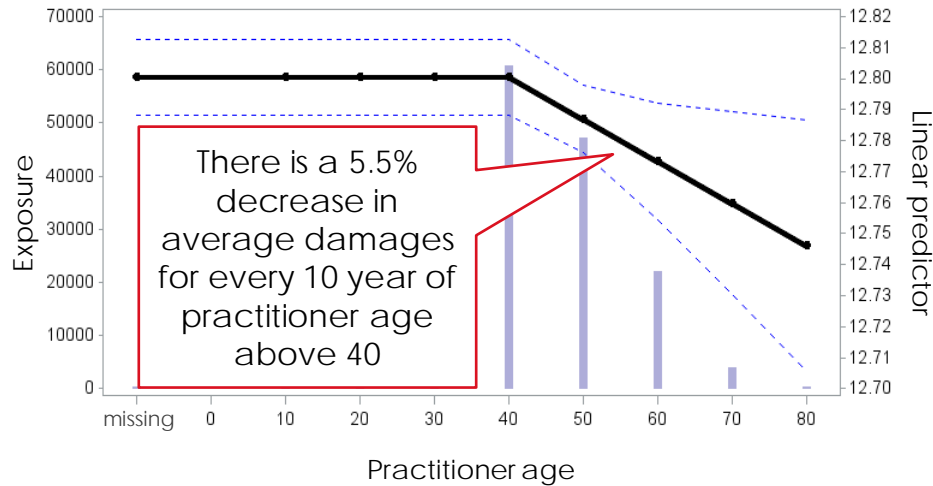
## Allegation nature relativities



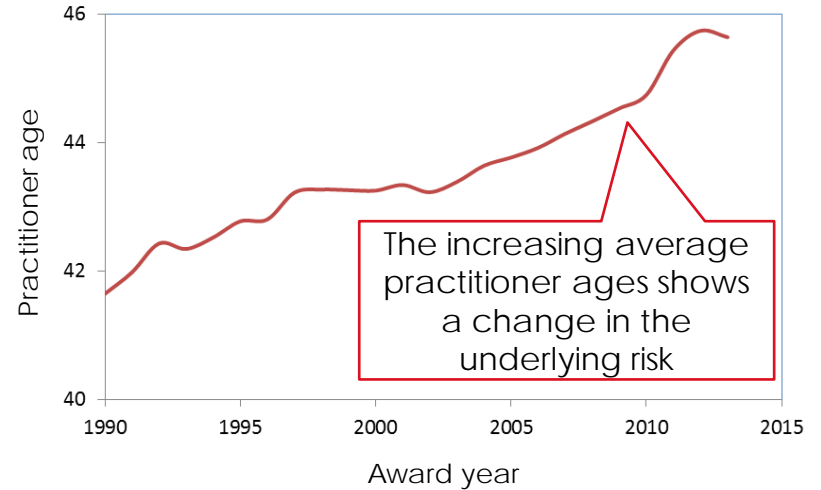


# A relatively risky practice

## Practitioner age relativities



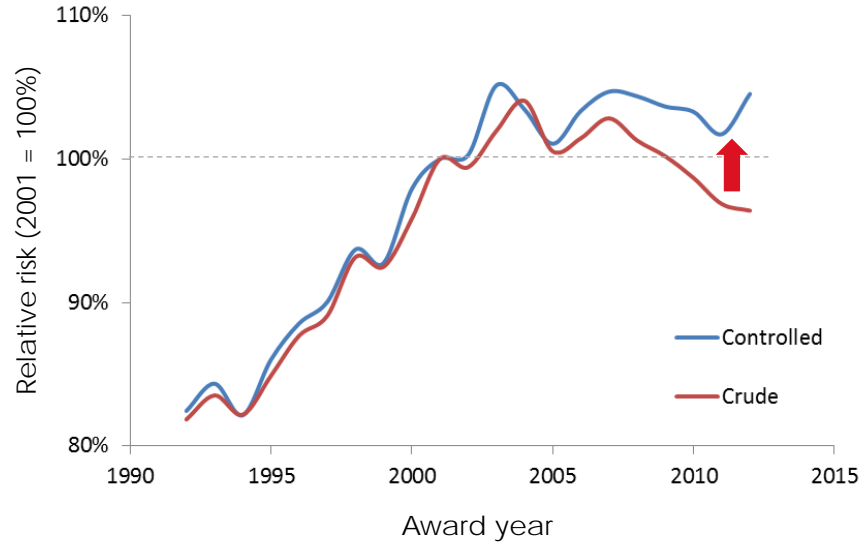
## Average practitioner age





# So how do the damages behave now?

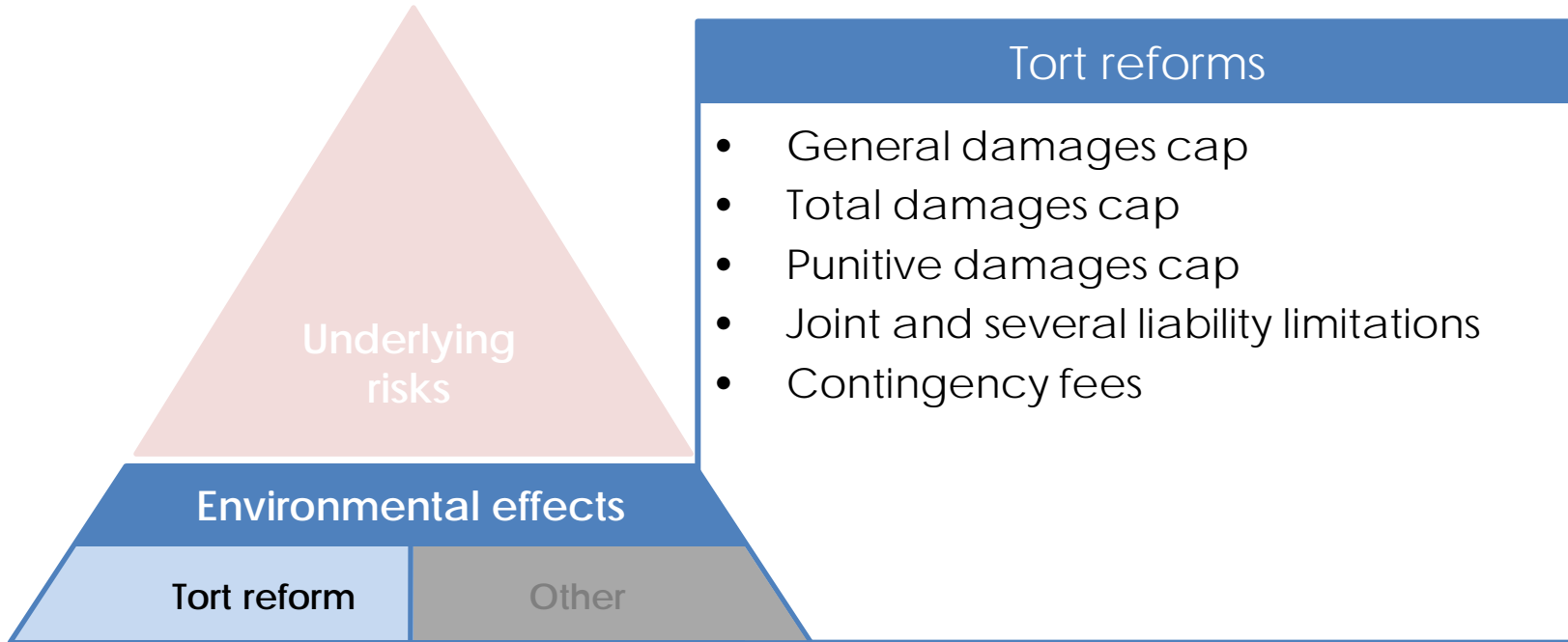
## Time relativities



Average damages awarded have been **flat** over the past 10 years after accounting for demographic shifts



# Getting it under control





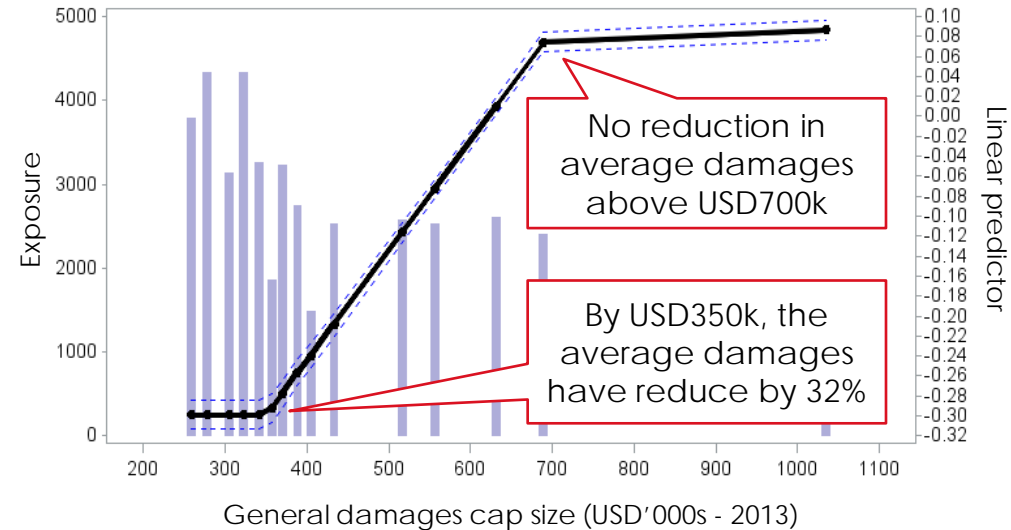


# The impact of tort reform

## Reform impacts

| Reform type                 | States affected | Effect on damages |
|-----------------------------|-----------------|-------------------|
| Total damage caps           | 6               | -16%              |
| Punitive damage caps        | 23              | -7%               |
| Joint and several liability | 39              | -15%              |
| Contingency fees            | 19              | +9%               |

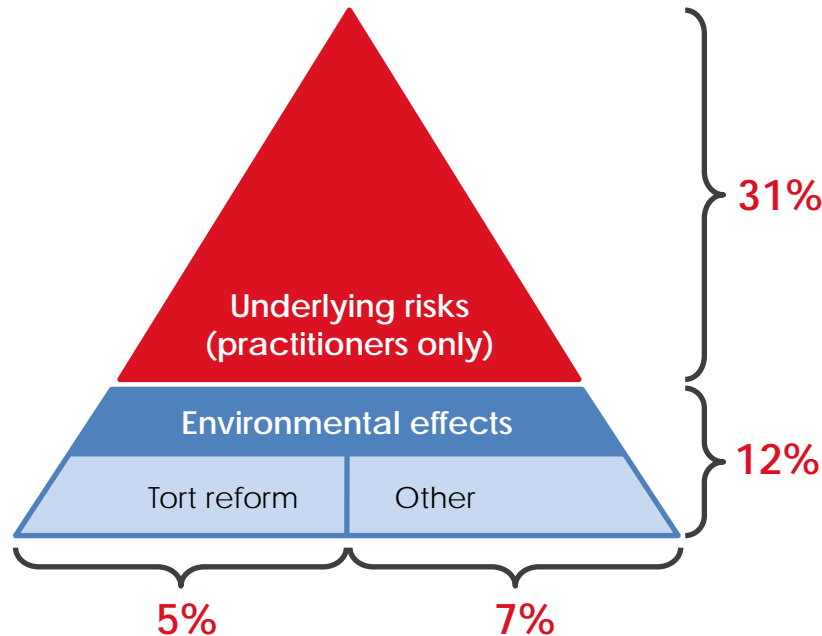
## General damages cap relativities





# Validating success

## Variation explained



- We compare the success of the tort reform model with a model saturated with state and time effects
- This is done on an independent dataset
- The tort reform model explains
  - 5% of the total variation
  - 45% of all environmental effects

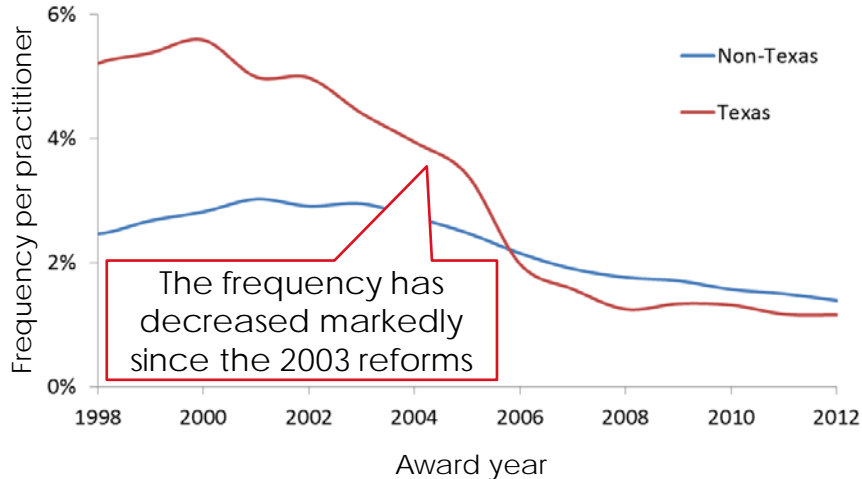


# Somebody got capped in Texas

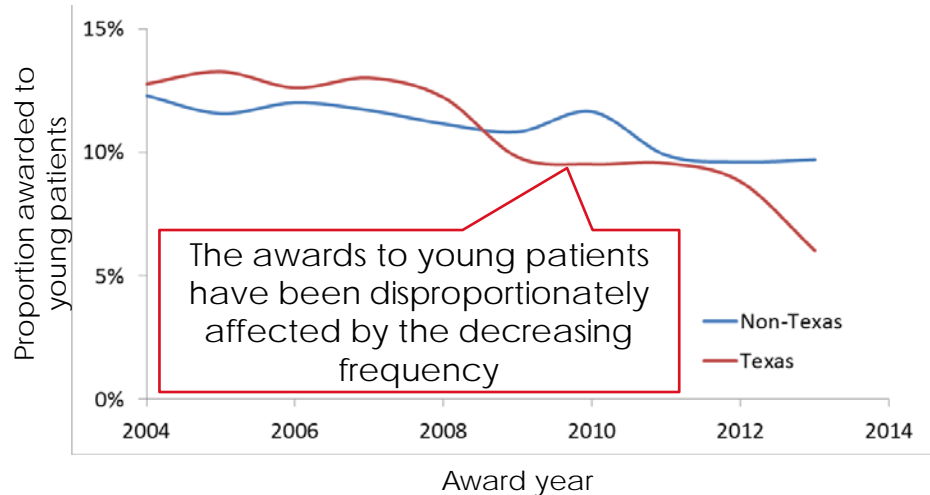


Texas introduced a stringently-enforced USD250k general damages cap in 2003

### Award frequency



### Awards to young patients

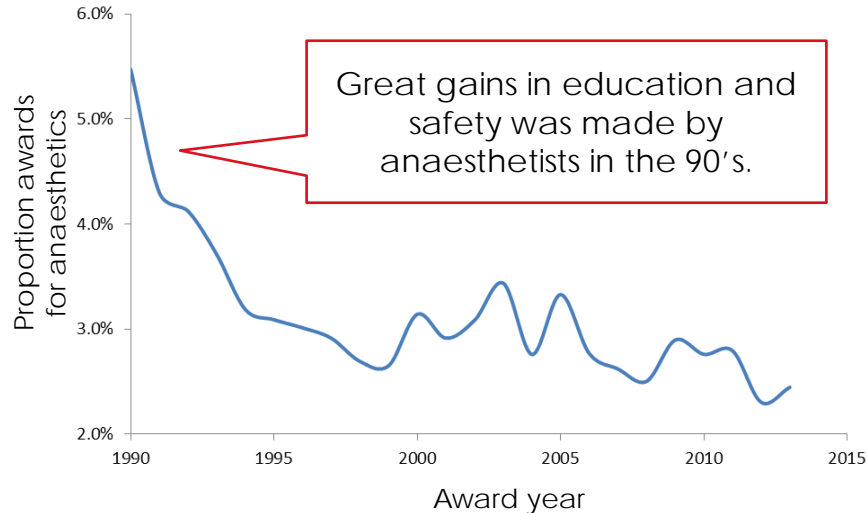




# Balancing outcomes

Physician and surgeon education and tight processes remain the most compelling driver of medical malpractice experience

## Awards for Anaesthetics



## Surgical Safety Checklist

### Before induction of anaesthesia

(with at least nurse and anaesthetist)

Has the patient confirmed his/her identity, site, procedure, and consent?

Yes

Is the site marked?

Yes

Not applicable

Is the anaesthesia machine and medication check complete?

Yes

### Before skin incision

(with nurse, anaesthetist and surgeon)

Confirm all team members have introduced themselves by name

Confirm the patient's name, procedure, and where the incision will be made

Has antibiotic prophylaxis been given in the last 60 minutes?

Yes

Not applicable

**Anticipated Critical Events**



# Separating underlying risk from environment

It is possible to isolate and measure the impact of legislative change

Insights are improved by using underlying risk information

Yields insight into the true drivers of experience

General damages caps can have a significant impact on the average damages awarded if set at a low enough level

The effect on different cohorts can be markedly different

Low caps may reduce the representation available to less affluent claimants