

Long Island OB-GYNs say insurance rates too high

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Dr. Scott Berlin is giving up the thing he has loved doing for the past 13 years: delivering babies. The obstetrician-gynecologist from Islip said he can't afford it.

Berlin has been pushed over the edge by a 14 percent increase in medical malpractice premiums announced July 2 by the state Insurance Department. Next year, he would be paying \$196,642 for insurance.

Because he is reimbursed less than \$3,000 from managed care companies for prenatal care and delivery, Berlin said he simply can't make ends meet. Two years ago, his father, Dr. Melvin Berlin, with whom he shares a practice, made the same decision - for the same reason.

"It's just become so that you can't do enough deliveries to make it worthwhile," Scott Berlin said. Instead, beginning in December, he will practice only gynecology and work part-time at Southside Hospital in Bay Shore and Lincoln Hospital in the Bronx. By no longer delivering babies, his insurance will go down 75 percent.

Although it's not clear how many other Long Island doctors will alter their practices, Berlin is not the only one feeling the pinch. "We love our profession, but it is killing us," said Dr. Bernardita Lazo, an obstetrician-gynecologist in Massapequa. She said she spends close to a third of her earnings on malpractice insurance.

Nassau, Suffolk top rates

Nassau and Suffolk, markedly litigious areas, have the highest combined medical malpractice insurance rates in the state - 22 percent higher than Manhattan, and 72 percent higher than Syracuse. And high-risk specialties such as obstetrics and neurosurgery have been suffering for a decade or so because of lower managed care reimbursements and rising costs, including malpractice coverage.

But consumer advocates and lawyers say malpractice insurance rates reflect physician errors, not a problem with the legal system.

State insurance superintendent Eric Dinallo, who is setting up a task force to study the issue, said rates were kept artificially low during the administration of former Gov. George Pataki. That has led to financial "deterioration" of the state's malpractice insurers, he said. "After years of failing to confront the fundamental problems ... we have inherited the worst of both worlds - physicians who cannot afford to practice medicine and insurers whose financial condition is rapidly eroding," Dinallo said in a news release announcing the hike. Gov. Eliot Spitzer has asked for a report from the task force by the end of the year.

The state is required to set medical malpractice insurance rates every year. However, in

past years, the rates have not matched insurers' projected losses as the awards from jury verdicts have risen, the state says. From 1996-2003, malpractice premiums increased 1 percent or less annually. For the next four years, rates rose less than 10 percent per year, much lower than what insurers asked for.

As a result, Medical Liability Mutual Insurance Company, the largest carrier with about 60 percent of the market, and Physicians Reciprocal Insurers, with more than 20 percent of the market, "now face the real prospect of insolvency," the insurance department said.

Edward Amsler, vice president of Medical Liability Mutual, said the company's \$1.4 billion surplus has dropped to \$200 million in the past few years in part because of "rate inadequacy" and increases in settlements and jury awards.

Whatever woes beset the doctors and insurance companies, the impact on consumers remains unclear. The malpractice insurance increases don't automatically mean higher medical costs, and overall, there is no shortage of physicians in the area. Figures from the Center for Health Workforce Studies at the University at Albany show that the number of OB-GYNs on Long Island grew 7 percent from 2001 to 2005. The percentage of doctors in surgical specialties, including neurosurgery, grew 13 percent. But doctors said if something isn't done quickly, patient care will suffer.

"Bottom line, we are concerned about a decreased number of doctors for patients," said Dr. David Kirshy, president of the Suffolk County Medical Society. A radiologist in Southampton, Kirshy said he has seen the number of doctors delivering babies on the East End fall from 15 to eight in the past five years, in many cases because of rising insurance rates.

'Defensive medicine'

Dr. David Chalif, chief of neurovascular neurosurgery at North Shore University Hospital in Manhasset, said many doctors are forced to practice "defensive medicine," ordering more tests to make sure they are not sued. While there is little hard data, experts agree with Chalif. In a May article in the American Medical Association's online ethics forum "Virtual Mentor," senior AMA research associate Lee Black said that "the debate over the extent and cost of its occurrence notwithstanding, there is enough anecdotal evidence that defensive medicine is being practiced."

Many doctors are calling for reform of what they see as a rapacious legal system, which they blame for high jury awards and settlements.

"It's a system run away with itself," said Dr. Robert Goldberg, president of the Medical Society of the State of New York. According to the medical society, the size of jury awards in New York has increased substantially: From 1999-2005, the median medical liability jury award went up about 30 percent - from \$1 million to \$1.3 million - when compared with 1997-2003.

And certain specialists - such as OB-GYNs - are especially vulnerable. Donna Williams,

executive director of the American College of Obstetrics and Gynecologists in New York State, said 44 percent of New York OB-GYNs have had four or more claims filed against them in their careers.

The national average for claims filed against OB-GYNs during their careers is 2.62, while in New York, it's 2.97.

Proposals to help

To bring malpractice insurance rates down, the society has proposed a \$250,000 cap on "pain and suffering" damage awards, a special medical court with no juries and/or a no-fault system for claims involving neurologically impaired infants. The neurologic cases account for 66 percent of all payouts from verdicts or settlements by OB-GYNs, according to the American College of Obstetrics and Gynecologists, which has called for similar changes.

But lawyers and advocates say the doctors are painting a distorted picture.

"There's only one reason insurance premiums are going up and that's because of damages by medical errors," said Joseph Awad, a Garden City attorney who is immediate past president of the New York State Trial Lawyers Association. He pointed to a 1999 landmark study by the National Academy of Science's Institute of Medicine, which reported that 98,000 people die each year because of medical errors.

Awad said most doctors have failed to make even simple changes - such as using a computer instead of handwriting prescriptions - to reduce medical errors. As for making less money, he said, "the reason is HMOs" - not runaway jury awards. He pointed out that malpractice cases composed just 2 percent of all civil cases filed in 2006.

The Center for Justice & Democracy, a national consumer group that tracks civil justice and insurance issues, agrees that the root cause is medical errors - not juries. In data released this month, the center found that since the mid-1980s, payouts in New York from settlements or verdicts have tracked the rate of inflation in medical costs.

"Tort law is not responsible for this," said Joanne Doroshov, the center's director, referring to the malpractice rate hike.

But that is little consolation to Dr. Jeffrey Wanerman, an obstetrician-gynecologist who practices in Amityville and West Islip. He said his income has been falling since 1995 and this latest malpractice rate increase may put him out of business unless he makes changes. He is thinking of moving to a smaller house and even considering another career.

He has little hope that a task force will solve the problem.

"It may make sense, but it's way, way too late," he said. "We need a radical solution."