

## **Overview of the 2015 American Congress of Obstetricians and Gynecologists' Survey on Professional Liability**

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The 2015 Survey on Professional Liability is the twelfth survey conducted since 1983 to assess the effects of professional liability litigation and related liability insurance issues on the practice of obstetrics and gynecology. The entire population of the American College of Obstetricians and Gynecologists (ACOG) Fellows and Junior Fellows in practice in the 50 states, the District of Columbia, and Puerto Rico were surveyed and, as was the case in 2012, the questionnaire was available exclusively online. Junior Fellows still in residency and fellowship (subspecialty) training, Founding Fellows, Life Fellows, members of the Armed Forces District, and members living outside the 50 states, the District of Columbia, and Puerto Rico were excluded from the survey.

The survey questionnaire was developed and tested with select ACOG Fellows and staff members. The questionnaire included segments on demographics, patient care, liability claims experience, and practice changes associated with the cost of liability insurance and the fear of litigation. In total, 32,425 Fellows and Junior Fellows in practice were surveyed. The final 4,294 completed surveys were coded and analyzed using Statistical Package for Social Sciences. Data analysis yielded frequency distributions and percentages for each of the survey questions. The final data represent only those 4,294 obstetrician-gynecologists (ob-gyns) who responded to the survey.

Similar to the 11 previous ACOG national surveys<sup>1</sup>, this survey addresses the impact of professional liability on the practice of obstetrics and gynecology. It provides continuing trend data about ob-gyns' professional liability experiences and changes in their practice patterns. For all purposes, except analysis of claims, the survey interval is January 1, 2012 through December 31, 2014. Claims themselves may have a duration which extends beyond the survey interval. Similar to the previous surveys, the 2015 survey includes data on professional liability claims in both obstetrics and gynecology, although these claims have been limited to those opened or closed or both between January 1, 2012 and December 31, 2014.

### **Physicians' Demographics**

A majority of the survey respondents were female (56.1%). The average age of survey respondents was 51.4 years. The average male age was higher than the average female age (56.8 years versus 47.1 years).

### **Practice Setting**

The 2015 Survey respondents were asked to identify their practice type. Most of respondents identified their practice as group practice (42.7%), followed by hospital employee (17.8%), solo practice (15.7%), and academic faculty (14.5%).

### **Patient Care**

Physicians were asked a series of questions about the type of patient care they currently provide. A total of 71.8% of respondents indicated that they are providing both obstetric and gynecologic care, which is slightly lower than the 2012 survey result of 72.5%. Gynecologic care only is provided by 19.5% of physicians and obstetric care only is provided by 7.9% of physicians. Of the 19.5% providing gynecologic

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<sup>1</sup> 1983, 1985, 1987, 1990, 1992, 1996, 1999, 2003, 2006, 2009, and 2012

care only, 83.5% had previously offered obstetric care. The average age at which these physicians stopped practicing obstetrics was 48 years, slightly younger than that of the 2012 survey (49 years).

Physicians were asked to identify the number of procedures, if any, they performed during an average month. The average number of vaginal deliveries reported was 8.3; cesarean deliveries, 3.5; surgical assists, 2.3; hysterectomies, 2.2; and vaginal births after cesarean deliveries (VBACs), 0.8. The average number of total procedures performed was 25.7, a decrease from the 34.7 reported in 2012.

### **Professional Liability Insurance**

Of all ob-gyns surveyed, 96.6% reported being covered by professional liability insurance, similar to the 2012 result of 96.5%. Of these insured physicians, 58.8% had claims-made coverage, 32.0% had occurrence coverage, and 9.2% had another unidentified type of insurance or were self-insured.

Of those respondents who reported not being covered by professional liability insurance, 38.8% were covered by a bond, escrow account, or other pledge of personal assets to cover defense costs of medical liability claims and adverse judgments. Physicians reported spending an average of 10.6% of their gross income on liability insurance premiums each year. This is a small decrease from the 12.4% reported in 2012.

### **Changes in Practice as a Result of the Affordability or Availability of Professional Liability Insurance**

The 2015 ACOG Survey on Professional Liability asked whether ob-gyns had made any practice changes since January 2012 because of the affordability or availability of professional liability insurance. Of the 4,294 responses to this question, 39.8% reported having made one or more changes to their practice. This is a considerable decrease from the 2012 survey which reported 51.1% of ob-gyns making changes. Compared with national data, more ob-gyns in District II (52.4%) and District XII (53.1%) and fewer ob-gyns in Districts VIII (34.2%) and XI (31.6%) reported such changes.

#### ***Obstetric Practice Changes***

Of the survey respondents who reported making changes to their obstetric practice because of insurance affordability or availability, 9.6% reported increasing the number of cesarean deliveries. Additionally, 13.6% reported decreasing the number of high-risk obstetric patients, 6.4% decreased the number of total deliveries, 8.4% stopped offering or performing VBACs, and 3.9% stopped practicing obstetrics altogether.

Overall, in relation to national averages, more respondents in Districts II and XII and fewer respondents in Districts I, VIII and XI reported adverse obstetric practice changes (See Table 1).

#### ***Gynecologic Practice Changes***

Of all ob-gyns who reported making changes in their gynecologic practice due to the affordability or availability of professional liability insurance, 12.0% decreased gynecologic surgical procedures. An additional 4.9% stopped performing major gynecologic surgery, and 1.4% stopped performing all surgery.

Compared to national averages, more respondents in Districts II and XII and fewer respondents in District XI reported negative changes in gynecologic practice (see Table 1).

#### ***Changes in Practice Economics***

Relative to changes in practice economics, 13.1% of all ob-gyn respondents reported they had reduced their salary by greater than 10%; 2.6% of respondents reported relocating their practice to another state

or to another jurisdiction within the same state; and 0.4% ceased carrying liability insurance coverage completely. Many more respondents in District XII (Florida) reported dropping all liability insurance coverage (6.7%).

### **Changes in Practice as a Result of the Risk or Fear of Professional Liability Claims or Litigation**

The 2015 ACOG Survey on Professional Liability asked whether ob-gyns had made any practice changes since January 2012 as a result of the risk or fear of professional liability claims or litigation. Of the 4,294 responses, 49.7% reported having made one or more changes to their practice. More ob-gyns in District XII (65.2%) and fewer ob-gyns in District VIII (42.3%) reported any changes relative to the national average.

#### ***Obstetric Practice Changes***

Of the survey respondents who reported making changes to their obstetric practice as a result of the risk or fear of professional liability claims or litigation, 23.8% decreased the number of high-risk obstetric patients, 17.0% reported increasing the number of cesarean deliveries, and 13.4% stopped offering and performing VBACs. An additional 9.3% decreased the number of total deliveries, and 5.1% stopped practicing obstetrics altogether.

More respondents in Districts II and XII and fewer respondents in Districts I and VIII reported adverse practice changes (See Table 2).

#### ***Gynecologic Practice Changes***

Of all ob-gyns who reported making changes in their gynecologic practice as a result of the risk or fear of professional liability claims or litigation, 19.7% decreased gynecologic surgical procedures, 7.7% stopped performing major gynecologic surgery, and 2.0% stopped performing all surgery.

Relative to national averages, more respondents in Districts II and XII and fewer respondents in District XI reported negative changes in gynecologic practice (see Table 2).

#### ***Changes in Practice Type and Location***

In relation to practice type and practice location, 10.7% of all ob-gyn respondents became an employee of a hospital, the government, or other institution and 3.6% relocated their practice to another state or to another jurisdiction within the same state.

### **Professional Liability Claims Experience**

At least one professional liability claim was filed against 73.6% of respondents during their professional careers, with an average of 2.59 claims per ob-gyn. Of these, 41.1% reported they experienced at least one professional liability claim filed against them as a result of care rendered during their residency training. The average age at which an ob-gyn experienced his or her first claim was 36.6 years old.

Respondents to the 2015 survey were asked a series of questions on claims opened and/or closed during the interval of January 1, 2012 through December 31, 2014. Of the 4,294 ob-gyn respondents, 40.5% reported one or more such claims: 28.0% had one claim, 9.3% had two claims, 2.4% had three claims, and 0.8% had four or more claims. Of these claims, 63.5% involved obstetric care, and 36.5% were related to gynecologic care.

#### ***Obstetric Claims***

The survey respondents reported on a total of 1,117 obstetric claims. Neurologically impaired infant claims were more likely to be the primary allegation of an obstetric claim (27.4%) than any other primary

allegation. Stillbirth or neonatal death was the second most frequent primary obstetric allegation (15.0%). Of the neurologically impaired infant claims, 55.2% were delivered by cesarean, 40.5% were delivered vaginally, and 2.0% were delivered by VBAC.

### ***Other Factors***

Respondents were asked to identify other primary factors that applied to their obstetric claims. Among the associated primary factors, 22.1% involved electronic fetal monitoring, 14.2% of cases involved shoulder dystocia/brachial plexus injury, 10.6% involved actions of ob-gyn residents, and 10.5% involved lack of communication among health care providers.

### ***Gynecologic Claims***

Survey respondents reported on a total of 641 gynecologic claims. "Patient injury-major" claims were more likely to be the primary allegation of gynecologic claims (27.9%) than any other allegation. "Patient injury-minor" was the second most frequent primary allegation (23.4%) followed by "delay in or failure to diagnose" (21.5%). Of the claims involving "delay in or failure to diagnose," 59.4% involved a failure to diagnose cancer. Of these, breast cancer (39.0%) was the most frequent type of cancer; cervical, uterine, and other cancers were second at a frequency of 15.9% each; followed by ovarian and fallopian tube cancer, 12.2% and 1.2%, respectively.

### ***Other Factors***

Respondents were asked to identify other primary factors that applied to their gynecologic claims. Among the associated primary factors, 42.0% cited "surgical complications" as a general category. Two specifically identified areas within this category were claims arising from hysterectomies (27.0%) and laparoscopic procedures (20.3%).

### ***Claim Outcomes***

Of the 1,085 respondents who indicated how their claims were closed, 47.8% were reported dropped or settled without any payment on behalf of the ob-gyn. Outcomes included those dropped by the plaintiff (33.5%), dismissed by the court (10.4%), and settled without payment on behalf of the ob-gyn (3.9%). A total of 35.9% of respondents reported a settlement that involved payment on behalf of the ob-gyn. The remaining claims were resolved through either jury or court verdict (11.2%) or arbitration/another form of alternative dispute resolution (5.0%). Of those, 33.5% resulted in an indemnity payment on behalf of the ob-gyn.

The average for all paid claims was \$486,066. The average payment for claims involving a neurologically impaired infant was \$1,030,151. Other average payments for obstetric claims include "other infant injury-major," \$493,691, and "stillbirth/neonatal death," \$308,107. Average payments for gynecologic claims include "failure to diagnose breast cancer," \$420,667, and "patient injury-major," \$424,838.

### **Conclusion**

More than one-third (39.8%) of ob-gyn survey respondents have made one or more changes to their practice as a result of the affordability or availability or both of professional liability insurance, and almost one half (49.7%) have made one or more changes to their practice as a result of the risk or fear of professional liability claims or litigation. In both instances, ob-gyns significantly decreased the number of high-risk obstetric patients (13.6% and 23.8% respectively) and stopped performing or offering VBACs (8.4% and 13.4% respectively). In both instances, approximately 4% and 5% of respondents stopped practicing obstetrics altogether. The average age at which physicians stopped practicing obstetrics was 48 years, at one time the near midpoint of an ob-gyn's professional career. In sum, the current medical-legal

environment continues to deprive women of all ages, especially pregnant women, of their most educated and experienced women's health care physicians. Quality health care for women is negatively affected through a diminution of obstetric services, a reduction in gynecologic surgery, and the widespread practice of defensive medicine.

**Table 1. Obstetric and Gynecologic Practice Changes as a Result of the Affordability or Availability of Professional Liability Insurance**

| Practice Changes                                 | National Rate (%) | Greater than National Rate |          | Less than National Rate |          |
|--|-------------------|----------------------------|----------|-------------------------|----------|
|  |                   | District*                  | Rate (%) | District*               | Rate (%) |
| Decreased number of high-risk obstetric patients | 13.6              | XII                        | 23.2     | I, VIII                 | 8.5      |
|  |                   | II                         | 22.5     | XI                      | 9.2      |
| Increased number of cesarean deliveries          | 9.6               | II                         | 16.5     | VIII                    | 4.5      |
|  |                   | XII                        | 14.7     | XI                      | 6.1      |
| Stopped offering and performing VBAC             | 8.4               | XII                        | 18.3     | VIII                    | 3.4      |
|  |                   |                            |          | I                       | 4.1      |
| Decreased number of total deliveries             | 6.4               | II                         | 11.4     | VIII                    | 4.0      |
|  |                   |                            |          | XI                      | 4.8      |
| Stopped practicing obstetrics                    | 3.9               | XII                        | 9.4      | VIII                    | 2.0      |
| Decreased gynecologic surgical procedures        | 12.0              | II                         | 21.9     | XI                      | 3.7      |
|  |                   | XII                        | 18.3     |                         |          |
| Stopped performing major gynecologic surgery     | 4.9               | II                         | 11.4     | XI                      | 2.4      |
|  |                   |                            |          | VII                     | 2.5      |
| Stopped performing all surgery                   | 1.4               | I                          | 3.7      | VI                      | 0.5      |
|  |                   | XII                        | 3.6      |                         |          |

**Table 2. Obstetric and Gynecologic Practice Changes as a Result of the Risk or Fear of Professional Liability Claims or Litigation**

| Practice Changes                                 | National Rate (%) | Greater than National Rate |          | Less than National Rate |          |
|--|-------------------|----------------------------|----------|-------------------------|----------|
|  |                   | District*                  | Rate (%) | District*               | Rate (%) |
| Decreased number of high-risk obstetric patients | 23.8              | II                         | 33.8     | VIII                    | 16.3     |
|  |                   | XII                        | 32.1     | I                       | 17.3     |
| Increased number of cesarean deliveries          | 17.0              | II                         | 23.7     | VIII                    | 9.8      |
|  |                   | XII                        | 21.0     |                         |          |
| Stopped offering and performing VBAC             | 13.4              | XII                        | 29.0     | I                       | 6.4      |
|  |                   |                            |          | VIII                    | 6.7      |
| Decreased number of total deliveries             | 9.3               | II                         | 12.6     | IV, VIII                | 6.5      |
|  |                   | VI                         | 12.3     |                         |          |
| Stopped practicing obstetrics                    | 5.1               | XII                        | 10.7     | VII, VIII               | 3.4      |
| Decreased gynecologic surgical procedures        | 19.7              | XII                        | 28.6     | XI                      | 9.9      |
|  |                   | II                         | 27.2     |                         |          |
| Stopped performing major gynecologic surgery     | 7.7               | II                         | 17.1     | VII                     | 4.1      |
| Stopped performing all surgery                   | 2.0               | I                          | 4.1      | XI                      | 0.7      |
|  |                   | XII                        | 4.0      |                         |          |

**\*ACOG Districts:**

District I: CT, ME, MA, NH, RI, and VT  
 District II: NY  
 District III: DE, NJ, and PA  
 District IV: DC, GA, MD, NC, PR, SC, VA, and WV  
 District V: IN, KY, MI, and OH

District VI: IL, IA, MN, NE, ND, SD, and WI  
 District VII: AL, AR, KS, LA, MS, MO, OK, and TN  
 District VIII: AK, AZ, CO, HI, ID, MT, NV, NM, OR, UT, WA, and WY  
 District IX: CA  
 District XI: TX  
 District XII: FL