

Testimony of Arthur Towers in Support of HB 4136
House Consumer Protection & Government Effectiveness Committee
February 2, 2016

Many of the cases involving death caused by negligence happen outside the medical field. Deaths caused by defective products, negligent conduct on the roads, and other types of negligence are impacted by the arbitrary cap on compensation.

Oregon is a laboratory for the impact of the outright elimination of caps on non-economic damages. The State Supreme Court in 1999 ruled that this compensation in injury cases could not be limited.

The Number of Doctors in Oregon Grew Rapidly After
Caps on Compensation for Injury Were Removed

Looking at the relative number of physicians from 1999 to the present, we can see what has happened after the complete removal of the injury caps in Oregon.

This is instructive since there are many more injury cases than death cases, and since the proposal before the House Consumer Protection Committee is simply an increase in the cap as opposed to an outright removal.

	# of licensed MDs in Oregon	Oregon population
2000	7,848	3,421,399
2015	12,447	4,028,977
% increase	47%	18%
Source: Oregon Medical Board (formerly Board of Medical Examiners)		

According to statistics by county from 2004 forward from the Oregon Medical Board (formerly the Oregon Board of Medical Examiners), **the number of MDs in 33 of the 36 counties increased by more than 23% over the last 11 years.** As the attached chart indicates, many of our state's rural counties saw large increases (Grant, Harney, Jefferson, Polk, and Tillamook all saw the number of doctors more than double.). The three outliers were Coos with "only" a 16% increase, Lake which went from 8 doctors to 6, and Sherman which lost its only doctor. The statistics are pretty similar for Osteopaths, Physician Assistants, and other licensees covered by the medical board.

For doctors, there are many factors that go into the decision about where to locate one's family and set up a business. The removal of the compensation cap on injuries in Oregon has not caused a decrease in physicians statewide or in rural Oregon.

We don't want to overstate cause and effect nor do we want to minimize the importance of access to medical care. But in our analysis of the numbers, we cannot see any indication that an outright removal of the injury cap has kept doctors out of Oregon, nor would a simple increase in the cap on compensation for grieving families.

2012 State Study on Re-imposition of Compensation Caps in Injury Cases

In 2011, the state commissioned a study of this issue through the passage of the HB 3650, the health care transformation legislation that established Coordinated Care Organizations. That 2012 study touched on a number of topics including the re-imposition of caps on compensation from injuries caused by medical negligence. Pages 13-32 of the study tackle the potential impact if the injury cap were to be reinstated (which would have to be done via Constitutional Amendment). Pages 31-32 provide a summary of that analysis. The benefits seem modest. The Oregon-specific analysis suggests an increase of 1/5 of 1% in the number of physicians. The Oregon-specific analysis suggested a decrease in malpractice premiums but felt that the national estimate would “likely overstate the actual effect in Oregon.”

Since the number of death cases is smaller than the number of injury cases, and since the proposal is to increase not repeal the cap, the impact would seem to be pretty small on malpractice premiums and availability of medical care.

Comparisons to Other States: Data Indicate More Physicians and Lower Premiums

Information from the American Medical Association’s “Physicians Characteristics and Distribution 2015” reveals that -- based on the 2010 census -- Oregon has 357 physicians per 100,000 residents. States with caps have 301 physicians per 100,000 residents.

Oregon malpractice premiums are lower than in states with compensation caps, according to October 2015 information from the Medical Liability Monitor. Across internists, general surgeons, and OB/GYNs, premiums in states with compensation caps are 26% higher. Please see the specifics in the attachments.

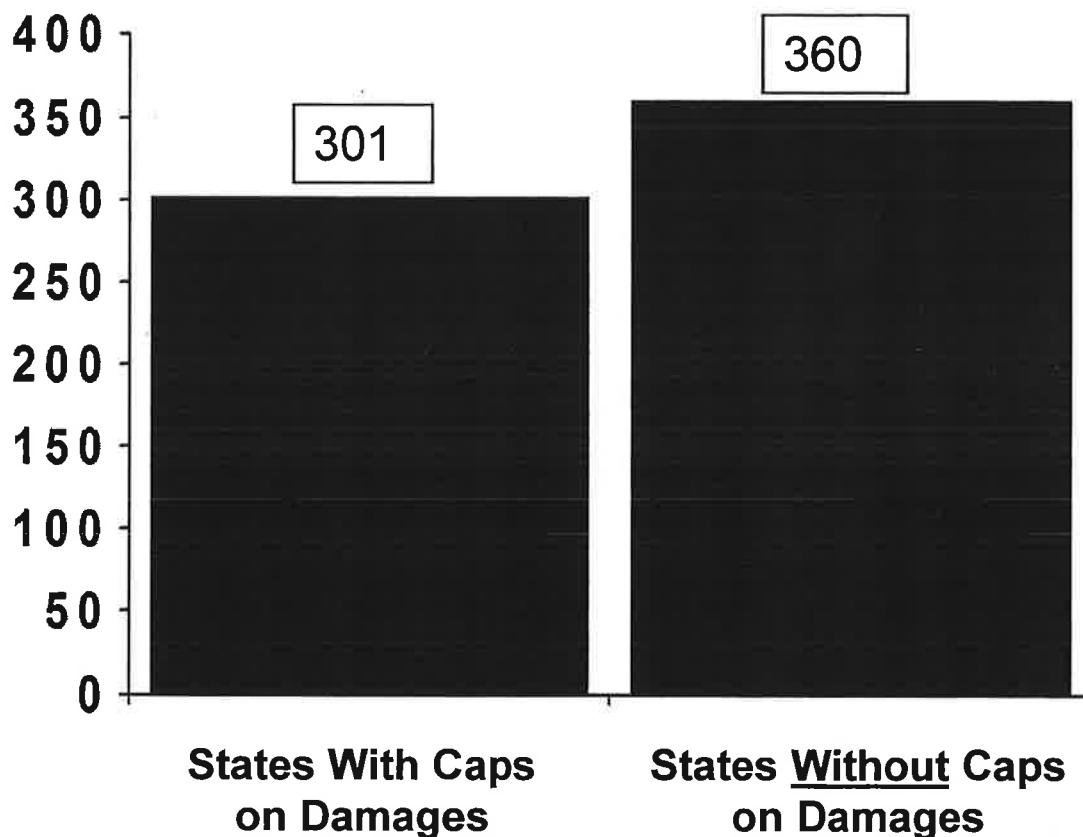
1/3 of All Medical Malpractice Cases are Linked to 1% of Physicians (New England Journal of Medicine, 2016)

Wrongful deaths occur in a wide variety of settings – not just within the medical industry. That said, the latest edition of the New England Journal of Medicine reveals that a tiny percentage of doctors are responsible for an extraordinarily large proportion of medical malpractice tragedies. There has to be a better way to tackle the problem created by this 1% of doctors than to limit access to justice for grieving families.

	MDs by County		Increase
	2015	2004	
Baker	70	19	268%
Benton	306	194	58%
Clackamas	1,045	630	66%
Clatsop	107	55	95%
Columbia	24	16	50%
Coos	146	126	16%
Crook	23	14	64%
Curry	39	26	50%
Deschutes	546	312	75%
Douglas	218	176	24%
Gilliam	1	-	NA
Grant	11	4	175%
Harney	20	6	233%
Hood River	96	54	78%
Jackson	645	431	50%
Jefferson	32	13	146%
Josephine	168	113	49%
Klamath	159	125	27%
Lake	6	8	-25%
Lane	954	719	33%
Lincoln	74	56	32%
Linn	171	130	32%
Malheur	106	58	83%
Marion	817	554	47%
Morrow	7	5	40%
Multnomah	4,373	3,563	23%
Polk	70	28	150%
Sherman	-	1	-100%
Tillamook	58	27	115%
Umatilla	184	95	94%
Union	76	46	65%
Wallowa	16	7	129%
Wasco	101	54	87%
Washington	1,677	871	93%
Wheeler	2	-	NA
Yamhill	201	122	65%
None/NA		500	-100%
	12,549	9,158	37%

Are Doctors Really Closing Their Doors?

Number of Physicians Per 100,000 Population: 2013



In 2013, there were 20% more physicians per 100,000 population in states without caps than there were in states with caps.

A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases. Physician numbers from "Physician Characteristics and Distribution 2015," American Medical Association (AMA).



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TREATMENTS

A Few Doctors Account For Outsize Share Of Malpractice Claims

Updated January 29, 2016 · 5:34 PM ET

Published January 28, 2016 · 10:59 AM ET

LISA ALIFERIS

Just 1 percent of doctors are linked to nearly one-third of all paid malpractice claims, an analysis by researchers at Stanford finds. And the physicians who account for an outsize share of the claims have a set of distinctive characteristics.

The researchers said that the claim-prone physicians were disproportionately male (82 percent) and were older, rather than younger. More than half the claims were by doctors in four areas: internal medicine, obstetrics and gynecology, general surgery and general practice/family medicine.

But the biggest predictor of all for claim-prone doctors was whether they'd had a prior claim.

"Compared to physicians with only one previous claim," Studdert said, "a physician who has had three previous claims is three times as likely to have another one," said lead author David Studdert, a professor of medicine and law at Stanford. "A physician who has had four is four times more likely and so on."

In the study, published in the latest issue of the *New England Journal of Medicine*, researchers looked at more than 66,000 malpractice claims paid against 54,000 physicians nationwide between 2005 and 2014.

The researchers focused on paid, rather than unpaid, claims, because those are markers for substandard care. About 1 in 3 malpractice claims is ultimately paid. In the claims the researchers reviewed, one-third resulted in patient death and another 54 percent in serious injury.

The study noted that only 6 percent of doctors had any paid claims over the 10-year period studied.

In the study the researchers are clear that they have identified risk factors but that it's up to health care systems, hospital and malpractice insurers to identify and work with these doctors. "This problem of physicians who accumulate multiple claims and continue to practice ... is a significant policy problem and one that we need to address," Studert said.

But he and his colleagues noted that few of these organizations do. "With notable exceptions," the researchers write, "fewer still systematically identify and intervene with practitioners who are at high risk for future claims."

The authors of the paper call for further investigation into predicting which doctors are at risk and then implementing interventions such as training and supervision to improve their quality of care.

In California, patients can look up their doctor on the state's medical board website. Depending on the type of malpractice settlement, it will be part of the public record if the doctor has had either three or four settlements within a five-year period. Other information is also available, including whether your doctor has had a felony conviction or is on probation. Patients can use the website simply to determine that a doctor's license is valid.

But advocates like Lisa McGiffert, with Consumers Union's Safe Patient Project, say that's not enough. They have been pushing the Medical Board of California to require that doctors placed on probation notify their patients. The board has resisted taking this step.

While probation and multiple malpractice claims are not necessarily linked, McGiffert says she hopes doctors will pay attention to this study. "I have this sense that doctors as a group protect other doctors who are on probation or get in trouble because they think it might happen to them," she said. But since this study demonstrates that a small percentage of doctors are responsible for a disproportionate number of claims, it should be reassuring to physicians.

"This study is one more piece of information that regulators can use in determining their strategy in addressing the small percentage of doctors who have problems in their treatment of patients," McGiffert said.

A version of this story first appeared on KQED's State of Health blog.

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LICENSING STATISTICS BY TYPE AND STATUS

As of March 4, 2004

PROFESSION	ACTIVE (Permanent)	INACTIVE	EMERITUS	EMERITUS INACTIVE	LOCUM TENENS	LIMITED LICENSE	TOTAL
Medical (MD)	8,579	1,626	506	67	228	577	11,583
Osteopathy (DO)	486	98	14	5	20	20	643
Acupuncture (LAc)	545	49	0	0	6	47	647
Podiatry (DPM)	135	27	1	1	1	9	174
Physician Assistant (PA)	513	45	0	0	0	16	574
TOTALS	10,258	1,845	521	73	255	669	13,621

LICENSING STATISTICS BY OREGON COUNTY MDs and DOs (ACTIVE ONLY)

As of March 4, 2004

COUNTY (Seat)	MDs	DOs
BAKER (Baker City)	19	4
BENTON (Corvallis)	194	14
CLACKAMAS (Oregon City)	630	66
CLATSOP (Astoria)	55	2
COLUMBIA (St. Helens)	16	1
COOS (Coquille)	126	4
CROOK (Prineville)	14	4
CURRY (Gold Beach)	26	5
DESCHUTES (Bend)	312	16
DOUGLAS (Roseburg)	176	22
GILLIAM (Condon)	0	0
GRANT (Canyon City)	4	1

(continued on page 5)

Licensing Statistics By Oregon County (continued from page 4)

HARNEY (Burns)	6	0
HOOD RIVER (Hood River)	54	0
JEFFERSON (Madras)	13	1
JACKSON (Medford)	431	34
JOSEPHINE (Grants Pass)	113	15
KLAMATH (Klamath Falls)	125	5
LINCOLN (Newport)	56	9
LINN (Albany)	130	6
LAKE (Lakeview)	8	1
LANE (Eugene)	719	25
MALHEUR (Vale)	58	5
MORROW (Heppner)	5	0
MARION (Salem)	554	20
MULTNOMAH (Portland)	3,563	147
POLK (Dallas)	28	9
SHERMAN (Moro)	1	0
TILLAMOOK (Tillamook)	27	1
UMATILLA (Pendleton)	95	15
UNION (La Grande)	46	2
WASHINGTON (Hillsboro)	871	31
WALLOWA (Enterprise)	7	1
WASCO (The Dalles)	54	5
WHEELER (Fossil)	0	0
YAMHILL (McMinnville)	122	7
NONE / NOT APPLICABLE	500	28

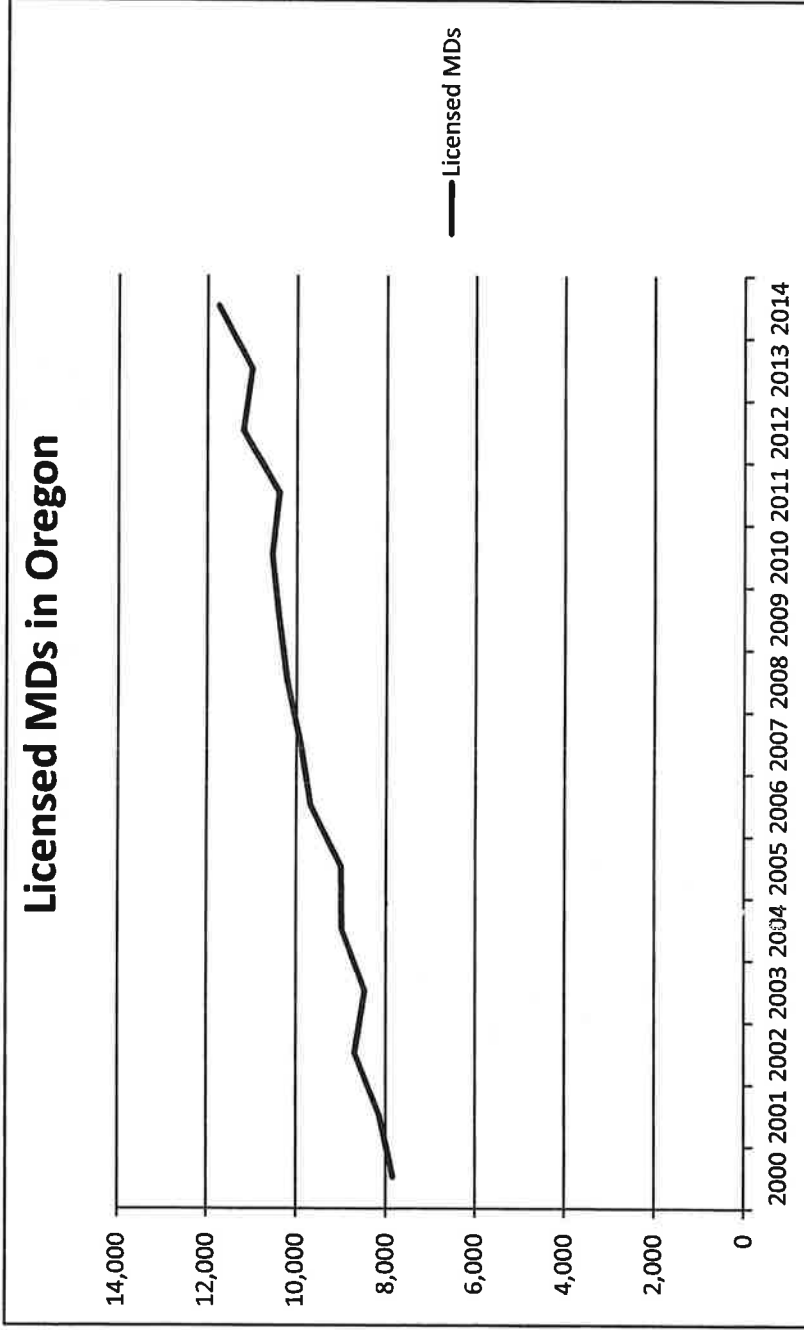
LICENSING STATISTICS BY SPECIALTY WILL APPEAR IN THE SUMMER 2004 ISSUE.

LICENSEES BY COUNTY - *As of May 1, 2015*

The mission of the Oregon Medical Board is to protect the health, safety and wellbeing of Oregon citizens by regulating the practice of medicine in a manner that promotes access to quality care. To more closely reflect the current status of access to quality medical care in Oregon, this table is being reprinted. The revised data includes current practice addresses reported by licensees who have full licenses at practicing statuses. If a licensee provides practice addresses in more than one county, the licensee will be counted in each county. Therefore, the data does not represent full-time clinical practitioners in each county. †

County (Seat)	MDs	DOs	DPMs	PAs	LACs	Total	Population
Baker (Baker City)	70	8	1	11	1	91	16,059
Benton (Corvallis)	306	77	4	53	25	465	86,316
Clackamas (Oregon City)	1,045	106	16	106	94	1,367	394,972
Clatsop (Astoria)	107	10	2	14	8	141	37,474
Columbia (St. Helens)	24	5	0	18	5	52	49,459
Coos (Coquille)	146	14	4	14	5	183	62,475
Crook (Prineville)	23	7	1	10	3	44	20,998
Curry (Gold Beach)	39	13	1	7	2	62	22,335
Deschutes (Bend)	546	52	12	124	60	794	170,388
Douglas (Roseburg)	218	40	6	33	5	302	106,972
Gilliam (Condon)	1	0	0	2	0	3	1,932
Grant (Canyon City)	11	1	0	0	2	14	7,180
Harney (Burns)	20	2	0	3	0	25	7,126
Hood River (Hood River)	96	6	1	18	16	137	22,885
Jackson (Medford)	645	73	12	76	50	856	210,287
Jefferson (Madras)	32	2	0	3	2	39	22,192
Josephine (Grants Pass)	168	21	4	30	17	240	83,599
Klamath (Klamath Falls)	159	11	2	16	4	192	65,455
Lake (Lakeview)	6	2	0	2	0	10	7,838
Lane (Eugene)	954	65	11	136	67	1,233	358,337
Lincoln (Newport)	74	17	2	26	10	129	46,406
Linn (Albany)	171	29	2	31	6	239	119,356
Malheur (Vale)	106	12	3	27	0	148	30,359
Marion (Salem)	817	67	11	107	39	1,041	326,110
Morrow (Heppner)	7	0	0	5	0	12	11,187
Multnomah (Portland)	4,382	256	46	454	690	5,828	776,712
Polk (Dallas)	70	22	1	17	2	112	77,916
Sherman (Moro)	0	1	0	1	0	2	1,710
Tillamook (Tillamook)	58	3	0	8	4	73	25,342
Umatilla (Pendleton)	184	16	4	24	1	229	76,705
Union (La Grande)	76	12	1	3	6	98	25,691
Wallowa (Enterprise)	16	0	0	1	3	20	6,820
Wasco (The Dalles)	101	7	1	15	6	130	25,515
Washington (Hillsboro)	1,677	76	24	271	127	2,175	562,998
Wheeler (Fossil)	2	0	0	2	0	4	1,375
Yamhill (McMinnville)	201	17	7	28	11	264	101,758

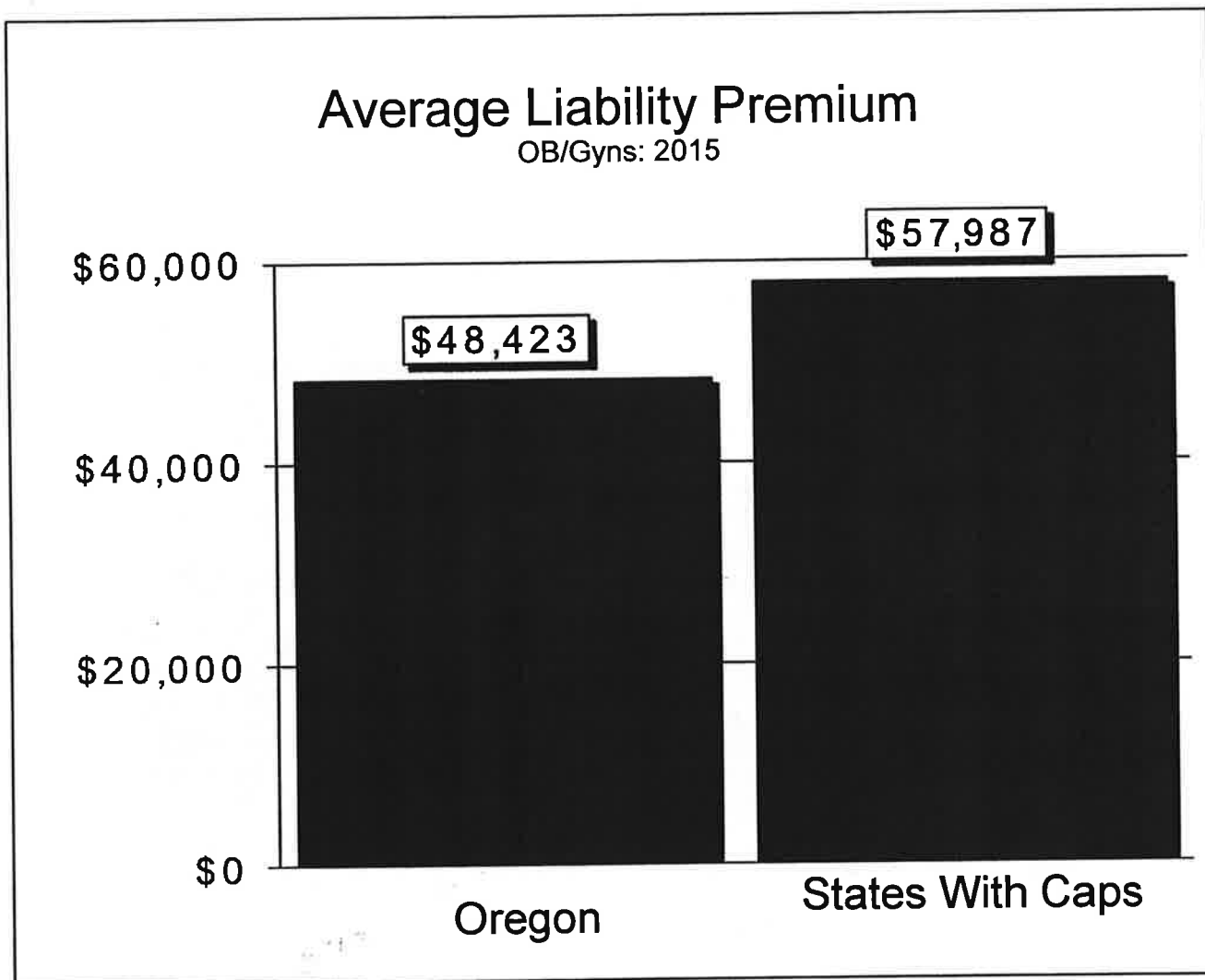
Oregon Medical Board - Annual Licensing Statistics
 Active MD Members, years 1999-2014



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Licensed MDs	7,848	8,146	8,696	8,469	8,986	8,997	9,691	9,915	10,211	10,389	10,546	10,389	11,203	11,005	11,761	12,447

Source: Oregon Medical Board Newsletter
<http://www.oregon.gov/OMB/board/board/Pages/Newsletters.aspx>

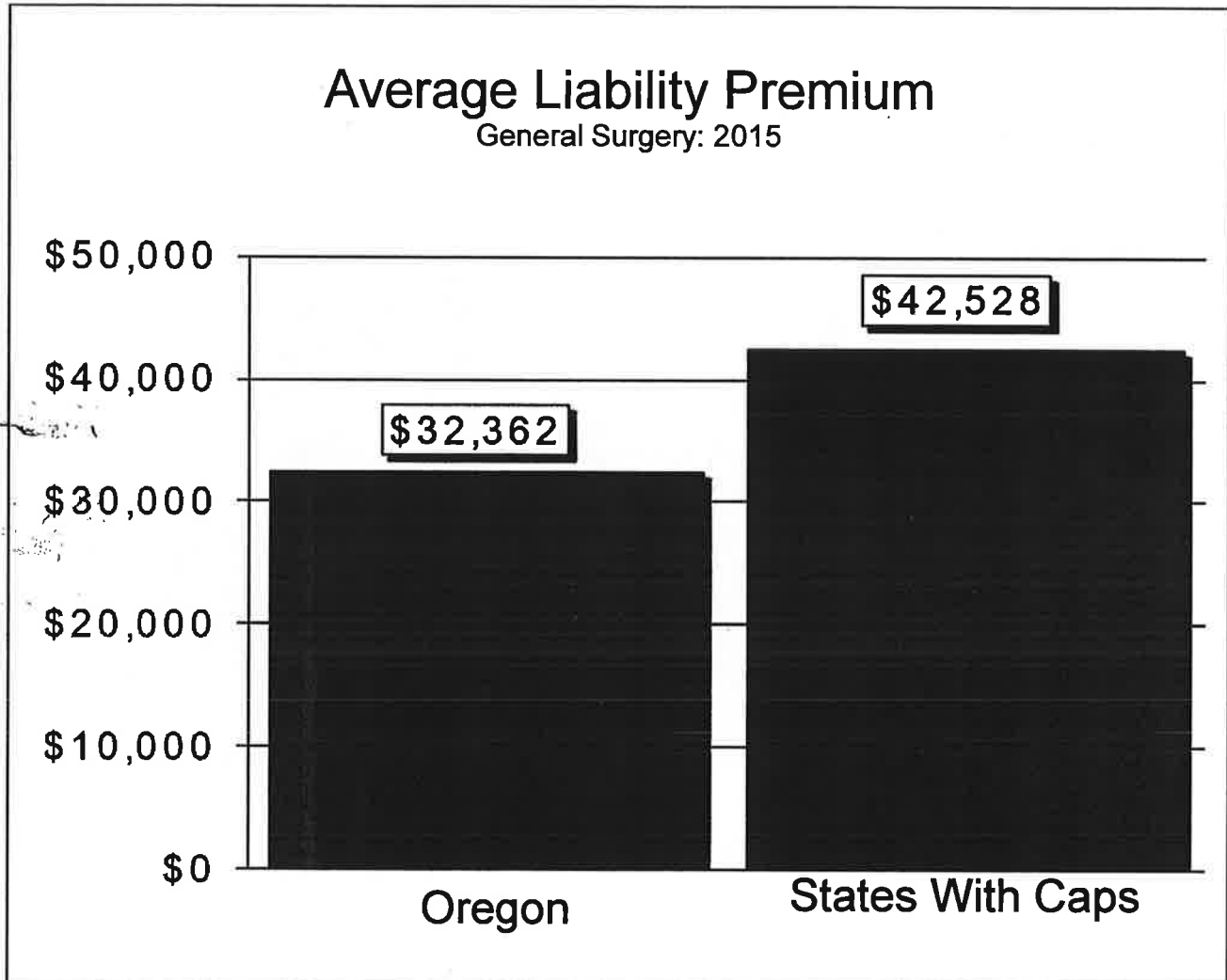
How Do Physician Premiums Compare In Oregon?



Malpractice Premiums For OB/Gyns Are 20% Higher In States With Caps Than In Oregon.

Derived from data provided by Medical Liability Monitor (October 2015) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

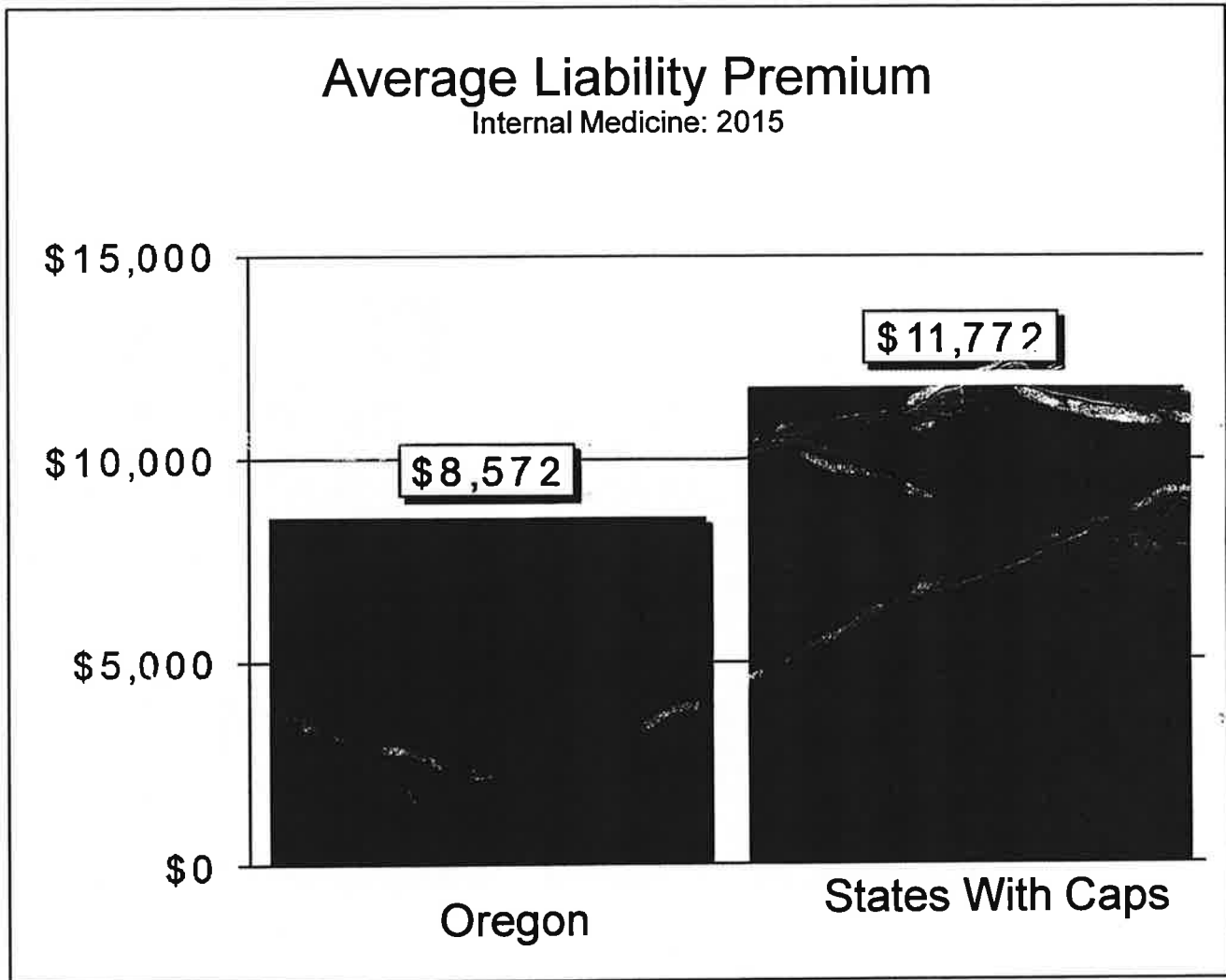
How Do Physician Premiums Compare In Oregon?



Malpractice Premiums For General Surgery Are 31% Higher In States With Caps Than In Oregon.

Derived from data provided by Medical Liability Monitor (October 2015) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

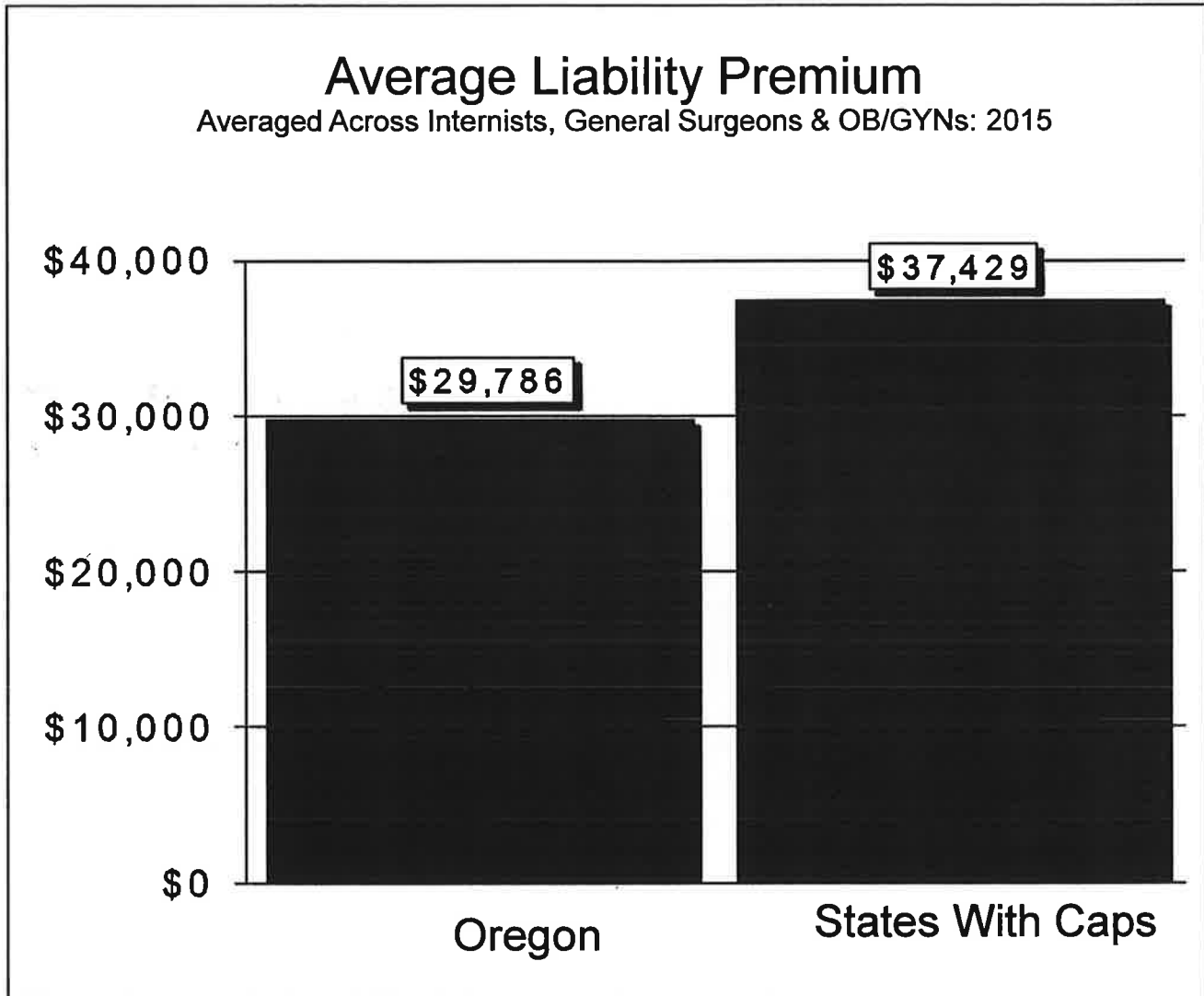
How Do Physician Premiums Compare In Oregon?



Malpractice Premiums For Internal Medicine Are 37% Higher In States With Caps Than In Oregon.

Derived from data provided by [Medical Liability Monitor](#) (October 2015) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

How Do Physician Premiums Compare In Oregon?

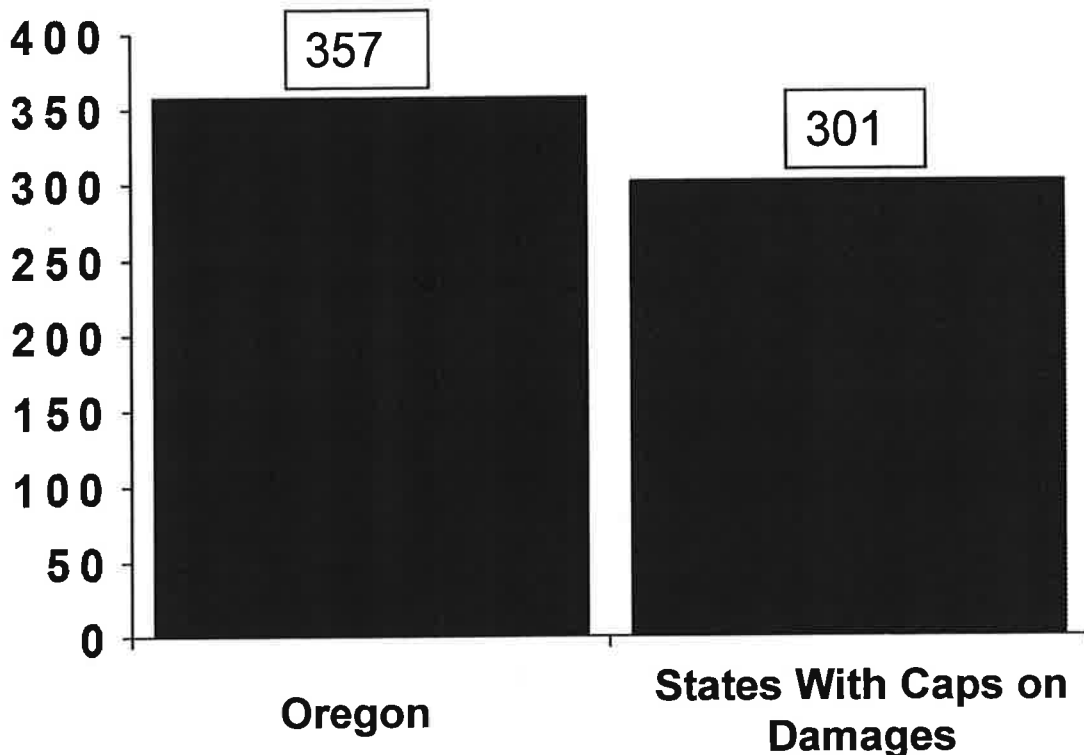


Malpractice Premiums For Doctors Averaged Across Specialties Are 26% Higher In States With Caps Than In Oregon.

Derived from data provided by [Medical Liability Monitor](#) (October 2015) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

Are Doctors Really Closing Their Doors?

Number of Physicians Per 100,000 Population: 2010



In 2013, there were Nearly 19% more physicians per 100,000 population in Oregon than there were in states with caps on damages.

A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases. Physician numbers from "Physician Characteristics and Distribution 2015, American Medical Association (AMA).

