HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bills 2300 and 2310

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House Judiciary Committee

Room 60, East Wing
Main Capitol Building
Harrisburg, Pennsylvania

Wednesday, February 13, 2002 - 9:35 a.m.

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BEFORE:

Honorable Thomas Gannon, Majority Chairperson
Honorable Patrick Browne
Honorable Timothy Hennessey
Honorable Kelly Lewis
Honorable Kevin Blaum, Minority Chairperson
Honorable Harold James
Honorable Kathy Manderino
Honorable John Pallone
Honorable James Roebuck

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ALSO PRESENT:

Michael Schwoyer
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Judy Sedesse
Majority Administrative Assistant

Jason Klipa
Majority Intern

Mike Rish
Minority Executive Director

Beryl Kuhr
Minority Counsel

Cathy Hudson
Minority Administrative Assistant

C O N T E N T S

CHAIRPERSON GANNON: The House Judiciary Committee meeting will come to order. Today begins a series of hearings on several bills that have been introduced into the House and referred to the Judiciary Committee generally dealing with the issue of medical malpractice tort reform.

This issue has gained a lot of attention over the past several months. And the reason for the meeting today was to address some of the factors that prompted legislation such as this to be introduced. One of those is that a number of doctors are fleeing Pennsylvania into other states because of the excessively high medical malpractice insurance premiums that they're required to pay.

Members of the House at least -- I believe also the Senate -- have been receiving conflicting reports with respect to the number of doctors that are leaving Pennsylvania and why they're leaving Pennsylvania. The reason being assigned is that their medical malpractice premiums are excessive.

What we would like to do today, we have invited Al Masland with the Bureau of Professional and Occupational Affairs and John Reed, Director of Medical Malpractice, Medical Professional Liability Catastrophic Loss Fund, to try to get some insight into the number of

physicians and osteopathic physicians who are licensed in Pennsylvania and how that number has changed over the past couple of years and whether or not they have any insight into the reasons that number would fluctuate and to try to develop some correlation between the number of physicians that the Bureau tells us are licensed to practice in Pennsylvania and the number of physicians who are actually paying into the Catastrophic Loss Fund and why the number is, appears to be substantially different.

With those introductory statements, I'd like to welcome Albert Masland, Commissioner of the Bureau of Professional and Occupational Affairs. And Representative Masland, you can begin when you're ready.

MR. MASLAND: Thank you, Mr. Chairman. It's a pleasure to be back here, especially before this committee. Having been at the table with you on a number of occasions, I appreciate the hard work of this committee. I would like to be able to say that I'll be able to present data to you today that will clear everything up, but that unfortunately is not the case.

I can present some data. I will explain some of the numbers. But I can tell you at the outset that what we collect in the Bureau has not been, over the years, focused on the issue of shortages. We basically look at who is qualified to be licensed, who wants to be renewed,

who can be renewed. But we don't necessarily track some of the information that you would find helpful.

For instance, we don't know exactly who is working in Pennsylvania. We know where their address is, at least the address they give us; but it can be a home address or a work address. So we have no way of saying for sure that someone who lives in a border county necessarily works in that county.

Now, obviously, if they're in Centre County, they're licensed and active, they're probably working in Pennsylvania. But we don't have that ability at this point to pinpoint it. That is going to change. And our focus changed some last year because of the registered nurse shortage and the nurse shortage in general.

And as a result of that, we, in our last renewal cycle for nurses, not only sent out the normal renewal form, which just asks a handful of questions, but sent out a survey along with it that we are having them complete to show us who works where, how long they work, if they're working overtime, if they're working regular hours, how many jobs they're working.

And that will give us some data to further illuminate any shortages in that area. I think we're going to need to do that with respect to other health professions as well. And certainly, the physicians will be one that we

will focus on this year.

For your information, we're on a 2-year cycle in renewals as far as any profession is concerned. And the medical physicians will be renewing at the end of this year. Their cycle, 2-year cycle, ends on December 31st of 2002. The osteopaths' is a little bit earlier in the year.

So with that explanation, or with that introduction, let me just point out a couple things on these forms that you need to know. The top sheet, Total Active Physician Licenses, that's the total whether your residence is in Pennsylvania, California, or wherever.

You'll notice that the numbers change significantly from an odd number year to an even number year, and that is because of the renewal. For instance, at the end of 2002, our numbers should be significantly lower than 2001 because a number of doctors are going to take their names off the active list.

The number you see for '97 is before renewal, and the number for 1998 is after the renewal period. So you have that fluctuation where the numbers go up as more people are licensed, as people graduate from medical school and come into the ranks. And then as you reach the end of the renewal cycle, that's when people ask to go on inactive status.

So we won't really have as clear a picture of

the impact of any medical malpractice insurance premium increase until the end of this year. Really the first quarter of next year I would suggest that this committee revisit these numbers and see, see where they're at at that time.

If I could just refer to some of the other sheets that we do have. At the top of the sheet that has Health Board New License Counts From 1991 Through 2001, this is probably helpful because this shows the number of new licensees per board.

And we listed dentists, pharmacists, and podiatrists in addition to the osteopathic and medical physicians just for comparison sake. You'll notice some trends but nothing real clear. There's a slight trend downward in medical physicians.

Osteopaths, although a significantly lower number, are up slightly the past couple years. I can tell you that for most professions, they peaked in the early mid-'90s. Registered nurses, just for example, had 8,400 new licensees in 1995. And in the year 2000, they only had 5,600.

So there was a significant drop-off in that license group. The numbers are not as clear with respect to the medical physicians and the osteopathic physicians. Although, you could say that the highest number of new

licensees was in 1996 with a little over 2,900. The lowest number was in 2000 with 2,391.

The next page again is just a short list which shows the total numbers. As of yesterday, we have 46,158 physicians licensed. And that number basically will go down at the end of this year. So we'll just have to see how that tracks. But that's people that are licensed in Pennsylvania regardless of where they live.

The next page is probably a little more interesting, and that shows Pennsylvania addresses. Nineteen ninety-seven and 2002, again comparing an odd year to an even year as I explained, because of the renewal cycles, is a little bit like apples and oranges. But there's not a real significant trend that we can point to just from looking at those 2 years or even the years in between.

But this shows the people with addresses in Pennsylvania. And as of yesterday, there were 33,142 medical physicians and 4,604 osteopathic physicians. The next page has, again, a 1997 and 2002 comparison, which shows where these Pennsylvania physicians actually live, in what counties.

And I would just point out again that in 19, or in 2001, actually the last quarter of 2000 during the renewal cycle and the first quarter of 2001, we had 5,004

physicians go inactive. So that's packaged right around the end of the renewal at the end of this year. And the first quarter of next year we'll probably see about the same thing, a drop of around those numbers.

Now, if it's significantly higher than that, you might be able to draw some inferences that it is connected with the insurance problems. I can't say for sure whether that's the case; but we'll see at the end of this year, which is why I would suggest we look at these numbers again in the first quarter of 2003.

I don't have much else to say. I'd be happy to answer some questions. I'll just again repeat that because of the focus on the shortage crisis with nurses, our Bureau is going to be changing the way we collect the data. And that will be more helpful to the Department of Health, Department of Labor and Industry, and to the Legislature.

It's not something that we necessarily need in the Bureau for our function, but it's something that we can collect most easily compared to the other departments. So we are going to be doing that with their assistance. The nurse renewal, for instance, the survey we submitted was compiled with the assistance of the Department of Health. And certainly, we'll be working with them in connection with renewals for the other health licensing professions.

With that, I'd be happy to answer any questions. Oh, one other question, one other thing I should point out. Counsel Schwoyer did ask if we had data on dual licensure. That's something we don't have yet. We actually asked on the renewal form, Are you licensed anywhere else? But we don't track it.

So that's one of the things we'll need to do, to not only say where are you licensed but where are you working because there are a lot of people that have licenses in more than one state; but they could be working here in Pennsylvania or New Jersey or California, again.

So we need to do a better job of collecting data so that you can do a better job of assessing it.

CHAIRPERSON GANNON: Thank you. Representative Blaum, Representative Roebuck, questions?

REPRESENTATIVE ROEBUCK: A couple questions. In looking at the border issue that we're confronted with as to the supposed exitus of physicians from the state, do you have any comparative figures available, for example, to other professions as to the patterns of retention of those individuals in the state?

Do we have any sense that this is exclusively a medical problem? Or is there a similar exitus, say, from other professions? I think particularly of teachers. We talk about losing teachers out of Pennsylvania. Do we have

any sense of how this all fits together?

MR. MASLAND: I can't say for sure. I can tell you that health licensing, the health licensing division in general, whether you're talking about pharmacists or dentists, doctors, or nurses, there is a general downward trend. It's more marked in some professions.

If you look at dentists, it's pretty easy to see that we have lost a significant number of dentists. And that is a concern in the years to come. You know, it's hard to say what is impacting all of that. But we have, we have some general trends in nurses, dentists. Pharmacists is another group that has significantly dropped off.

But I can't say how other states have fared specifically. We can, we can look into that with respect to at least the health professions, the ones that we license.

REPRESENTATIVE ROEBUCK: But I guess -- I'm not specifically saying other states. I mean other professions. I mean, is there a general exitus of professionals out of the state? And again, go back to teachers. We say over and over again that we're producing teachers who don't stay in the state. And perhaps because they don't pay liability insurances on crisis. But nevertheless, there is an exitus of that profession.

And I'm wondering is it a function of the profession? Is it a function of being young and wanting to be in a different environment? What is it a function of? I'm not sure that this analysis gives us much of a sense other than you have figures here for one profession.

There's no comparative figure for any other profession in the state. And I don't know whether we can collect those, but they'll be helpful.

MR. MASLAND: Well, that's why the first page we just threw on there the dentists, pharmacists, and podiatrists. We can give you the figures for nurses and some other professions as well. But we don't know what's driving that because, frankly, that's why we need to find out who actually is working in Pennsylvania, not just who's licensed in Pennsylvania.

REPRESENTATIVE ROEBUCK: I want to ask one other question, if I might. And that is, of the last chart that you showed us that compared active medical physicians from '97 to 2002, I'm struck by the surge in numbers in certain counties.

Do we have any sense of why, for example, in Fulton we go from a figure of 4 to 59 or in Sullivan from 1 to 13 or even Somerset where it goes from 84 to 192?

MR. MASLAND: I don't know that. I don't know what the reason for that is. We can look into that and

get -- when we collect the data at the end of this year, we might be able to tell you more.

REPRESENTATIVE ROEBUCK: Okay. Thank you.

CHAIRPERSON GANNON: Representative Hennessey.

REPRESENTATIVE HENNESSEY: Thank you, Mr. Chairman. Al, it's good to see you again. By the way, you referenced the nursing shortage or the crisis in nursing care, whatever, that we experienced. I guess maybe we're still experiencing it.

I appreciate the help you gave me in trying to get some of the people licensed down in some of the nursing homes in my district. With regard to this information, it would seem to me that if we're going to collect information, additional information, it might be helpful to collect breakdowns, how many specialists are involved, you know.

Knowing how many doctors are working in the southeast doesn't tell us the information which we're hearing as more details sort of get fleshed out of the skeleton, how many orthopedic surgeons there are as opposed to, I mean, just a number of medical doctors, how many neurosurgeons or cardiac specialists there are, what the scope of the practice in the area is.

Can we collect that information? Do you have to change the forms that we're going to be sending out in

order to get that kind of information?

MR. MASLAND: We would have to change our forms. We can collect some. I can tell you that in general in Pennsylvania, we license people not by specialty but just by the mere profession itself. For instance, a dentist -- and this is one of the problems we have with some, some people coming into the state.

A dentist, for instance, who has practiced for 12 years outside of Pennsylvania as an orthodontist, depending on where he practiced and under what circumstances, coming into Pennsylvania might need to take the test on the whole kit and caboodle because we don't license by specialty.

But we can capture some of that data because under the recent survey we sent out to nurses, we are asking whether they're a nurse midwife, a nurse anesthetist, a nurse practitioner, et cetera. And we can certainly capture some of that specialty data with respect to physicians as well.

But we don't license them by that. If you're a physician, you're a physician.

REPRESENTATIVE HENNESSEY: Okay. But it might be helpful if we could get that.

MR. MASLAND: Yeah.

REPRESENTATIVE HENNESSEY: Because what I'm

hearing down in the southeast, in my area anyway, that neurosurgeons are in short supply. Pottstown Hospital doesn't have a neurosurgeon on staff. It may have more doctors on staff. I don't know the, you know, I don't know whether that's true or not.

But, you know, I know for sure there's no neurosurgeon there because the president of the hospital has indicated that. Same situation, a similar situation is true at Brandywine where we only have one. So it would be helpful to know whether or not we have an increase in neurosurgeons that are available because we can break it down by Catholics, we can figure out regional trends from that information.

Let me ask you -- I'm just jotting some things down here -- what's an oral surgeon? I mean, you have dentists; you have orthodontists. But an oral surgeon, does he fall within the medical --

MR. MASLAND: He would be under the dental.

REPRESENTATIVE HENNESSEY: Under the dental?

MR. MASLAND: Dental, yes.

REPRESENTATIVE HENNESSEY: So he's listed under the dentists, not --

MR. MASLAND: Yes.

REPRESENTATIVE HENNESSEY: Okay. It might be helpful to know that as well, if you can break that area of

specialty down. And one other thing that you might want to try to find out is whether or not there's any limitations that have been self-imposed by doctors on the areas of their practice.

We're hearing that OB/GYNs aren't delivering babies anymore but they're delivering prenatal care. It would seem to me that if we could just ask, Have you limited the scope of your practice within the last 2 years or from the time of your last renewal, it might give us some indication as to whether or not the long number, a certain number of OB/GYNs out there, that doesn't help us as much as knowing that of that number, only 75 percent or 90 percent or 20 percent are actively involved in the delivery of, delivery childbirth process.

MR. MASLAND: That may be possible. I think I'd want to meet with the folks from the Department of Health to see exactly the best way to frame that so that you're getting data that is really helpful. But we can try that.

REPRESENTATIVE HENNESSEY: Okay. Yeah. And I don't know whether or not the term self-imposed limitation is, you know -- some might say it's not self-imposed. It's imposed by the vagaries of the insurance market. But, you know, the distinction would be that somebody is not limited by any bureaucratic agency in terms of the scope of their

practice but just cutting back because that's important.

And what about retired doctors, do they, do they fall under a separate category?

MR. MASLAND: Well, they would be inactive. We have an active -- the numbers I'm showing you are just for the active physicians.

REPRESENTATIVE HENNESSEY: Okay. Thank you. If you can get that information, it probably would help.

MR. MASLAND: Again, with terms like self-imposed that are somewhat subjective, on the nurse renewal form, we ask questions about overtime. And some people were concerned about whether it's mandatory, optional. What is mandatory overtime? It's really hard to pin that down. Everybody's having a tough time with that.

So when you ask a question like that, sometimes you just send up red, red flags and don't get the data you need. But we'll see with the nurses, and we'll see what we can do with physicians.

REPRESENTATIVE HENNESSEY: As we talk, I'm just thinking, maybe we can just simply ask, Have you restricted the scope of your practice since you were last renewed? That might give us some indication if there are doctors out there who are simply not doing the full gamut of surgeries, for example, or whatever that they used to. Thank you.

MR. MASLAND: Thank you.

CHAIRPERSON GANNON: Representative Manderino?

REPRESENTATIVE MANDERINO: No. Just good to see you again, Mr. Masland.

MR. MASLAND: Good to see you, too.

CHAIRPERSON GANNON: Representative Lewis.

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. Good morning, Commissioner Masland. I'm from Monroe County. I just have some clarification questions on the data on the Active Medical Physicians by County sheet. It looks -- when you look at this, Monroe County has added 100 physicians over the last 5 years. But this is just data by residence, correct?

MR. MASLAND: Correct.

REPRESENTATIVE LEWIS: So I could live in Monroe County and commute to New Jersey or New York and have a dual license, but I just happen to reside in Monroe County?

MR. MASLAND: That's absolutely correct. And that's, as I said, one of the problems with the data that we're presenting.

REPRESENTATIVE LEWIS: Is there a way to find out how many actually, physicians actually practice in Monroe County versus live in Monroe County?

MR. MASLAND: That's what we hope to be

able to -- that data we hope to capture in this next renewal cycle. As the physicians renew at the end of this year, we'll ask additional questions to try to clarify where people actually are working.

REPRESENTATIVE LEWIS: Just following up Representative Roebuck's question on why some counties may have grown so much, Monroe County's population's grown tremendously over the last 5 years, including the high end housing market.

What's really interesting from a Monroe County perspective is our hospital has the third busiest emergency room in the state, but we don't come close to having the third most physicians in the state. So it's just incredible the comparison between our volume of business because of our tourism industry and our growing population and the number of physicians we have in our county.

Our orthopedic surgeons have actually gone down even though the knee accidents haven't. Thank you, Mr. Chairman.

CHAIRPERSON GANNON: Thank you. Representative Masland, just to follow up a little bit on what Representative Hennessey, his line of questioning about the specialties. I would surmise that the insurance companies that underwrite medical malpractice liability insurance would have a lot of that data.

Does the Department or, does the Department -- has the Department ever approached the insurers to get those numbers without being specific as to specific physicians? I would assume they have it broken down by county and they break it down by specialty because as I understand it, they underwrite the premium based on what you tell them you specialize in, whether it's orthopedics or neurosurgery or whatever.

And would it be helpful if the Bureau, in terms of its statistical monitoring of licensing in Pennsylvania, if the insurers would have to share that gross information, not specific license information, but with the Department so that you would know what was happening with respect to specialties in Pennsylvania, immigration and outmigration of physicians, beyond malpractice but simply to monitor to see whether or not we're confronted in the near future with a physician shortage for whatever reason? Would that be helpful, do you think?

MR. MASLAND: I'm sure that information would be helpful. And I know it's out there. Just, again, we, as a Bureau, we never really focused on that. We're just trying to see who wants to be licensed and if they're qualified to be licensed and if they've taken the continuing education, if required. Okay. You can renew

the license.

That's why we're working with Department of Health. It's really a multi-agency task. So with the Department of Health, Department of Labor and Industry, Department of State working together, I think we can -- and also getting the information, the insurance information I'm sure would be helpful.

But we need to, we need to do a better job of collecting that data. We're in the position, though, where we renew these folks every couple years. So we know they're going to get back in touch with us. So we can get them to answer some questions that the other departments may not be able to.

The data we're collecting for the nurses is going to be analyzed primarily by the Department of Health. So likewise with other professions, we'll collect this data; but we'll work with Health, Labor and Industry, and Insurance to analyze it.

CHAIRPERSON GANNON: Just a follow-up. You mentioned about the nursing shortage. How, how did the Bureau of Licensing arrive at the conclusion there was a nursing shortage in Pennsylvania and what, and started to react to that? Just a little bit of background.

MR. MASLAND: Well, I wouldn't say that we necessarily at the Bureau arrived at that conclusion or

really any conclusion. I know that the nurse board has expressed concern about this. I know that our policy office and other people have been looking at it, as the Legislature has.

But I think really, in part, this was one issue that was highlighted by the General Assembly last session, last year. And because of that, we've looked more closely at the trends. It's not to say that they didn't notice some trends but in terms of collecting data to find out why it hadn't done that much.

We actually did a fairly extensive survey about 15 or 20 years ago regarding nurses but had not done anything in between. So with the focus from last year, we'll collect the data that will actually be useful.

CHAIRPERSON GANNON: Does the Bureau have any information that would indicate that Pennsylvania at this time has a physician shortage?

MR. MASLAND: I really couldn't say. I mean, it's hard for me to look at these numbers and say that there is or is not a shortage. Maybe at the end of the year, we can, we can see where the numbers have gone down. But I'm not really in a position, our Bureau isn't in a position to say this is how many we actually need in any given county vis-a-vis the number that actually work. That's where Health comes in.

CHAIRPERSON GANNON: As I understand these numbers and charts that you've given to us, there are predictable trends of up and down based upon the renewal years. Would that be the even number years or the odd number years?

MR. MASLAND: The renewal years are the even number years.

CHAIRPERSON GANNON: So you would see in some instances a bump down because some folks are just retiring, they're not renewing their license?

MR. MASLAND: Right. They just wait until the end of the year or the end of the cycle, and then they go inactive.

CHAIRPERSON GANNON: But generally, those numbers are usually within parameters. It's either a bump up or a bump down for whatever reason. And as I understand what you're, what you're indicating, is that if that number changes dramatically next year, that that would indicate that there's something going on out there that wasn't there before; that this number is out of, out of track with the prior history of these, these changes that have taken place?

MR. MASLAND: For instance, as I mentioned, approximately 5,000 physicians went inactive at about the time of the last renewal cycle. If we have the same number

this time, then maybe there is no trend. If we have a significantly higher number, then that's something we'd want to take a look at.

CHAIRPERSON GANNON: Is there anything off the top of your head -- maybe you do have something that you've been thinking about -- that would be necessary to change in statute to assist the Bureau in gathering that information that they would need for their own purposes but also to help us to understand what's going on out there as we develop public policy with respect to health care?

MR. MASLAND: I don't think we need to have any statutory change to enable us to collect the data. Although, we can't necessarily require people to fill out all this extra information because the statute doesn't say that. If we run into a problem, then I think we come to the General Assembly.

But what we're seeing with respect to the nurse renewals -- we're in the middle of them now -- is that a very high percentage are returning the surveys, well over 90 percent. So it's, it's going to be good data. Even if it's not 100 percent, it will be close to it.

CHAIRPERSON GANNON: What about with respect to your relationship with other agencies and bureaus within state government, the information that they may have because of their function but that would help you, the

Bureau, in a centralized capacity as regulating the licensing of the professionals in Pennsylvania?

MR. MASLAND: Well, I know that there have been a number of issues that have been discussed over the past few weeks. Some of them have been before you and will be before you today. But for the most part, I think we have a pretty good relationship with the Department of Health and Labor and Industry. And those are the 2 that we need to work most closely with on these type issues.

CHAIRPERSON GANNON: And one final question. Do you know what the, the licensing fees are for physicians for a new license or a renewal?

MR. MASLAND: Yes. It is, I believe -- I don't have it here. Off the top of my head, I'm pretty sure that a --

CHAIRPERSON GANNON: Just a round number.

MR. MASLAND: -- a physician is $125 every 2 years, medical physician. Osteopathic physician is $140. The reason that is more is because these license fees are based on the cost that each specific board and license population generates within our Bureau. So they fluctuate some. And because there's fewer osteopaths, their fees are a little bit higher.

CHAIRPERSON GANNON: That's the same for new or renewal?

MR. MASLAND: That's the renewal fee. I'm not sure what the application fee is.

CHAIRPERSON GANNON: That's all the questions I have. Any members of the staff have a question? Representative Lewis.

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. One follow-up question. Does the Bureau keep a list or an ideal number of physicians that Pennsylvania should have to provide quality patient care?

MR. MASLAND: We do not have that. Again, that would probably be something the Department of Health would be in a better position to assess. And that's why we're working with them on these type issues.

REPRESENTATIVE LEWIS: Because we hear the 33,000 and the $45,000 number, but we don't know if we should have 100,000.

MR. MASLAND: That's correct. I can't, I can't answer that.

CHAIRPERSON GANNON: Representative Blaum.

REPRESENTATIVE BLAUM: Thank you, Mr. Chairman. In this brief morning here that we're having this hearing, I'm finding it very interesting and may suggest to the Chairman that this be a continuing thing for our committee because a lot of what Mr. Masland has said has been of interest to me, things I did not know. And I'm

happy to see Al Masland in this position --

MR. MASLAND: I'm not under oath now.

REPRESENTATIVE BLAUM: -- and look forward to him being there because we have a lot of confidence in his abilities because as I go over some of the, the statistics that he's given us, that we don't know what these specialties are in various parts of Pennsylvania is amazing.

And I know Al has not been there for a long period of time. But he certainly could leave a big impression on this office, you know, by doing some of the things, correcting some of the, and clarifying some of the things we've heard here today.

Susquehanna, one physician, we don't know what that means. And it's probably a shame that we don't know what that means. We don't know if that physician just lives in Susquehanna County but practices elsewhere in a different county, in a different hospital.

We don't know if the physician is required to list on his application his home address or his office or --

MR. MASLAND: They can use either.

REPRESENTATIVE BLAUM: -- or the hospital that he practices at. And it seems to me that, you know, we could give Al the help that he may need if we do need to

change the statutes to require this, to require these things. And, you know, I came here for, you know, an interesting hearing this morning. And that might be the end of it.

But I think what we've just touched the surface here with Al is something that we probably should continue because underneath your office is this, the State Board of Medicine. We hear and review anecdotal evidence where 2 percent of the physicians are responsible for 40 percent of the payout.

I assume who those 2 percent are is somewhere in your offices, yet the people of Pennsylvania are prohibited from knowing that information. That's something I think we should probably continue to look at in the weeks and months ahead because I think the people of Pennsylvania want to know that information.

And it should not be covered up. It should be, it should be made available to us. And I think -- and again, this is only in 35 minutes. But it peaks a lot of our interest as to how we can work with Al to make a dramatic improvement in this.

So Mr. Chairman, I want to thank you for the hearings. And it's great to see you, Representative Masland, back here with us.

MR. MASLAND: All joking aside --

REPRESENTATIVE BLAUM: Too bad you're on that side of the table and not on this side.

MR. MASLAND: You didn't ask too many tough questions. I'm happy with that. But I do appreciate working with you. And we have worked very closely with Representative Civera's committee. And we'll be happy to work with your committee as well.

CHAIRPERSON GANNON: I want to thank you, Representative Masland. I echo the sentiments of Chairman Blaum that what you really indicated to us is there are a lot of information which we just don't know. And I applaud the Bureau for initiating efforts under your direction to try to gather that information in one repository to help you do your job better and to help us have a source of valid information when we deal with these public policy issues. Thank you for attending today.

MR. MASLAND: Thank you.

CHAIRPERSON GANNON: Our next witness is Mr. John Reed. He's the Director of the Medical Professional Liability Catastrophic Loss Trust Fund. Welcome, Mr. Reed. And you may proceed when you are ready. I believe you got the flavor of what we're trying to get a hold of here from the questioning and the testimony of Representative Masland.

And maybe you can help fill out, or flesh out

some of that from your perspective. It would be very helpful.

MR. REED: Well, first of all, let me begin by saying good morning, Mr. Chairman and to the other members of the committee. Obviously, having dealt with physicians both before my position with the Fund and obviously here at the Fund -- I talk to them every day -- I realize there's a lot of discontent out there in the health care community. There has been a long time, particularly about the cost of malpractice insurance. And it has gotten expensive, particularly in the last 90 days.

If you look, I'm dealing now with some specialty groups. They're having a hard time. They cannot afford primary insurance. I mean, we're seeing guys with bills of 2-, $300,000. So we're trying to work with some of them on some creative ways to try to keep them in practice.

Having said that, I also recognize that with this situation, there is the potential for physician flight in the future because there is dissatisfaction out there. However, I must report to you on the basis of the data as it is in the real world.

And the fact is that on the aggregate level -- obviously, there are individual exceptions, particular hospitals that have problems, certain

individuals. But on the aggregate level, there has not yet been physician flight in Pennsylvania.

We've tracked this going back a number of years. And I can tell you that the physician population of Pennsylvania has steadily grown since the '80s. It has grown since 1990, grown since 1995. In fact, at the end of 2000, physicians, as counted by those who pay a premium to the Cat Fund, is higher than ever.

We ended the year of 2000 -- and it takes a long time for us to gather this data because we rely on people who actually pay surcharges. And that's reported to us by the carriers. And there are sometimes a very great lag in getting that data. Sometimes we don't get it for a year, until a year after the fact.

But once it's in there and we get the information from their carriers, we know who's in practice based on the fact that they've, they're licensed. And we get this data weekly from the Board. And we also know it on the basis of the fact they've paid a primary premium to a carrier and they've paid a surcharge to us.

And the forms tell us where they're practicing, or at least where they declare that they're practicing. If they declare that they're exempt from the surcharge for one reason or another, they're sent an affidavit to complete by us. We want the details.

And sometimes after they get that affidavit, people come back and return it with a check to us for a surcharge. We've had people claim that they were practicing less than 50 percent of the time in Pennsylvania till they get that form to fill out and give us the particulars.

So we do follow through on that. But it is obviously largely dependent on the -- it's a self-reporting system. It relies on the honesty of the physicians and their carriers to accurately report the data. And year to year, there is some shift between counties because physicians move their practices. Some do discontinue practices.

But I'll give you the overall numbers and the trends. At the end of 2000, we have 34,900 physicians who had paid a surcharge to the Cat Fund. As I said, that's higher than in prior years, only slightly higher than the year before. This year, we're still collecting data for 2001. As I said, there's a tremendous lag time in this process.

So we will continue to collect data in 2002 for the numbers for 2001. Specifically, we haven't even booked the November and December renewals yet because they have 60 days to pay. So they haven't come in. But at any rate, with that in mind, we've already collected surcharge

payments for 34,322 doctors in the year 2001.

We expect that by the time the year is over, the number will be more or less the same as it was at the end of 2000. That's not to say that they're not going to leave practice in 2002 because as I mentioned at the outset of my remarks, physicians are having a serious financial problem.

And by the way, just so the committee knows, I have with me Bud Sanders, who is our outside consultant from ISG -- it's a computer consulting group -- who works with me on a number of issues, including the statistics as far as tracking physicians.

As I mentioned, we keep this information by specialty because we have to. The actuaries have to know that in order to assess the surcharge. And we keep it by county of practice. And I can tell you that we've had some loss in the southeast.

And by the way, the Fund operationally breaks the state into thirds. They're roughly equal in population. The southeastern portion of our state has by far the greatest number of physicians. They have lost some physicians in the southeast.

You have to make judgments on that as to how significant that is, but it is in fact true that there are somewhat less in the southeast now than there were 4 or 5

years ago. We have appeared to have grown, however, in the central and the western regions of the state.

The same is true for most of the specialty groups. The number of neurosurgeons in the state is limited to begin with. Statewide, there were only 233 of them in 1997. We had 231 registered in 2000. And so far for 2001, we have 229 who have paid a premium.

Orthopedics, we had 1,136 statewide in 1997. We had 1,190 at the end of 2000. So far for 2001, we have 1,108. Obstetricians, in the beginning of the, or in 1997, we had 2,105. And at the end of 2000, that had dropped to 1,911. So far for 2001, we have 1,758.

Now, there are other doctors out there who do deliver babies; but they're not included in this survey. For instance, some family practitioners and general practitioners are licensed. Well, they pay a surcharge and a private premium that allows them to have obstetric privileges. I don't have those figures with me here today.

As I mentioned, we have seen some variances in some of the counties. I believe it was Representative Lewis asked about his county, Monroe County. And that is a fast growing county. And I see there it looks, though, that the physician count as far as people practicing in Monroe County has grown. It was 165 in 1996. It was 195 in 2000. And thus far for 2001, we've registered 216.

The physicians who have to pay into the Fund are those who practice more than 50 percent of the time in the state of Pennsylvania. Those who say they practice less than that are exempt from the Fund, but they have to buy a basic insurance policy. Obviously, we've increased our enforcement on that.

As I said, we're now sending out affidavits to doctors because we became a little bit suspicious about that. But as of the end of 2000, there were 431 doctors who claimed that status. We had 276 doctors who work for the Commonwealth of Pennsylvania. Obviously, they don't pay a surcharge.

Federal and military doctors amounted to about 507. We had 4 physicians employed by the City of Philadelphia. As I said, we check our data weekly with the Board of Licensing. And our compliance office, in collecting premiums, follows up on it. There is some lag in getting the data.

Once we have the data, you know, we're confident of its accuracy insofar as reporting the past. I know there was some question about the demographics of physicians. Obviously, that's a concern. We've been able to measure that for quite some time. We've put out some matrixes.

And we can tell you how many doctors there

were within each age year over the career. And I can show you that the pattern has largely remained the same. There may be somewhat of an aging of the physician population. There is an aging of the Pennsylvania population as well.

We've seen, even going back 10, 15 years ago, that doctors started to leave the practice of medicine in some instances in their later 40's. And then it seems to slow down. And then physicians, a lot of physicians stay in their, they drop off in their 50's. And then some stay all the way through until later years in life.

And we actually have physicians that are 90 years old that pay the surcharge to the Fund. We've even had one fellow who pays a surcharge for being a surgeon, and he's in his 80's. I'm not making any judgments about that. But that's one of the things I notice when I look at those age statistics.

But obviously, as I mentioned earlier, in talking with physicians, I can tell you that they are frustrated about their economic circumstance, reimbursements, et cetera. So there is a very real fear in my mind that there may be physician flight in the future wholesale. But thus far, the data doesn't show it.

CHAIRPERSON GANNON: Thank you.

Representative Blaum?

REPRESENTATIVE BLAUM: None at this time, Mr.

Chairman.

CHAIRPERSON GANNON: Representative Roebuck?

REPRESENTATIVE ROEBUCK: No.

CHAIRPERSON GANNON: Representative James?

REPRESENTATIVE JAMES: No, thank you.

CHAIRPERSON GANNON: Representative Hennessey.

REPRESENTATIVE HENNESSEY: Thank you, Mr. Chairman. Good morning, John. You had indicated that in the southeast, we've got somewhat fewer doctors than we have, whatever the comparison year was, and there's been some trend to migrating from the central part of Pennsylvania to the western part of Pennsylvania.

Do you have that kind of breakdown in terms of neurosurgery, orthopedic numbers that you were talking about?

MR. REED: Well, I have it broken down with me today at least by region, not by county. And let me just get to that. By the way, I would mention that it does appear overall that the number of physicians per capita is about twice as high in the southeast as it is in the other 2 regions of the state.

And you'd have to check with the national authorities as to how that benches up with other states. But I think Pennsylvania, at least up to now, has compared favorably.

REPRESENTATIVE HENNESSEY: That's largely where the concentration of medical schools are, too.

MR. REED: That's true. Now, of our numbers, we include some of those are residents. But that's been true in our state statistics since we ever kept them. In other words, once they get to the stage where the law requires them to have insurance, which is in their second year in a D.O. program and I think their third year in an M.D. program, they're in the Fund statistics because somebody is paying a premium on their behalf.

Prior to that, they're not in our statistics because they're not required to have individual insurance. Neurosurgeons in the eastern part of the state were 112 in 1997, and there was 109 in the year 2000. And so far for 2001, we have 106.

For the central region, neurosurgery was 52 in 1997. It was 50 in the year 2000 and appears to be 50 in 2001. In the western region, there were 69 in 1997, 72 in the year 2000. And then 2001, that's gone up to 73.

REPRESENTATIVE HENNESSEY: Does the data that you collect indicate the restrictions that might have been placed on doctors' practices? For example, the OB/GYNs, do you know how many people, how many doctors, how many OB/GYNs are out there delivering babies?

MR. REED: I can't say how many are actually

delivering babies. I can tell you how many -- I don't have the exact breakout with me right here at the moment. But we know, for instance, if somebody's restricted themselves to gynecology only. They're paying a different premium than somebody who is an OB/GYN.

Same is true -- an orthopod would not be performing surgery and be in these numbers. Somebody could voluntarily restrict their practice and still continue to pay the premium.

REPRESENTATIVE HENNESSEY: Okay. But does the data that you collect indicate that? Can you break it down for us so we know?

MR. REED: We can break it down by subspecialty. Where it gets difficult in making long-term, multi-year comparisons comes from the fact that the specialty code numbers have changed over time. In other words, 10 years ago, they were using a different series of numbers for different specialties than they use now.

And right now, we're working off a JUA code and have been, I believe, since the end of '96. They don't always translate one to one. But we -- certainly within recent years, we can give it to you very precisely. In other words, if, if somebody is a, you know -- we know a podiatrist from a nonsurgical podiatrist. We know somebody who is obstetrics, no delivery. There is a category for

that, and there is a lower premium associated with that.

REPRESENTATIVE HENNESSEY: If you can provide that kind of information for us, it would probably help. And if you brought that in yesterday, it would probably help. Obviously, this is a front burner issue. It would help to have that information as quickly as possible.

MR. REED: Yeah. I just want to mention there has been some migration between categories. There has been some drop-off, as I mentioned, in obstetrics. But I don't recall, from having looked at the data, any of the mass swings thus far that have been indicated publicly.

REPRESENTATIVE HENNESSEY: I'm told that there are family doctors that pay a surcharge so they can deliver children?

MR. REED: Yeah. There is a, there is a category of family practice that allows them to have obstetric privileges. They pay the carriers and the JUA or us a surcharge for that.

REPRESENTATIVE HENNESSEY: And do you know whether --

MR. REED: I don't know the number. We have it back at the office, but I don't remember the number offhand.

REPRESENTATIVE HENNESSEY: If you can get that information.

MR. REED: Sure. It's a much smaller number than the overall number of obstetricians. We're talking only maybe 100, 150 or so. Most family practice doctors don't want to be involved with obstetrics.

REPRESENTATIVE HENNESSEY: Thank you.

CHAIRPERSON GANNON: Representative Lewis.

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. And thank you, Mr. Reed, for coming today. You mentioned that on an aggregate level, there's no physician flight in Pennsylvania. And I've seen that quoted in numerous papers and statements and newsletters around the state.

Have you done a study that tells you the ideal number of physicians in Pennsylvania?

MR. REED: No, I don't pretend to have the knowledge as to what would be the ideal number of physicians.

REPRESENTATIVE LEWIS: Are you aware of such a study that tells the public what is the ideal number of physicians to provide the best possible patient care in Pennsylvania?

MR. REED: I'm not aware. There may be one, but I don't know.

REPRESENTATIVE LEWIS: And Pennsylvania has -- I hear different statistics -- but we have something

like the second largest senior population in the country on a percentage term, percentage terms. And don't seniors generally require more physician care than less?

MR. REED: Not being a physician, I don't know if I would be an expert on that. But obviously, elderly do have a lot of illnesses. Whether they actually get the care or not --

REPRESENTATIVE LEWIS: I don't mean to ask these difficult questions. But we're here debating medical malpractice insurance premiums; and we're having a big debate over the last 2, 3 weeks. And I've never heard someone tell me the ideal number of physicians that we should have in Pennsylvania to provide the best possible patient care in Pennsylvania. Are you aware of any study that tells me that number?

MR. REED: I'm not aware of any study.

REPRESENTATIVE LEWIS: Do you know approximately what the administrative cost is to run the Cat Fund in Pennsylvania?

MR. REED: It is in the 3 something million dollar range, all-encompassing. It's one to a couple percent of the surcharge dollar. Part of it is for claims. The rest of it is for the, the administration of collections.

Overall, historically, the Fund has paid out

very close to a dollar in payments for claims for every dollar, or 99 cents at any rate for every dollar it collects. So very low operating overhead.

REPRESENTATIVE LEWIS: And I haven't heard of this as part of this debate at all. But is the Cat Fund well run in terms of the dollars spent to administer it? Is it -- if you added 50 people, would premiums go down if we --

MR. REED: Surcharges would go down. Premiums perhaps would go down if there was a greater discipline in the medical profession, if the carriers were assessed with some responsibility for the consequences of their claims handling decisions.

You have to understand, the Fund inherits some things late in the game after it's already been on the railroad track for a long, long time. We get a lot of claims at the 11th hour, 59th minute. I literally get claims reported to me over the telephone when they have had a jury trial and the jury has come back and said they had a verdict.

And before the verdict is announced, somebody said, Hey, we want you to settle this. There is no penalty out there. Sometimes carriers don't settle cases that they should, and it turns into a multi-million dollar verdict. Who pays it? The Fund pays it. We don't have any choice.

There's no penalty for them when they sit on doctors' money for 6 months to a year, report it late, and they claim it's an administrative oversight. Premiums are going to go up in the future on the private level. There's no other way you can deliver the same level of service without charging more for it. But that's my position.

CHAIRPERSON GANNON: Because of the interest of time, I'd like to ask members to restrict their questions just to the issue of the number of physicians. I know there's lots of other policy questions that we'd like to ask. But we're running up against the clock.

And I would just like to keep the folks at this point in time, in the interest of time, on the licensing issue that we've been following and stay away from those policy questions. We can address them at a later date.

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. Sorry about that.

CHAIRPERSON GANNON: Representative Browne.

REPRESENTATIVE LEWIS: Just one final question.

CHAIRPERSON GANNON: I'm sorry.

REPRESENTATIVE LEWIS: You mentioned -- I'm glad to hear that Monroe County is adding physicians. But on a per capita basis, that's what we're concerned about in

Monroe County, that it's not a question of physician flight. It's a question of getting physicians to move to Monroe County and practice there. That's been our problem for the last 10 years.

It's very difficult to get physicians out to Monroe County. I'm pleased to hear that we've added physicians, but nowhere near to covering 100,000 people that have moved there in the last 18 years.

MR. REED: I've heard that statement from a number of, particularly up in the central and the north central areas of the state. The rural areas have a hard time recruiting physicians for any number of reasons. Monroe County obviously is getting almost to be urban. It's growing so fast. But I can imagine you may have had some problems in that regard.

REPRESENTATIVE LEWIS: Our problem, on any given weekend, we may add a million people to our population, which isn't reflected in any census thing.

MR. REED: Sure.

REPRESENTATIVE LEWIS: But when we have a NASCAR race in Monroe County, add 500,000 people to our population. And obviously, there's injuries in fun and frolicking. Thank you, Mr. Chairman.

CHAIRPERSON GANNON: Representative Browne.

REPRESENTATIVE BROWNE: Thank you, Mr. Reed,

for your participation today. You had mentioned the requirement for participation in the Fund is if you practice 50 percent, 50 percent of your practice in the state of Pennsylvania?

MR. REED: That's correct.

REPRESENTATIVE BROWNE: And the numbers you had provided as far as those practicing in Pennsylvania, are those just the ones that practice over 50 percent; or do they include everyone, 50 percent and below as well?

MR. REED: Well, I gave 2 separate figures. I gave you the total of doctors who are practicing the majority of time in Pennsylvania. Those are the ones who pay a surcharge to the Fund. Those are the basis for the numbers that I gave you, the aggregate number.

But I separately had reported the number of doctors who are claiming to practice in Pennsylvania but say that they're exempt from paying into the Fund because they're less than 50 percent of the time.

REPRESENTATIVE BROWNE: All right. Thank you for clarifying that. If the -- this is probably more of an opinion than anything else. If the statute was changed to lower that from 50 to 30 to 20, what would be your assessment as far as what would that do to that physician population number and in the same regard to the surcharge of the Fund? Would it cause more flight, would it not

cause flight, or would it cause --

MR. REED: Well, I think that it would increase the number of doctors paying into the Fund because a lot of doctors in some of these border areas, some doctors in Baltimore, for instance, who are working in York, people in New Jersey who do a lot of work in Philadelphia, some people in Delaware who are working in Delaware County that would then be required to pay into the Fund surcharge pool or whatever its replacement equivalent is.

REPRESENTATIVE BROWNE: Well, that's the obvious answer. But isn't it possible that if we did that, then those doctors would decide that the 20 percent they practice here is not worth it because of the cost to the Fund?

MR. REED: That is possible, sure.

REPRESENTATIVE BROWNE: All right. I guess the only way to make sure of that, there would have to be some sort of ratio as compared to some --

MR. REED: Uh-huh.

REPRESENTATIVE BROWNE: Thank you, Mr. Chairman.

CHAIRPERSON GANNON: Representative Manderino.

REPRESENTATIVE MANDERINO: Thank you. Just one clarifying question, following up on what

Representative Hennessey was asking you about in terms of how physicians are classified and what they're paying. And I think I understood you, but I don't want to walk out of here and misrepresent what I thought I heard.

If a physician says to me, I'm an obstetrician but I quit delivering babies because it was just costing me too much, my malpractice premiums were more than my practice could afford, that person would be reflected in your numbers because they would have been paying -- I mean, if they're saying the reason I quit delivering babies was the cost of the malpractice insurance, then I think it's a logical assumption to say they went from one category, obstetrician delivering babies at this surcharge price to obstetricians not delivering babies at a lower surcharge price. Am I understanding you correctly?

MR. REED: That's correct, yes. And we, as I said earlier -- Representative Hennessey asked for some follow-up statistics. And I believe we have some back at the office, and we will forward them.

REPRESENTATIVE MANDERINO: Okay. Thank you.

CHAIRPERSON GANNON: Representative Blaum.

REPRESENTATIVE BLAUM: Thank you, Mr. Chairman. And I repeat what I said earlier. I find Mr. Reed's testimony fascinating as well. And we don't have a lot of time this morning. As I understand it, in previous

questioning, if someone, if a doctor, his practice, his or her practice is 50 percent outside of Pennsylvania, then they don't have to pay into the, they don't have to pay the surcharge?

MR. REED: That's correct.

REPRESENTATIVE BLAUM: What's the penalty for misleading the Cat Fund on what percentage of my practice is in the Commonwealth?

MR. REED: Well, there is no penalty as such in the law. There is -- if they're required to pay a surcharge and they don't, then they're in noncompliance with the law. And we would refer them to the licensing board.

REPRESENTATIVE BLAUM: How do you determine 50 percent? Is it on the number of appendectomies I do, or is it the number of procedures I do, or is it on the amount of income that I earn?

MR. REED: It's based on patient visits. We ask them to tell us how many patients they see each week and in each location where they practice. The form that we're using now asks them to tell us where they're practicing, where their office, who they're insured by in the other state, what hospitals they're privileged at, you know, what their patient count is. And then we ask them the same thing for Pennsylvania.

REPRESENTATIVE BLAUM: If 51 percent of my practice is in the state of New Jersey but on a procedure that I perform in Philadelphia I am sued, will the Cat Fund pay whatever the, the verdict is?

MR. REED: No. I mean, they're not insured by the Cat Fund. At least they're not required to be insured by the Cat Fund. And currently, the only thing they have to have in the law is $500,000 of insurance.

REPRESENTATIVE BLAUM: So for that physician whose 51 percent of the practice is in New Jersey, the procedure is done in Philadelphia, they are not insured then in Pennsylvania? They would be -- whatever, whatever system New Jersey has would take care of that procedure?

MR. REED: They're supposed to have a policy that applies to them in Pennsylvania, a basic insurance policy, which presently under the law is $500,000.

REPRESENTATIVE BLAUM: Right.

MR. REED: But that's all they would be required to have.

REPRESENTATIVE BLAUM: And what if the, what if the verdict is much higher than that?

MR. REED: Well --

REPRESENTATIVE BLAUM: Would they be under whatever the state of New Jersey has or --

MR. REED: Whatever the state of New Jersey

has or whatever personal assets that physician has.

REPRESENTATIVE BLAUM: Do our border states also have a similar criteria for insuring their physicians? Meaning do you do 49 or, 49 percent or 51 percent of your work in Baltimore and vice versa in New York? Do they have the same, similar system?

MR. REED: Representative Blaum, I don't know what the systems are in the border states.

REPRESENTATIVE BLAUM: I want to thank you for your testimony. I find it fascinating. We are in the middle of a heated debate. I think the Chairman has -- I want to thank him for calling these hearings. We've never had a bill in this committee dealing with this issue except for House Bill 2300, which was sent to us on January 29th of this year.

And so here it is, the second week of February, and the Chairman has called a hearing, albeit brief. I think there's a lot more for us to explore on this issue. Even if a bill is ultimately sent to the Governor's desk in the near future, I think there's more work for us to do.

The PR machines have told us about the crisis in flight in Southeastern Pennsylvania. You tell me that per capita, the number of physicians in Southeastern Pennsylvania is twice what it is in my hometown. That

flies in the face of a great deal of information the people of Pennsylvania have been fed over the last 60 days.

Had these bills been introduced at the beginning of the session, I think the Chairman would have had hearings many months ago and the people of Pennsylvania would have known that information and not had to digest some of the stuff that they've been fed over the last few weeks.

So I thank you so much for coming today. And Mr. Chairman, thank you for allowing me the time at the mike.

CHAIRPERSON GANNON: Thank you, Representative Blaum. And I just wanted to say I echo your sentiments completely. Representative Roebuck.

REPRESENTATIVE ROEBUCK: Just by, by way of clarification and understanding, are doctors the only ones who deliver babies who are under the Cat Fund? If you're not a doctor and you deliver babies, are you under the Cat Fund?

MR. REED: No, we also have nurse midwives who pay into the Cat Fund. And I'm remiss. It's a relatively small number, but I don't have that in front of me here at the moment.

REPRESENTATIVE ROEBUCK: Can you provide those?

MR. REED: Sure.

REPRESENTATIVE ROEBUCK: And also, is there a fluctuation in that profession of doctors --

MR. REED: We can do that. Just so you understand, we can get the data for you on just about any specialty. The reason I have it available for neurosurgery and obstetrics and orthopedics is we've had so much in the way of inquiry about that.

I have to admit, this gentleman over here to my right, Mr. Sanders, has worked quite a number of hours to massage this stuff to make sure that what we give is accurate. As I said, because of code switches and reporting period lags and all sorts of things, we never wanted to put anything out from the Fund that was misleading anybody.

So I stand behind the accuracy of the stuff we put out in the past. But it does take effort. And I think nurse midwives, I think, are just one category. It should be relatively easy to get that calculation.

REPRESENTATIVE ROEBUCK: Thank you.

CHAIRPERSON GANNON: And our newest member.

REPRESENTATIVE PALLONE: Thank you. Thank you, Mr. Chairman. I'm sorry I was late. I have 2 very quick questions. Do nurse practitioners participate as well?

MR. REED: No.

REPRESENTATIVE PALLONE: They do not?

MR. REED: No. Physicians' assistants and nurse practitioners are not incorporated in the Fund.

REPRESENTATIVE PALLONE: And do you keep statistics in terms of the awards as to how many annually include punitive damage awards? Would you have that number readily available?

MR. REED: Well, I don't know if we keep statistics. I know from working in the field and working with people who have been in the business a lot longer than me, 25 years, that punitive damages, frankly, are almost unheard of in medical malpractice cases. The only one I can recall since I've been Director was one for like $25,000.

REPRESENTATIVE PALLONE: And that's the only one in how many years?

MR. REED: Well, we do 4,500 new claims a year. So since 1995, that's a lot of claims. There are a lot of punitive damage claims, but they don't necessarily result in payouts. Having litigated these kinds of cases, I can tell you there's a lot of jostling that goes on over punitive damage accounts in complaints.

And they do come up as an issue in cases and are discussed, and it's sometimes one of the reasons why

you settle cases. But there have been very few cases where a case has actually gone to a jury trial where punitive damages have, have in fact been awarded. But statistically, it's not something we have a category for.

REPRESENTATIVE PALLONE: Okay. Thank you. That's all I have. Thank you, Mr. Chairman.

CHAIRPERSON GANNON: Thank you, Representative Pallone. Just a clarification. I believe you told us there were 431 physicians that are exempt from the Cat Fund. Now, does that mean that these 431 physicians, they have underlying basic, they have, they have a basic policy but because their practice is 50 percent or less, or less than 50 percent, that they're not required to pay a surcharge?

MR. REED: That's correct.

CHAIRPERSON GANNON: So they could be -- they're practicing in Pennsylvania?

MR. REED: That's right.

CHAIRPERSON GANNON: But because it's less than the 50 percent, the surcharge doesn't affect them?

MR. REED: That's correct.

CHAIRPERSON GANNON: And that's 431?

MR. REED: That's correct.

CHAIRPERSON GANNON: So what I'm getting at, add that into that 34.9, you get about 35.4. And the other

physicians -- oh, okay. The military and the --

MR. REED: Well, people that work for federal clinics or the military, there's 507 them.

CHAIRPERSON GANNON: Oh, they would be required --

MR. REED: They're not required to participate in the Fund. I don't think they have to have basic insurance because they're covered under the Federal Tort Claims Act.

CHAIRPERSON GANNON: To have a license, they would still be required to have the basic, I guess. But they're obviously not seeing patients, you know, if they're working for the military?

MR. REED: Well, no. They do see patients. There are a lot of, for instance, federal clinics --

CHAIRPERSON GANNON: Oh, okay.

MR. REED: -- that treat people. They're seeing patients. They're just not required to pay into the Cat Fund.

CHAIRPERSON GANNON: Is that because of their military status?

MR. REED: Well, very few of these are actually military. But there's federal clinics that employ physicians, sponsor them. And therefore, the liability issues, if there are any, become a responsibility of the

United States Government.

CHAIRPERSON GANNON: So it would be like a VA hospital physician or something?

MR. REED: Right, VA hospitals. There are actually community clinics out there where the doctors are sponsored by US Government.

CHAIRPERSON GANNON: So because of their status as an employee, they would not be required to pay into the Cat Fund. That would be --

MR. REED: Right.

CHAIRPERSON GANNON: -- taken care of by the employer. Just so I can be clear, from the data that you have, you couldn't specifically tell us not necessarily the address that the physician would use on his license for communication with the Bureau but actually which county they were practicing in and which specialty or subspecialty they were practicing in?

MR. REED: Right.

CHAIRPERSON GANNON: Now, you've given us a lot of information today from stuff, I guess, in preparation for this hearing. Do you provide that information as a matter of course to the General Assembly through any report, or is this information that you've gathered because of the nature of this hearing?

MR. REED: No. I've -- well, we've been

tracking this on an ongoing basis for at least the past year. I have in the past disseminated this thing, this data to our advisory board, to the administration, and I believe to the legislative leaders. We've even had charts and graphs showing, you know, different things.

CHAIRPERSON GANNON: No. What I'm getting to is -- and I've seen some of that, that data that you've furnished. But as a matter of course, by a statutory requirement or by your own initiative, on a regular basis like an annual report to the General Assembly -- we frequently get data from various agencies -- is that, is that type of information included or would it be included in reports that you would send to the Legislature, the House and the Senate, on an annual basis?

MR. REED: No, it hasn't been. I mean, the report -- we give out annual reports. They're almost all focused on claims and dollars and administrative expenses, things of that sort. I mean, if somebody were to ask for it, obviously we can do it.

I mean, our general policy has been any time a member or anybody, for that matter, from the outside calls and asks for data, we're pretty much an open door and try to provide it.

CHAIRPERSON GANNON: I guess basically what you're saying is that in order to formalize that process to

disseminate it to every member of the House and the Senate, there would have to be some statutory requirement that you show that information in an annual report?

MR. REED: Well, it maybe would be helpful; but I don't know that it would be required. If you wanted it and provided -- the Fund or whatever successful organization could do that, I think, without requirement of law.

CHAIRPERSON GANNON: Thank you, Mr. Reed. Representative Blaum.

REPRESENTATIVE BLAUM: Mr. Reed, earlier when Al Masland was here, I suggested to him that somewhere in his offices is documentation that tells us who the 2 percent are that are responsible for 40 percent of the payouts.

I would assume that in your office, you have statistics that demonstrate, as we, as the Cat Fund writes the big checks, you know, who, what physicians those checks are attached to. Is that, is that confidential information, those statistics?

MR. REED: Well, the statistics about individuals is confidential. The claim records of individuals are confidential, I believe, by statute and certainly by custom. However, the statistics, including that 2 percent figure that you mentioned, we're the ones

that put it out there.

I mean, we have made information available about the frequency of payments on behalf of physicians.

REPRESENTATIVE BLAUM: And I mean, again, Mr. Chairman, I just think, again, it's more areas for this committee to explore to better help the people of Pennsylvania. I mean, you wonder if the person in the office who's responsible for mailing the check out sees the same names over and over again.

And the people of Pennsylvania can't know that. And that's not anyone's fault except ours for not adopting appropriate legislation to make that information available.

MR. REED: Mr. Blaum, I don't presume to tell anybody what course to follow. As I said, policy direction is your purview and that of the administration. But obviously, there are some physicians out there who have a significant frequency of claims.

I know we've done it since the life of the Fund. We've provided statistics on that. More recently, we broke it out for the more limited time frame since 1996 when the law was amended. And we've had at least one individual that had 10 paid claims during that period of time.

We've had -- a number of others have had

multiple. We've had 14 physician that have had 4 paid claims, 7 who have had 5, 55 who have had 3, and 269 who have had 2. And obviously, the vast majority, 2,012, only had 1.

REPRESENTATIVE BLAUM: And again, you know, you are sworn to protect that privacy. That is an area for us to deal with. Ten paid claims. The bill that will go to the Governor's desk sooner or later covers that up, continuously to cover that up, Mr. Chairman.

And I mean, again, I think we can reduce the premiums on thousands, 98 percent of those fantastic physicians in this Commonwealth. And everyone I talk to, every good doctor I talk to wants that information revealed but not their association, not the medical society. They don't push for that.

They don't try and put it in any piece of legislation, and they fight tooth and nail to make sure that it's kept out of any legislation that will eventually go to the Governor's desk. And that's a crime. That's a shame. And if there's some clerk in the Cat Fund who mails the envelope who knows this information but the constituents in our districts don't know this information, Mr. Chairman, that's a sin. Thank you, Mr. Chairman.

CHAIRPERSON GANNON: Thank you, Representative Blaum. Representative Hennessey.

REPRESENTATIVE HENNESSEY: Thanks, Mr. Chairman. John, just a question. We've been hearing that doctors are not rated, experience rated in terms of the claims history. And maybe you can clear this up. It seems to me that they're rated by the primary carrier, or the insurance company that provides their primary letter of coverage.

And I have always understood that the Cat Fund premium was based on that, it was a percentage of that primary coverage premium. So if they paid $80,000 for their primary coverage and you charged them 90, 90 percent of that, you would be charging, in '97, $2,000.

It would seem to me that if they are experience rated by their primary cover carrier, then automatically that experience rating will continue in the Cat Fund surcharge. Am I missing something or --

MR. REED: Representative Hennessey, your understanding is correct for the earlier law. But it was changed. Under the current system, the Cat Fund surcharge is divorced from the primary carrier's rating of the physician. It's based on the JUA rate schedule, the unmodified JUA rate schedule.

In fact, we don't have any influence over that JUA rate schedule. There are groups out there, for example, I mentioned orthopedic surgeons who was based on

claims history at the Cat Fund. And our actuaries had power to modify it based on experience. We would have cut rates of orthopedic surgeons a long time ago, but we don't have that ability.

So, too, if somebody has a claims record, I don't have the ability to charge them more.

REPRESENTATIVE HENNESSEY: How recently has that been changed, and what do we need to do to change it back?

MR. REED: Well, if you wanted to make it that way, you would have to pass a law that just allowed the Cat Fund to experience rate physicians. You know, there's a number of models that could be used. But that excess layer could be priced using some formula that either gave them a credit for a lifelong claims-free record or penalized them in some way for having some claims experience.

REPRESENTATIVE HENNESSEY: Thank you. Thanks, Mr. Chairman.

REPRESENTATIVE BLAUM: Mr. Chairman, just one more. Just a follow-up on what Representative Hennessey said.

CHAIRPERSON GANNON: Representative Blaum.

REPRESENTATIVE BLAUM: So there's ratings for various discipline, various specialties; but not necessarily an individual person is not rated?

MR. REED: That's correct.

REPRESENTATIVE BLAUM: So therefore, all the good orthopedic surgeons are paying a ton more because of a few of the bad ones because of the way we write the law.

MR. REED: Well, they're paying more. Any system that doesn't balance it between one and the other, obviously you're going to have some people paying more than they might otherwise pay in the alternative system. So, too, based on the fact that the rate schedule is based on what we get from the JUA.

And the experience of the primary level, you know, that first piece of insurance may drive up a pretty high price. But that may not translate into claims up at our level. For example, people that we've seen penalized over the years are podiatrists. They have very high primary costs, but they don't cost the Cat Fund a great deal of money.

So as a result of which, over the life of the Fund, the Fund has collected a great deal more in premium from podiatrists than we needed to collect based on, you know, their losses.

CHAIRPERSON GANNON: Well, thank you, Mr. Reed, for presenting a great deal of helpful information to the committee on this controversial issue and at least giving us some insight in some of the, some of the

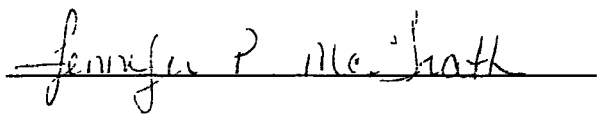
relationships between the licensing of physicians and the practice.

It seems to me, my impression -- I'm just speaking for myself here -- that what we have in Pennsylvania is a crisis in medical malpractice premiums, particularly to good physicians who are, who are practicing good medicine, and not necessarily a crisis in health care delivery just based on a number of physicians that, that are actually practicing and seeing patients.

Thank you very much. This meeting is adjourned.

(Whereupon, at 10:55 a.m., the hearing adjourned.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause and that this is a true and correct transcript of the same.



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My Commission Expires:

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