



Kansas Health Care Stabilization Fund

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Report to the
Health Care Stabilization Fund
Oversight Committee

November 30, 2012

on behalf of the
Health Care Stabilization Fund Board of Governors

Steven C. Dillon, M.D., Chairman

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by

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Health Care Stabilization Fund Board of Governors

REPORT

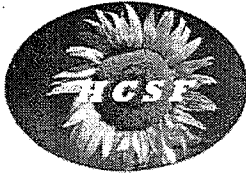
to the

HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

November 30, 2012

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Medical Professional Liability Experience Fiscal Year 2012

By Rita Noll
Deputy Director and Chief Attorney

This report for the Board of Governors of the Health Care Stabilization Fund summarizes medical professional liability experience in Kansas during fiscal year 2012. The report is based on statistical data gathered by the Fund in administering the Health Care Provider Insurance Availability Act.

This report on medical malpractice litigation is based on all claims resolved in fiscal year 2012 including judgments and settlements. By far, the majority of medical malpractice cases are resolved by settlement rather than by jury trial.

Medical professional liability refers to a claim made against a health care provider for the rendering of or failure to render professional services (K.S.A. 40-3403). Health care provider is defined in K.S.A. 40-3401 to include physicians, chiropractors, podiatrists, registered nurse anesthetists, and certain medical care facilities. Fiscal year 2012 covers the period of time from July 1, 2011 through June 30, 2012.

It should be noted that dollar amounts will not necessarily correspond with the agency's accounting and budgeting documents because claims are not necessarily paid in the same fiscal year that the settlement was approved by the court, or the judgment was rendered by a jury. Data in this report reflects the status of cases at the end of the fiscal year. Data for prior years is for comparison purposes only, as case outcomes may have changed due to subsequent court proceedings.

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MEDICAL PROFESSIONAL LIABILITY EXPERIENCE

A. Jury Verdicts

From HCSF data, 21 medical malpractice cases involving 28 Kansas health care providers were tried to juries during fiscal year 2012. Of these, 18 cases were tried to juries in Kansas courts, and three cases involving Kansas health care providers were tried to juries in Missouri. These jury trials were held in the following jurisdictions:

Johnson County	6
Jackson County, MO	3
Wyandotte County	3
Sedgwick County	3
U.S. District Court, KS	2
Shawnee County	2
Geary County	1
Reno County	1

Of the 21 cases tried, 19 resulted in complete defense verdicts. One case resulted in a mistrial. The jury returned a verdict for the plaintiff in one case as follows:

<u>Case</u>	<u>Court</u>	<u>Verdict Amount</u>	<u>HCSF Amount</u>
Plaintiff v. Doctor	Johnson County	\$8,700.00	0

The following chart compares this year's experience to previous fiscal years:

Fiscal Year	Total Trials	Defense Verdict	Plaintiff Verdict	Split Verdict	Mistrials
2012	21	19	1		1
2011	19	16	2	1	
2010	32	21	7	1	3
2009	27	20	5	1	1
2008	34	25	4	1	4
2007	36	31	5		
2006	29	23	6		
2005	34	22	7	3	2
2004	28	23	3	2	
2003	27	23	3		1
2002	19	10	6	2	1
2001	21	13	6		2
2000	28	18	7	1	2

B. Settlements

Claims settled by the Fund. During FY 2012, 67 claims in 62 cases were settled involving HCSF monies. Settlement amounts incurred by the HCSF for the fiscal year totaled \$21,431,000.00. These figures do not include settlement contributions by primary or excess insurance carriers. The settlement amounts are payments made, or to be made, by the HCSF in excess of primary coverage or on behalf of inactive health care providers. The average Fund settlement amount per claim for FY 2012 claims is \$319,866. This amount compares to last year's average of \$287,192

<u>Fiscal Year</u>	<u>Number of Claims/Cases</u>	<u>Fund Amount</u>	<u>Settlement Average</u>
FY 2012	67/62	\$21,431,000.00	\$319,866
FY 2011	61/57	\$17,518,727.54	\$287,192
FY 2010	61/54	\$19,745,200.00	\$323,692
FY 2009	81/72	\$23,867,283.72	\$294,658
FY 2008	65/57	\$17,352,500.00	\$266,962
FY 2007	61/53	\$20,929,250.00	\$343,102
FY 2006	89/81	\$24,917,984.00	\$279,977
FY 2005	90/74	\$23,544,658.00	\$261,607
FY 2004	79/64	\$18,905,505.00	\$239,310
FY 2003	87/76	\$17,483,778.00	\$200,963
FY 2002	67/58	\$16,173,742.00	\$241,399
FY 2001	54/44	\$15,592,748.80	\$288,755
FY 2000	69/59	\$20,071,607.50	\$290,893
FY 1999	70/57	\$18,344,368.15	\$262,062
FY 1998	60/53	\$11,461,345.13	\$191,022
FY 1997	39/33	\$12,448,978.83	\$319,204
FY 1996	67/51	\$21,808,406.14	\$325,498
FY 1995	42/36	\$15,344,749.98	\$365,351
FY 1994	59/45	\$19,526,821.53	\$330,963
FY 1993	45/37	\$18,239,093.06	\$405,313
FY 1992	33/27	\$ 7,890,119.83	\$239,095
FY 1991	44/NA	\$16,631,491.94	\$377,988

Health Care Stabilization Fund individual claim settlement contributions during fiscal year 2012 ranged from a low of \$25,000 to a high of \$800,000. HCSF settlements fall within the following ranges and are compared to individual claim settlements in previous years:

	FY12	FY11	FY10	FY09	FY08	FY07	FY06	FY05	FY04
\$000-\$9,999	0	0	0	2	0	0	0	0	0
\$10,000-\$49,999	7	6	5	12	6	6	9	5	13
\$50,000-\$99,999	10	12	11	10	12	7	12	13	18
\$100,000-\$499,999	32	29	29	37	34	27	51	58	37
\$500,000-\$800,000	18	14	16	20	13	21	17	14	11
Total Claims	67	61	61	81	65	61	89	90	79

Of the 67 claims involving Fund monies, the Fund provided primary coverage for inactive health care providers in eight claims. Also, the Fund "dropped down" to provide first dollar coverage for five claims in which aggregate primary policy limits were reached. Primary insurance carriers tendered their policy limits to the Fund in 54 claims. Therefore, in addition to the \$21,431,000 incurred by the Fund, primary insurance carriers contributed \$10,800,000 to the settlement of these claims. Further, six claims involved contribution from a health care provider or an insurer whose coverage was excess of Fund coverage. The total amount of these contributions was \$5,083,500.

Total settlement amounts for claims involving Fund contribution are as follows:

<u>Fiscal Year</u>	<u>Primary Carriers</u>	<u>HCSF</u>	<u>Excess Carriers</u>
FY 12	\$10,800,000.00	\$21,431,000.00	\$ 5,083,500.00
FY 11	\$10,400,000.00	\$17,518,727.54	\$ 4,350,000.00
FY 10	\$ 9,400,000.00	\$19,745,200.00	\$14,972,500.00
FY 09	\$11,471,170.00	\$23,867,283.72	\$ 4,954,830.00
FY 08	\$10,612,500.00	\$17,352,500.00	\$ 2,425,000.00
FY 07	\$ 9,488,750.00	\$20,929,250.00	\$ 3,125,000.00
FY 06	\$14,580,000.00	\$24,917,984.00	\$ 5,089,425.00
FY05	\$15,800,000.00	\$23,544,658.00	\$10,450,000.00
FY04	\$12,600,000.00	\$18,905,505.00	\$ 8,550,000.00
FY03	\$14,200,000.00	\$17,483,778.00	\$ 2,787,500.00
FY02	\$11,400,000.00	\$16,173,742.00	\$ 2,680,000.00
FY01	\$ 8,800,000.00	\$15,592,748.80	\$ 6,710,000.00
FY00	\$12,515,000.00	\$20,071,607.50	\$ 2,465,000.00
FY99	\$11,800,000.00	\$18,344,368.15	\$ 8,202,500.00
FY98	\$ 8,825,000.00	\$11,461,345.13	\$ 3,040,000.00
FY97	\$ 6,046,667.33	\$12,448,978.83	\$ 1,117,500.00
FY96	\$11,000,000.00	\$21,808,406.14	\$ 1,065,000.00
FY95	\$ 7,000,000.00	\$15,344,749.98	(Not available)

Claims settled by primary carriers. In addition to the settlements discussed above, the HCSF was notified that primary insurance carriers settled an additional 98 claims in 81 cases. The total amount of these reported settlements is \$6,603,521.00. These figures compare to previous fiscal years as follows:

<u>Fiscal Year</u>	<u>Settlement Reported Claims/Cases</u>	<u>Amount Paid by Primary Insurance Carriers</u>
2012	98/81	\$ 6,603,521.00
2011	99/83	\$ 7,865,915.00
2010	110/92	\$ 8,958,622.00
2009	90/80	\$ 7,182,241.00
2008	104/88	\$ 8,486,032.00
2007	167/146	\$10,870,339.00
2006	110/98	\$ 8,545,218.00
2005	103/88	\$ 8,058,894.00
2004	99/85	\$ 6,978,801.00
2003	122/99	\$ 9,087,872.00
2002	141/124	\$10,789,299.00
2001	109/88	\$ 8,124,459.00
2000	116/102	\$ 8,390,869.00

C. HCSF Total Settlements and Verdict Amounts

During fiscal year 2012 the HCSF incurred \$21,431.00 in 67 claim settlements. There were no judgments this past fiscal year resulting in liability for the Fund. The following figures compare total Fund settlements and awards since the inception of the Health Care Stabilization Fund.

<u>Fiscal Year</u>	<u>Total Claims</u>	<u>Settlements & Awards</u>	<u>Average Per Claim</u>
FY 2012	67	\$21,431,000.00	\$319,965.67
FY 2011	63	19,118,727.54	303,471.87
FY 2010	65	20,970,021.10	322,615.71
FY 2009	85	25,505,208.67	300,061.28
FY 2008	68	19,085,004.00	280,661.82
FY 2007	64	22,589,655.27	352,963.36
FY 2006	90	25,017,984.00	277,977.60
FY 2005	97	26,119,569.91	269,273.30
FY 2004	81	19,055,505.00	235,253.15
FY 2003	90	18,295,320.32	203,281.34
FY 2002	71	17,467,033.19	246,014.55
FY 2001	58	17,114,748.80	295,081.86
FY 2000	73	20,868,192.91	285,865.66
FY 1999	71	21,344,368.15	300,624.90
FY 1998	66	12,834,705.13	194,465.23
FY 1997	41	13,653,618.34	333,015.08
FY 1996	70	23,258,406.14	332,262.94
FY 1995	45	17,023,882.17	378,308.49
FY 1994	65	21,194,765.96	326,073.32
FY 1993	48	24,614,093.06	492,281.86
FY 1992	35	8,824,834.14	252,138.11
FY 1991	49	19,666,797.32	401,363.21
FY 1990	48	13,627,222.20	283,700.46
FY 1989	58	18,713,543.00	315,750.00
FY 1988	51	13,402,756.00	262,799.00
FY 1987	47	13,296,808.00	282,910.00
FY 1986	42	11,492,857.00	273,639.00
FY 1985	41	15,152,042.00	369,562.00
FY 1984	34	9,538,741.00	280,551.00
FY 1983	25	6,522,369.00	260,894.00
FY 1982	24	3,060,126.00	127,505.00
FY 1981	8	1,760,645.00	220,080.00
FY 1980	0	0.00	-
FY 1979	3	203,601.00	67,867.00
FY 1978	0	0.00	-
FY 1977	1	137,500.00	137,500.00

D. New Cases by Fiscal Year

The Health Care Stabilization Fund was notified of 260 new cases during fiscal year 2012. The following chart lists the number of new cases opened in each fiscal year since inception of the Fund.

Fiscal Year	Number of Cases
2012	260
2011	267
2010	290
2009	310
2008	329
2007	304
2006	457
2005	336
2004	368
2003	392
2002	361
2001	341
2000	294
1999	319
1998	293
1997	318
1996	296
1995	326
1994	247
1993	263
1992	245
1991	230
1990	205
1989	251
1988	285
1987	320
1986	276
1985	245
1984	175
1983	153
1982	124
1981	98
1980	87
1979	50
1978	19
1977	2

**University of Kansas Foundations and Faculty; Residents
Self-Insurance Programs/Primary Coverage
Reimbursement to the Health Care Stabilization Fund**

I. KU Foundations and Faculty

Foundation Self-Insurance Program Costs

FY 2012	FY 2011	FY 2010	FY 2009	
\$1,184,475.00	\$ 805,000.00	\$ 625,000.00	\$1,800,000.00	Settlement Amounts
\$ 575,258.60	\$ 379,218.79	\$ 820,658.21	\$ 893,099.94	Attorney Fees and Expenses
<u>\$1,759,733.60</u>	<u>\$1,184,218.79</u>	<u>\$1,445,658.21</u>	<u>\$2,693,099.94</u>	Totals

Reimbursable Amounts

FY 2012	FY 2011	FY 2010	FY 2009	
\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 502,375.42	Reimbursement - Private Practice Reserve
*\$1,259,733.60	*\$ 684,218.79	*\$ 945,658.21	*\$2,190,724.52	Reimbursement - State General Fund
<u>\$1,759,733.60</u>	<u>\$1,184,218.79</u>	<u>\$1,445,658.21</u>	<u>\$2,693,099.94</u>	Totals

*Amounts not reimbursed FY 2012, 2011, 2010, 2009

II. KU and WCGME Residents

Residents Self-Insurance Program Costs

FY 2012	FY 2011	FY 2010	FY 2009	
0	0	0	0	Settlements, WCGME Residents
\$ 351,025.00	0	\$ 202,500.00	\$200,000.00	Settlements, KU Residents
\$ 474,606.44	\$291,403.70	\$ 481,927.32	\$201,523.03	Fees & Expenses, WCGME Residents
\$ 375,477.55	\$164,217.55	\$ 517,290.69	\$410,969.63	Fees & Expenses, KU Residents
<u>\$1,201,108.99</u>	<u>\$455,621.25</u>	<u>\$1,201,718.01</u>	<u>\$812,492.66</u>	Totals

Reimbursable Amounts

FY 2012	FY 2011	FY 2010	FY 2009	
\$ 474,606.44	\$291,403.70	\$ 481,927.32	\$201,523.03	WCGME Reimbursement-General Fund
\$ 726,502.55	\$164,217.55	\$ 719,790.69	\$610,969.63	KU Reimbursement-General Fund
<u>**\$1,201,108.99</u>	<u>**\$455,621.25</u>	<u>**\$1,201,718.01</u>	<u>*\$812,492.66</u>	Totals - State General Fund

*\$ 83,616.87 - Amount reimbursed FY 2009

*\$728,875.79 - Amount not reimbursed FY 2009

**No amounts reimbursed FY 2012, 2011, and 2010

III. Expenditures by Fiscal Year

Fiscal Year	Foundations and Faculty*	KU and WCGME Residents**
2012	\$ 1,759,733.60	\$ 1,201,108.99
2011	1,184,218.79	455,621.25
2010	1,445,658.21	1,201,718.01
2009	2,693,099.94	812,492.66
2008	966,327.58	648,269.80
2007	2,037,227.63	1,194,968.11
2006	1,407,837.70	871,719.27
2005	1,706,763.57	1,749,032.25
2004	1,825,116.29	2,787,112.99
2003	1,113,326.84	1,418,927.85
2002	583,566.19	723,834.54
2001	1,540,133.41	953,304.62
2000	691,253.39	735,633.12
1999	1,371,640.73	645,997.65
1998	1,018,435.78	1,072,324.05
1997	1,111,787.72	999,388.16
1996	4,003,062.51	1,331,521.75
1995	255,117.85	534,124.84
1994	1,959,284.79	574,758.65
1993	1,453,444.21	650,033.67
1992	645,670.10	810,703.77
1991	435,540.69	458,561.65
1990	261,035.55	120,796.12

*Foundations and Faculty:

Amounts up to \$500,000 are reimbursed from the Private Practice Reserve Fund.

Amounts over \$500,000 are reimbursed from the State General Fund.

FY 09, FY 10, FY 11, FY 12 HCSF received reimbursement only from the Private Practice Reserve Fund.

**KU and WCGME Residents:

All amounts are reimbursed from the State General Fund.

FY 09 HCSF was reimbursed only \$83,616.87. FY 10, FY 11, FY 12 HCSF received no reimbursement.

Amounts to be received from the State General Fund are carried forward as receiveables. As of June 30, 2012, the accrued State General Fund reimbursements receiveables to the Health Care Stabilization Fund were \$5,748,058.85.

IV. Monies Paid by the Health Care Stabilization Fund for Excess Coverage Claims

	FY 12	FY 11	FY 10	FY 09	FY 08	FY 07
WCGME Residents	0	0	0	0	\$ 78,000	\$1,600,000
K.U. Residents	\$150,000	0	0	\$ 800,000	0	0
Faculty, Foundations	<u>\$600,000</u>	<u>\$195,000</u>	<u>\$970,000</u>	<u>\$3,262,500</u>	<u>\$135,000</u>	<u>\$1,475,000</u>
Total	\$750,000	\$195,000	\$970,000	\$4,062,500	\$213,000	\$3,075,000