

**Analysis of the Current Medical
Liability Climate in New York State**

ACOG

THE AMERICAN CONGRESS
OF OBSTETRICIANS
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I. The Current Medical Liability Climate in New York State

Accessible, high-quality medical care is essential for improving and maintaining the health of women in New York State. However, the medical liability climate is currently threatening the ability of obstetrician-gynecologists (Ob-Gyns) to provide care to women. The dramatic increases in medical liability premiums during the past six years coupled with the fear of litigation have caused many ob-gyns in New York State to make several changes to their practices, including early retirement, dropping high-risk obstetric patients, dropping obstetric services altogether, increasing cesarean section rates, and decreasing their number of deliveries.¹

Fear of lawsuits is a very real concern for ob-gyns practicing in New York State. Ob-gyns are particularly vulnerable to being targeted in medical malpractice cases compared to other physician specialties. Obstetrics and gynecology is considered among the specialties at highest risk for malpractice claims and most severely affected by rising insurance premiums.² According to the American Congress of Obstetricians and Gynecologists' (ACOG) 2009 National Survey on Professional Liability, 94.9% of respondents from New York State (ACOG District II) indicated that they had at least one professional liability claim filed against them during their careers. And of these, 49.9% had four or more claims filed against them (refer to Table 1).³ According to this national survey, the average number of claims filed against Ob-Gyns during their careers was 3.09, compared to a national average of 2.69. The high liability insurance premiums are a direct result of the outrageously high frequency of lawsuits against the specialty. Not only are obstetricians in New York very vulnerable to litigation, but the severity of these claims is contributing to the rising costs of liability premiums.

Table 1: Claims Experience During Career

# of Medical Liability Claims Experienced Against Ob-Gyns During Their Careers	NEW YORK STATE
ONE CLAIM	12%
TWO CLAIMS	17.3%
THREE CLAIMS	15.7%
FOUR or MORE CLAIMS	49.9%

Source: ACOG 2009 Professional Liability Survey

¹ 2009 ACOG Professional Liability Survey

² Mello M, Studdert D, DesRoches C, Peugh J, Zapert K, Brennan T and Sage W (2005). "Effects of a malpractice crisis on specialist supply and patient access to care", *Annals of Surgery* 242(5).

³ 2009 ACOG Survey on Professional Liability – American College of Obstetricians and Gynecologists

Since 2003, liability premiums for Ob-Gyns in New York State have continued to increase, with an average annual liability insurance premium of \$107,811 for 2010-2011. These periodic increases are not sustainable for Ob-Gyns wishing to stay in practice in New York State, especially when these increases far exceed the national Medical Care Services Inflation Index. The Medical Care Services Inflation Index is a national index which includes professional medical services, hospital services, nursing home services, and health insurance, and therefore depicts the change in cost of these services over time.

It can be easily argued that the current liability environment is not only a problem for the providers, but is simultaneously creating a critical public health problem in New York State. This is due to liability costs driving ob-gyns to leave practice or decrease their high-risk obstetric services. Access to obstetric services continues to become more difficult for many women of New York State, which has been labeled by the American Medical Association as one of 19 states in “full medical liability crisis”.⁴ In addition, the American Congress of Obstetricians and Gynecologists’ national organization has declared New York as one of 22 “Red Alert” states, where it is becoming unreasonably expensive for ob-gyns to practice.

II. The Cost of Being an Ob-Gyn

Throughout the past decade, medical liability premiums in New York State have continued to rise. According to the Medical Society of the State of New York (MSSNY), between 2003 and 2008, medical liability insurance costs for ob-gyns have increased by 63-72%.⁵ In July 2010, after 2 years of legislatively enacted rate freezes, medical liability insurance premiums were increased by the Superintendent of Insurance by an additional 5% (it was close to 9% for physicians in some regions of New York State).

These rate increases affect ob-gyns differently depending on where they practice in New York State. Medical Liability Mutual Insurance Company (MLMIC) is the largest medical liability carrier in the state (insuring about 60% of all physicians) and separates its insured into seven territories. Liability insurance premiums are set differently for these territories depending on the allocated loss adjustment expense which includes court fees, investigation costs, legal fees, etc. These expenses are allocated to each specific claim. Therefore, the frequency of claims in one area and the severity in cost of those claims determine the differences in rates for regions of New York State. For example, an ob-gyn who practices in Territory 3 which includes Nassau and Suffolk counties, can expect to pay over \$186,000 for annual insurance premium. While salaries differ greatly between regions and counties in New York State, the price of living also varies; it is more expensive to live and work on Long Island than in Western New York.

⁴ Robinson P, Xu X, Keeton K, Fenner D, Johnson T and Ransom S (2005). “The impact of medical legal risk on obstetrician-gynecologist supply”, *Obstetrics and Gynecology* 105(6).

⁵ *Medical Society of the State of New York*: 2011 Legislative Program

Table 2: 2010-2011 MLMIC Rates

MLMIC Territories	2006-2007	2007-2008	2010-2011
Nassau and Suffolk Counties (Territory 3)	\$ 156,032	\$ 177,880	\$ 186,772
Bronx, Kings, Queens and Richmond Counties (Territory 2)	\$ 143,215	\$ 163,269	\$ 176,573

Table 3: 2010-2011 MLMIC Rates based on scope of practice

	Obstetrics & Gynecology	Gyn/Surgery	Uncomplicated Obstetrics & Minor Surgery	GYN Only
Long Island	\$186,772	\$102,961	\$61,220	\$43,181
Bronx	\$176,573	\$97,339	\$57,877	\$40,181

Table 4: Physician Premiums for OB-GYN in California, Texas and New York

State	2003 Premium	2006 Premium	2010 Premium	% Change 2003-2010
California (Los Angeles)	\$60,259	\$63,272	\$49,804	- 17.3%
Texas (Brownsville, Laredo, El Paso)	\$92,236	\$73,342	\$62,168	- 32.6%
New York (Long Island)	\$123,853	\$156,032	\$186,772	+ 50.8%

Source: Medical Liability Monitor

Due to such outrageously high insurance premiums, 17.0% of ob-gyns in New York State reported they had liquidated holdings, accessed savings, or secured a loan to fund increases in the costs of medical liability insurance.⁶ When compared to the nation as a whole, it has become considerably more expensive to practice obstetrics in several areas of New York State (see Figure 1). Nationally, liability insurance accounts for an average of 11% of an Ob-Gyn's total operating costs.⁷ Operating costs can include technology, medical and/or surgical supplies, rent, other insurance premiums, etc. An Ob-Gyn in

⁶ 2009 ACOG Survey on Professional Liability – American College of Obstetricians and Gynecologists

⁷ Medical Group Management Association (MGMA), 2006 Cost Survey

Rockland County, however, can expect his/her liability premium to monopolize 29% of his/her operating costs, and 38% of his/her total revenue (refer to Figure 2).⁸

Figure 1: Ob/Gyn Liability Premium Expressed as a Percentage of Total Practice Operating Costs

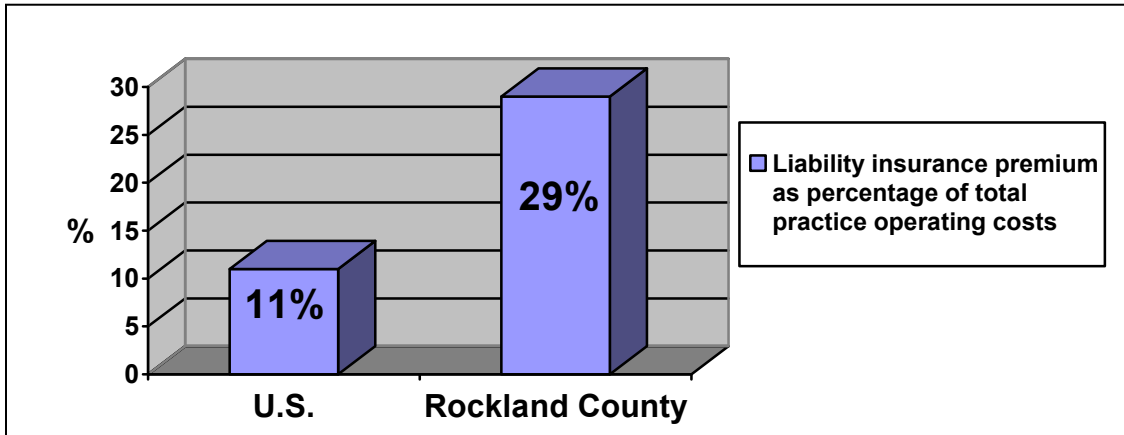
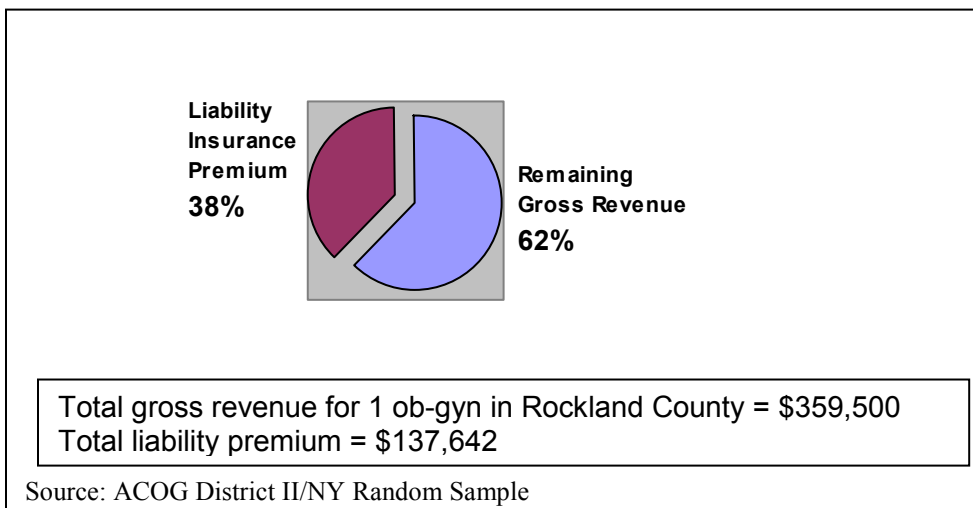


Figure 2: Liability Premiums a Percent of Total Revenue for Ob-Gyn Practicing in Rockland County, NY



With such high premium rates, Ob-GHyns must rely on the services they provide in order to afford to continue practicing obstetrics. With 51% of New York State deliveries covered by Medicaid, most providers rely on this funding for reimbursement for the care they provide. Currently, Medicaid Fee For Service (FFS) reimburses providers \$1,370 for each delivery (including prenatal and postnatal appointments). At this reimbursement rate, an obstetrician in Suffolk County would have to perform 137 deliveries annually just to cover his/her \$186,772 liability premium. This Ob-Gyn would be delivering a baby approximately every 3 days *just to cover their liability premiums*. The cost of the

⁸ Random sample of ACOG DII/NY membership (2007)

premium must be added to other practice expenses for the provider, such as administrative costs, overhead costs, etc. Figures 1 and 2 show that unreasonably high rates of liability insurance are a financial hurdle to ob-gyns.

Frustration has also been documented in ACOG District II/NY member surveys regarding inadequate reimbursement rates by commercial insurers, with 41% of respondents reporting a “negotiated” reimbursement rate for deliveries between \$1,500 and \$2,500, and 11% receiving below \$1,500.⁹ Obstetrical care continues to be a dangerously undervalued service and unsustainable profession in New York State.

III. Changing Practice Patterns Among Obstetric Providers

The supply of Obstetrician-Gynecologists has been continuously decreasing in the state of New York. Between the years 2000 and 2004, New York State has seen a 4% decrease in the number of practicing Ob-Gyns.¹⁰ In 2006, several areas of the state saw another decrease in their supply of Ob-Gyns (See Table 3). Data displayed in Table 3 refers to the supply of Ob-Gyns excluding those providers who practice gynecology only, and therefore directly showcases the diminishing access to obstetric services in these areas. A 2011 report indicates the continuing trend of recruitment and retention difficulties and Ob-Gyns are among one of the hardest occupations to recruit in New York State.¹¹ Statewide, there are only 50 Obstetricians/Gynecologists (Ob/Gyns) per 100,000 women ages 15 – 44.¹²

Access to Ob-Gyns differs greatly depending on where you look. For example, according to the Center for Health and Workforce Studies (CHWS), New York City has a rate of 34 ob-gyns per 100,000 population, while locations such as Oswego and Columbia Counties have less than 4 Ob-Gyns per 100,000 population.¹³

⁹ 2007 New York Professional Liability Insurance Survey – ACOG District II/NY

¹⁰ Changing practice patterns of obstetricians/gynecologists in New York (2006). *The Center for Health Workforce Studies, University at Albany School of Public Health*. . <http://chws.albany.edu/>

¹¹ McGinnis S, Martiniano R, and Moore J. *The Community Health Center Workforce in New York*. Rensselaer, NY: Center for Health Workforce Studies, School of Public Health, SUNY Albany. August 2011.

¹² Martiniano R, MacPherson M, Dionne M, and Moore J. *The Health Care Workforce in New York, 2009: Trends in the Supply of and Demand for Health Workers*. Rensselaer, NY: Center for Health Workforce Studies, School of Public Health, SUNY Albany. June 2011.

¹³ Annual New York Physician Workforce Profile (2007). *The Center for Health Workforce Studies, University at Albany School of Public Health*. <http://chws.albany.edu/>

Table 5: Change in Supply of Ob-Gyns per 100,000 Population in Select Regions of New York State (2002-2006)¹⁴

New York State Region	Change in Supply
Capital District	- 6.2%
Long Island	- 13.8%
Mohawk Valley	- 14.1%
Hudson Valley	- 5.7%
Southern Tier	-6.1%
Western New York	- 2.7%

Source: The Center for Health Workforce Studies, 2006

In addition, several areas have withstood large decreases in their practicing Ob-Gyns in recent years. Cattaraugus County of the Southern Tier experienced a 31% decrease in practicing Ob-Gyn specialists between 2002 and 2006. Rensselaer County saw a 32% decrease, and Schoharie (Mohawk Valley) and Steuben Counties (Southern Tier) both experienced a 39% decrease.¹⁴ According to the Center for Health Workforce Studies in Albany, NY, there are currently eight counties with zero obstetricians: Essex, Greene, Seneca, Tioga, Washington, Yates, Schoharie and Hamilton. The CHWS also found that 18 of New York's counties have less than five practicing Ob-Gyns. This has become a grave public health concern with many women being forced to travel extremely long distances and face long waiting room lines to receive appropriate care.

Two ACOG surveys have shown that many Ob-Gyns are reducing or eliminating their obstetric practice due to the liability risks. A national ACOG survey from 2009 found that 68.5% of New York State Ob-Gyns reported having made at least one change to their practice due to the lack of affordable and/or available professional liability insurance since 2006 and 70.2% reported having made one or more changes as a result of the risk or fear of professional liability claims or litigation¹⁵. These changes included increasing the number of cesarean deliveries, decreasing the number of high-risk obstetric patients, no longer offering/performing vaginal births after Cesarean-section (VBACs), decreasing the total number of deliveries, and no longer offering obstetric services altogether (refer to Table 4).

¹⁴ Annual New York Physician Workforce Profile (2007). *The Center for Health Workforce Studies, University at Albany School of Public Health.* <http://chws.albany.edu/>

¹⁵ 2006 ACOG Survey on Professional Liability – American College of Obstetricians and Gynecologists

Table 6: Changes Made in Ob/Gyn Practice in New York State Since 2006 and Reported Causes

Obstetric Practice Changes	As a Result of the Lack of Affordable and/or Available Professional Liability Insurance	As a Result of the Risk or Fear of Professional Liability Claims or Litigation
Decreased # of high-risk obstetric patients	29.0%	39.3%
Increased number of cesarean deliveries	24.5%	33.3%
Stopped offering/ performing vaginal births after Cesarean (VBAC)	22.1%	26.8%
Decreased # of total deliveries	15.2%	21.0%
Stopped practicing obstetrics	10.5%	11.4%

Source: 2009 ACOG Survey on Professional Liability

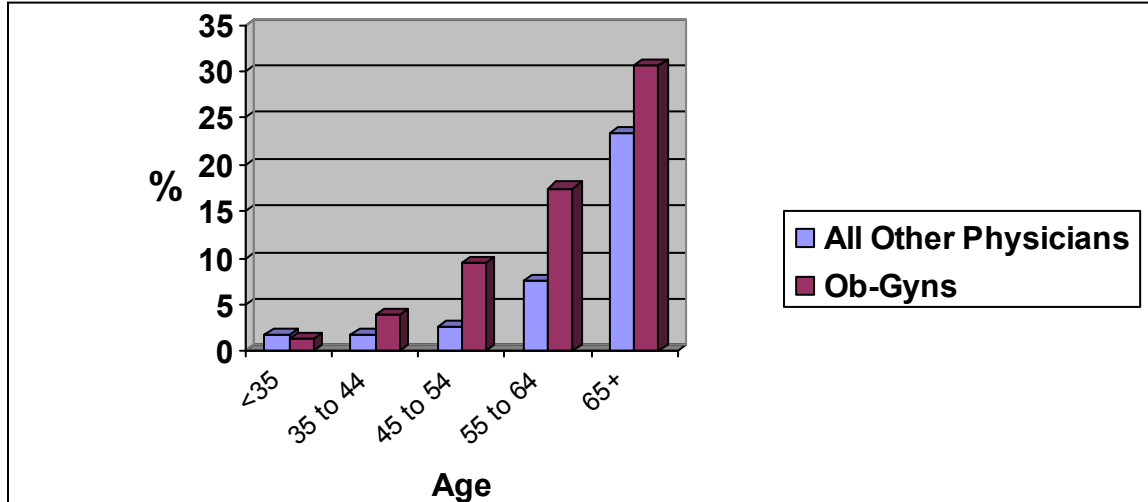
Papers published by the New York State Trial Lawyers Association (NYSTLA) have refuted any reports of an Ob-Gyn shortage in New York State¹⁶. However, these studies have not taken into consideration those physicians who have reduced their scope of practice and are therefore limiting the supply of obstetric *services* available. NYSTLA also argues that New York State has nothing to worry about regarding retirement among Ob-Gyns, reporting that in some areas of the state, large proportions of the practicing ob-gyns are still relatively young (with about a third of Ob-Gyns having been in practice for between 10 and 20 years). However, according to a study conducted by the *Center for Health Workforce Studies* in 2006, between 2004 and 2005, more than 10% of all New York State Ob-Gyns reported plans to retire or reduce hours, a rate that is much higher than for all other specialties¹⁷. Ob-Gyns in New York also plan to retire at much higher rates in younger age groups (See Figure 3). Even though a large portion of practicing Ob-Gyns in New York State are in their forties, the average age at which physician's stop practicing obstetrics is 47 years old.¹⁸

¹⁶ The True Crisis of Medical Malpractice: Needless Injuries, Tragic Deaths (2005). *The New York State Trial Lawyers Association (NYSTLA)*

¹⁷ Changing Practice Patterns of Obstetricians/Gynecologists in New York (2006), *The Center for Health Workforce Studies, University at Albany, School of Public Health*

¹⁸ 2006 ACOG Survey on Professional Liability – American College of Obstetricians and Gynecologists

Figure 3: Percent of Ob-Gyns Planning to Reduce Hours or Retire by Age



Source: Center for Health Workforce Studies, 2006

It is not only individual Ob-Gyns reducing the scope of their practice; many hospitals have been forced to cease providing obstetric services due to malpractice insurance issues, further decreasing access to care for pregnant women. According to the *Center for Health Workforce Studies*, between 1995 and 2003, fourteen hospitals in the state stopped providing regular obstetrical services¹⁹. A few examples of recent obstetrical unit closures include:

- **March 2011** —Bronx-Lebanon Hospital Center was almost forced to discontinue their maternity service because all obstetricians are losing their liability insurance. Only after the passage of the Medical Indemnity Fund (MIF) in the 2011 New York State Budget did FOJP (Federation of Jewish Philanthropies) decide to insure these physicians and keep the maternity ward within the Bronx Hospital open.
- **April 2008** – Brookhaven Memorial Hospital Medical Center in East Patchogue closed its maternity ward and delivery room services.
- **December 2007** - Victory Memorial Hospital in Brooklyn closed its labor and delivery unit and patients were advised to travel to Brooklyn Hospital Center, nearly one hour away by car.
- **December 2004** - Sidney Hospital announced that it was applying for permission to relinquish providing obstetrical services.
- **September 2003** - Elizabeth Seton Birthing Center closed its Manhattan location when its carrier raised premiums by 400 percent.
- **August 2003** - Brooklyn Birthing Center closed when its insurer ceased to provide malpractice insurance for midwives.

¹⁹ Changing Practice Patterns of Obstetricians/Gynecologists in New York State (2006). *The Center for Health Workforce Studies, University at Albany, School of Public Health* <http://chws.albany.edu/>

When an obstetrical unit is shut down, the entire community suffers. Imagine that you are a young mother-to-be living in a rural area of our state worried about your first baby. Will it be healthy? Will the delivery go smoothly? Will I get to the hospital in time? For most mothers that last question is usually the easiest to answer, but unfortunately, not for all mothers. Imagine what could happen with no Ob-Gyn practitioner in your area or if your local health care facility had closed its doors to obstetrics. Instead of a quick trip to a hospital just a few minutes or miles away when labor begins, you are forced to race perhaps a hundred miles to deliver the most precious gift you will ever receive: your child.

Patients in need are likely losing access to quality and affordable health care. Patients like the high-risk woman who can't find a local doctor for her prenatal care. Sadly, situations like these are real in areas across our state. The impact of the state's broken medical liability system extends from physicians and health care providers to patients and all New Yorkers.

IV. Effects of Ob-Gyn Practice Changes on Patients

The declining numbers of practicing Ob-Gyns has resulted in reduced access to obstetric services for women residing in many parts of New York State. Patient – doctor ratios have been decreasing in some areas of the state for the past ten years. These ratios vary greatly depending on which area of the state a woman may live. For example, according to the *Center for Health Workforce Studies*, in 2007 Oswego County had 6 Ob-Gyns to 1,353 births (225 births performed by each physician) annually. In Cattaraugus County there were 982 births with just 5 Ob-Gyns (196 births performed by each physician). With eight counties in New York with zero practicing Ob-Gyns, waiting room lines and travel distances have increased for women needing obstetric care. In Schoharie County women are forced to travel 1.5 hours to seek obstetric services. Such situations have become more and more common, and without appropriate malpractice reform, the situation is only expected to get worse.

This health care access crisis, coupled with an upward trend of Ob-Gyns taking part in defensive medicine, is creating a suboptimal health care environment for women in New York. Defensive medicine has been defined as “a deviation from sound medical practice that is induced primarily by a threat of liability”.²⁰ In other words, defensive medicine occurs when providers order unnecessary tests and procedures or avoid certain high-risk patients or procedures primarily because of the fear of medical liability and litigation. The New York State Trial Lawyers Association has tried to dispute the fact that malpractice insurance premiums result in increased rates of defensive medicine among Ob-Gyns.²¹ However, studies conducted in other states have found that defensive medicine is in fact most prevalent among providers who pay the most for their liability

²⁰ Hershey, N (1972). The defensive practice of medicine: myth or reality, *Milbank Memorial Fund Quarterly*, 50: 69-98.

²¹ The True Crisis of Medical Malpractice: Needless Injuries, Tragic Deaths (2005). *The New York State Trial Lawyers Association (NYSTLA)*

insurance premiums.²² A 2005 study included a sample of 669 physician specialists practicing in Pennsylvania, 88% of which had previously been sued. Nearly all (93%) reported that they sometimes or often engaged in at least one form of defensive medicine outlined in the survey (ordered more tests than medically indicated, prescribed more medications than medically indicated, referred patients to other specialists in unnecessary circumstances, suggested invasive procedures to confirm diagnoses, avoided certain procedures or interventions, or avoided caring for high risk patients). Of the 187 ob-gyns included in the survey, 59% reported that they often referred high-risk patients to other providers in unnecessary circumstances due to fear of liability concerns.²²

New York State is experiencing its own increased rates of defensive medicine due to malpractice concerns. According to a survey conducted by ACOG in 2009, 24.5% of New York ob-gyns reported increasing the number of Cesarean deliveries as a direct result of the affordability and/or availability of professional liability insurance, and 33.3% reported increasing Cesarean deliveries due to the risk or fear of professional liability claims or litigation.²³ Other studies have found there to be a relationship between increased Cesarean delivery rates and increasing malpractice premiums.²⁴ Changes in practice discussed previously in Section III of this report have also been attributed to affordability of liability insurance and fear of liability claims and litigation.

V. Physician Shortages Across the Country

Dr. William Rayburn report shows a shortage of 9,000 to 14,000 Ob-Gyns in 20 years. After 2030, the Ob-Gyn shortage may be even more pronounced, as the population of women is projected to increase 36% by 2050, while the number of Ob-Gyns remain constant.²⁵ It is predicted that the adult female population is expected to be 170 million in 2020 and 213 million in 2050. To go along with that the number of births is projected to rise from 4.3 to 5.7 million between the years 2010 and 2050. These numbers show the absolute need of Ob-Gyns to increase so that there can be healthy mothers and babies. There is also a shortage prediction in at least 21 medical and surgical specialties.²⁶ There is also the issue of Ob-Gyns being forced to do more primary care. The problem is that Ob-Gyn is not a primary care.²⁷

VI. Conclusions

Research has shown that there are real reasons to be concerned about how the medical liability climate is affecting ob-gyns practices and access to quality obstetric care for

²² Studdert, DM, Mello, MM, Sage, WM, DesRoches, CM, Peugh, J, Zapert, K, and Brennan, TA (2005). Defensive medicine among high-risk specialist physicians in a volatile malpractice environment, *JAMA*. 293(21)2609-2618.

²³ 2009 ACOG Survey on Professional Liability – American College of Obstetricians and Gynecologists

²⁴ Spencer, JV, Borgida, AF, Smith, K, Ingardia, C, Prabalos, AM, and Egan, JFX (2008). Cesarean delivery rates and medical malpractice premiums, *Obstetrics and Gynecology* 111(4). Abstracts pending publishing.

²⁵ ²⁵ Dr. William F. Rayburn, MD, MBA. OBG Management, *The Obstetrician – Gynecologist Workforce in the United States, Facts, Figures and Implications* (2011).

²⁶ Erin E. Tracy, MD, MPH, William F. Rayburn, MD, MBA *An evolving specialty confronts workforce changes* (2011).

²⁷ Jessica A. Smith *The Looming Shortage of OB/GYNs* (2012).

women in New York State. Ob-Gyns across the state are being forced to give up obstetrics, leaving many women to suffer from longer travel times to appointments at facilities that are further away from home, where they may not be treated by their regular obstetrician-gynecologists. Medical liability reform is imperative if we wish to relieve our ob-gyns from the burden of outrageously high liability insurance premiums while ensuring that the women of New York State will receive the quality obstetric care they need and deserve.

VII. ACOG District II/NY's Recommendations

ACOG District II/NY supports medical liability reform measures that would lower liability premiums and/or create a compensatory fund, similar to workers' compensation, for neurologically impaired infants. The fund would provide them with necessary medical and financial support throughout their lives – over and above what any current public health program could provide and, far beyond what a court of law could ever pay out. ACOG remains dedicated to working with all interested stakeholders and policymakers to ensure relief for physicians from skyrocketing medical liability costs and to guarantee that patients and their families receive care and services seamlessly and expeditiously.