Review of the Montana Medical Legal Panel

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Purpose

- To prevent the filing of malpractice lawsuits which do not have at least a reasonable inference of malpractice and to promote settlement of meritorious claims.

Mandatory

- Every malpractice claim must be filed first with the Medical Legal Panel before suit can be filed in district court.

Procedure

1. Malpractice claim filed with the panel director.
2. The director forwards the claim to the healthcare provider.
3. The director obtains medical records and provides them to each side.
4. Panel is composed of 3 lawyers and 3 healthcare providers.
5. Hearing in Helena without a transcript unless both sides agree.

Procedure (continued)

6. Deliberations in secret to decide if there is:
    a) "substantial evidence that the acts complained of occurred and that they constitute malpractice, and,
    b) a reasonable medical probability that the patient was injured thereby."
7. Explanation of decision

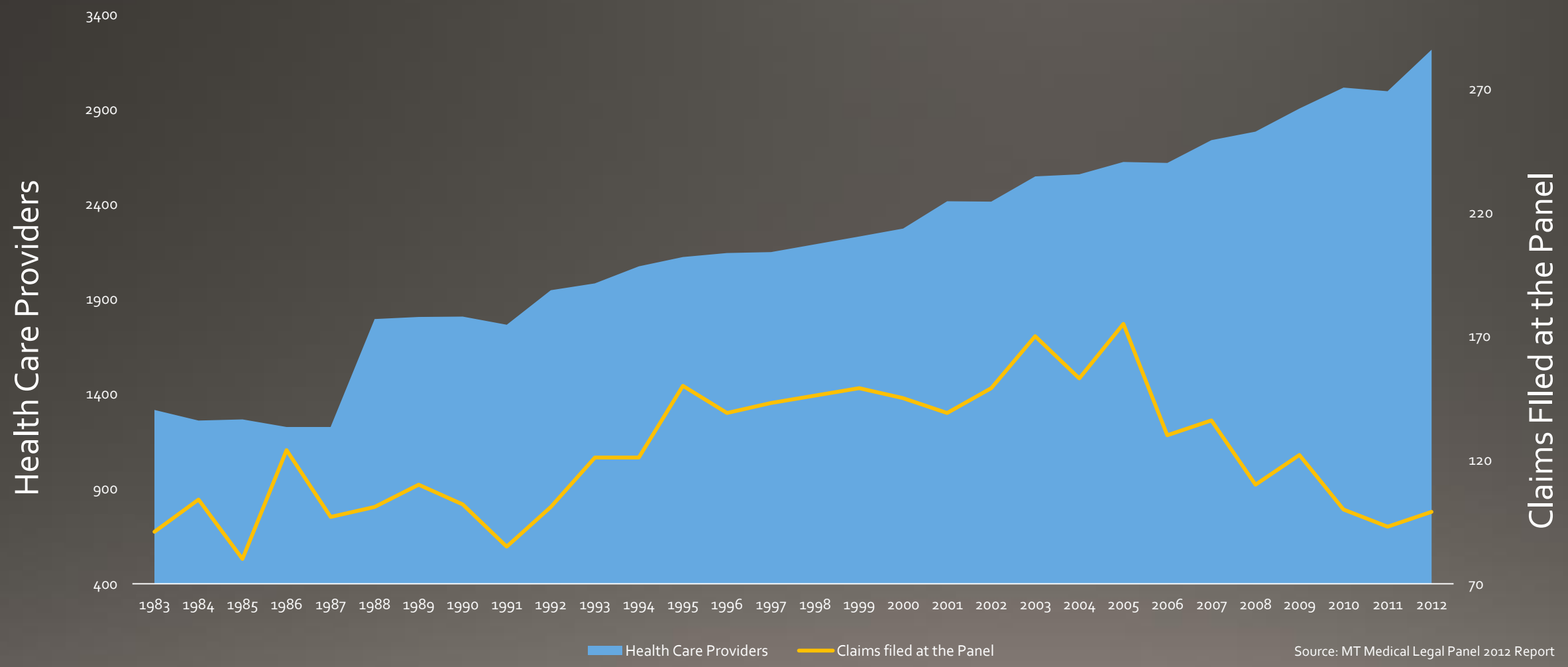
Effect of Decision

1. Non-binding.
2. Not admissible in any subsequent proceeding
3. Evidence can be used to impeach a witness.
4. If claimant wins, early mediation can be ordered.
5. Practical considerations

Statistics

1. Over the past 30 years the number of claims have remained about the same while the number of practitioners has trebled.

30 Years:
Health care providers, med mal claims



Source: MT Medical Legal Panel 2012 Report

Statistics (continued)

2. Very few trials

Physicians in Claims Lawsuits and Jury Trials

MONTANA MEDICAL LEGAL PANEL REPORT

MONTANA PHYSICIANS IN MEDICAL MALPRACTICE CLAIMS, LAWSUITS AND JURY TRIALS

MONTANA PHYSICIANS

Panel Claim Filing Year	In Claims Filed	In Claims Abandoned, Settled Or Special Ruling Without A Panel Hearing	In Claims With A Hearing	In Claims Abandoned Or Settled After A Hearing Prior To A Lawsuit	In Lawsuits After The Panel	In Claims Abandoned Or Settled After A Lawsuit & Prior To A Trial	In Lawsuits Ending In Summary Judgment Or Dismissal	In Jury Trials	In Trials With Jury Verdicts And Verdict Results	
									In Favor Of Physician	In Favor Of Claimant
2002	177	31	146	66	72	63	4	1	1	0
2003	188	37	151	89	52	46	2	2	2	0
2004	183	48	135	66	64	49	3	1	1	0
2005	193	43	150	73	70	57	3	3	3	0
2006	149	35	114	55	54	40	3	4	3	1
2007	154	43	111	47	60	43	1	7	7	0
2008	122	28	94	46	39	18	3	1	1	0
2009	140	26	114	41	55	17	2	0	0	0
2010	109	20	89	27	40	5	0	0	0	0
2011	101	21	80	16	36	7	0	0	0	0
2012	107	9	46	5	5	0	0	0	0	0
TOTAL	1,623	341	1,230	531	547	345	21	19	18	1
ANNUAL AVERAGE	148	31	111.8	48.3	49.7	31.4	1.9	1.7	1.6	0.1

Note: Special Ruling involves claims or individual health care providers that are dismissed from MMLP level where no party prevails.

It takes approximately five years from a starting point until the rate of malpractice claims "mature" or are fully-reported from an incident year given that Montana has a three year "discovery" statue of limitations. ***Some actions are still pending.***

Observations

1. Inherently biased
2. Efficient way to preview case to arrive at next step
3. Catharsis for claimant
4. It is the law

End