# Index

#### А

ACC. See American College of Cardiology

- Accelerated compensation events, 15, 18, 19,88, 89,90-91
- ACES. See Accelerated compensation events; Avoidable classes of events
- ACOG. See American College of Obstetricians and Gynecologists
- ACS. See American College of Surgeons
- Acute myocardial infarction, 105
- ADR. See Alternative dispute resolution
- Agency for Health Care Policy and Research, 18, 83, 142. 145, 149
- Alternative dispute resolution, 13-14, 82, 84-87, 89, 90-93
- AMA. .See American Medical Association

AMA,' SSMLP. See American Medical Association/ Specialty Society Medical Liability Project

- American College of Cardiology. 5-6, 8, 50, 58, 96, 106-117
- American College of Emergency Room Physicians, 96
- American College of Obstetricians and Gynecologist, 5-6, 8, 43, 50, 56, 58, 63, 65, 71, 96, 106-117, 144
- American College of Surgeons, 5-6, 8, 50, 56, 58, 63,65, 96, 106-117
- American Health Care Systems. Inc.. 32-33
- American Medical Association, 30, 145, 47-48, 150, 156-160
- American Medical Association/Specialty Society Medical Liability Project, 14, 84,86-87

AM I. See Acute myocardial infarction

Arbitration. See Alternative dispute resolution

Archer, Bill, 2, 95

Arizona

- pretrial screening studies, 81
- Avoidable classes of events. See accelerated compensation events

## В

Baldwin, Laura Mae, 9, 68-69.70, 97 Birth-related injuries, 14-15, 88, 89 Bovbjcrg, Randall, 96 Breast biopsy, 24-25 Brigham and Women's Hospital, 24-25 Bush, George, 2

#### С

Caesarean delivery, 2,5,8, 11,68,81, 105, 129, 131 California, 28-29, 49.80-81, 87, 105, 149-150 Cancer, 9.24-25, 31-32 Cardiologists. See American College of Cardiology. Case studies methodology', 43 use of low osmolality contrast agents. 1 (), 71-74 Channeling arrangements, 87 Clinical practice guidelincs, 2, 12-13, 17-18.81-84, 87,92, 142-150 Clinical scenario surveys Duke Law Journal study. 49-50, 51-52 Classman survey of New Jersey physicians. 9. 65-66 methodology, 41-42 OTA surveys. 5-6,8, 50, 52-65 Congressional Sunbelt Caucus. 95 Conventional malpractice reforms compensation guidelines, 11-12 description, 2, 11-12, 78-79.92 direct malpractice costs impact, 81 low-income plaintiffs and, 76, 77 multistate data. 79, 133:141 policy option, 16-17 pretrial screening studies, 81, 133-141 pm-defendant bias, 76 single-state studies, 79-81, 133-141 small multistate studies, 79-81. 133-141 Cost Consciousness scale. 109

#### 180 | Defensive Medicine and Medical Malpractice

Cost of defensive medicine Caesarean delivery in a complicated labor example, 129, 131 cost containment and practice guidelines, 148-149 "customary practice" standard, 149 estimate surveys, 128-132, 156-161 head injury example, 5, 131-132 Lewin-VHI, Inc. estimates, 48, 160-161 Reynolds and colleagues estimates, 47-48, 156-160 "Customary practice" standard, 149

#### D

Definitions of defensive medicine benefit or harm to the patient and, 22-25,36 categories of defensive medicine, 23-24 examples, 24-25 conscious versus unconscious practice, 2, 22, 36 definitions other than OTA's, 23 Lewin-VHI, Inc. definition, 48 OTA definition, 1,3,21-22,95-96 primary versus sole motivation, 22,36 probability of disease and medical consequences, 25-26 Delayed diagnosis breast malignancy claims, 24-25 Diagnostic x-rays - see x-rays Dingell, John D., 2,95 Direct physician surveys methodology, 4, 41, 43 findings, 4,43-46 poor response rates, 47 Discomfort with Clinical Uncertainty scale, 109 Duke Law Journal Project findings, 50 methodology, 5, 41-42 structure, 49-50 Durenbergcr, Sen. Dave, 2,95

## E

Economic issues. See Cost of defensive medicine; Financial consequences of malpractice suits Eliastam, 131 Enterprise liability, 13, 18,82,87-88,93 Epstein, A. and McNeil, B., 48-49 Erb's palsy study, 32 "Error in judgment" rule, 143 Expert witnesses, 30,83, 143

#### F

Failure-to-diagnose claims, 30-31 Family practitioners, 5,9,29,69,71, Federal Rules of Evidence "learned treatise" exception, 144 Fee-for-service system health care reform and, 2, 15,91-92 lower diagnostic testing use in, 104 Financial consequences of malpractice suits. See *also* Cost of defensive medicine income loss, 27-28 malpractice premiums and, 29, 159 malpractice reporting systems and, 10,28-29 misperceptions about, 28 Florida, 14-15,29, 82,88,89,96-97, 147 FPs. See Family practitioners

### G

Glassman, P., 4,9,65-66,69 Goold, Susan, 108-109 Graduate medical education, 33-36 Grassley, Sen. Charles E., 2 Gronfein, and Kinney, 79-80 Grumbach and Lueft, 69,71,97 Guidelines. See Clinical practice guidelines

#### Н

Harvard Medical Institutions, 33 Hatch, Sen. Orrin, 2,95 Hawaii, 81 Head injuries, 5, 130, 131-132 Health care reform, 2, 15-16,91-92,93 Health Insurance Association of America, 131 Health maintenance organizations, 15,31,87, 105 HMOs. See Health maintenance organizations Hospitals, 32-34

#### I

Indiana, 79-80 Informed consent, 32-33 Ischemic heart disease, 105

# J

Jacobson, P. and Rosenquist, C. 10,71-74 Joint Commission on Accreditation of Health Care Organizations, 32

#### K

Kaiser Foundation, 80 Kennedy, Sen. Edward M., 2,95 Kington, R., 71 Kinney. See Gronfein and Kinney

#### L

"Learned treatise" exception, 143-144 Legal standard of care, 30-32, 142-145 Lewin-VHI, Inc., 48, 160-161 Localio R, 2,5,8, 11,68,81 LOCAs. See Low osmolality contrast agents "Loss of chance" doctrine, 31-32 Low osmolality contrast agents, 10,72-74

#### М

Maine, 12,82-84, 109, 146-147, 148 Malpractice reform. See Reforms Mammograms, 24-25,83 Managed competition, 15,92 Maryland, 148 Massachusetts, 105 Medical Injury Compensation Reform Act, 80-81 Medical Insurance Exchange of New Jersey, 65-66 Medical Liability Demonstration Project, 12,82-84, 146-147, 148 Medicare Act, 146 Medicare reimbursement rates, 132 Methodology of studies. See also Study evidence behavioral model of physician test ordering, 39.40 case studies, 43 clinical scenario surveys, 5-6, 8, 41-42 direct physician surveys, 41 "prompting" issue, 41,63,74 statistical analyses, 42-43 for this report, 95-100 Meyer, J., 24-25 MICRA. See Medical Injury Compensation Reform Act Minnesota, 82, 147-148 Multistate studies of malpractice reform, 79-81, 133-141

#### Ν

National Ambulatory Medical Care Survey, 158 National Cancer Institute, 83 National Center for Health Statistics, 131 National Electronic Injury Surveillance System, 132 National Health Interview Survey, 131, 132 National Practitioner Data Bank, 10,28, 29 Negative defensive medicine, 3,5,9,69,71 Neurological injuries. See also Head injuries, 88, 89 Neurosurgeons, 123-124 New Jersey, 9, 4, 9,65-66,69 New York, 2,5, 8, 11, 28,68-69,71,81, 105 No-fault malpractice reform proposals, 14-15, 18-19,82, 88-91,93 Nonclinical factors in physicians' resource USC, 104-105 NPDB. See National Practitioner Data Bank

#### 0

OB/GYNs. See Obstetricians/gynecologists Obstetric claims. See also Caesarean delivery, 4,8, 68-69.90 Obstetricians/gynecologists. See also American College of Obstetricians and Gynecologists, 5,9, 29,69,71, 125-126 OTA clinical scenario surveys, 5-6,50,52-65,67, 106-111, 113-114, 118-127, 130-132 Ρ Patient Compensation Funds, 79-80 PCFs. See Patient Compensation Funds Physician Payment Review Commission, 132 Physician test ordering surveys, 48-49 Physicians' attitudes, 2,9-10,26-32,37, 104-105, 108-109, 127 Physicians' Insurance Association of America, 24 - 25Policy options, 16-19 Positive defensive medicine studies, 2, 5, 8-9, 11, 68-69.81 Pretreatment arbitration agreements. See Voluntary binding arbitration Pretrial screening studies, 81, 133-141 Project structure advisory panel, 96 background papers, 97 clinical scenario surveys, 96 contract papers, 97, 100 empirical research in addition to clinical scenario surveys, 96-97 planning workshop, 95-96 report review process, 97 workshop participants, 98-99 "Prompting" issue, 41,63,74 Prospective Payment Assessment Commission, 132 Prostate specific antigen test use, 9 Psychological consequences of malpractice suits, 29

## Q

Quality assurance influence on defensive medicine, 32-33

# R

Reforms alternative dispute resolution, 13-14, 82, 84-87, 89,90,91,92-93 clinical practice guidelines, 12-13, 81, 82-84,92, 142-150 conventional, 11-12, 76-81

#### 182 | Defensive Medicine and Medical Malpractice

enterprise liability, 13, 18, 82, 87-88,93 health care reform considerations, 15-16,91-92 newer reforms, 81-91 no-fault compensation, 14-15, I8-19, 82, 88-91, 93 "Relative avoidability" concept, 90 Residency training. See Graduate medical education "Respectable minority" rule, 143

Reynolds R., 47-48, 156-160

Risk management, 32-33

**Risk Management Foundation**, 32

Robert Wood Johnson Foundation, 9,68-69,70 Rosenquist. See Jacobson and Rosenquist

#### S

Secretary's Commission on Medical Malpractice, 23 Shoulder dystocia study, 32 Single state studies of malpractice reform, 79-81, 133-141 SMS survey. See Socioeconomic Monitoring System survey Socioeconomic Monitoring System survey, 156-157 Sources of defensive medicine, 26-36 St. Paul's Fire and Marine Insurance Company, 30 Stanford University Medical Center Emergency Department, 25 Statistical analyses common hypothesis, 67 methodology, 4, 42-43 multivariate analyses, 42 negative defensive medicine studies, 9, 69, 71 OTA clinical scenario surveys, 114-115 positive defensive medicine studies, 68-69 StatXact-Turbo software, 115-116 Study evidence. See also Methodology of studies case study of LOCAs, 71-74 clinical scenario surveys, 5-6, 8, 49-67 direct physician surveys, 4,43-47

physicians' reasons for ordering tests and procedures, 48-49 specific measures, 113-114 statistical analyses, 67-71 survey-based estimate of cost, 47-48 Study summaries conclusions, 74 methodology, 41-43 study evidence, 43-74 SUDAAN software, 115-117 Surgeons. See *also* American College of Surgeons, 121-122 Survival rates, 31-32

#### Т

Tort reform. See Reforms Traditional reforms. See Conventional malpractice reforms

# u

University of California, 87

#### V

Vermont, 82, 148 Virginia, 14-15,88-89 Voluntary binding arbitration, 13-14,84-86

#### W

Washington State, 4,8,68-69, 105 Wickline v. State of California, 149-150

# Х

X-rays

criteria for when not to obtain cervical spine x-ray, 2, 5, 25, 82-83, 130-132

#### Y

Youngberg v.. Romeo, 149