

Medical Malpractice Liability: Something to Worry About?



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What is the Problem?

- medical treatment is associated with a risk (a probability) of additional injury
- injury results in financial and physical losses for the consumer
- injuries are costly to prevent, but greater prevention efforts can reduce injuries

What is the Solution?



- Provide incentives to efficiently reduce injuries--produce an “optimal” number of injuries
 - not possible to eliminate all injuries
 - eliminate injuries in which the marginal cost of injury prevention is less than or equal to the marginal benefit of injury prevention
 - consumers should be willing to pay for the costs of injury prevention where the marginal cost is less than or equal to the marginal benefit



Does Third Party Liability with Negligence Rule Achieve this Goal?

- In theory yes!
- Negligence Rule: failure to take prevention measures that cost less than the damages caused by not taking preventive measures
- under such a rule, physician would take necessary prevention because it is always less costly than not doing so
- number of injuries would be optimal
- **there is no demand for malpractice insurance**
- **costs of prevention are included in costs of treatment**



So Why is there Medical Malpractice Insurance?

- failure to file, or failure for courts to find liability, in true negligence cases
- estimates indicate that only 1 in 10 to 1 in 20 injured patients file a claim
- physician will insure against financial claims and be negligent—undertake too little prevention; costs of insurance are less than costs of prevention
- insurance provides additional incentive not to take preventive action—moral hazard
- Consequences
 - too many injuries
 - too little prevention (treatment)
 - effects on costs of medical care are ambiguous



So Why is there Medical Malpractice Insurance?

- an inappropriate negligence standard— courts hold physicians responsible for not taking actions that cost more than the cost of the injury they are intended to prevent
- physician insures because costs of prevention are greater than costs of injury
- insurance provides incentive not to take preventive action—moral hazard, although reputation costs and time costs associated with legal case mitigate this effect
- Consequences
 - increases use of positive defensive medicine—too much prevention (treatment); treatment not justified on the basis of cost-benefit analysis
 - increases use of negative defensive medicine—avoid treatment that has high risk of legal negligence (leave certain specialties; avoid certain patients)
 - increases costs of medical care



So it is an Empirical Question: Too Much or Too Little Prevention?

- Does malpractice insurance imply too little care and too many injuries?
 - increases in malpractice insurance premiums would increase prevention (treatment) and improve health
 - increases in malpractice premiums would have no effect on access
 - may lower costs of medical care since costs of prevention are lower than costs of insurance
- Does malpractice insurance imply too much care and too few injuries?
 - increases in malpractice insurance premiums would increase treatment and have little effect on health
 - increases in malpractice premiums would decrease access and have adverse effects on health

A Review of the Evidence



- Kessler and McClellan (1996, 2002) –
 - widely cited articles that show that malpractice reforms such as damage caps reduce hospital expenditures on heart attack patients by approximately 5% without adversely affecting health
 - evidence of positive defensive medicine—too much inefficient care
 - policy implication—reduce malpractice premiums and significantly reduce costs without adversely affecting health
 - only paper to find large effects and subsequent research has not confirmed this finding

A Review of the Evidence



- Dubay et al. (1999, 2001)
 - two articles examining effect of malpractice premiums for OB/GYN on cesarean section, access to prenatal care and infant health
 - find that increases in premiums increase use of cesarean section (consistent with other studies) and decrease access for prenatal care; effects are small
 - some evidence of positive defensive medicine—too much inefficient care
 - evidence of negative defensive medicine and behavior to avoid high risk cases
 - policy implication—reduce malpractice premiums and there will be slight improvement in access and a slight cost savings; much smaller effects than implied by Kessler and McClellan

A Review of the Evidence



- Baicker and Chandra (2004)

- examine the effect of malpractice premiums size of physician workforce, and on physician treatment practices
- find that increases in premiums decrease number of rural physicians—primarily because of a decline in older physicians
- find no relationship between malpractice premiums and treatment
- some limited evidence of negative defensive medicine and behavior to avoid high risk cases
- policy implication-reduce malpractice premiums and increase access

A Review of the Evidence



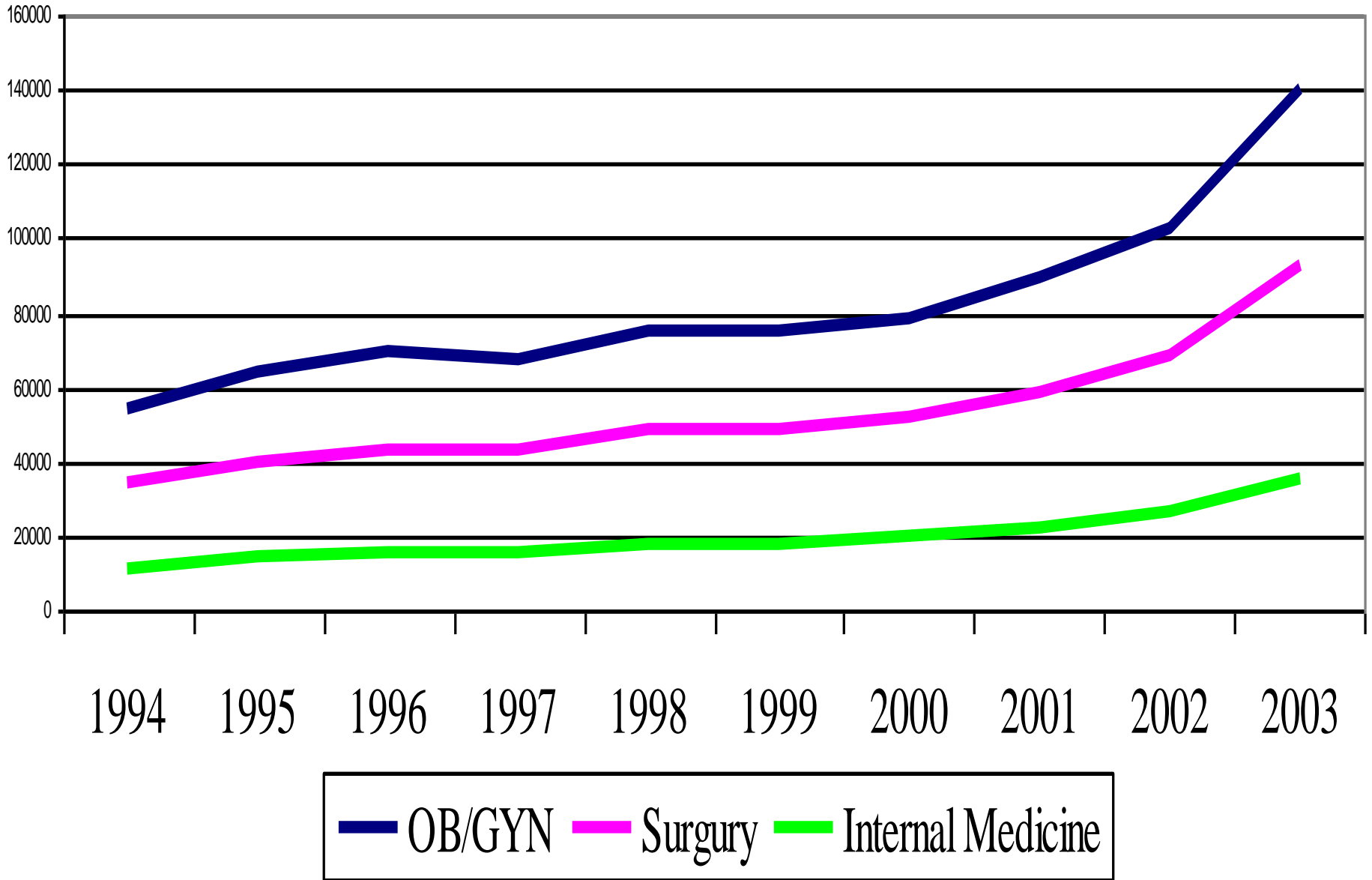
- Dranove and Gron (2005)
 - examine the effect of malpractice premiums on craniotomies and travel times in Florida
 - find that there was an increase in travel times due to a decrease in physicians who do not specialize in craniotomies
 - some limited evidence of negative defensive medicine and behavior to avoid high risk cases
 - policy implication-reduce malpractice premiums and increase access

Conclusions

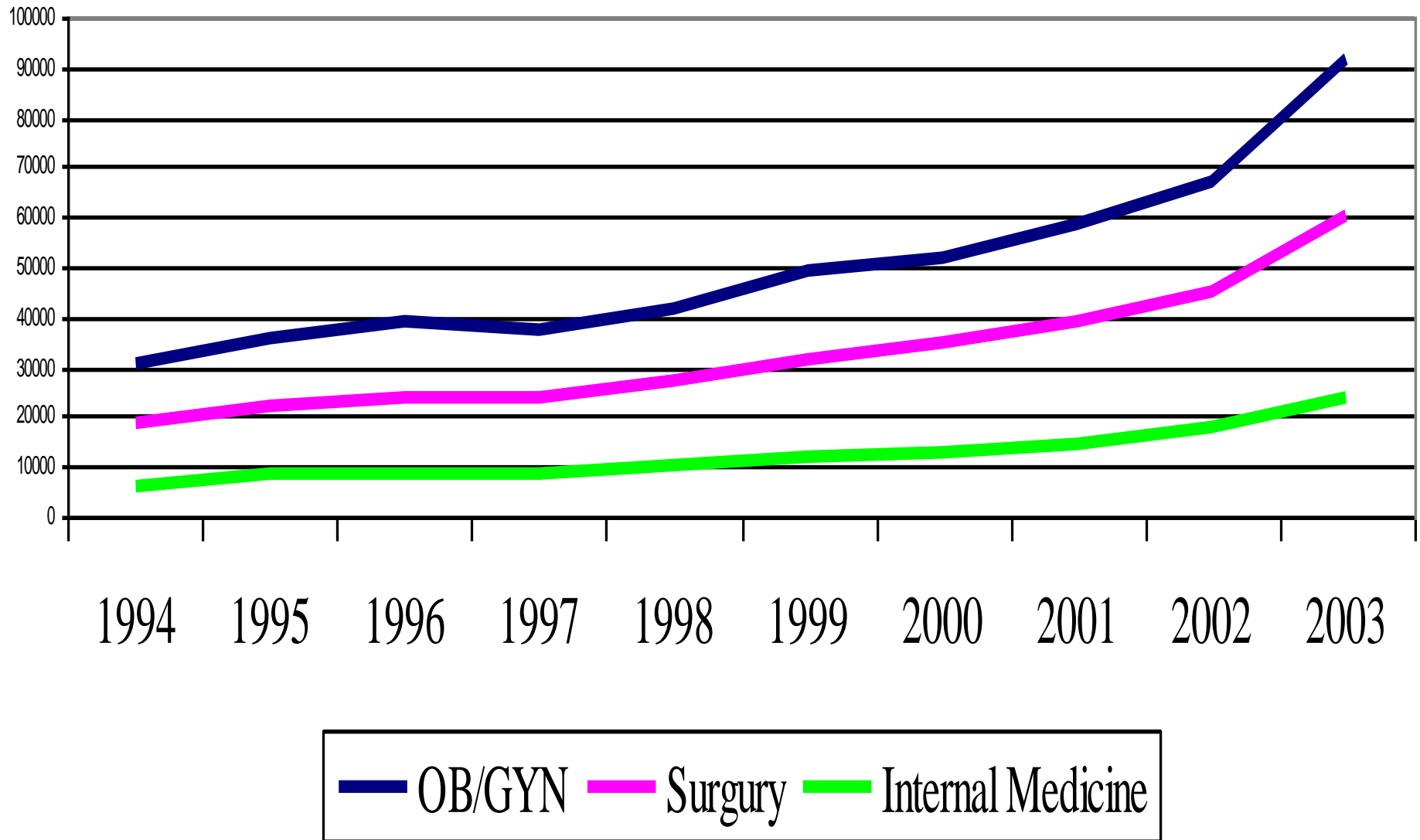


- Malpractice reforms will have little effect on treatment practices, costs of care, and health
- Most evidence suggests that reforms that lower premiums will have some benefits; implies that most of the inefficiency in malpractice liability is due to inappropriate standard and judgments
 - lower premiums will increase access
 - lower premiums will reduce excess utilization
 - lower premiums will not adversely affect health
- Malpractice reforms will not eliminate variability in malpractice premiums

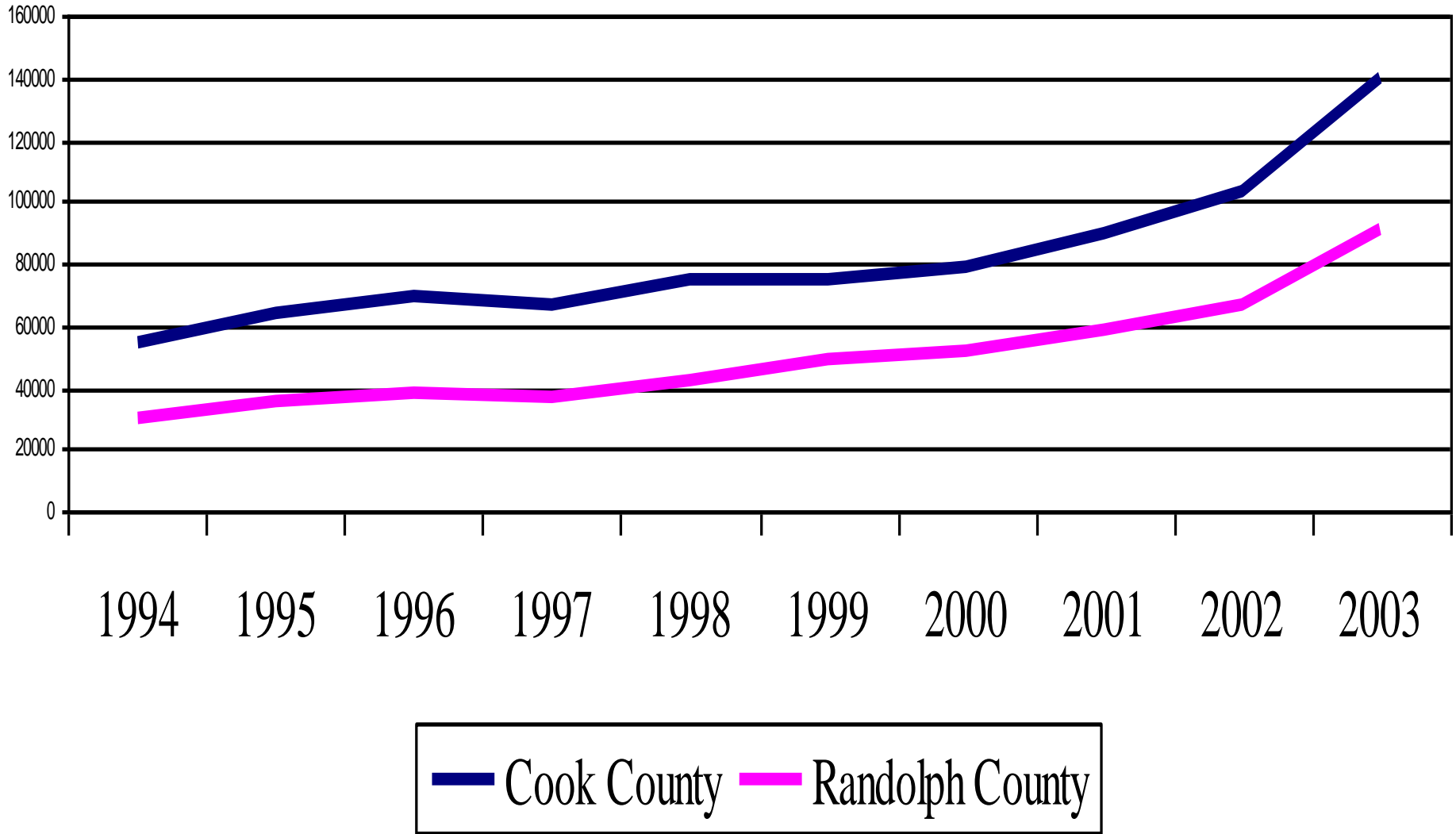
Malpractice Premiums in Cook County



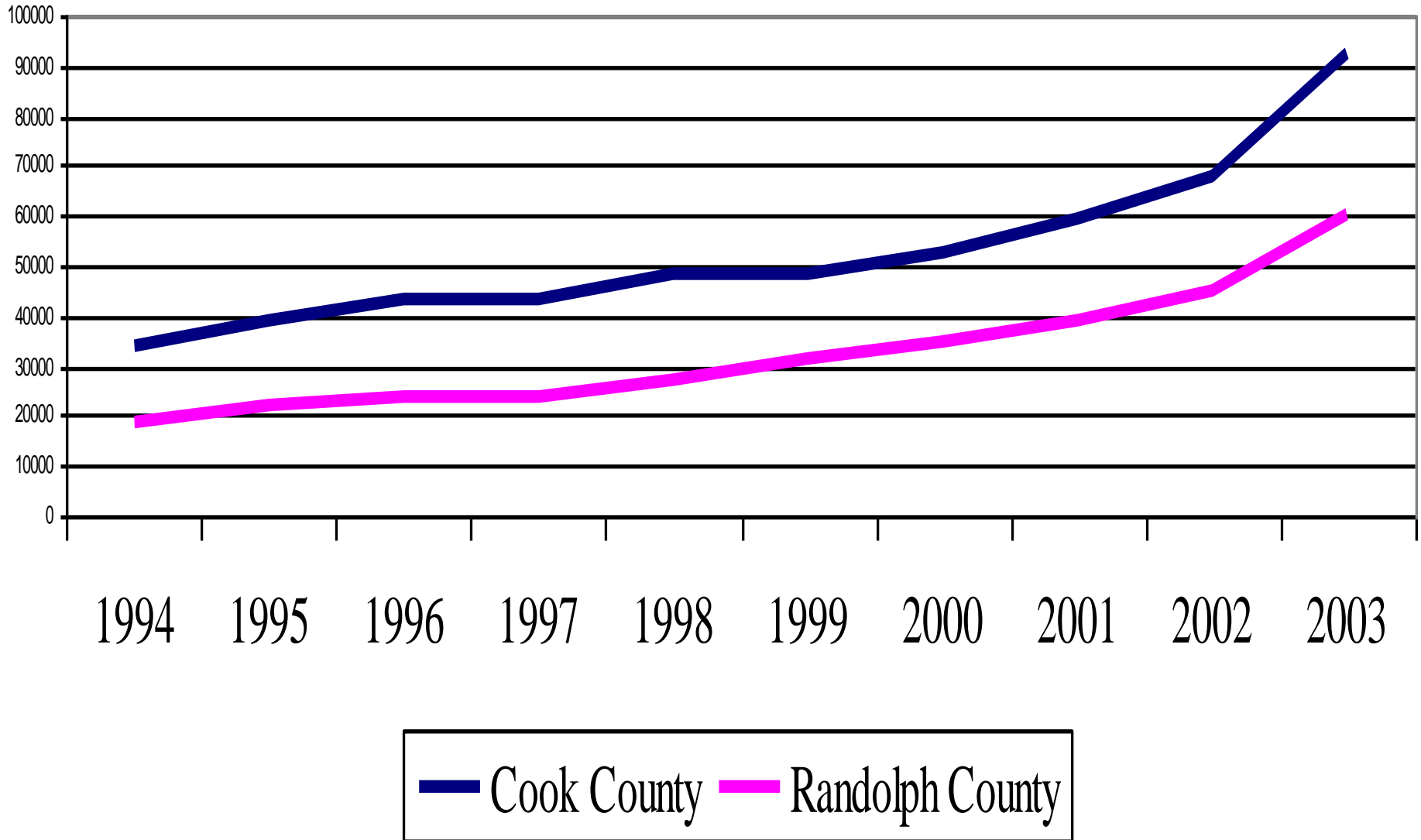
Malpractice Premiums in Randolph County



Malpractice Premiums for OB/GYN Premiums



Malpractice Premiums for Surgury



Malpractice Premiums for Internal Medicine

