

American Medical Association

Physicians dedicated to the health of America



1101 Vermont Avenue, NW
Washington, DC 20005

Statement

of the

American Medical Association

to the

**Committee on Small Business
U.S. House of Representatives**

**RE: Medical Liability Reform:
Stopping the Skyrocketing
Price of Health Care**

Presented by: Donald J. Palmisano, MD, JD

February 17, 2005

Division of Legislative Counsel
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On behalf of the physician and medical student members of the American Medical Association (AMA), I want to thank Chairman Don Manzullo (R-IL), Ranking Member Nydia M. Velázquez (D-NY), and Members of the Small Business Committee for holding this hearing to examine ways to stop the rampant increases in medical liability insurance premiums and protect patient access to quality health care.

I am Donald Palmisano, MD, JD, Immediate Past-President of the AMA and a general and vascular surgeon from New Orleans, LA. The policy of the AMA is decided through its democratic policy-making process in the AMA House of Delegates, which meets twice a year. Our House is comprised of physician delegates representing every state, over 100 national medical specialty societies, federal service agencies (including the Surgeon General of the United States), and six sections representing hospital and clinic staffs (medical students, resident physicians, young physicians, medical schools, organized medical staffs, and international medical graduates). AMA policy dictates support for national medical liability reform. In particular, the AMA supports federal legislation based on California's medical liability reforms known as MICRA.

Not only are physicians medical professionals, their practices typically operate as small businesses. AMA data show that approximately three-fourths of practice-based physicians work in or own small practices (businesses). Among practice-based physicians, roughly 33 percent are in solo-practice, 26 percent are in practices with between 2 and 4 physicians, and 16 percent are in practices with 5 to 9 physicians.¹ In addition, self-employed physicians employ an average of 4.1 non-physicians.²

¹ Department of Economic and Statistical Research, American Medical Association, The Practice Arrangements of Patient Care Physicians (2001), available at <http://www.ama-assn.org/ama1/pub/upload/mm/363/pmr-022004.pdf>.

² American Medical Association, Physician Socioeconomic Statistics (2003 edition).

As with any small business, physician practices generally do not have the economic and other resources necessary to absorb or shift the cost of rapidly increasing insurance premiums, let alone the high costs imposed by unfunded government mandates resulting from paperwork and other regulatory requirements. When overhead expenses increase, physicians must either increase fees or cut other expenses just to sustain their practices. For physicians, raising fees is becoming more difficult as Medicare, Medicaid, and managed health care plans arbitrarily limit payments for services rendered to patients. Alternatively, if physicians are forced to trim expenses, they are generally limited in their options and must make difficult choices, such as cutting staff, limiting staff benefits (e.g., health insurance), or forgoing the hiring of additional staff or the purchasing of advanced medical equipment. In some cases, physicians must limit certain aspects of their practice in order to find or afford medical liability insurance. For example, numerous family physicians are no longer delivering babies because it is cost prohibitive to insure that component of their practice. Anytime vital health care services are limited, patients' access to care is jeopardized.

THE CRISIS

What defines a crisis? In medicine, a crisis is defined as a sudden intensification of symptoms in the course of a disease. For the past several years, we have seen numerous symptoms that tell us our nation is facing a crisis because of a broken medical liability system. The symptoms are unmistakable: patients having to leave their state to receive urgent surgical care; pregnant women who cannot find an obstetrician to monitor their pregnancy and deliver their babies; community health centers reducing their services or closing their doors because of liability insurance concerns and the increasing fear of litigation; efforts to improve patient safety and quality being stifled because of lawsuit fears, just to name a few.

Escalating jury awards and settlements, and the high cost of defending against lawsuits, even those without merit, are driving medical liability insurance premiums to unprecedented levels.³ As insurance becomes unaffordable or unavailable, physicians are being forced to relocate, close their practices, or drop vital services—all of which seriously impede patient access to care. Emergency departments are losing staff and scaling back certain services, such as trauma units, while some advanced and high-risk procedures (such as neurosurgery) are being postponed because physicians can no longer afford or even find the liability insurance they need to practice. Many young physicians and medical students are opting out of high-risk specialties even before their careers begin, while other physicians are choosing to retire from practice altogether.

In the course of the past year there were several significant developments relating to the medical liability crisis. For example, going into 2004 the AMA had identified 19 states in crisis.⁴ In June 2004, however, the AMA announced that Massachusetts had become the 20th

³ A compendium of data supporting medical liability reform and debunking arguments against reform is available on the AMA Web site at <http://www.ama-assn.org/go/mlrnow>.

⁴ Arkansas, Connecticut, Florida, Georgia, Illinois, Kentucky, Mississippi, Missouri, New Jersey, Nevada, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Washington, West Virginia, and Wyoming (see attached map).

state in a full-blown medical liability crisis due to its deteriorating medical liability climate and the growing threat of patients losing access to care. Data from the Massachusetts Medical Society show how patients' access to care may be in jeopardy as increased medical liability costs force physicians to restrict the services they provide, especially high-risk specialists in neurosurgery, orthopedic surgery, obstetrics, and general surgery. The situation outside of Boston is particularly worrisome, as the most recent data show there are only 23 neurosurgeons based outside of Metro Boston to serve 39 hospitals and the time to recruit a neurosurgeon has increased from 23 months in 2002 to 30 months in 2004.

There was also significant activity at the state level with legislatures passing medical liability reform bills in Iowa, Mississippi, Missouri, Oklahoma, and Wyoming.⁵ In Iowa and Missouri, however, the efforts of the legislatures proved to be in vain as the governors of those states vetoed their respective legislature's liability reform measures. Also in 2004, the citizens in four states (Florida, Nevada, Oregon, and Wyoming) voted on ballot measures related to medical liability reform. While the efforts in these states (and the states with existing liability reforms) are indicative of the severity of the problems in the medical liability system and the desire to find effective solutions, the goal of stabilizing medical liability insurance premiums may prove elusive in the short term as legal challenges continue to work their way through the respective state court systems. These are a few reasons (more of which are discussed below) why the AMA believes it will take a federal approach to resolve the liability crisis.

ACCESS TO CARE IS AT RISK

The most troubling aspect of the current medical liability litigation system is its impact on patients. Unbridled lawsuits have turned some regions of our country—and in several cases entire states—into risky areas to be sick, because it is so risky to practice medicine. A 2003 report by the Blue Cross/Blue Shield Association showed that 56 percent of Blue Cross/Blue Shield plans in crisis states report that physicians are leaving their practice, retiring, or no longer performing some high-risk procedures.⁶ According to the American College of Obstetricians and Gynecologists, rising liability insurance costs combined with the increased fear of being sued have driven one in seven of America's ob-gyns from the practice of delivering babies.⁷ Our future physicians are concerned as well, with 48 percent of America's medical students indicating that the liability situation is a factor in their choice of specialty, affecting patients' future access to critical services.⁸ Moreover, 82 percent of Americans believe that physicians are being forced to leave their practices because excessive litigation puts the cost of liability insurance out of reach.⁹

⁵ In addition, in 2003 seven states passed laws to avert falling further into crisis (Arizona, Florida, Idaho, Mississippi, Ohio, Texas, and West Virginia).

⁶ Blue Cross Blue Shield Association, *The Malpractice Insurance Crisis: The Impact on Healthcare Cost and Access* (2003).

⁷ American College of Obstetricians and Gynecologists, *Medical Liability Survey*, July 19, 2004.

⁸ Division of Marketing Research & Analysis Survey, American Medical Association (2003).

⁹ Wirthlin Worldwide for the Health Coalition on Liability and Access (2004).

Throughout 2004, the medical liability crisis only got worse. Access to health care is now seriously threatened in 20 states, up from 12 states in 2002.¹⁰ In many other states a crisis is looming—a crisis that not only threatens access to quality medical care, but also stifles medical and scientific innovation, inhibits efforts to improve patient safety, discourages new treatments and procedures, heaps billions of dollars in additional costs upon a health care system already strained to the breaking point, and places lives at risk. Virtually every day for the past four years there has been at least one major media story on the plight of American patients and physicians as the liability crisis reaches across the country. Below is just a sample of recent media reports that illustrate the problem faced by patients and physicians. Additional stories can be found on the AMA Web site at <http://www.ama-assn.org/go/crisismap>.

FLORIDA

- In Florida, emergency neurosurgery patients are increasingly being transported from Palm Beach County to hospitals in Broward and Miami-Dade counties, and sometimes as far as Tampa and Gainesville. In March, one of those patients, Mildred McRoy, died six days after being transferred to a hospital in Broward County because no neurosurgeon was available to treat her in Palm Beach County. (*Palm Beach Post*, March 9, 2004)
- Lee Memorial Health System officials announced they were giving the state a required six-month notice to close the trauma center after two neurosurgeons quit, leaving only two to handle 24-hour on-call duty. The center treats more than 1,000 trauma-alert patients a year. Recruitment efforts to bring neurosurgeons to Lee County have been disappointing. "The fact is, three trauma centers in Florida have notified the state that they can't hang on much longer," according to Lee Memorial's government consultant. (*The News-Press*, December 14, 2003)
- At least seven Florida hospitals have closed their obstetrics units due to insurance concerns, and four other hospitals have reduced or limited obstetrics services. In addition, ten hospitals have eliminated, reduced or limited neurological services. (Florida Hospital Association, January 2, 2003)

GEORGIA

- Georgia's ongoing crisis has negatively affected patient access for children, women and families throughout the state. Only seven pediatric neurosurgeons are left in the state. Women in Statesboro often wait between 6 - 9 months for routine mammogram since fewer radiologists are willing to read mammograms. Nine Macon obstetricians have stopped delivering babies or will soon do so. Two of three obstetricians in Eastman have left the state, leaving the remaining obstetrician to deliver nearly 200 babies without backup coverage. (Medical Association of Georgia)

¹⁰ See attached map of medical liability crisis states.

- The Athens Women's clinic, which has offered obstetrics services for 35 years, announced May 21 that the state's medical liability crisis was forcing it to no longer deliver babies. It will continue to offer gynecological services. (*Athens Banner-Herald*, May 21, 2004)
- More than two dozen medical liability insurers have left Georgia, according to MAG Mutual, one of the state's remaining carriers. Since 1995, MAG Mutual's average payout in jury awards and settlements has increased from \$215,000 a case to \$465,300. Last year, it paid claims in 20 cases of more than \$1 million. (*Atlanta Journal-Constitution*, February 8, 2004)

ILLINOIS

- Because of the state's legal climate, Illinois physicians pay some of the highest medical liability insurance premiums in the nation. Ob-gyn premiums have risen from \$103,000 in 2002 to \$148,000 in 2004; and general surgeons' premiums have risen from \$68,000 in 2002 to \$103,000 in 2004. Neurosurgeons typically pay more than \$200,000. (Illinois State Medical Insurance Exchange, February, 2005)
- The frequency and severity of claims is skyrocketing in Illinois. Between 2000 and 2003, the number of medical liability claims has jumped 46 percent in Illinois to more than 3,500 claims. The average indemnity per claim also has risen dramatically. In 1990, the average indemnity was about \$310,000. In 2003, it was nearly \$600,000. (Illinois State Medical Insurance Exchange, February 2005)
- Patients in Illinois are losing access to neurosurgical care. The Memorial Hospital of Carbondale's administrator, George Maroney, explained that southern Illinois lost the only two neurosurgeons south of Springfield in 2004 because of rapidly increasing medical liability insurance premiums. Because of Illinois' well-earned reputation for litigiousness, Maroney still has not been able to replace them. (*The Southern*, January 5, 2005)
- In February 2003, two Joliet neurosurgeons stopped practicing brain surgery, leaving the city's only two hospitals without full-time coverage for head trauma cases. Joliet's two hospitals, Silver Cross Hospital and Provena St. Joseph Medical Center, acknowledge they will be unable to handle all emergency head trauma cases. They say they may have to stabilize and transport serious cases 45 minutes to the nearest trauma center. (*Chicago Tribune*, February 16, 2003)
- Heidi Ruppenthal and her son Alex know first hand the importance of having neurosurgical care available locally. Alex, who incurred a brain injury while playing ball at school, is alive today only because he had access to a neurosurgeon near home. Lisa Kasten was not as lucky. Her father, who lived in Belleville, suffered a serious head injury, but with little neurosurgical care available locally, had to be transferred to Missouri where he later died. (Illinois State Medical Society, February 1, 2005)

- When three obstetrician-gynecologists on staff at Advocate Lutheran General Hospital in Park Ridge learned their 2004 liability insurance premiums would climb from \$345,000 to \$510,470, they decided to take their practice to Kenosha, Wisconsin, where during their first year their combined insurance will cost \$50,018. "This state is like the Titanic," said one of the doctors. "A year ago, we saw the iceberg. Now we've already hit." (*Chicago Tribune*, March 12, 2004)

MASSACHUSETTS

- Cape Cod lost its only board-certified neurosurgeon when Robert Leaver, MD, retired early rather than face insurance premiums that reached \$115,000. Dr. Leaver, who said he would have to perform about 100 operations just to pay his insurance bill, had no intention of retiring. (*Cape Cod Times*, October 6, 2003)
- Large jury awards and settlements continue to occur in Massachusetts, putting further pressure on the liability system. In 2003, there were jury awards of \$3.18 million and \$1.8 million. Settlements were reported for \$3.75 million and \$3.25 million, eight settlements between \$2 million and \$3 million, and eight settlements between \$1 million and \$2 million. (*Mass. Lawyers Weekly*, January 19, 2004)

MISSISSIPPI

- Days before Mississippi's new reforms went into effect (January 1, 2003), several counties saw a rush of lawsuit filings. Hinds County saw a 200-300 case increase; Holmes County had at least 30 additional lawsuits filed; Rankin County's increase went from less than 300 to nearly 400. (Associated Press, December 30, 2002)
- Only two neurosurgeons remain in practice in the Gulf Coast-area of Mississippi, and general surgeons are in short supply because of the state's medical liability crisis. "Everybody is reduced to the same low level of trauma care that we had 20 years ago," said Steve Delahousey, vice president of operations at American Medical Response ambulance service. (*Biloxi Sun Herald*, January 29, 2003)
- Rural obstetric care is in serious jeopardy. Cleveland has lost three of six Ob-gyns, Greenwood has lost two of four, and Yazoo City, with 14,550 residents, has no one practicing obstetrics. (Associated Press, November 19, 2003)
- Dr. Ron Graham, an orthopedic surgeon in Gulfport, received a retroactive premium increase in May of \$36,000, then another increase in September. He said he's already been informed that when renewal time comes next year, it will double. That means in 10 years he's seen a 400 percent increase, he said. He may be forced to close his practice and put his four employees out of work. (*Biloxi Sun Herald*, November 7, 2003)
- Although there are several companies licensed to write medical liability insurance policies, state insurance commissioner George Dale said few new policies are actually

being written. "A lot of the companies still perceive that Mississippi is not a good place to do business," he said. (Associated Press, April 28, 2004)

MISSOURI

- St. Anthony's Health Center in Alton will lay off 50 to 75 employees in coming months. William E. Kessler, president and CEO of St. Anthony's, blamed the layoffs on declining revenue associated with increased medical liability insurance premiums and the resulting exodus of doctors from the community. (*St. Louis Post-Dispatch*, June 26, 2004)
- Dr. Al Elbendary, a gynecological oncologist, left a group practice and eliminated a rural outreach clinic because of rising professional liability premiums. "Women with gynecologic cancers in Ste. Genevieve, Carbondale and Chester now have to drive over a hundred miles to see a gynecologic oncologist and receive the care they deserve," said Elbendary. (*St. Louis Post-Dispatch*, October 31, 2002)
- After obstetrician Jamie Ulbrich's liability insurance carrier stopped doing business in Missouri, the best coverage he and three colleagues at their Marshall clinic could find would have cost them double what they paid in 2003. The four doctors decided they couldn't each afford the \$50,000 liability insurance premium, so they decided to stop providing obstetric service and instead work solely as family physicians in 2004. (Associated Press, January 3, 2004)

NEVADA

- "I left Nevada because the litigation climate had driven medical liability premiums to astronomical heights," obstetrician-gynecologist Shelby Wilbourn, MD, testified before a Congressional subcommittee. Dr. Wilbourn, whose premiums increased to \$108,000, moved to Maine this year and still receives calls from some of the 8,000 patients he saw during his 12 years in Nevada. "Liability isn't about fault or bad practice-it's about hitting a jackpot. Even the best obstetrician-gynecologists have been sued, many more than once." (Associated Press, February 12, 2003)
- Mary Rasar's father died in Las Vegas after the only Level 1 trauma center was forced to [temporarily] close due to skyrocketing medical liability costs. Jim Lawson was injured July 4 in a traffic accident and rather than being rushed to the Level 1 trauma center at nearby University Medical Center, which had been forced to close, Lawson was taken to a hospital that did not have the resources necessary to save his life. He died while physicians tried to stabilize him for airlift to Salt Lake City. (PR Newswire, April 21, 2003)
- The ongoing crisis has caused one of the few remaining liability insurers, American Physicians Assurance, to pull out of Nevada, a move that will leave about 125 doctors looking for new coverage to continue their practices. Dr. Fred Redfern, president of the Nevada Orthopedic Society, said the withdrawal of another insurance carrier

should alarm Nevadans. He said APA is his third insurance carrier to decide to leave Nevada because of the high cost of fighting medical liability claims. "This is not a good place to practice medicine. That's the message doctors are getting," he said. (*Las Vegas Review-Journal*, January 29, 2004)

NEW JERSEY

- A New Jersey Hospital Association survey shows that 100% of New Jersey hospitals saw an increase in liability insurance premiums in 2002, with the average hospital experiencing a 50% increase. Liability insurance has increased 203% from 1999. (New Jersey Hospital Association, January 29, 2003)
- An eight-physician ophthalmology practice, which treats premature babies born with retinopathy-a condition that can lead to blindness-will no longer offer the procedure due to the high-risk and liability exposure. (Medical Society of New Jersey)
- Dr. Stephen Smith says that part of the reason costs are going up is the doctors are now forced to practice defensive medicine. "What bothers me so much is that element of -- of fear and doubt that is created by this system we're in. What we're doing now is we practice [defensive] medicine. His father, also a physician, is worried that the legal climate could cause a future shortage of high-risk specialists: "the best students are not going into high-risk fields, they're not going into OB, they're not going to neurosurgery." (*60 Minutes*, March 9, 2003)

NEW YORK

- Of the 13 largest medical negligence lawsuits in the United States in 2002, seven were in New York state, according to the National Law Journal, including a \$94 million verdict from a Brooklyn jury. (*Albany Business Review*, March 21, 2003)
- Awards greater than \$1 million are three times more frequent in New York than in California, a state that has had reforms since 1975, according to the Insurance Information Institute. (*Poughkeepsie Journal*, April 1, 2003)
- Many young doctors won't specialize in obstetrics. They fear the threat of lawsuits and wince at liability insurance costs, which can be as much as \$200,000 per year. Last summer, Manhattan's Elizabeth Seton Childbearing Center, which practiced natural childbirth, had to close when its medical liability insurance premiums rocketed to \$2 million. (*New York Daily News*, February 12, 2004)
- Dr. John Cafaro, 45, an obstetrician-gynecologist in Garden City, said some doctors are paying \$130,000 for only \$1 million worth of protection. "But we are getting sued for \$85 and \$90 million at a time," he said. "You do the math. Every time I walk into an operating room I put my family's life savings on the line." (*New York Times*, May 25, 2003)

NORTH CAROLINA

- Hospitals in North Carolina have had insurance premiums go up 400 percent to 500 percent in the past three years, the North Carolina Medical Society says. Small, rural hospitals were hit hardest. (*Winston-Salem Journal*, March 9, 2004)
- "If we remain in North Carolina we will likely be forced to make the decision to limit procedures which carry high risks (but also are often life-saving)," said K. Stuart Lee, M.D. of Eastern Neurosurgical and Spine Associates Inc. Dr. Lee's practice saw their medical liability premiums increase 116 percent last year. (*The News and Observer*, January 26, 2003)

OHIO

- From 2001-02, Ohio physicians faced medical liability insurance increases ranging from 28 to 60 percent. Ohio ranked among the top five states for premium increases in 2002. General surgeons pay as much as \$74,554, and obstetrician-gynecologists pay as much as \$152,496. Comparatively, Indiana general surgeons pay between \$14,000-\$30,000; and obstetrician-gynecologists pay between \$20,000-\$40,000. (*Medical Liability Monitor*, October 2002)
- Dr. William Hurd, chairman of the department of obstetrics and gynecology at the Wright State University School of Medicine, said the liability crisis already is driving young doctors out of the Dayton area. "In the last two years, not a single one of our (obstetrical-gynecological) residents has set up a practice in Dayton, or even Ohio," Hurd said. (*Dayton Daily News*, August 28, 2002)
- "My wife and I are both physicians and just arrived in Wausau [Wisconsin] in March. We fled the crisis in Ohio after spending our whole careers in that state," said Christopher J. Magiera, a gastroenterologist. Magiera and his wife, Pamela G. Galloway, a general surgeon, gave up their 15-year-old practice when their medical liability premiums were projected to reach \$100,000 apiece. In Wisconsin, they pay a fraction of that. (*Journal Sentinel*, April 20, 2003)
- Dr. Rebecca Glaser, a popular breast cancer specialist, will retire from surgery on April 1 because of high liability insurance premiums. "I think it's horrifying when we lose a physician who has literally a one-of-a-kind practice," said Donna Buchheit, one of Glaser's breast cancer patients. She continues, "It is literally a life and death issue. The legislature needs to understand that. It is not melodramatic to say that there will be women who die this year because of this. I certainly hope I won't become one of them." (*Dayton Daily News*, February 28, 2004)

PENNSYLVANIA

- In 2000, Philadelphia accounted for 82 percent of the \$415 million in medical liability awards in Pennsylvania, and 14 of the 19 awards that exceeded \$5 million, according

to the Pennsylvania Trial Lawyers Association. (*The Wall Street Journal*, January 28, 2003)

- More than two out of three medical residents in six medical specialties chose to leave Pennsylvania after completing their training, according to the Philadelphia Daily News, which examined data from the city's major teaching hospitals between 1998-2002. "The resident brain drain is greatest among doctors going into high-risk specialties: ob-gyns, orthopedic surgeons and neurosurgeons. These doctors, not surprisingly, are most likely to be sued for malpractice, and pay some of the highest malpractice insurance premiums." (*Philadelphia Daily News*, May 28, 2003)
- A good example of Pennsylvania's lawsuit culture came in early 2004 when juries returned \$15 million and \$20 million verdicts on the same day. (Associated Press February 4, 2004)
- According to Grand View Hospital President Stuart Fine, the medical liability crisis is a main reason why patient access problems are occurring throughout the state and "has caused experienced doctors to leave the area, especially neurosurgeons, orthopedic and general surgeons, obstetricians and cardiologists. Few young doctors are coming in to take their place, and the result is a shortage of doctors." (*Morning Call* (Allentown, PA), January 23, 2004)

TEXAS

- David Gray is an emergency medical physician who has been thinking about moving to Colorado for several years to avoid lawsuits in Corpus Christi. His group of 16 emergency room doctors were sued six times in the last 30 days, as lawyers rushed to the courthouse to file cases before [recent] lawsuit caps went into effect. (*Corpus Christi Caller-Times*, September 16, 2003)
- A pregnant woman showed up in Dr. Lloyd Van Winkle's Castroville office in South Texas, less than 10 minutes from delivery. Her family doctor in Uvalde had recently stopped delivering babies, citing medical liability concerns, and the woman was trying to drive 80 miles to her San Antonio doctor and hospital. (*Fort Worth Star-Telegram*, January 26, 2003)

WYOMING

- The loss of even one physician can have dire consequences for Wyoming patients, yet the liability crisis has forced the loss of obstetricians in Wheatland, Cheyenne and Newcastle. Surgeons have disappeared from Casper and Gillette, and more may leave Jackson. And all remaining Fremont County anesthesiologists have left their practice. (Wyoming Medical Society)
- Emergency and trauma care also is in jeopardy in Jackson Hole and Gillette. Without trauma services in the popular ski town, patients' lives will be compromised by the long distance to the next open trauma center. Such travel can take several hours in

good weather. (*Jackson Hole News&Guide*, June 11, 2003 and *Buffalo Bulletin*, May 15, 2003)

FEDERAL SOLUTION

The medical liability crisis is a growing national problem that requires a national solution. If the crisis was just a matter of physicians obtaining or affording medical liability insurance in one state, we might agree that a national approach would not necessarily be required. However, the problem goes far beyond physicians and other health care professionals and institutions. The medical liability crisis has become a serious problem for patients and their ability to access health care services that would otherwise be available to them, including services provided to Medicare and Medicaid patients.

Also, the premise that it is within the ability of every state to enact legislation to effectively resolve their respective medical liability crisis has been shattered by the fact that many state liability reform laws have been nullified by activist state courts or stripped of their most effective provisions under state constitutions that limit reforms. For example, in 1995 the Illinois legislature enacted meaningful medical liability reforms that showed signs of improving the litigation climate in Illinois. In 1997, however, these reforms were struck down by the Illinois Supreme Court. Taking into consideration that studies show the litigation system to be an ineffective, and often unfair, mechanism for resolving medical liability claims, we believe that the time is ripe for a uniform, federal approach to resolving the liability crisis.

Moreover, there is a direct and compelling federal interest in reforming our outmoded medical liability system. According to estimates by the U.S. Department of Health and Human Services (HHS), altogether medical liability adds \$70 billion to \$126 billion to the cost of health care each year. These are the costs attributed to defensive medicine, which could be significantly reduced by effective medical liability reforms. These costs mean higher health insurance premiums and higher medical costs for all Americans, and especially for the federal government given that one-third of the total health care spending in our country is paid by the Medicare and Medicaid Programs. Further, HHS estimates that excessive medical liability adds \$47.5 billion annually to what the federal government pays for Medicare, Medicaid, the State Children's Health Insurance Program, Veterans' Administration health care, health care for federal employees, and other government programs. Recent data from the agency shows that reasonable limits on non-economic damages would reduce the amount of taxpayers' money the federal government spends by up to \$50.6 billion per year.

A PRACTICAL SOLUTION

The AMA recognizes that injuries due to negligence do occur in a small percentage of health care interactions, and that they can be as devastating for patients and their families as injury due to natural illness or unpreventable accident. When injuries occur and are caused by a breach in the standard of care, the AMA believes that patients are entitled to prompt and fair compensation. This compensation should include, first and foremost, full payment of all out of pocket "economic" losses. The AMA also believes that patients should receive reasonable

compensation for intangible “non-economic” losses such as pain and suffering and, where appropriate, the right to pursue punitive damages.

Unfortunately, our medical liability litigation system is neither fair nor cost effective in making a patient whole. Transformed by high-stakes financial incentives, it has become an increasingly irrational “lottery” driven by open-ended non-economic damage awards. It is also an extremely inefficient mechanism for compensating claimants where court costs and attorney fees often consume a substantial amount of any compensation awarded to injured patients.

To ensure that all patients who have been injured through negligence are fairly compensated, the AMA believes that Congress must pass fair and reasonable reforms to our medical liability litigation system that have proven effective. Toward this end, we strongly support legislation that is based on the successful California law known as MICRA (Medical Injury Compensation Reform Act of 1975). In the 108th Congress, the House of Representatives passed two bills (H.R. 5 and H.R. 4280) that include language similar to MICRA. The major provisions in these bills would benefit patients by:

- awarding injured patients unlimited economic damages (e.g., past and future medical expenses, loss of past and future earnings, cost of domestic services, etc.);
- awarding injured patients non-economic damages up to \$250,000 (e.g., pain and suffering, mental anguish, physical impairment, etc.), with states being given the flexibility to establish or maintain their own laws on damage awards, whether higher or lower than those provided for in these bills;
- awarding injured patients punitive damages up to two times economic damages or \$250,000, whichever is greater;
- establishing a “fair share” rule that allocates damage awards fairly and in proportion to a party’s degree of fault; and
- establishing a sliding-scale for attorneys’ contingent fees, therefore maximizing the recovery for patients.

These reforms are not part of some untested theory. They have been proven to have stabilized the medical liability insurance market in California—increasing patient access to care and saving more than \$1 billion per year in liability premiums—and have reduced the time it takes to settle a claim by 33 percent. MICRA is also saving California from the current medical liability insurance crisis brewing in many states that do not have similar reforms. In fact, the gap between medical liability insurance rates in California and those in the largest states that do not limit non-economic awards is substantial and growing. Data from the National Association of Insurance Commissioners (NAIC) shows that total liability premiums in California increased only 245 percent between 1976 and 2002, compared to 750 percent for the rest of the U.S.

Studies and expert opinions confirm that MICRA reforms lower costs and improve access. In a study on the effect of reforms, Stanford University researchers Kessler and McClellan concluded that direct reforms, including caps on non-economic damages, reduced the likelihood that a physician will be sued by 2.1 percent. Within three years after enactment of a direct reform, premiums in direct reform states declined by 8.4 percent.¹¹ Another study by Stephen Zuckerman *et al.* looked at several types of reforms and concluded that capping medical liability awards reduced premiums for general surgeons by 13% in the year following enactment of that reform and by 34% over the long term. Premiums for general practitioners and obstetrician-gynecologists were impacted similarly.¹²

When liability insurance premiums are lower, more physicians are able to remain in practice, and the access to quality care is improved. A July 3, 2003, study from the Agency for Healthcare Research and Quality (AHRQ) looked at the distribution of physicians across states with and without caps on non-economic damages since 1970.¹³ After adjusting for multiple factors, AHRQ found that by 2000, states with damage caps averaged 12 percent more physicians per capita than states without damage caps.

In a study released in May 2003, the Joint Economic Committee of the U.S. Congress stated: “Some of the key reforms proposed at the federal level, including the cap on pain and suffering damages, have proven successful at producing savings when implemented.”¹⁴ The study points to California, praising MICRA as “perhaps the most successful example of reform at the state level,” and noting its slower rate of growth in medical liability premiums.¹⁵

Furthermore, there is strong public support for continued efforts to fix our broken medical liability system. A January 2005 survey by Public Opinion Strategies/Frederick Polls (for the AMA) shows that 73 percent of voters support a national law to limit the amount a jury can award in damages to compensate for pain and suffering in a medical liability lawsuit. These findings are consistent with the results of a Gallup poll released on February 4, 2003, which show that 72 percent of those polled favor a limit on the amount patients can be awarded for pain and suffering.

CONCLUSION

Unless the hemorrhaging costs of the current medical liability system are addressed at a national level, patients will continue to face an erosion in access to care because their physicians can no longer find or afford liability insurance. The reasonable reforms embodied in H.R. 5 and H.R. 4280 (108th Congress) have brought stability in those states that have enacted similar reforms.

¹¹ Daniel P. Kessler & Mark B. McClellan, *The Effects of Malpractice Pressure and Liability Reforms on Physicians' Perceptions of Medical Care*, 60 LAW & CONTEMP. PROBS., 81-106 (1997).

¹² Stephen Zuckerman, Randall R. Bovbjerg & Frank Sloan, *Effects of Tort Reforms and Other Factors on Medical Malpractice Insurance Premiums*, 27 INQUIRY 167-182 (1990).

¹³ FRED HELLINGER & WILLIAM ENCINOSA, U.S. DEP'T OF HEALTH AND HUMAN SERVS., *THE IMPACT OF STATE LAWS LIMITING MALPRACTICE AWARDS ON THE GEOGRAPHIC DISTRIBUTION OF PHYSICIANS* (2003).

¹⁴ JOINT ECON. COMM., 108TH CONG., *LIABILITY FOR MED. MALPRACTICE: ISSUES & EVIDENCE* 19 (2003).

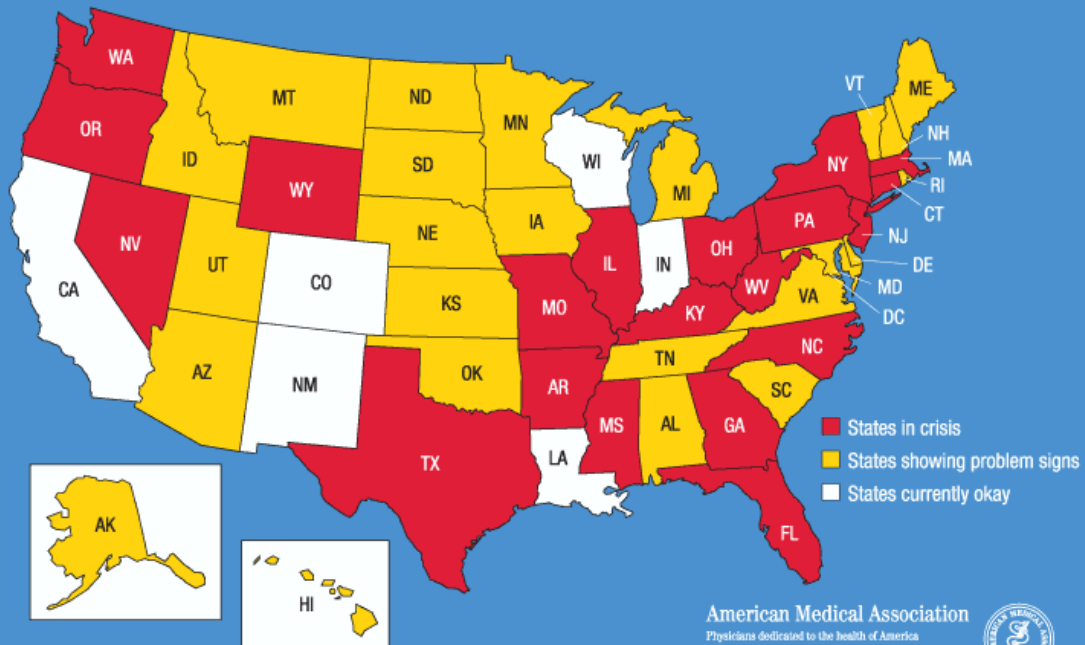
¹⁵ *Id.*

The AMA believes the time for action is past due. Physicians across the country are making decisions now about the future of their practice, and patients are increasingly recognizing that the current litigation system jeopardizes access to quality health care services. The AMA has nearly 100,000 physicians who are actively participating in a grassroots network to call attention to the problem and effectuate change. Patients are involved, too. Our AMA Patients' Action Network currently has over 350,000 patients advocating for effective reforms by way of well over a million communications to their respective Members of Congress. By the second quarter of this year, we estimate that there will be 600,000 patients involved in the effort, and we are on track to exceed that goal.

By enacting meaningful medical liability reforms, Congress has the opportunity to increase access to medical services, eliminate much of the need for medical treatment motivated primarily as a precaution against lawsuits, improve the patient-physician relationship, help prevent avoidable patient injury, and curb the single most wasteful use of precious health care dollars—the costs, both financial and emotional, of health care liability litigation. The modest proposals highlighted in this statement answer these issues head on and would strengthen our health care system.

In his annual State of the Union Address, President Bush said that solving the medical liability crisis continues to be one of the nation's top priorities. The President called on Congress to pass medical liability reform that “will reduce health-care costs and make sure patients have the doctors and care they need.” As we have done in the past, the AMA will work with the President and Congress to pass common sense medical liability reform legislation this year so that patients have greater access to health care and physicians can practice medicine more effectively.

America's Medical Liability Crisis: A National View



American Medical Association
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