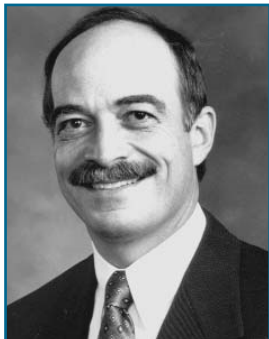


The Malpractice Crisis—How We Can Effect Change through the Legislative Process



The malpractice crisis has reared its ugly head once again. First, in the 70s, then in the mid-80s, and now with a vengeance. This time, both patients and physicians alike are suffering. The problem is three-fold: skyrocketing premiums, huge awards, and limited access to stable and reliable insurance coverage.

How did this happen?

America's trial lawyers claim they are trying to improve the quality of care and reduce medical mishaps, and that high premiums and lawsuits help to protect patients! They can get away with this explanation because the tort system is clearly out of control. Here are some alarming facts and figures:

- The average award in 1996 was \$500,000; and in 1999 it was \$800,000. Awards continue to rise sharply; for example, in New York the average award in 1997 was \$1.1 million and now is over \$2 million. Median malpractice awards rose 43% between 1999 and 2000.
- Failure to cap noneconomic and economic damages is the single most significant cause of huge awards. Only a few states such as California, Indiana, and Louisiana have caps.
- In most cases, attorneys get 57% of the award, and in 70% of cases the patient gets nothing.
- Physicians in some states such as West Virginia and Pennsylvania have limited access to insurance coverage.

While these problems are nationwide, they are most significant in Pennsylvania, West Virginia, Florida, Mississippi, and Nevada where the situation has reached crisis proportions.

How can we use the legislative system to bring about change?

- First, we must make medical liability tort reform a priority with our legislators so that they can pass reforms that will provide stable and reliable medical malpractice insurance.
- We must encourage our legislators to pass laws that limit non-economic damages as was done in the 1970s by Governor Jerry Brown when he signed into law MICRA – Medical Injury Compensation Reform Act. This one factor has been the lynchpin of success in controlling malpractice in California. The AMA's policy statement on malpractice reform is based on MICRA with the insistence that there be a cap on noneconomic damages, a shorter statute of limitation, a cap on attorney's contingency fees, elimination of joint and several liability, a prohibition against collecting from more than one source, and periodic payment of large awards.
- We must push for laws to regulate contingency fees to ensure that the bulk of the award goes to the patient.
- We must seek regulation of expert witness testimony so that so-called "hired guns" cannot appear on the stand unless they have the correct credentials.
- We should encourage our legislators to force the trial lawyers to submit notice of intent to sue and push to reduce the statute of limitations to a reasonable period of time.
- We must ask that laws regarding frivolous lawsuits be strengthened through strict malpractice panels.
- We must seek laws to restrict the ability to shop around for the best jury and venue.

Some believe that higher premiums protect patients! Educate your legislators and your patients! In reality, higher premiums reduce access to medical care. Physicians leave states with high premiums or close down practices. Patients have long waits to see their doctors because there are not enough doctors in their locale. In order to make their exorbitant premiums, some doctors maintain skeletal staff and old machines, which reduces patient

more 

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access and care. Patients with life-threatening medical conditions will find it hard to find a specialist who will assume this potential risk of liability; physicians will retire in the prime of their careers and select other vocations, while students will shy away from medicine, thereby leading to a tremendous shortage of physicians. Stress to your legislators that physicians cannot afford the skyrocketing premiums amid the shrinking reimbursements, especially with the recent 5.4% Medicare cuts.

We must join together with the AMA and the College of Surgeons on a national level, and with our specialty and local societies to bring about this change. The role of the BOG is to assist you in this matter. Develop relationships with your legislators—offer your help during their campaigns, contribute to your Academy and your local political action committees. Make an investment that will withstand the test of time.

Our goal is to see the following headline: “Congress Acts to Avert the Malpractice Insurance Crisis.”—It is the only goal we as physicians must accept and one that our patients so rightly deserve.

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2002 ANNUAL MEETING BOARD OF GOVERNORS EVENTS

SATURDAY, SEPTEMBER 21, 2002

- 9 am - 10:30 am **Rules and Regulations Committee**
- 11 am - 12:30 pm **Carrier Relations Committee**
- 1 pm - 2:30 pm **Public Relations Representatives Committee**
- 3 pm - 5 pm **Legislative Representatives Committee**
- 5:30 pm - 7 pm **Socioeconomic and Grassroots Committee**

SUNDAY, SEPTEMBER 22, 2002

- 2 pm - 4 pm **Physician Reimbursement Committee**
- 5 pm - 6 pm **Nominee Platform Committee**
- 8 pm - 10 pm **BOG Executive Committee Meeting [by invitation]**

MONDAY, SEPTEMBER 23, 2002

- 8 am - 12:00 pm **BOG Miniseminar**
- 11:30 am - 1 pm **Past BOG Chairs Luncheon [by invitation]**
- 1 pm - 2:30 pm **How to Build an Effective Local Society**
- 3 pm - 4 pm **Big On Goals Volunteer and Public Education Session**
- 5 pm - 7 pm **BOG General Assembly Meeting**

TUESDAY, SEPTEMBER 24, 2002

- 6 pm **BOG Alumni Reception**



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