



**STATEMENT OF THE  
AMERICAN COLLEGE OF PHYSICIANS – AMERICAN SOCIETY OF  
INTERNAL MEDICINE**

**TO THE SENATE COMMITTEE ON JUDICIARY  
AND THE SENATE COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS**

**“Patient Access Crisis: The Role of Medical Litigation”**

**February 11, 2003**

The American College of Physicians-American Society of Internal Medicine (ACP-ASIM) – representing 115,000 physicians and medical students – is the largest medical specialty society and the second largest medical organization in the United States. We congratulate the Senate Committee on Judiciary and the Senate Committee on Health, Education, Labor, and Pensions for holding this important hearing on a subject matter that has more relevance today than ever before. Of the College’s top priorities for 2003, addressing the health care liability crisis and its impact on access to care is one of the most critical to our members. ACP-ASIM thanks Chairmen Orrin Hatch and Judd Gregg, Ranking Members Patrick Leahy and Edward Kennedy, and other members, for holding this important hearing to discuss how limitless litigation can and has begun to restrict patient access to health care in this country.

**Background**

Doctors across the country are experiencing sticker shock when they open their medical malpractice insurance renewal notices – if they even get a renewal notice. After more than a decade of generally stable rates for professional liability insurance, physicians have seen costs dramatically increase in 2000-2003. And in some areas of the country, premiums have soared to unaffordable levels. According to the *Medical Liability Monitor*, in mid-2001, insurance companies writing in 36 states and the District of Columbia claim to have raised rates well over 25 percent. Unfortunately, rates continue to rise dramatically with no sign of the market beginning to stabilize.

While obstetricians, surgeons and other high-risk specialists have been hit hard, internists have been one of the hardest hit specialties -- having seen a record nearly 50 percent average increase over the last two years. In some cases, physicians, even those without a track record of lawsuits, cannot find an insurance company willing to provide coverage. These physicians

are being forced to decide whether to dig deeper and pay the steeper bill, change carriers, move out of state, or retire from the practice of medicine.

Of these options, changing carriers may not even be an alternative. Finding replacement coverage won't be as easy as it was in a buyer's market. Companies writing professional liability coverage are fleeing or being chased from the market. As an example, St. Paul Companies, which insures doctors in 45 states and is the second largest medical underwriter in the country, announced late in 2001 that it no longer would write medical liability policies. It plans to phase out coverage as physicians contracts expire over the next 18 to 24 months. Frontier and Reliance are also gone. Other commercials, such as PHICO, CNA and Zurich, are significantly cutting back. Even some provider-owned insurers, committed to this market by their founders, are pulling back from some states in which they extended sales.

### **The Perfect Storm**

At a time when the market is squeezing physician and hospital margins, the rise in professional liability insurance may be the deciding factor that contributes to whether physician offices and emergency rooms keep their doors open. Recently, the costs of delivering health care have been driven by increased costs of new technologies; increased costs of drugs that define the standard of care acceptable for modern medicine; the rising costs of compliance under increasing state and federal regulation; the low reimbursement rate under Medicare and Medicaid; and the declining fees from managed care have all been contributing factors that have affected patient access to health care.

Unquestionably, there is real potential that rising insurance rates ultimately will reduce access to care for patients across the country. Indeed, press accounts on a daily basis are demonstrating exactly that from coast to coast. Physician offices and emergency rooms have been closing their doors all across the country due to the exorbitant costs. The states most severely hampered by the spiraling out-of-control rates are: Florida, Georgia, Illinois, Michigan, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, and West Virginia. Several other states are just beginning to feel the impact.

Some states have tried to address the dramatic increase in professional medical liability insurance rates with very little success. At best, attempts by the states to solve this problem have resulted in only band-aid approaches to the more underlying problem: the escalation of lawsuit awards and the expense of litigation has led to the increase in medical liability premiums. This fact has resulted in many patients not receiving or delaying much needed medical care – a fact Congress can no longer ignore. ACP-ASIM strongly believes that Congress must act to stabilize the market to avoid further damage to the health care system.



AMERICAN COLLEGE OF PHYSICIANS  
INTERNAL MEDICINE | *Doctors for Adults*

## **Relief for Physicians from Soaring Malpractice Premiums**

Federal legislation has been introduced to help curb the spiraling upward trend in malpractice premiums. **H.R. 5, the “Help Efficient, Accessible, Low Cost, Timely Health Care” (HEALTH) Act of 2003, will attempt to safeguard patient access to care, while continuing to ensure that patients who have been injured through negligence are fairly compensated. ACP-ASIM strongly endorses this legislation as a means to stabilize the medical liability insurance market and bring balance to our medical liability litigation system.** The HEALTH Act achieves this balance through the following common sense reforms:

- Limit on pain and suffering (non-economic) awards. This requirement limits unquantifiable non-economic damages, such as pain and suffering, to no more than \$250,000.
- Unlimited recovery for future medical expenses and loss of future earnings (economic) damages. This provision does not limit the amount a patient can receive for physical injuries resulting from a provider’s care, unless otherwise restricted by state law.
- Limitations on punitive damages. This requirement appropriately raises the burden of proof for the award of quasi-criminal penalties to “clear and convincing” evidence to show either malicious intent to injure or deliberate failure to avoid injury. This provision does not cap punitive damages, rather, it allows punitive damages to be the greater of two times the amount of economic damages awarded or \$250,000.
- Periodic payment of future damages. This provision does not reduce the amount a patient will receive. Rather, past and current expenses will continue to be paid at the time of judgment or settlement while future damages can be funded over time. This ensures that the plaintiff will receive all damages in a timely fashion without risking the bankruptcy of the defendant.
- Elimination of double payment of awards. This requirement provides for the jury to be duly informed of any payments (or collateral source) already made to the plaintiff for her injuries.
- A reasonable statute of limitation on claims. This requirement guarantees that health care lawsuits will be filed no later than 3 years after the date of injury, providing health care providers with ample access to the evidence they need to defend themselves. In some circumstances, however, it is important to guarantee patients additional time to file a claim. For example, the legislation extends the statute of limitations for minors injured before age 6.

- A sliding scale for contingency fees. This provision will help discourage baseless and frivolous lawsuits by limiting attorney incentives to pursue meritless claims. Without this provision, attorneys could continue to pocket large percentages of an injured patient's award, leaving patients without the money they need for their medical care. The sliding scale would look something like this:
  - Forty percent (40%) of the first fifty thousand dollars recovered
  - Thirty-three and one-third percent (33 1/3%) of the next fifty thousand dollars recovered
  - Twenty-five percent (25%) of the next five hundred thousand dollars recovered
  - Fifteen percent (15%) of any amount recovered in excess of six hundred thousand dollars
- Proportionate liability among all parties. Instead of making a party responsible for another's negligent behavior, this requirement ensures that a party will only be liable for his or her own share. Under the current system, defendants who are only 1 percent at fault may be held liable for 100 percent of the damages. This provision eliminates the incentive for plaintiff's attorneys to search for "deep pockets" and pursue lawsuits against those minimally liable or not liable at all.

These common sense recommendations have been proven to work. The HEALTH Act is largely based on provisions contained in the California Medical Injury Compensation Reform Act (MICRA). Since its enactment in the mid-1970's, the MICRA reforms have helped reduce the overall costs of medical malpractice and have contributed to an increase in patient access to care. During this recent malpractice insurance crisis, California's rates have changed only slightly, while other states have spiraled to out of control levels. ACP-ASIM strongly supports the elements contained in MICRA. Further, we believe that any legislation proposed must include these basic, proven elements in order to assure the stabilization of malpractice premiums.

## **Conclusion**

ACP-ASIM is pleased that the Senate Committee on Judiciary and the Senate Committee on Health, Education, Labor, and Pensions agreed to conduct this joint hearing to address the serious problem of soaring medical malpractice premiums that physicians are facing across the country. **We strongly urge the Committees to pass the common sense reforms similar to those contained in the HEALTH Act that would allow for greater access to care, while adequately compensating injured patients.** We appreciate the opportunity to present our views.