



A Coalition of 13 Medical Societies Representing  
200,000 Specialty Physicians in the United States

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## Statement

of the

## Alliance of Specialty Medicine

Presented by

Thomas F. Gleason, MD

Before the

House Committee on Small Business

On the Subject of

“Medical Liability Reform: Stopping the Skyrocketing  
Price of Health Care”

Thursday, February 17, 2005, 10:00 am  
2360 Rayburn House Office Building



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

**Thomas F. Gleason, MD  
Alliance of Specialty Medicine**

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- States Face Significant Barriers to Implementing Medical Liability Reforms

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**WITHOUT REFORM THE STATE OF AMERICA'S HEALTH NOW AND IN THE FUTURE IS AT RISK**

Chairman Manzullo, Ranking Member Velázquez, and members of the Committee, my name is Thomas F. Gleason, MD. I am a practicing orthopaedic surgeon in Illinois, managing partner for the Bone and Joint Institute, Ltd, a partnership of approximately 70 orthopaedic surgeons, and a board certified member of the American Association of Orthopaedic Surgeons. On behalf of the Alliance of Specialty Medicine, a coalition of 13 medical societies representing 200,000 specialty physicians in the United States, I would like to thank you for holding this hearing to seek input from physicians and others regarding the impact the current litigation system is having on medical practices and our ability to continue to provide timely, high quality healthcare to our patients.

Mr. Chairman, we appreciate the interest this Committee has taken under your leadership, over the past several years, to assess the status and cost of health care in this country. Already four years ago this Committee held a hearing seeking input from physicians and other providers on the cost to medical practices as a result of record keeping and reporting requirements imposed by the U.S. Department of Health and Human Services. We believed then as we do now that the health care infrastructure of this country is in critical need of an overhaul, that we have lost sight of what is important for ensuring that our patients receive the very best care that they deserve. Now, the escalating costs of medical liability insurance is fast outpacing other regulatory requirements imposed on practices, threatening to change the structure of health care in this country, leaving lasting consequences on the U.S. healthcare system, both in terms of how health care will be delivered and who will be available to deliver that care. Physicians should be focused on directing resources to attending to our patients, rather than practicing defensive medicine under an increasingly litigious environment, and ironically, being forced to also focus more on the business of practicing medicine.

I am sorry to inform you today, that not only has the crisis not subsided, indeed, it has worsened. According to the American Medical Association, there are now twenty states in “full-blown”

crisis and twenty-four states and the District of Columbia are showing warning signs of a potential crisis. Only six states -- California, Colorado, Indiana, Louisiana, New Mexico, and Wisconsin -- are considered safe, and the common denominator is that they have all implemented effective medical liability reform.

Regarding the current status of this ongoing crisis, the media now report on a daily basis that as medical liability insurance becomes unaffordable or unavailable, more and more doctors, especially specialists, are no longer performing high-risk procedures, or they are being forced to move their practices to states with stable medical liability systems, or they are simply retiring from medical practice -- leaving gaping holes in the healthcare safety net.

Much of the "face" of this crisis has centered around the great difficulties that pregnant women are having in finding obstetricians to deliver their babies, but the simple truth is that this is a problem that potentially affects all of our citizens: the mother whose little boy has fallen off the jungle gym and needs an orthopaedic surgeon to fix his broken arm; the teenager who has been in a serious car accident and needs a neurosurgeon to treat his severe head injury; the woman who needs a pathologist to evaluate her Pap smear to screen for cervical cancer; the elderly man who has a poor heart and needs a cardiologist or cardiothoracic surgeon to unblock a clogged artery or replace a failing valve; the woman who has a family history of breast cancer and needs a radiologist to perform a mammography to make sure she is cancer free; the business man who needs a gastroenterologist to treat his ulcer; the man who needs a urologist to screen for prostate cancer; and for millions, a nearby emergency department that is open to avoid unnecessary delays in getting treatment when time is of the essence.

The Alliance is encouraged that the Committee is assessing the impact of the medical liability crisis from a small business perspective. I would like to share with you some of the tangible, quantifiable costs of medical liability to a small business practice such as the Illinois Bone and Joint Institute, Ltd., a partnership with approximately 70 orthopaedic surgeons. The Illinois Bone and Joint Institute, Ltd. is a member of a larger entity, the Midwest Orthopaedic Network, L.L.C., a group of approximately 125 orthopaedic surgeons. The majority of our physicians practice in Cook County, and we represent approximately 20% of the orthopaedic surgeons practicing in Illinois.

From July 2002 to now, our medical liability premiums have increased 250% from \$1.6 million to \$5.6 million, an additional \$4 million in premium costs. These premiums are after discounts (47.5% in 7/01-7/02 reduced to 40% in 7/04-7/05) from base rates. Discounts are determined based on past history of claims. We have had a good loss ratio. Our loss ratio as a group for the seven years preceding July 2002 was 91%. In five years, Cook County and the Illinois market has gone from 17 to 5 carriers---ISMIE (Illinois State Medical Insurance Exchange) Mutual, Medical Protective, AP Capital, PIC Wisconsin and ProAssurance. At least one carrier that we know of, PIC Wisconsin, has stopped writing new policies in Cook County and is focusing instead on Wisconsin and Iowa. ISMIE Mutual is currently experiencing a moratorium, only offering policies to new doctors and doctors joining existing groups with ISMIE Mutual coverage. All carriers have done away with discounts in an effort to build up their reserves.

Current base premiums for orthopaedic surgeons in Cook County are \$128,000 or \$153,000 (with spine coverage) for \$1mil/3mil coverage and \$177,000 or \$212,000 (with spine coverage) for \$2mil/4mil coverage. These premium costs have risen to such a degree that the Midwest Orthopaedic Network, through which our insurance is purchased, has instituted a surcharge program. This requires any physician who is named in three lawsuits in three years, regardless of how meritorious, or any physician who is involved in any action requiring an indemnity payout of \$750,000

in any one year, to pay a surcharge to the group equal to 50% of his or her premium in year one, 25% in year two, and 12.5% in year three. Our colleagues in other Illinois counties, especially St.Clair and Madison Counties to the south of us, are experiencing even higher increases.

According to the Cook County Jury Verdict Reporter, the number of claims reported by ISMIE Mutual increased 46% between 2000 and 2003. In Cook County, from 1998 through 2003, the average total jury verdict went up 314%, and the average jury award for non-economic damages increased 247%. The average jury verdict in Cook County jumped from \$1.07 million in 1998 to \$4.45 million in 2003. By 2003, non-economic damages totaled 70 percent of the total monetary value awarded by the jury. Eighty percent of the claims filed against ISMIE Mutual policyholders result in no payment to the plaintiff. In the last five years, ISMIE Mutual has paid \$150 million in defense costs for these non-meritorious claims.

An average of 7 medical liability suits are filed each year against orthopaedic surgeons in our practice. Currently, our practice has 49 open files where the average life of a suit is 7 years. This requires time away from practice for trials, preparation, depositions, etc. where other physicians are required to take on the care of additional patients. We have estimated that, as a direct consequence of the increasingly litigious environment, the maintenance associated with managing the patient's medical record has reduced by almost half the number of patients that a physician is able to see in any given day---from 10 patients per hour to 5-6 for a team of physicians and other health care staff.

We are concerned with an increasing number of physician retirements at earlier ages. The escalating costs and changing policies associated with tail premiums required by retiring physicians are creating incentives for early retirements. The chief of orthopaedics at one hospital I staff belongs to a small orthopaedic practice that switched insurance companies in order to lower their premium rates. Because the insurance company required him to practice at least five more years in order to

receive a discount on a sizeable tail cost, he is retiring now. I have assumed his administrative duties taking me further away from patient care, while we are also now short one additional orthopaedic surgeon for the department.

Public aid and HMO patients stand to lose the most in a medical environment of diminishing resources and high operating expenses as a result of the increasingly litigious environment. Average reimbursements are considerably lower for these patients---approximately \$34 for public aid and \$57 for HMO for office visits for orthopaedic surgeons in the Illinois Bone and Joint Institute. Physicians cannot afford to pay operating expenses serving these patients alone. This creates an access problem for these patients who need to be seen by a physician. A high number of these patients are pediatric orthopaedic cases. There are several physicians in our practice who are currently practicing at a deficit. Some of these physicians are incurring net losses close to \$200,000. As our overhead costs continue to rise as a result of increasing premiums, we will not be able to sustain these losses.

Emergency room and high risk patients are also at risk of losing access to necessary specialty care in a litigious environment. Emergency trauma is currently responsible for over half of the income to the traumatologists in the Illinois Bone and Joint Institute. As the risk and costs to care for these patients rise, so does the risk of losing these physicians who currently cover two-thirds of the nights on call at one of the busiest trauma centers in Chicago. This is particularly alarming knowing that this trauma center is already inundated with transfers from more and more community hospitals in Illinois that no longer have physicians available for emergencies.

At another suburban Chicago hospital, three out of seven orthopaedic groups have already diminished or eliminated on-call services, and neurosurgeons have stopped taking call altogether, changing this hospital's status from a Level I to a Level II trauma center. Pediatric coverage at emergency rooms continues to worsen. Children are being transferred without even being examined,

and even for basic orthopaedic cases including femur fractures and supracondylar fractures, where some of these transfers have taken hours to process.

Because no orthopaedic surgeon was available, a 25 year old male was recently transferred from the Rockford area to Lutheran General Hospital, a Level I trauma center in Park Ridge, after sustaining an unstable pelvic ring. The patient was not volume resuscitated appropriately in the initial hospital and the transfer delayed emergent care by 7 hours. By the time he arrived he was grossly volume depleted. The fluid administration consisted of rapid volume replacement, including blood, leading to a dilutional coagulopathy and ARDS---known complications from rapid volume replacement in massive quantities after blood loss. The patient died. Timely and appropriate care at the initial institution, including gradual volume replacement, could have prevented this tragic outcome.

Neurosurgeons at Lutheran General Hospital have been blind-sided by a proliferation of inappropriate transfers of head-injured patients to their facility because smaller, community hospitals have lost their neurosurgeons. Patients are being air-lifted to Lutheran from hundreds of miles away and after hours.

More and more physicians are also restricting how they address non-emergency high risk cases, or eliminating these cases altogether from their practice. Our total joint physicians have already set limits on patients they operate on and treat. Due to increased risk of infection and deep venous thrombosis, one of the most experienced and productive total joint surgeons in Illinois, and arguably the country, has reservations about operating on individuals with a BMI over 40 (ie. 5', 204 lbs., 6'6", 294 lbs).

## **THE MEDICAL LIABILITY CRISIS: PATIENT ACCESS TO MEDICAL CARE IS IN JEOPARDY**

As the Committee considers the current state of this national healthcare problem, I'd like to draw your attention to more evidence that demonstrates just how serious this crisis has become.

### **□ Doctors are No Longer Performing Complex and High-Risk Medical Procedures**

America's women are at particular risk of losing access to vital healthcare services. The August 2003 General Accounting Office report entitled, "Medical Malpractice: Implications of Rising Premiums on Access to Health Care," confirmed that rising medical liability insurance premiums have contributed to reduced access to obstetrical services, particularly in rural locations. According to a 2004 professional liability survey conducted by the American College of Obstetricians and Gynecologists, ob-gyns have made a number of practice changes as a result of the medical liability crisis:

- One in seven has stopped practicing obstetrics because of the risk of liability claims;
- Because of the risk of liability claims or suit, 22 percent decreased the amount of high-risk obstetric care; 14.8 percent stopped offering or performing VBACs; 9.2 percent decreased the number of deliveries; 12.3 percent decreased gynecologic surgical procedures performed; and 5.6 percent no longer perform major gynecologic surgery;
- Because of liability insurance costs and availability, 25.2 percent decreased the amount of high-risk obstetric care; 12.2 percent decreased the number of deliveries; 14.8 percent decreased gynecologic surgical procedures performed; and 5.4 percent no longer perform major gynecologic surgery

Patients in need of care from surgical specialists like orthopaedic surgeons and neurosurgeons are affected by the crisis, as these physicians are also restricting their practices. According to the American Association of Orthopaedic Surgeons, rising liability premiums have

caused 55 percent of orthopaedic surgeons to avoid at least some procedures due to liability concerns; 39 percent now avoid performing spine surgery; and 6 percent have eliminated all surgery.

The American Association of Neurological Surgeons and the Congress of Neurological Surgeons report similarly alarming findings. Based on a 2004 national survey of U.S. neurosurgeons, the AANS and CNS found that over one-half of survey respondents have limited services because of rising medical liability insurance premiums and/or increased risk of suit. Of those limiting services, 70 percent refer complex cases to other neurosurgeons; 71 percent no longer perform aneurysm surgery; 23 percent no longer treat brain tumors; 75 percent no longer operate on children; and 34 percent no longer perform complex spine procedures. These patients are typically sent to academic medical centers or large tertiary care hospitals for treatment, often requiring patients to travel great distances to receive neurosurgical care.

Even specialists who are not usually considered “high-risk” cite medical liability pressures as the reason why they are restricting services. For example, according to the American Urological Association, over 41 percent began referring complex cases in the past two years and one in four no longer perform such procedures as cystectomy (which is complete bladder removal, usually for cancer patients).

The elderly may also be particularly affected, as decreases in reimbursements for complex medical procedures have declined to the point where Medicare no longer even covers the cost of medical liability insurance. Specialists with a high volume of Medicare patients, such as cardiologists and cardio-thoracic surgeons, and their patients who need high-tech, lifesaving heart therapy, will likewise feel the effects of the crisis.

## ❑ **Patient Access to Emergency and Trauma Care is at Risk**

While the medical liability crisis affects patients who need many types of medical care, access to timely and efficient emergency and trauma care services is in particular jeopardy. When patients rush to the ER, they assume the hospital will be open and doctors will be there to treat them. However, because of the medical liability crisis, this is no longer always the case. The liability crisis is now severely straining our nation's already stressed emergency medical system, as patients who have no access to doctors inevitably end up on the emergency department's doorsteps, further exacerbating the hospital emergency department overcrowding problem.

In addition, to secure affordable medical liability insurance or to minimize their risk of lawsuits, many physicians, including neurosurgeons, orthopaedic surgeons, cardiothoracic surgeons, and obstetricians and cardiologists, are no longer serving "on-call" to hospital emergency departments. For example, according to a 2004 hospital emergency department survey conducted by The Schumacher Group, three of four emergency departments diverted ambulances in the last 12 months in part because no specialists were available. Of these, one third diverted patients six or more times a month and an additional 28 percent diverted patients three to five times a month. More than one-fourth of hospitals reported losses in specialty coverage related to a fear of lawsuits.

The above referenced August 2003 GAO report confirmed that rising medical liability premiums have contributed to reduced access to emergency surgery services, particularly in rural locations, because certain high risk specialists like neurosurgeons and orthopaedic surgeons are no longer serving on-call to hospital emergency departments. Over one-third of surveyed neurosurgeons have reported that they have altered their emergency and/or trauma call coverage because of liability concerns. Neurosurgeons across the country are now limiting the types of emergency cases that they treat, they are limiting the hours that they serve on-call, or they have stopped providing emergency

call altogether. Twenty-one percent of orthopaedic surgeons have likewise eliminated emergency department call.

#### **❑ Doctors are Moving to States with a More Favorable Medical Liability Climate**

Every state that is experiencing a medical liability crisis reports that doctors are leaving in droves in search of another location in which to practice where the medical litigation climate is more favorable. The list of states experiencing the exodus of doctors continues to grow, and as with other elements of this crisis, specialists are most likely to “hit the road” in search of a safe haven state. Pennsylvania has been especially hard hit, and some counties no longer have any practicing orthopaedic surgeons and 12 maternity wards closed in Philadelphia alone. Moreover, 80 percent of Pennsylvania medical students are leaving the state, instead of staying to practice in this highly litigious area of the country. Neurosurgery’s survey data show that nearly 19 percent of practicing neurosurgeons either plan to, or are considering, moving their practice to another state where the medical liability costs are relatively stable. Prior to the recent enactment of medical liability reform, Mississippi had lost 35 percent of its neurosurgeons in a two year period. Last year, 21 out of 79 neurosurgeons surveyed in Missouri stated that they were considering leaving the state, and today, there are no longer any neurosurgeons in Southern Illinois.

#### **❑ Doctors, Trauma Centers and Other Medical Providers are Closing their Doors**

An even more troubling aspect of the current crisis is the fact that many physicians are simply finding it impossible to stay in practice at all, and once gone, they are not easily replaced. In extreme cases, emergency departments and trauma centers have been forced to shut down completely because the physicians have been unable to secure medical liability insurance at any price. The GAO confirmed that the medical liability crisis caused trauma centers to close in Florida, Mississippi, Nevada, Pennsylvania and West Virginia. The same has been true in other states, including Arizona, Maryland, Ohio and Texas. These closures are coming during a time when the number of visits to the

nation's emergency departments climbed over 20 percent from 89.8 million in 1992 to 107.5 million in 2001.

Within the past several years, nearly 700 mammography facilities have closed nationwide. The continued and steady closing of mammography facilities throughout the country has led to increased waiting times for women seeking both screening mammograms and diagnostic mammograms. The longer waiting times are now on the brink of affecting clinical outcomes for those women who must wait for a possible diagnosis of breast cancer.

Individual physicians are also retiring. In the case of neurosurgery, in 2001 alone, 327 board certified neurosurgeons retired, representing an alarming 10 percent of the neurosurgical workforce in the United States. In addition, another 33 percent of neurosurgeons report that they are planning to retire early. Five percent of orthopaedic surgeons have retired earlier than they otherwise would have.

Current and future shortages of high-risk specialty physicians will increase the magnitude of the problem. According to the American Hospital Association's March 2003 Liability Insurance Survey, over one-half of hospitals across the country reported difficulty in recruiting physicians because of the medical liability crisis. A recent study of third and fourth-year medical students found that nearly one-half said the current crisis was a significant factor in their specialty choice, with many future doctors no longer choosing high-risk specialties such as ob-gyn. In the 2004 National Resident Matching Program, the number of ob-gyn training slots filled by U.S. medical school seniors declined for the third year in a row to 65.1 percent – a decrease of 20 percent over the past decade. The number of U.S. medical students entering neurosurgery and emergency medicine residencies declined to 86 percent and 77.5 percent, respectively. Finally, applications to medical schools have dropped 22 percent since 1997. With an increasingly aging population, the country can ill-afford to

lose good doctors prematurely and to have a healthcare litigation system that deters our best and brightest from choosing medicine as a career.

## **CAUSE OF THE CRISIS: THE CURRENT MEDICAL LITIGATION SYSTEM IS BROKEN**

The root cause of this problem is quite simple: the unrestrained escalation of jury awards and settlements, in even a small number of medical liability cases, is driving up doctors' liability insurance premiums and is forcing some insurance companies out of business altogether. This problem is making it difficult, and sometimes impossible, for doctors to obtain affordable liability insurance so they can remain in practice. There is a wide body of evidence to substantiate these conclusions.

### **❑ Medical Liability Awards are On the Rise**

Medical liability awards have been growing steadily, and according to closed claims data from the Physicians Insurance Association of America (PIAA), the median jury award nearly doubled from 1997 to 2003, increasing from \$157,000 to \$300,000. The average award increased from \$347,134 in 1997 to \$430,727 in 2002. Data collected by Jury Verdict Research (JVR), which reports statistics for a smaller number of cases that reach the trial stage, reflects these same trends. According to JVR, the median medical liability jury award doubled from \$500,000 in 1995 to over \$1 million in 2002 and the average jury award has soared to an astonishing \$6.2 million, up from \$1.8 million in 1996. Finally, the number of mega-verdicts is also on the rise. In 1997, only two medical liability verdicts topped \$20 million. In 2001 and 2002, however, seven of the top 20 awards were related to medical liability, including a \$95.2 million birth injury judgment in New York. The combined total of these seven awards was nearly \$3 billion.

Overall medical liability tort costs are rapidly increasing, and far outpace the growth in medical costs generally. For example, according to the Insurance Information Institute, from 1975 through

2000, medical liability costs have grown a whopping 1,642 percent as compared to a 449 percent increase for general medical costs.

**□ Increased Awards and Settlements Mean Insurers are Paying Out More than they are Collecting, Necessitating Steep Premium Increases**

A June 2003 General Accounting Office (GAO) report, entitled “Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates,” confirms what we already know: increased losses on claims are the *primary* contributor to higher medical liability insurance premium rates.

Indeed, according to the Insurance Information Institute, which analyzed data from A.M. Best (an independent insurance rating agency that analyzes insurance companies’ overall financial strength and creditworthiness), the cumulative underwriting loss for the medical liability insurance sector from 1990 to 2001 was nearly \$10 billion. This dramatic rise in medical liability awards and settlements has meant that professional liability insurers have been paying out more than they have been collecting in premiums. In 2002, medical liability insurance companies were paying out \$1.65 in claims for every medical liability premium dollar collected. In 2003, according to the National Underwriter Data Services, insurers were paying approximately \$1.38 for every premium dollar collected. While the ratio of payouts to premium dollars collected has become more aligned, insurance companies are still finding it necessary to raise physicians’ premiums to keep pace with anticipated claims. Obviously, this situation is not sustainable, and this trend is therefore forcing insurance companies, which must set their rates based on anticipated future losses, to steeply increase doctors’ medical liability premiums to ensure adequate reserves to pay future judgments.

As a result, over the past several years, physicians across the country have faced double, and sometimes triple, digit rate increases. Alliance members, including high-risk specialists like neurosurgeons, orthopaedic surgeons, obstetricians, cardiothoracic surgeons and emergency physicians, have been disproportionately affected by these premium increases. For example:

- According to one national survey of neurosurgeons, between 2000 and 2004 the national average premium increase was 84 percent, from \$44,367 to \$81,749. The median rate for neurosurgeons in Illinois is now \$200,000 and in some states, neurosurgeons' premiums have reached nearly \$400,000 per year.
- Rates for ob-gyns continue to be among the highest. According to the *Medical Liability Monitor's* 2004 rate survey, in 2004, obstetricians paid \$277,241 in Florida, up from \$249,169 in 2003. Illinois ob-gyns received a 66.9 percent increase in 2004, paying \$230,428 as compared with \$138,031 in 2003. And in Pennsylvania, premiums for ob-gyns increased 34.4 percent in 2004 to \$172,178 from \$128,114 in 2003.
- Utah orthopaedic surgeons saw medical liability rate increases of 60 percent from 2002 to 2003 and in Texas they have risen by more than 50 percent. In Pennsylvania, a survey conducted in June 2002 revealed rate increases as high as 59 percent. In other areas of the country, orthopaedic surgeons are finding that their premiums have risen by over 100 percent, even if they have never had a claim filed against them.
- Over the past several years, over 95 percent of emergency medicine physicians have experienced medical liability premium increases, with approximately 69 percent facing increases between 60 to 500 percent. This is attributed to the fact that emergency medicine physicians are almost always named in any litigation that arises from a patient encounter that begins in the emergency department. Since most hospital admissions now come through the emergency department, these doctors are experiencing steep premium rises even though the lawsuits against them may have no merit and result in either dismissal or a defendant's verdict.

- Even those specialists who are not in high-risk categories are affected by this upward trend in premium costs. For example, 80 percent of recently surveyed dermatologists reported that their premiums increased over the past years and those dermatologists who were insured by a state plan were paying nearly double what their colleagues were paying in the private market.

#### ❑ **Medical Liability Insurance is Unavailable**

Not only are medical liability insurance premiums rising at astronomical rates, but many doctors have found it increasingly difficult to obtain medical liability insurance at any price. Citing the increases in liability losses, several companies, including, St. Paul, MIXX, PHICO, Frontier Insurance Group and others, have either recently stopped selling medical liability insurance or have gone out of business, leaving thousands of doctors scrambling to find replacement coverage. Of the companies that have remained in the market, many are no longer renewing insurance coverage for existing policyholders and/or they are not issuing new insurance policies to new customers. This is particularly true in states that have no effective medical liability reform laws in place.

The June 2003 GAO report confirmed that the declining profitability of the medical liability insurance market has caused many insurers to either stop selling medical liability policies altogether or reduce the number of policies they sell, putting even greater pressure on the remaining insurance companies to raise their premiums to cover expected losses. Alliance members have witnessed the impact of this problem first hand. For example:

- In 2002, nearly 40 percent of orthopaedic surgeons in Pennsylvania were not able to renew their medical liability coverage with the same carrier and 31 percent did not find new coverage.
- In 2002, 15 percent of dermatologists experienced difficulties securing their liability insurance. In some cases, dermatologists in solo practice who have never even been sued were forced to turn to the state for coverage because the remaining insurers in their area made a blanket decision to no longer insure solo practice physicians, regardless of specialty.

- A recent study found that in recent years, approximately 33 percent of surveyed neurosurgeons have switched insurance companies, and of these, 41 percent did so because their insurance company failed or withdrew from the market. In addition, neurosurgeons in Florida have been unable to obtain medical liability insurance at any cost, forcing them to “go bare” or self-insure. Across the nation, even those neurosurgeons who only have one claim against them (regardless of the outcome of the case) are finding it difficult to find insurance coverage.
- Three of four insurance carriers with the largest market share in Missouri recently stopped writing policies in that state. This means that physicians can often obtain a quote from only one company. For example, one group of 12 cardiologists could get only one quote with an 80 percent increase for 2003.

### **SCOPE OF THE CRISIS: A NATIONAL PROBLEM THAT REQUIRES A FEDERAL SOLUTION**

Those who oppose federal legislation to fix this crisis cite various reasons in support of their contention that this is not a national problem that merits a federal solution. In particular, they note that the regulation of insurance and healthcare is generally left to the states and therefore this is a matter that the states should attend to. The Alliance respectfully disagrees with these objections. Today, healthcare delivery has no borders and it should be equal from state to state. We currently have a patchwork of liability reforms, and because of this uneven system, access to healthcare varies according to the liability climate of each state. Every patient, every citizen, in every state deserves equal protection under the law, both in compensation for negligent injury, and in timely access to healthcare, particularly emergency and specialty care. The undisputed truth is that one way or another, this problem now touches nearly every American and a federal solution is therefore a national imperative.

### **❑ Nearly All States are Facing a Medical Liability Crisis**

According to the American Medical Association, there are now twenty states in “full-blown” crisis: Arkansas, Connecticut, Florida, Georgia, Illinois, Kentucky, Massachusetts, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Washington, Nevada, West Virginia, and Wyoming. Twenty-four states and the District of Columbia are showing warning signs of a potential crisis. For high-risk specialists like neurosurgeons, the situation is even more widespread than the AMA reports, as the American Association of Neurological Surgeons and Congress of Neurological Surgeons have identified at least 22 states that are currently facing a medical liability crisis, with another 16 facing a potential crisis.

### **❑ Every American Pays the Costs of the Current Medical Litigation System**

According to the U.S. Department of Health and Human Services (HHS), in its 2003 report entitled, “Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care,” the current medical litigation system imposes enormous direct (e.g., premiums, legal fees, expenses and payouts) and indirect costs (e.g., defensive medicine) on the health care system. In 2004, for example, 55 percent of surveyed neurosurgeons reported that they are practicing defensive medicine and have altered their treatment protocols because of liability concerns, including ordering more diagnostic or other tests. These costs are passed on to all Americans in the form of increased health insurance premiums, higher out-of-pocket medical expenses and higher taxes. The report estimates that enacting federal medical liability legislation could save between \$70-120 billion in health care costs each year. These savings would in turn lower the cost of health insurance and make health care more affordable and available to many more Americans.

### **❑ Federal Medical Liability Reform Will Save the Federal Government Money**

Each year, the Federal Government pays for the increased costs associated with the current medical litigation system through various health care programs, including Medicare, Medicaid, Community Health Centers and other health care programs for veterans and members of the armed forces. Citing the findings of the Department of Health and Human Services and the Congressional Budget Office's (CBO) cost estimate of HR 5, the HEALTH Act, the Congressional Joint Economic Committee concludes that federal medical liability reform legislation that includes a cap on non-economic damages would generate significant fiscal savings for the Federal Government. The combined annual budget savings attributed to decreased direct and indirect costs would total approximately \$12.1 billion to \$19.5 billion. Over a ten-year period (2004-2013), if medical liability reform legislation passed, a total of between \$67 billion and \$106 billion in savings would accrue to the federal government.

#### **❑ States Face Significant Barriers to Implementing Medical Liability Reforms**

Many states face barriers – some legal and some political -- to enacting effective medical liability reform laws. Some states, including Florida and Ohio, have enacted medical liability reform laws, only to have their state Supreme Courts strike them down as unconstitutional. Other states, like Arizona, Kentucky, and Pennsylvania have explicit constitutional prohibitions on damage limits. Still others, like Montana, have not had their laws tested and reviewed by their highest court. In addition, new laws passed by Mississippi and West Virginia may also face court challenge, and it will be years before it is determined whether these laws pass state constitutional muster. As a consequence, despite the increasing medical liability crisis in many of these states, they are essentially powerless to act to effectively solve the problem.

## **SOLUTION TO THE CRISIS: MEDICAL LIABILITY REFORM LEGISLATION PATTERNED AFTER CALIFORNIA'S MICRA**

The cornerstone of any legislation should include the principles that injured patients deserve their day in court and that they are entitled to receive full, just and fair compensation. Congress should therefore adopt medical liability reforms that have a proven track record and will help strike the necessary balance between compensating injured patients and ensuring access to healthcare for all Americans. Fortunately, Congress does not need to start from scratch and identify and implement a solution that is untested. Faced with a similar crisis in the early 1970's, the state of California, with bipartisan support, enacted the Medical Injury Compensation Reform Act or MICRA. The Alliance believes that any federal reform must contain the key elements of MICRA, which include:

- Providing full compensation for all economic damages, including medical bills, lost wages, future earnings, custodial care and rehabilitation;
- Placing a fair and reasonable limit of \$250,000 (without exceptions or an inflationary adjuster) on non-economic damages, such as pain and suffering;
- Resolving claims quickly by establishing a reasonable statute of limitations for filing a lawsuit;
- Ensuring appropriate payments are there when patient need them by allowing for periodic payments of damages rather than lump sum awards;
- Maximizing the amount of the award that goes to injured patients by placing reasonable limits on attorneys' fees;
- Focusing liability on those at fault, not on "deep pockets," by eliminating joint and several liability; and
- Preventing double recovery of damages through collateral source reform

Congress may want to consider additional reforms (which were not included in last-year's House-passed version of the HEALTH Act) that would:

- Ensure that juries are advised by actual experts by establishing expert witness standards; and
- Unclog the courts and reduce the societal costs of lawsuits by limiting frivolous lawsuits

In addition, Congress should ensure that federal medical liability reform does not preempt *effective* state reforms.

As the subcommittee moves forward with its deliberations on this legislation, the Alliance urges you to keep in mind the following points about the effectiveness of MICRA:

**☐ MICRA Fully Compensates Injured Patients Quickly**

First and foremost, under MICRA, patients receive full compensation for legitimate injuries resulting from medical negligence. Detractors of federal reform legislation are attempting to obfuscate the facts by scaring the public and policymakers into believing that injured patients will only receive a maximum of \$250,000 to compensate them for their injuries. This is simply not the case. Patients receive full compensation for all of their quantifiable needs, with up to an additional \$250,000 for non-economic damages, such as pain and suffering. To demonstrate this fact, the Californians Allied for Patient Protection recently compiled a sample of total awards (including both economic and non-economic damages) provided to injured patients. For example, in December 2002, a 5 year-old Alameda County boy with cerebral palsy and quadriplegia because of delayed treatment of jaundice after birth was awarded \$84,250,000; a 3 year-old Contra Costa County girl with cerebral palsy as a result of birth injury was awarded \$59,317,500 in October 2002; a 30 year-old homemaker from Los Angeles with brain damage because of lack of oxygen during recovery from surgery, was awarded \$12,558,852 in July 2002; and in November 2000, a 25 year-old San Bernardino County woman with quadriplegia because of failure to diagnose a spinal injury was awarded \$27,573,922.

Medical liability claims are also paid most quickly in California versus all other states. According to the National Practitioner Data Bank's 2003 Annual Report, in 2003, the mean delay between an incident that led to a payment and the payment itself was 4.59 years. In California, it was 2.98 years. The slowest state to close claims was Massachusetts, which was 6.19 years.

**❑ MICRA Significantly Minimizes Premium Increases**

Opponents of reform cite statistics that over the past several years, premiums for doctors in California have also been rising; thus somehow proving that MICRA does not have any impact in holding down the costs of medical liability insurance. While it is true that premiums are on the rise in nearly all states, including California, the rate of increase of premiums for California doctors is significantly lower than in other states, and over time, MICRA has, in fact, stabilized medical liability insurance premiums as compared to the rate of increase in the rest of the country. According to data from the National Association of Insurance Commissioners, from 1976 to 2002, liability premiums for California physicians rose only 245 percent as compared with 750 percent of physicians in the rest of the United States. Data from a survey of neurosurgeons validates these trends, and both actual premiums and the rate of increase for neurosurgeons in California, as compared to neurosurgeons who practice in states where there are no reforms in place, are significantly lower.

<b>State</b>	<b>2000 Median</b>	<b>2004 Median</b>	<b>Percentage Increase</b>
<b>California</b>	<b>\$45,598</b>	<b>\$59,583</b>	<b>31%</b>
Ohio	\$43,001	\$136,416	217%
Illinois	\$70,000	\$200,000	186%
Washington	\$35,816	\$88,400	147%
Missouri	\$40,500	\$98,000	142%

**❑ Federal Government and Other Experts Agree that MICRA Works**

U.S. Government experts and others agree that MICRA does in fact hold down the costs of medical liability insurance, and over the years there have been a number of studies that have identified MICRA's \$250,000 cap on non-economic damages as a critical element in stabilizing premium costs. For example, dating back to September 1993, the former U.S. Office of Technology Assessment (OTA), in a report entitled, "Impact of Legal Reforms on Medical Malpractice Costs," concluded that caps on damages were consistently found to be an effective mechanism for lowering medical liability insurance premiums. Most recently, the U.S. Department of Health and Human

Services, Congressional Budget Office and Joint Economic Committee issued reports evaluating the HEALTH Act, came to the same conclusion, and the GAO, in its August 2003 report, found that “premium growth was lower in states with non-economic damage caps than in states with limited reforms.” In addition to these government experts, others have studied the effectiveness of MICRA. A 2004 study by the RAND Corporation, entitled “Capping Non-Economic Awards in Medical Malpractice Trials” concluded that MICRA’s contingency fee reform and limit on noneconomic damages has decreased insurer payouts and redistributed more money from personal injury attorneys to injured patients. Finally, according to Kenneth Thorpe, in a study published in the January 2004 edition of *Health Affairs*, insurance premiums are 17 percent lower in states with caps on noneconomic damages and they are one-quarter lower in states with both caps on noneconomic damages and discretionary collateral offsets.

❑ **States with Damage Caps Have More Doctors Available to Treat Patients**

Opponents of medical liability reform cite various statistics to claim that tort reforms, especially caps on damages, have had no affect on stemming the tide of this crisis. In addition, in its August 2003 Report, the GAO asserts that its analysis of medical licensure data proves that not only are physicians not moving or retiring as a result of increased medical liability premiums, but in the crisis states it reviewed there actually was an increase in the number of licensed physicians. The Alliance takes issue with these claims for several reasons:

- Medical licensure data is in no way indicative of the number of physicians who are actually practicing medicine in a particular state. Rather, it merely means that a certain number of physicians hold a license to practice medicine. Physicians tend to hold multiple state licenses and typically retain their licenses when they relocate or retire from active practice. Thus, taken

alone, medical licensure data provides no useful information to prove or disprove the affects of the medical liability crisis on physician supply.

- According to a July 2003 study conducted by the U.S. Department of Health and Human Services' Agency for Healthcare Research and Quality, entitled "The Impact of State Laws Limiting Malpractice Awards on the Geographic Distribution of Physicians," states that have enacted laws capping damage payments in medical liability cases have more physicians per capita than those who have no cap or very high damage caps. The study found that in 1970, before any states had a law capping damage payments, in all states there were virtually identical levels of physicians per 100,000 citizens. Thirty years later in 2000, however, states that had adopted a cap averaged 135 physicians per 100,000 citizens, while states without caps averaged 120.
- The May 2003 Joint Economic Committee study concluded that "the number of doctors at the state level is sensitive to the malpractice insurance costs: higher premiums reduce the number of practicing physicians."

The clear and simple truth is that MICRA and other similar laws work. For nearly three decades, this law has ensured that legitimately injured patients get unfettered access to the courts and receive full compensation for their injuries, while at the same time providing stability to the medical liability insurance market to ensure that doctors can remain available to care for their patients.

#### **□ Americans Overwhelmingly Support a MICRA-Style Solution**

Americans are becoming acutely aware of the impact this crisis is having on the nation's healthcare system and the care they receive. Studies show that they overwhelmingly favor passage

of federal legislation to reform the current medical liability system and create a system that balances the rights of patients to obtain appropriate compensation for injuries caused by medical negligence with the rights of all citizens to have access to medical care. A March 2004 poll conducted by Wirthlin Worldwide for the Health Coalition on Liability and Access found that:

- 82 percent of the Americans surveyed believe that doctors are being forced to leave their practices because excessive litigation has put the cost of medical liability insurance out of reach.
- By a huge margin, 72 percent of those surveyed said that health care expenses for all people are being driven up by the rising cost of medical liability lawsuits.
- The high number of medical liability lawsuits is unjustified, according to 55 percent of the survey respondents. Only 16 percent say that the number of lawsuits against health care providers is lower than justified.
- Three-quarters of Americans want Congress to pass reforms to fix the medical liability crisis. 72 percent favor a law that guarantees full payment for lost wages and medical expenses but limits non-economic damages; 73 percent want to limit the amount of money personal injury trial lawyers can get from the excessive litigation settlements their clients receive.

A January 2005 poll conducted by Public Opinion Strategies for the American College of Emergency Physicians reached similar conclusions, confirming that three out of four (75 percent) of Americans recognize the current system interferes with physicians' ability to provide quality care; 85 percent of Americans believe the current legal system – with no consequences for pursuing frivolous lawsuits and publicity about large monetary awards – is responsible for rising medical insurance costs; and 73 percent favor liability reform that includes placing limits on non-economic (pain and suffering) damages.

## **WITHOUT REFORM THE STATE OF AMERICA'S HEALTH NOW AND IN THE FUTURE IS AT RISK**

Clearly the health of our nation's citizens is at considerable risk. Because of the medical liability crisis, more and more people are finding it difficult to get the specialized medical attention they need, when they need it. This is causing a national health care emergency. Thus:

- When patients can't find a specialist close to home, they must sometimes travel great distances, often going out of state, to get their medical care.
- When fewer specialists are available, hospital emergency departments and trauma centers must shut their doors, and patients with emergency medical conditions lose critical life-saving time searching for an available emergency room.
- When specialists stop performing high-risk medical services, patients are often referred to academic medical centers, and these medical facilities are already overburdened and are ill equipped to handle the increase in patient volume.
- When specialists retire at an early age, the looming shortage of doctors is accelerated, which, if left unchecked will place additional burdens on the health care system as the population ages and requires more medical care from an increasingly shrinking pool of practicing doctors. Once gone, these doctors are hard to replace, and those states currently facing a medical liability crisis are having a difficult time recruiting new physicians to their communities adding to the shortage of doctors in many parts of the country.
- When the practice of medicine becomes so uninviting, fewer and fewer of our nation's best and brightest will want to become doctors, thus jeopardizing our country's status as one of the finest healthcare systems in the world.

We have reached a very important juncture in the evolution of the U.S. healthcare system. At a time when lifesaving scientific advances are being made in nearly every area of healthcare, patients

across the country are facing a situation in which access to health care is in imperiled. Thus, as the Congress deliberates the many facets of this issue, the Alliance urges you to continue to keep in mind that this issue is not about doctors, lawyers and insurance companies. Rather, it is about patients and their ability to continue to receive timely and consistent access to quality medical care. By reforming the medical litigation system, the crisis will ultimately be abated. Patients are calling for reform. Doctors are calling for reform. President Bush is calling for reform. The Alliance is hopeful that the Congress's continued efforts to highlight and debate this crisis will lead to the passage of MICRA-style medical liability reform legislation so all Americans are able to find a doctor when they most need one. Ultimately, when the question "Will your doctor be there?" is asked, the answer must be an unqualified yes.

Thank you for considering our comments and recommendations. The Alliance of Specialty Medicine, whose mission is to improve access to quality medical care for all Americans through the unified voice of specialty physicians promoting sound federal policy, stands ready to assist you on this and other important health care policy issues facing our Nation.

## ***The Many Faces of the Medical Liability Crisis***

### ***Arizona***

- ❑ **Ob-gyn:** Deborah Wilson made the tough decision to stop delivering babies in June 2003. “It was a really tough decision. I just knew I couldn’t do it anymore once I realized the risks. You’ve just got a target on your back.” Dr. Wilson delivered approximately 50 babies a month for over 17 years. One of the many patients forced to find a new obstetrician was Patty Jasinski, who was seven months pregnant with her second set of twins at the time. Dr. Wilson was Jasinski’s obstetrician for nearly two decades, helping her through five miscarriages, an ectopic pregnancy and the birth of her first set of twins. (*East Valley Tribune*, April 2004)
- ❑ **Neurosurgeon:** Timothy Putty, MD writes: “A 60ish year old man presented to St. Joseph’s Emergency Dept. with a cerebral hemorrhage. The ED physician tried to find a neurosurgeon to care for this patient. None of the neurosurgeons that go to that particular hospital was available or on call. The ED physician tried to transfer to another hospital in Tucson, but none had neurosurgical coverage that evening, and the University Hospital was full (on diversion). This patient was subsequently flown out of the city, to San Diego, and I believe ultimately died” (American Association of Neurological Surgeons/Congress of Neurological Surgeons 2004)

### ***Florida***

- ❑ **Neurosurgeon:** Mildred McRoy suffered a hemorrhagic stroke in February and was rushed to JFK Medical Center in Atlantis, Florida for treatment. However, JFK stopped providing around-the-clock neurosurgical coverage in July because of the medical liability crisis. In fact, there wasn’t a single neurosurgeon on call in all of Palm Beach County. Ms. McRoy was transported 40-miles away to North Broward Medical Center more than eight hours later. She was operated on by neurosurgeon Gary Gieseke, but died after being in a coma for several days. Almost all of the neurosurgeons at the hospital are “bare” and are not willing to take on the risk of emergency procedures without insurance. The hospital has begun paying for on-call services in an effort to provide the necessary 24/7 coverage. (*Palm Beach Post*, March 6 and 18, 2004)
- ❑ **Orthopaedic surgeon:** Diana Carr, MD writes: “In my community only two orthopaedists (including myself) of the five will see children. My practice is limited to pediatric upper extremity. The other pediatric orthopaedic surgeon is on call in rotation with the three others who do no pediatrics. The 75-percent of the time he is not on call, children have to go to Tampa, Orlando or St. Petersburg where pediatric orthopaedists are available. This is a two-hour ride each way for the initial appointment and all follow-ups.” (American Association of Orthopaedic Surgeons)
- ❑ **Ob-gyn:** Manatee Obstetrics & Gynecology physicians will end obstetrical services at the practice September 2004 due to rising medical liability costs, leaving hundreds of expectant mothers to find a new baby doctor this fall. State Rep. Bill Galvano, R-Bradenton, is an immediate victim of this escalating crisis. His pregnant wife, Julie, was scheduled to deliver their third child at Manatee in October. (*Bradenton Herald*, April 15, 2004)

## **Georgia**

- ❑ **Ob-gyn:** In 2003 there were three obstetricians in Eastman, Georgia. Today there is one. One moved out-of-state and the other 42-year old doctor quit obstetrics. (Medical Association of Georgia, 2004); Dr. Patricia Ritchie Haynes recently quit her 23-year ob-gyn practice at Piedmont Hospital after learning her malpractice premium was going to rise by 50 percent in one year. (*Atlanta Journal-Constitution*, Feb. 8, 2004); 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)
- ❑ **Emergency Physicians:** "At my hospital in Atlanta, GA, the surgeons (including orthopedists) decided that due to... skyrocketing premiums, they would work less call, leaving us for several months with every third day with surgeons and orthopaedics on call. My hospital is the designated site for Hartsfield Airport, the busiest airport in the nation. Multiple patients have had to be transferred and a colleague had a stabbing that had a significant delay in care due to lack of coverage." (American College of Emergency Physicians, 2005)
- ❑ **Neurosurgeon:** Last year there were four neurosurgeons in Albany, Georgia and the local hospital had neurosurgical trauma coverage 24 hours a day, seven days a week. Today there are two and the hospital only has a neurosurgeon on-call 50 percent of the time. If area residents suffer a head or spinal injury, stroke or other neurosurgical emergency on the "wrong day" they must be air-lifted to Macon or Columbus, if a neurosurgeon is available there. (Medical Association of Georgia, 2004)

## **Hawaii**

- ❑ **Neurosurgeon:** Premiums for neurosurgeon Dilworth Rogers of Kahului have risen from \$30,000 a year in 2000 to over \$79,000 in 2004. As a result, Dr. Rogers no longer treats pediatric patients or patients with aneurysms or complex brain or spine problems. These patients must be sent to a facility more than 30 miles away. Unless something changes in the next year, Dr. Rogers will be forced to close his practice and move to another state with tort reforms and a more stable professional liability environment. (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)
- ❑ **Neurosurgeon:** Michon Morita is Hawaii's only pediatric neurosurgeon. Because of the medical liability crisis, he has been forced to limit the types and amount of cases he treats. "If I can't see these patients, they have to go to the mainland," he said. (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)

## **Illinois**

- ❑ **Neurosurgeon:** In February 2004, 85-year-old retired machinist Fred Andricks tripped and hit his head. Because of the medical liability crisis there are no neurosurgeons left in Belleville. After a delay, Mr. Andricks was transferred to a St. Louis, MO medical center where he received treatment. Unfortunately he died the next day from swelling of the brain. After learning of her father's fate, Lisa Kasten said "All the talk was that this was going to happen and that someone would not get care when they needed it. I just never realize it would be my dad." (American Association of Neurological Surgeons/Congress of Neurological Surgeons 2004)

- ❑ **Emergency Physician:** In August 2004, a cable snapped when Richard Rhodes was unloading his stock car into a garage, injuring his hand. He was rushed to the Alton Memorial Hospital emergency room with his thumb and little finger missing. There were no doctors at the hospital available to reattach his fingers. The emergency room physician called more than six hospitals in an effort to transfer Mr. Rhodes, but no other hospitals were accepting transfers for this type of injury. After several hours, Mr. Rhodes was airlifted to a hospital in Springfield and his fingers were reattached. Unfortunately because of the delay, the reattachment did not take and his thumb had to be amputated two weeks later. Mr. Rhodes blames the loss of his thumb on the medical liability crisis in Illinois. Mr. Rhodes said, "The doctor did everything he could to find someone to help. I kept saying that I had insurance. But what's a sense of having insurance if you can't find anyone to work on you?" (*The Telegraph*, August 2004)
- ❑ **Urologist:** Roger Rives MD and David Didomenico are the only two urologists and Sarah Bush Lincoln Health Center in Mattoon. In an effort to reduce their professional liability risks, they have stopped performing more risky, highly invasive procedures, including prostate and bladder surgery. They have tried to recruit a third urologist for more than 18 months, but have been unsuccessful. (*The Journal Gazette and Times-Courier*, August 2004)
- ❑ **Orthopaedic Surgeon:** "A five-year-old child was struck by an auto in Naperville and sustained a fracture of the femur and a small skull fracture with minimal underlying brain contusion. Such injuries would typically be treated by urgent casting by an orthopaedic surgeon and then a neurosurgeon would follow along to make sure the patient's brain injury remained stable. In this case, the neurosurgeon on call will not see any patient under 18. A pediatric orthopaedic surgeon was in attendance, waiting to treat the femur fracture, but without a neurosurgeon to follow the patient, transfer to Loyola had to be arranged. At Loyola, no pediatric orthopaedic surgeon was available, so the adult orthopaedic trauma surgeon had the child's leg placed in traction, inserting a pin just above the knee in order to hang the weights which pulled on the leg. The plan was to keep the child in traction for a few weeks, and then place the child in the cast. The family, after 2 days at Loyola, desired transfer of care back to their home town. The child was taken out of traction, placed in an ambulance, and transferred back to Edward Hospital in Naperville. He was eventually casted and sent home. The liability crisis has created a situation where this patient had to endure two useless ambulance rides with a broken femur, several extra days of hospitalization, and insertion and removal of a traction pin. This waste of resources and interference with medical care is repeated endlessly across the nation." (American Association of Orthopaedic Surgeons)
- ❑ **Ob-gyn:** Kim Dahlem, a mother of one, wants to have another baby next year, but she has a problem: She must find a doctor who will deliver it. The obstetrician-gynecologist who delivered her daughter in February 2003 recently decided, after 30 years in practice, to stop delivering babies because he could not afford the high cost of medical malpractice insurance. Dahlem, 32, does not live in Joliet or southern Illinois, areas reported to have lost many obstetricians because of the skyrocketing cost of professional liability insurance. She lives in northwest suburban Cary, and her gynecologist, Dr. Donald DeDonato, practices in Arlington Heights. "It's heartbreaking," Dahlem said of losing the physician who helped her through a difficult first pregnancy. "He was a blessing. . . . I was comfortable with him. It's hard having that ripped from you." (*Chicago Tribune*, September 22, 2004)

## **Iowa**

- ❑ **Neurosurgeon:** Vincent Traynelis, MD writes, "At the University of Iowa we are seeing a marked increase in complex spine cases, cranial cases and pediatric cases because local, private practice neurosurgeons are no longer treating these patients out of liability concerns. Transfers to the University costs time and lives." (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)
- ❑ **Ob-gyn:** Dr. Dan Bohle delivered his final baby last year. After more than 19 years as an obstetrician, the Dubuque physician left the specialty to concentrate on gynecology because of medical malpractice insurance premiums that rank second-highest in all of American medicine. The premium problem is compounded by a lengthy statute of limitations for suits. "A lot of times there is a two-year statute of limitations," Bohle said, "but for OB it can be 18 years plus two years." (*Telegraph Herald*, July 14, 2003)

## **Maine**

- ❑ **Neurosurgeon:** Waterville Neurosurgeon Eric Omsberg's premiums have increased from \$46,000 for \$2 million/\$5 million coverage in 2000 to \$300,000 for \$1 million/\$3 million coverage in 2004. The 552 percent increase has caused Dr. Omsberg to drop trauma and emergency call at some local hospitals in an effort to reduce his liability exposure. Dr. Omsberg writes "I am stuck. I am in my mid-40s with three grade school children and do not want to move right now. The liability crisis is devastating to this community!" (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)

## **Maryland**

- ❑ **Surgeon:** Dr. Gina Sager, a 43-year-old general surgeon who was named one of the city's best breast surgeons in 2000 by Baltimore Magazine, was forced to give up her profession last year because of "malpractice liability concerns." Her malpractice insurance rates jumped from \$21,000 to \$59,000 in one year--including a \$25,000 deductible--as a result of three meritless malpractice cases that were filed in tandem against her in 1997. "Besides the unexplainable emotional cost, it became very evident last year that if I didn't make some pretty dramatic changes, I would be unable to pay any bills," said Sager. "I apparently have the dubious distinction of being the youngest physician in Maryland to retire." (*Washington Times*, Sept. 1, 2003)
- ❑ **Orthopaedic Surgeon:** David B. Carmack, MD states, "I practice at the Maryland state trauma referral center (R Adams Cowley Shock Trauma) and am seeing a dramatic increase in trauma referrals for isolated orthopaedic trauma. Routine trauma will be turned away from the community and local hospitals and sent to the state trauma center, because of decreased numbers of community orthopaedic surgeons willing to take on a trauma patient. This overwhelms us at the state trauma center and limits access for our critically injured patients who indeed need to be here for life and limb threatening injuries." (American Association of Orthopaedic Surgeons, 2005)
- ❑ **Ob-gyn:** After 28 years of delivering babies, Pikesville physician Robert L. Brenner had a sentimental ambition: He wanted to deliver the babies of the babies he had ushered into the world. But that dream evaporated recently, three weeks before the first of the next generation was due, because Dr. Brenner couldn't afford malpractice insurance. Last month he scaled back his practice to gynecology alone in order to save \$42,000 a year on malpractice coverage. Insuring combined obstetric and gynecologic services was consuming nearly 50 cents of every dollar he

and a partner are paid at \$1,600 per delivery -- and a hefty premium increase is coming next year. He'd already laid off half his staff, shrunk his office space and brought his wife in to help. There was no place else left to cut. (*The Baltimore Sun*, 08/17/03)

## **Michigan**

- ❑ **Orthopaedic surgeon:** Daniel Garcia, MD writes, "I am an orthopaedic surgeon in my 18th year of private practice, and the major insurer in my state of Michigan gave us very short notice almost one year ago that they were not going to renew coverage for our group. My malpractice premium increased 100% last April 2003 and I am now paying \$124,000 for 200/600,000 coverage. I simply cannot continue to practice in this state for long. I have given up doing two or three specific types of orthopaedic procedures because of malpractice concerns or issues, and have turned a few patients away from surgery simply because of their demeanor or the impression they left me with at the time of their pre-op visit." (American Association of Orthopaedic Surgeons, 2005)
- ❑ **Neurosurgeon:** **Ann Arbor neurosurgeon Geoffrey Thomas stopped providing trauma and emergency call in 2004, dropping his premiums from \$45,947 to \$19,469. (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)**

## **Missouri**

- ❑ **Orthopaedic Surgeon:** Poplar Bluff internist Donald Piland said, "Last year a patient of mine fell on the ice during the winter and suffered a compound fracture of the lower leg. Subsequently, she lost her leg due to a lack of orthopaedic coverage in our community. We had recently lost three orthopaedic surgeons in a span of one year, partly because they couldn't afford malpractice insurance premiums in the state of Missouri." (*Daily American Republic*, March 17, 2004)
- ❑ **Neurosurgeon:** Robert Grubb in St. Louis, Missouri wrote "I recently received a patient in a transfer from a small town in northeast Arkansas with a severe cervical spinal injury following a motor vehicle accident. The primary care physician said he called 17 different hospitals closer than St. Louis over a 24-hour period and could not find anyone to take the patient because no one had an available neurosurgeon. The patient was finally transferred to Barnes Jewish Hospital in St. Louis after more than 24-hours, way beyond the optimal time for treating such a devastating injury." (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)

## **Nebraska**

- ❑ **Ob-gyn:** Dr. Steven Senseney said the money he takes in from delivering 15 to 20 babies a year does not cover the cost of the insurance he needs for obstetrics. If he quits, his colleagues would have a 24-hour burden of delivering the area's babies. Or it would force pregnant women to leave town, perhaps staying at hotels in larger cities for weeks before their due dates. (Doctors for Medical Liability Reform at [www.protectpatientsnow.org](http://www.protectpatientsnow.org))

## ***New Hampshire***

- ❑ **Ob-gyn:** Dr. Patricia Miller of Derry, NH, a town of 38,000, stopped delivering babies as of December 2003 because of increased medical liability insurance premiums. Dr. Miller, a solo practitioner for 15 years, delivered 8-10 babies a month, about 100 per year.
- ❑ **Ob-gyn:** Dr. Krishna Das closed her obstetrics practice because of skyrocketing medical liability costs and moved to North Carolina, leaving many women in Northern New Hampshire without obstetrical coverage. (New Hampshire Medical Society, April 2003).

## ***New York***

- ❑ **Neurosurgeon:** White Plains neurosurgeon Ed Kornel, president of the New York State Neurosurgical Society, and his partners stopped providing trauma and emergency coverage at South Sound Hospital last year in an effort to reduce their liability expose. The group will likely drop United Hospital and Phelps Hospital this year unless some relief is provided. Putnam Hospital in the area already does not have 24/7 neurosurgical coverage. (American Association of Neurological Surgeons/Congress of Neurological Surgeons)
- ❑ **Ob-gyn:** Jennifer Blovsky of Farmingdale has supported malpractice reform ever since the doctor who delivered her three children, Dr. Juliana Opatich of Bethpage, quit delivering babies last year because of the high cost of insurance. Last year when Mrs. Blovsky discovered that she was pregnant Dr. Opatich informed her that she could not deliver her fourth baby. Mrs. Blovsky said, "That was tough. Now when people ask me to recommend someone, I always say, 'Well I knew a wonderful person but she was driven out of business because of malpractice insurance.'" (Newsday, 01/26/03)
- ❑ **Orthopaedic surgeon:** John Olsewski, MD writes, that "Since 1994, I have provided the majority of the adult reconstructive spine care in the northern portion of the Bronx and the southern portion of Westchester County. In the past three years, I have seen my liability insurance premiums rise 25-percent. I have been forced to alter significantly my practice profile, referring out cases of a higher risk nature, which I would not have hesitated in the past to care for myself. In addition, the Level I Trauma Center in the Bronx, Jacobi Medical Center, will lose the emergency spine coverage of three of the four orthopaedic spine surgeons presently providing care, myself and two other colleagues, solely because of the increased liability risk of the clinical setting." (American Association of Orthopaedic Surgeons)
- ❑ **Gynecologic Oncology:** Five Long Island gynecologic-oncologists quit the practice altogether because of skyrocketing and unaffordable medical liability insurance premiums. That leaves only one gynecologic-oncologist within 110 miles to provide needed care. The only other option for patients is to travel a great distance or take a ferry to Connecticut. (American College of Obstetricians and Gynecologists, 2003)
- ❑ **Emergency physician:** A New York ER physician says, "I came from Canada, where I did my medical school and residency and have worked. I plan to move back there chiefly because the medical liability climate is better there. I enjoy being a doctor in Canada more than in the U.S. right now." (American College of Emergency Physicians, 2005)

## Ohio

- ❑ **Ob-gyn:** Over the course of her pregnancy, Sharon Minson of northeast Ohio had four different ob-gyns because rising professional liability insurance rates kept forcing her doctors to stop delivering babies. “When you’re pregnant, it should be a happy time,” she said. “I just wanted continuity of care. You can’t switch around like that.” In the past two years, 46 of 72 ob-gyns have left Summit County in the past two years and more than 190 doctors have left Summit, Medina and Portage counties in that time frame. (*Akron Beacon-Journal*, October 21, 2004)
- ❑ **Gastroenterologist:** In July Cleveland gastroenterologist Gary Gottlieb of Mayfield Heights announced he was leaving Ohio after receiving a professional liability premium bill for \$85,000, more than five times the amount he paid in 2002. Dr. Gottlieb will move to Arizona. In Arizona Dr. Gottlieb will pay between \$5,000 and \$12,000 for insurance. Dr. Gottlieb’s partners have been unable to replace them. All of the gastroenterology fellows at The Cleveland Clinic have decided to leave Ohio to pursue their careers elsewhere because of the high malpractice rates in Northeast Ohio (*Cleveland Jewish News*, July 2004)
- ❑ **Neurosurgeon:** Thomas Hawk of Columbus has stopped providing trauma and emergency call in an effort to reduce his liability premiums. He also writes, “I see lots of patients each week from West Virginia who cannot find neurosurgical care and are coming all the way to Columbus, Ohio to get care.” (American Association of Neurological Surgeons/Congress of Neurological Surgeons)

## Pennsylvania

- ❑ **Orthopaedic surgeon:** Shawn Hennigan, MD, recently moved from Pennsylvania to Wisconsin solely because of the medical liability crisis in Pennsylvania. (*American Association of Orthopaedic Surgeons*, 2004); David Yanoff, who has offices in Lehigh, Palmerton and Tamaqua, Pennsylvania, is closing up his practice and moving to Idaho because of skyrocketing professional liability premiums. Yanoff founded Mahoning Valley Orthopedics 16 years ago. (*The Morning Call*, February 21, 2004)
- ❑ **Neurosurgery:** In 2004, a 17-year old boy suffering a head injury in a car accident in Chester County, Pennsylvania died after no neurosurgeon could be found to treat his injury. The boy was originally taken to Brandywine Hospital, which lost all of its neurosurgeons because of the medical liability crisis. Hours later, he was transferred to Crozier-Chester Medical Center in Delaware County, but his brain had already begun to swell and nothing could be done. (*The Morning Call*, November 28, 2004)
- ❑ **Neurosurgeon:** Recently, in Pottstown a 20 year old fell down a flight of stairs. He sustained significant head trauma. Several years ago he would have been taken to Pottstown Memorial Hospital where two full time neurosurgeons were on staff. At this time, though, since no local neurosurgeons were available, he had to go to Lehigh Valley Hospital. Because of inclement weather it was not possible to fly him by helicopter. He was, therefore, placed in an ambulance and arrived at Lehigh approximately an hour later. Within ten to fifteen minutes of arriving at Lehigh Valley he was in the OR but died there of a massive bleed. I do not know if it would have made a difference if this patient had been treated sooner but I surely know he had no chance with the situation as it now exists. ([pamedicalcrisis.com](http://pamedicalcrisis.com), *Volume II, Issue No 5*)

## Texas

- ❑ **Ob-gyn:** Ken First, MD, and orthopaedic surgeon writes, “My wife was an ob-gyn for 15 years. She had one legal case that was dropped in her entire career. She delivered a great many babies. Several years ago, my wife gave up obstetrics because the malpractice premiums were so high. She then practiced just gynecology surgery and primary care. The insurance rates were still high, and she was forced to retire leaving a ton of women without their doctor. She gave up her medical career to sell Mary Kay cosmetics. She works fewer hours and is already making a solid income without the liability.” (American Association of Orthopaedic Surgeons, 2004)
- ❑ **Emergency physician:** An emergency physician who was chairman of the hospital’s Emergency Department for over 10 years, quit medicine less than a year ago because of the exorbitant liability premium rates in Texas. Another left the **ER** because of the medical liability situation, noting that “I feel like I’ve wasted a residency and a lot of my life.” (American College of Emergency Physicians, 2005)
- ❑ **Ob-gyn:** Two Dallas doctors, with over 40 years combined experience, quit obstetrics in 2004 due to high medical liability insurance premiums, leaving only 9 ob-gyns in the area. (Fellow communication to the American College of Obstetricians and Gynecologists, 2004).
- ❑ **Neurosurgeon:** Houston neurosurgeon Bruce Ehni writes “We are the recipient of much more serious and risky cases that would have otherwise been cared for locally. Here at our hospital in Houston we are receiving hemorrhages, traumas and other dire emergencies from as far away as El Paso and Brownsville – sometimes up to 600 miles or more! Some of these cases include: a patient with head trauma and a blown pupil flown in from Harlington (400 miles away); an aneurysmal hemorrhage with intracranial hemorrhage flown in from Laredo (300 miles away); and a brain tumor causing abrupt paralysis flown in from San Antonio (200 miles away). All of these communities have neurosurgeons. The “bad” cases end up in Houston despite the presence of neurosurgeons locally because everyone is trying to avoid being sued. It is bad for patients and bad for us. We are being dumped on endlessly.” (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)