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Medical Liability Reform: Separating Myth from Fact

Our nation's medical liability system is broken – it costs too much, takes too long to resolve claims, and does not serve the needs of patients or physicians. But personal injury lawyers, who typically collect 33 to 40% of any awards, desperately want to preserve the status quo by spreading misinformation and masking the sad truth about the state of the system. The Health Coalition on Liability and Access has debunked the myths that personal injury attorneys consistently cite as reasons for opposing medical liability reform.

MYTH

Our medical liability system is not in crisis, and any changes would do little to stop rising health care costs.

FACT

While the insurance market has stabilized in recent years, the medical liability system remains broken and continues to hurt patients and physicians. It costs too much, takes too long to resolve claims, undermines the doctor-patient relationship, and threatens access to quality medical care.

Too many meritless lawsuits are being filed. The most recent data shows that 68% of medical liability claims are dropped, dismissed or withdrawn without any payment. Additionally, 88% of cases that actually go to trial are won by health care providers.¹ Even so, it takes a tremendous amount of time, money and energy for health care providers to defend themselves against these meritless claims – and it changes the way they treat their patients. A recent survey done by the American Congress of Obstetricians and Gynecologists found that 49.7% of OB-GYNs have altered their practices due to the fear of lawsuits, with 13.6% saying they are accepting fewer high-risk patients.²

Additionally, the current medical liability system is costly and inefficient. Costs hit patients both directly and indirectly, passed on via high physician and hospital insurance premiums, as well as through “defensive medicine,” where patients are subjected to unnecessary and expensive treatments in order to reduce the risk of litigation, to the tune of \$160 billion to \$289 billion per year³ when applied to 2015 health care costs.⁴

The government's share of health care costs linked to the heavily flawed system continue to rise, to the extent that the non-partisan Congressional Budget Office found that \$55 billion in federal health savings and a total of \$62 billion in deficit reductions could be achieved over a 10-year period, if the federal

1 Medical Liability Reform NOW!, American Medical Association, 2017 Edition

2 Carpentieri AM, et.al, Overview of the 2015 ACOG Survey on Professional Liability. American Congress of Obstetricians and Gynecologists, 2015.

3 Office of the Assistant Secretary for Planning and Evaluation, U.S. Dep't of Health and Human Servs., Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care 11 (2003)

4 Martin AB, Hartman M, Whittle L, Catlin A and the National Health Expenditure Accounts Team. National Health Spending In 2012: Rate Of Health Spending Growth Remained Low For The Fourth Consecutive Year. *Health Aff.* 2014;33(1):67-77.

government passed reforms like those in California and Texas.⁵ In both states, there is no limit on economic damages, while reasonable limits are stipulated for non-economic damages, compensation is apportioned based on actual fault, and future damage awards may be paid periodically.

MYTH

Reforming our medical liability system takes away a patient's right to pursue litigation in cases of medical negligence.

FACT

Under both the current system and all proposed reforms, patients maintain the right to pursue legal action. The Seventh Amendment to the Constitution guarantees a right to a civil jury trial, and medical liability reform does not impede upon that right. A number of state high courts have found that statutory limits on noneconomic damages do not intrude on the role of the jury.⁶

Medical liability reforms reduce the incentive to file meritless lawsuits in the hopes of getting a "jackpot" award. A recent study found that most liability claims are without merit, with 68% of all claims dropped, dismissed or withdrawn. Further, of those claims that do go to a trial verdict, physicians win 88% of the time.⁷

When liability reforms are passed at the state level, the meritless claims are less likely to move forward. In Ohio, where reforms were passed in 2003, liability lawsuits in the state were down 41 percent between 2005 and 2010.⁸

MYTH

Medical liability reform does little to increase the physician workforce or access to care.

FACT

Our nation's broken medical liability system hurts all Americans, but it is patient access to care that is threatened the most.

There is a clear correlation between physician supply and liability climate. West Virginia has seen an increase in the number of licensed physicians from 5,182 in 2003, when reforms were passed, to 6,282 in 2013.⁹

Texas added nearly 5,800 more physicians with in-state licenses than can be accounted for by population growth. Forty-six counties (39 of which are rural) that did not have an emergency medicine physician now do. Fifteen counties (14 of which are rural) that did not have a cardiologist now do.¹⁰

5 Congressional Budget Office; Options for reducing the deficit: 2017-2026.

6 "The Constitutional Foundation for Federal Medical Liability Reform Legislation," American Tort Reform Association, May 2011.

7 "Medical Liability Reform Now!" 2017 Edition, American Medical Association.

8 "Lawsuits Against Doctors Decline," *The Columbus Dispatch*, 12 April 2012.

9 *West Virginia Board of Medicine*.

10 "Proposition 12 Produces Healthy Benefits," Texas Medical Association, www.texmed.org/tortreform.

Conversely, in Illinois, half of all graduating medical residents or fellows trained in the state leave the state to practice medicine elsewhere, in large part due to the medical liability environment in Illinois.¹¹

MYTH

Placing limits on non-economic damages prevents a patient from being fully compensated for lost wages and medical care.

FACT

Personal injury plaintiff lawyers continue to mislead the public by confusing economic and non-economic damages. The HCLA has always advocated that liability reform legislation include full and unlimited compensation for economic damages, such as past and future medical expenses, past and future lost wages and earning potential, rehabilitation costs, household services, and other out-of-pocket expenses.

Non-economic damages are non-quantifiable and include compensation for pain and suffering. State models of comprehensive medical liability reform with a proven track record of success place reasonable limits on non-economic damages. This would not in any way limit the amount of money that an injured patient could receive to cover his or her economic damages.

MYTH

Medical liability reform disproportionately hurts women, children and the elderly. Their economic damages are limited by the fact that they may have lower working wages.

FACT

A stay-at-home mother – or father – can continue to establish a basis for economic wages based on the services they provide to their families and children, including household management and driving responsibilities.

In most states, parents that do not work outside the home are eligible for the full replacement value of the services they provide at home – services that can be quantified and considered of economic value. Maintaining full payment of economic damages also ensures that children are eligible for lost lifetime earnings.

Children injured as a result of medical negligence are also assured full economic damages. In 2007, a Glendale, CA jury returned with \$78,000 award for past medical costs, \$82.8 million for future medical costs, \$13.3 million for the loss of future earnings for a child who suffered from brain damage and motor impairment.¹²

¹¹ *Illinois New Physician Workforce Study*, Northwestern University Feinberg School of Medicine, 2010.

¹² "Brain-Damaged Child Gets \$96 Million," *Daily Journal*, 5 July 2007.

MYTH

Liability reforms have little impact on already-low physician liability insurance premiums.

FACT

The cost of liability insurance for specialists in states that have not passed liability reform remains sky-high.

Liability premiums for specialists in California, where the landmark MICRA reforms were passed in 1975, are substantially less than for specialists in metropolitan areas in states without reforms such as New York. An obstetrician/gynecologist in Los Angeles pays approximately \$49,804 per year for liability insurance while the same specialist could pay \$155,329 in New York.¹³

Texas doctors have received, on average, a 46 percent reduction in their liability premiums since reforms were passed in the state in 2003, resulting in \$1.9 billion in reduced premiums.¹⁴

MYTH

Patient safety is in jeopardy due to rampant medical negligence.

FACT

Personal injury attorneys provide misleading information to the public when citing adverse medical outcomes as outright medical negligence, and wrongly assert that highly-trained and committed doctors must be threatened with lawsuits in order to practice according to standards of care.

As stated previously, most of the cases filed against physicians are without merit -- 68% are dropped, dismissed, or withdrawn, and of those that do go to trial, 88% are won by physicians.

Additionally, patient safety continues to improve. Between 2011 and 2013, hospital-acquired conditions were reduced by 1.3 million cases as a result of the federal Partnership for Patients initiative.¹⁵

What has increased is the exorbitant fee charged by personal injury lawyers, allowing them to benefit from a broken liability system. Since 1960, the effective hourly rates of tort lawyers have increased 1000% to 1400% (in inflation-adjusted dollars) while the overall risk of non-recovery has remained essentially constant—though it has decreased for such high-end tort categories as product liability and medical negligence.¹⁶

Medical outcomes will continue to improve as long as patients have adequate access to physicians – which will come as a result of liability reform, not increased lawsuits.

13 Medical Liability Monitor, 2016

14 “Proposition 12 Produces Healthy Benefits,” Texas Medical Association, www.texmed.org/tortreform.

15 2013 Annual Hospital-Acquired Condition Rate and Estimates of Cost Savings and Deaths Averted From 2010 to 2013. Rockville, MD: Agency for Healthcare Research and Quality; October 2015. AHRQ Publication No. 16-0006-EF. <http://www.ahrq.gov/professionals/quality-patient-safety/pfp/index.html>

16 *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, by Lester Brickman. Washington University Law Review, vol. 81, issue 3 (2003)