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June 24, 2009

The Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

As the specialty society for more than 5,000 board certified emergency physicians across the United States, the American Academy of Emergency Medicine (AAEM) has deep concerns about rising health care costs and the resulting negative impact on quality care for our citizens. During the current deliberations on health care reform, we urge you to take into account our dysfunctional tort system's significant contribution to these escalating expenses. Studies demonstrate that up to 83% of lawsuits filed against physicians have no basis in fact. These groundless cases result in huge costs from (1) higher medical malpractice insurance premiums, (2) high litigation costs, and (3) the indirect effect of "defensive medicine" and the resulting misallocation of scarce health care resources.

AAEM believes appropriate tort reforms will address these problems. Responsible legislation to reform the current tort system would improve patient care by making health care more affordable and accessible without affecting the standards of care that physicians must meet, or the ability of plaintiffs who suffered harm from medical error to secure proper compensation.

Specific deficiencies in our current tort system directly contribute to the liability crisis. AAEM supports responsible tort reform legislation that restores balance to our tort system and that includes the following modifications:

- Adoption of the "English Rule".
- Broadening the ability of malpractice defendants to recover damages for groundless suits.
- Limiting punitive damages and abandoning joint and several liability.

I attach a more complete list of our concerns and proposed modifications.

Accomplishing substantial tort reform would reign in the cost of medical care, improve the health of our citizens, and provide substantial economic benefits to our society. AAEM urges you to make tort reform part of the health care reform debate. If you need further clarification of our position or if we can be of any assistance, please feel free to contact Kathleen Ream, AAEM's Government Affairs Director, at 703-241-3947.

Sincerely yours,

Larry D. Weiss, MD, JD
President

American Academy of Emergency Medicine

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AAEM PROPOSED TORT REFORMS

Adopt the "English Rule"

Almost all countries in the world follow the "English Rule" in litigation: the losing party to a lawsuit pays the prevailing party's legal expenses. A "loser pays" rule would deter plaintiffs and their attorneys from filing groundless lawsuits.

Broaden the Ability of Malpractice Defendants to Recover Damages for Groundless Suits

Currently, defendants must prove malice to countersue plaintiffs or their attorneys, a nearly impossible burden in most cases. Victims of groundless lawsuits should have the right to sue plaintiffs and their attorneys for negligent institution of groundless lawsuits. Plaintiff attorneys would act more responsibly if they no longer had near immunity for filing groundless lawsuits.

Hold Expert Witnesses Accountable for Improper Opinions

Expert testimony constitutes the practice of medicine. Therefore, state medical boards and specialty boards should have the authority to discipline experts who provide false testimony or misrepresent the standard of care.

Limit Punitive Damages and Abandon Joint and Several Liability

Limitations on non-economic damages, such as pain and suffering or hedonic damages, effectively mitigated the excesses of the medical liability crisis in states such as California, Texas, and Mississippi. Another necessary reform would limit defendants' liability to their proportion of fault.

Model Tort Reform

Texas Proposition 12/ HB 4 serves as a model of successful tort reform. This measure dramatically improved access to medical care in Texas since its passage in 2003. It reversed the trend of significant numbers of physicians leaving Texas prior to passage of the bill. The salient features of this legislation include (1) limitation of liability to percentage of fault, (2) limiting awards to actual damages, (3) requiring a letter from an expert validating the plaintiff's claims, and (4) a cap on non-economic damages.

The legislation had dramatic results. Texas now has a significant decrease in the incidence of medical malpractice litigation, a significant reduction in the cost of malpractice insurance, and a return of physicians to Texas. Because of the decreased cost of malpractice insurance, many physicians returned to Texas, and since 2003 Texas licensed 14,500 new physicians. Finally, access to healthcare improved remarkably, with a fifty percent increase in physicians in major cities in Texas.

5/15/09

Similar letters were sent to all Members of Congress – House & Senate.