Testimony of

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American Medical Association

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RE: Impact of Medical Liability Issues on Patient Care

Presented by: John C. Nelson, MD, MPH

August 20, 2004

Good morning, Mr. Chairman. My Name is John Nelson, MD, MPH. I am the President of the American Medical Association (AMA) and an obstetrician-gynecologist from Salt Lake City, Utah. On behalf of the physician and medical student members of the AMA, I appreciate the opportunity to appear before you today to discuss how our nation's medical liability litigation system is seriously threatening patients' access to quality health care.

THE CRISIS

What defines a crisis? In medicine, we define a crisis as a sudden intensification of symptoms in the course of a disease. Today, we are seeing numerous symptoms that tell us our nation is facing a crisis because of a broken medical liability system. The symptoms are unmistakable--patients having to leave their state to receive urgent surgical care--pregnant women who cannot find an obstetrician to monitor their pregnancy and deliver their babies--community health centers reducing their services or closing their doors because of liability insurance concerns--efforts to improve patient safety and quality being stifled because of lawsuit fears, just to name a few.

Escalating jury awards and the high cost of defending against lawsuits, even those without merit, are driving medical liability insurance premiums to unprecedented levels. As insurance becomes unaffordable or unavailable, physicians are being forced to relocate, close their practices or drop vital services--all of which seriously impede patient access to care. Emergency departments are losing staff and scaling back certain services, such as trauma units, while some advanced and high-risk procedures (such as neurosurgery) are being postponed because physicians can no longer afford or even find the liability insurance they need to practice. Many young physicians and medical students are opting out of high-risk specialties even before their careers begin, while other physicians are choosing to retire from practice altogether.

Mr. Chairman, as you have recognized, the time for action is past due. Physicians across the country are making decisions now, and increasingly patients are wondering, "Will their doctor be

there?" We must act now to fix our broken medical liability system. We must bring common sense back to our courtrooms so patients have access to their physicians--whether in emergency rooms, delivery rooms, or operating rooms. This is why the AMA has worked so hard to seek passage of S. 11, the "Patients First Act," which includes reasonable reforms that have been proven effective at keeping medical liability insurance premiums stable, and why we continue to join with numerous other members of a broad-based coalition known as the Health Coalition on Liability and Access (HCLA) to seek passage of critical reform legislation.

As seen in the chart below, an outstanding 99% of AMA members are very or somewhat concerned with the current medical liability environment, with 87% being very concerned.

Physicians and patients across the country are realizing more and more every day that the current medical liability situation is unacceptable. The AMA has nearly 100,000 physicians who are actively participating in a grassroots network to call attention to the problem and effectuate change. Patients are involved, too. Our Patient Action Network currently has over 180,000 patients advocating for effective reforms by way of over a half million communications to their respective Members of Congress. By mid-October of this year, we estimate that there will be 300,000 patients involved in the effort, and we are on track to exceed that goal.

ACCESS TO CARE IS AT RISK

The most troubling aspect of the current medical liability litigation system is its impact on patients. Unbridled lawsuits have turned some regions of our country--and in several cases entire states--into risky areas to be sick, because it is so risky to practice medicine.

Throughout 2003 and 2004, the medical liability crisis has not waned. In fact, it is getting worse. Access to health care is now seriously threatened in 20 states, up from 12 states in 2002. In many other states a crisis is looming--a crisis that not only threatens access to quality medical care, but also stifles medical and scientific innovation, inhibits efforts to improve patient safety, discourages new treatments and procedures, heaps billions of dollars in additional costs upon a health care system already strained to the breaking point, and places lives at risk. Virtually every day for the past three years there has been at least one major media story on the plight of American patients and physicians as the liability crisis reaches across the country. A sample of media reports that illustrate the problem faced by patients and physicians is available at http://www.ama-assn.org/go/crisismap.

A recent survey of AMA members shows that physicians in high-risk specialties (29%) are more likely than member physicians in low-risk specialties (25%) to have stopped providing certain services in the last 12 months. Member physicians in crisis states (29%) are more likely than member physicians in non-crisis states (25%) to have stopped providing certain services in the last 12 months.

A look at several states provides a grim picture of the future of medicine if effective tort reforms are not enacted.

UTAH

? After making the hardest decision of his life, Grant Carter, an obstetrician for 22 years, had to break the bad news to his patients: He was no longer delivering babies. "I consider it the grandest of all medical specialties because you can help women deliver healthy babies. . . . But it became economically unfeasible." His medical liability insurance premiums were about $80,000. Dr. Carter's patients also are greatly affected. "I've been going to Dr. Carter since I was 12 years old because I have endometriosis," said St. George resident Michelle Belcher, 26, who is pregnant with her second child. "To have to go out and find a new doctor after 14 years, I was really upset," she said. "I cried as soon as I got out of the doctor's office." (Salt Lake Tribune, April 11, 2004)

? Utah policy makers cannot say they have not been warned. In 2002, The Utah Medical Association said only half the family practitioners surveyed still deliver babies, and nearly one-third of those say they plan to stop practicing obstetrics within the next decade - most within five years. The Utah Chapter of the American College of Obstetricians and Gynecologists said that of 106 chapter members polled, 15 had already stopped practicing obstetrics. Of the remaining 91 doctors, 21 plan to follow suit within five years. "Access to prenatal care will be impaired," said George Delavan, division director with the Utah Department of Health, who also knows of doctors who are getting out because the cost is just too high. (Associated Press, July 12, 2002)

? Many family practice physicians and obstetricians in Utah are dropping obstetrics or planning to retire earlier than planned. At the same time, medical students are largely steering clear of obstetrics, which could create a crisis over the next 10 years. The University of Utah has seen the number of obstetrical-gynecological resident applications decrease from 175 five years ago to 126 this year. The University selects five new residents each year for that specialty. (Salt Lake Tribune, April 11, 2004)

? Catherine Wheeler, an obstetrician/gynecologist at Millcreek Women's Center, said rising medical liability premiums are becoming a crisis in Utah, pushing many people out of medicine and discouraging medical students from specializing in high-risk fields such as obstetrics. To pay for her insurance, Wheeler said she has to deliver 60 babies, which typically takes about four months. "We have a lot of doctors who are quitting or moving out of the state," she said. (Salt Lake Tribune, March 6, 2004)

FLORIDA

? In Florida, emergency neurosurgery patients are increasingly being transported from Palm Beach County to hospitals in Broward and Miami-Dade counties, and sometimes as far as Tampa and Gainesville. In March, one of those patients, Mildred McRoy, died six days after being transferred to a hospital in Broward County because no neurosurgeon was available to treat her in Palm Beach County. (Palm Beach Post, March 9, 2004)

? Lee Memorial Health System officials announced they were giving the state a required six-month notice to close the trauma center after two neurosurgeons quit, leaving only two to handle 24-hour on-call duty. The center treats more than 1,000 trauma-alert patients a year. Recruitment efforts to bring neurosurgeons to Lee County have been disappointing. "The fact is, three trauma centers in Florida have notified the state that they can't hang on much longer," according to Lee Memorial's government consultant. (The News-Press, December 14, 2003)

? 100% of South Florida neurosurgeons have been sued, according to surveys of area physicians. In fact, 31% of physicians also have limited their practice in hospital settings, and physicians in South Florida can expect to be sued 1.44 times in their career. (Floridians for Quality Affordable Healthcare, December 2002)

? At least seven Florida hospitals have closed their obstetrics units due to insurance concerns, and four other hospitals have reduced or limited obstetrics services. In addition, ten hospitals have eliminated, reduced or limited neurological services. (Florida Hospital Association, January 2, 2003)

GEORGIA

? Georgia's ongoing crisis has negatively affected patient access for children, women and families throughout the state:
- Only seven pediatric neurosurgeons are left in the state.
- Women in Statesboro often wait between 6 - 9 months for routine mammogram since fewer radiologists are willing to read mammograms.
- Nine Macon obstetricians have stopped delivering babies or will soon do so.
- Two of three obstetricians in Eastman have left the state, leaving the remaining obstetrician to deliver nearly 200 babies without backup coverage.
(Medical Association of Georgia)

? Gainesville obstetrician-gynecologist Linda Harrell, 49, learned in November that her insurance premiums had more than doubled in two years and she's now contemplating retirement. "How can you budget for increases like that?" Harrell asked. "I wanted to retire on my own terms. I didn't want to be run out." (The Atlanta Journal-Constitution, February 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)

? More than two dozen medical liability insurers have left Georgia, according to MAG Mutual, one of the state's remaining carriers. Since 1995, MAG Mutual's average payout in jury awards and settlements has increased from $215,000 a case to $465,300. Last year, it paid claims in 20 cases of more than $1 million. (Atlanta Journal-Constitution, February 8, 2004)

ILLINOIS

? One physician relocated from Chicago to Centura Parker Adventist Hospital near Denver after her liability insurance premiums more than doubled, from $75,000 to $170,000. In Colorado, she pays only about $25,000. (Denver Post, March 4, 2004)

? Dr. Stephanie Skelly, an obstetrician-gynecologist in Belleville, is considering a move to her home state, Louisiana, where liability costs are about half compared to Illinois. The combined premium for Skelly and her partner, Dr. John Hucker, doubled to $200,000 from $100,000. They took out a loan to pay a one-time $250,000 for tail coverage. "We have to work for free this year," Hucker said. (St. Louis Post-Dispatch, October 6, 2002)

? In 2002, non-economic damages comprised 91% of the average total monetary value awarded by a jury. In 1997, it was 67%. (Illinois State Medical Society, Feb. 9, 2004)

? When three obstetrician-gynecologists on staff at Advocate Lutheran General Hospital in Park Ridge learned their 2004 liability insurance premiums would climb from $345,000 to $510,470, they decided to take their practice to Kenosha, Wisconsin, where during their first year their combined insurance will cost $50,018. "This state is like the Titanic," said one of the doctors. "A year ago, we saw the iceberg. Now we've already hit." (Chicago Tribune, March 12, 2004)

MASSACHUSETTS

? Cape Cod lost its only board-certified neurosurgeon when Robert Leaver, MD, retired early rather than face insurance premiums that reached $115,000. Dr. Leaver, who said he would have to perform about 100 operations just to pay his insurance bill, had no intention of retiring. (Cape Cod Times, October 6, 2003)

? The number of jury awards topping $2 million has quadrupled over five years, according to ProMutual's chairman, Barry M. Manuel, MD, a surgery professor at Boston University. Dr. Manual also said that ProMutual's investments are not behind rising insurance premiums: "In the past 10 years, there's not one year that we've shown a negative return on our investments. It's the severity of awards that's driving this situation." (Associated Press, May 17, 2004)

? A majority of Massachusetts patients believe patients bring too many lawsuits against physicians, and they strongly support reforms advocated by the state medical society. 85 percent of voters said they supported legislation that would assess liability based on a doctor's or nurse's level of responsibility, and nearly 70 percent favor limiting non-economic damages ("pain and suffering") when economic damages (such as child care costs, lost wages, benefits, etc.) are fully covered. (Boston Herald, June 7, 2004)

? Large jury awards and settlements continue to occur in Massachusetts, putting further pressure on the liability system. In 2003, there were jury awards of $3.18 million and $1.8 million. Settlements were reported for $3.75 million and $3.25 million, eight settlements between $2 million and $3 million, and eight settlements between $1 million and $2 million. (Mass. Lawyers Weekly, January 19, 2004)

MISSOURI

? St. Anthony's Health Center in Alton will lay off 50 to 75 employees in coming months. William E. Kessler, president and CEO of St. Anthony's, blamed the layoffs on declining revenue associated with increased medical liability insurance premiums and the resulting exodus of doctors from the community. (St. Louis Post-Dispatch, June 26, 2004)

? Dr. Al Elbendary, a gynecological oncologist, left a group practice and eliminated a rural outreach clinic because of rising professional liability premiums. "Women with gynecologic cancers in Ste. Genevieve, Carbondale and Chester now have to drive over a hundred miles to see a gynecologic oncologist and receive the care they deserve," said Elbendary. (St. Louis Post-Dispatch, October 31, 2002)

? Dr. Scot Pringle, a Cape Girardeau obstetrician, said he has delivered approximately 8,000 babies during his 23 years, and his premiums will likely exceed $85,000 if he continues to practice. "A lot of us have been practicing long enough we are near retirement," Dr. Pringle said. "Frankly, I don't want to put up with this mess anymore." (Southeast Missourian, April 26, 2004)

? After obstetrician Jamie Ulbrich's liability insurance carrier stopped doing business in Missouri, the best coverage he and three colleagues at their Marshall clinic could find would have cost them double what they paid in 2003. The four doctors decided they couldn't each afford the $50,000 liability insurance premium, so they decided to stop providing obstetric service and instead work solely as family physicians in 2004. (Associated Press, January 3, 2004)

NEVADA

? The people of Nevada overwhelmingly support comprehensive medical liability reforms. A May 2003 poll conducted by the "Keep Our Doctors In Nevada" initiative found that more than 80 percent of Republicans and Democrats said they would support candidates who supported reforms, including a limit on non-economic damages and trial-lawyer contingency fees. (BestWire, September 15, 2003)

? "I left Nevada because the litigation climate had driven medical liability premiums to astronomical heights," obstetrician-gynecologist Shelby Wilbourn, MD, testified before a Congressional subcommittee. Dr. Wilbourn, whose premiums increased to $108,000, moved to Maine this year and still receives calls from some of the 8,000 patients he saw during his 12 years in Nevada. "Liability isn't about fault or bad practice-it's about hitting a jackpot. Even the best obstetrician-gynecologists have been sued, many more than once." (Associated Press, February 12, 2003)

? Mary Rasar's father died in Las Vegas after the only Level 1 trauma center was forced to [temporarily] close due to skyrocketing medical liability costs. Jim Lawson was injured July 4 in a traffic accident and rather than being rushed to the Level 1 trauma center at nearby University Medical Center, which had been forced to close, Lawson was taken to a hospital that did not have the resources necessary to save his life. He died while physicians tried to stabilize him for airlift to Salt Lake City. (PR Newswire, April 21, 2003)

? The ongoing crisis has caused one of the few remaining liability insurers, American Physicians Assurance, to pull out of Nevada, a move that will leave about 125 doctors looking for new coverage to continue their practices. Dr. Fred Redfern, president of the Nevada Orthopedic Society, said the withdrawal of another insurance carrier should alarm Nevadans. He said APA is his third insurance carrier to decide to leave Nevada because of the high cost of fighting medical liability claims. "This is not a good place to practice medicine. That's the message doctors are getting," he said. (Las Vegas Review-Journal, January 29, 2004)

NEW YORK

? Dr. John Cafaro, 45, an obstetrician-gynecologist in Garden City, said some doctors are paying $130,000 for only $1 million worth of protection. "But we are getting sued for $85 and $90

million at a time," he said. "You do the math. Every time I walk into an operating room I put my family's life savings on the line." (New York Times, May 25, 2003)

? Of the 13 largest medical negligence lawsuits in the United States in 2002, seven were in New York state, according to the National Law Journal, including a $94 million verdict from a Brooklyn jury. (Albany Business Review, March 21, 2003)

? Awards greater than $1 million are three times more frequent in New York than in California, a state that has had reforms since 1975, according to the Insurance Information Institute. (Poughkeepsie Journal, April 1, 2003)

? Many young doctors won't specialize in obstetrics. They fear the threat of lawsuits and wince at liability insurance costs, which can be as much as $200,000 per year. Last summer, Manhattan's Elizabeth Seton Childbearing Center, which practiced natural childbirth, had to close when its medical liability insurance premiums rocketed to $2 million. (New York Daily News, February 12, 2004)

NORTH CAROLINA

? Dr. David Pagnanelli, a neurosurgeon, said he moved to Hendersonville, North Carolina in 2002 because liability costs were too high in Pennsylvania. But they shot up here too - to nearly $190,000 a year - even though there've been no successful claims against him, he said. Following his insurance carrier's advice, Pagnanelli stopped seeing trauma cases. But neurosurgeons are in short supply in Hendersonville, so his decision means patients with life-threatening head injuries have been transferred to other hospitals. (Charlotte Observer, February 11, 2004)

? The annual number of settlements greater than $1 million for medical liability cases has more than tripled between 1993 and 2002 from 6 to 19. (N.C. Lawyer's Weekly, April 21, 2003)

? Hospitals in North Carolina have had insurance premiums go up 400 percent to 500 percent in the past three years, the North Carolina Medical Society says. Small, rural hospitals were hit hardest. (Winston-Salem Journal, March 9, 2004)

? "If we remain in North Carolina we will likely be forced to make the decision to limit procedures which carry high risks (but also are often life-saving)," said K. Stuart Lee, M.D. of Eastern Neurosurgical and Spine Associates Inc. Dr. Lee's practice saw their medical liability premiums increase 116 percent last year. (The News and Observer, January 26, 2003)

OHIO

? Dr. William Hurd, chairman of the department of obstetrics and gynecology at the Wright State University School of Medicine, said the liability crisis already is driving young doctors out of the Dayton area. "In the last two years, not a single one of our (obstetrical-gynecological) residents has set up a practice in Dayton, or even Ohio," Hurd said. (Dayton Daily News, August 28, 2002)

? "My wife and I are both physicians and just arrived in Wausau [Wisconsin] in March. We fled the crisis in Ohio after spending our whole careers in that state," said Christopher J. Magiera, a

gastroenterologist. Magiera and his wife, Pamela G. Galloway, a general surgeon, gave up their 15-year-old practice when their medical liability premiums that were projected to reach $100,000 apiece. In Wisconsin, they pay a fraction of that. (Journal Sentinel, April 20, 2003)
? From 2001-02, Ohio physicians faced medical liability insurance increases ranging from 28 to 60 percent. Ohio ranked among the top five states for premium increases in 2002. General surgeons pay as much as $74,554, and obstetrician-gynecologists pay as much as $152,496. Comparatively, Indiana general surgeons pay between $14,000-$30,000; and obstetrician-gynecologists pay between $20,000-$40,000. (Medical Liability Monitor, October 2002)
? Dr. Rebecca Glaser, a popular breast cancer specialist, will retire from surgery on April 1 because of high liability insurance premiums. "I think it's horrifying when we lose a physician who has literally a one-of-a-kind practice," said Donna Buchheit, one of Glaser's breast cancer patients. She continues, "It is literally a life and death issue. The legislature needs to understand that. It is not melodramatic to say that there will be women who die this year because of this. I certainly hope I won't become one of them." (Dayton Daily News, February 28, 2004)

PENNSYLVANIA

? In 2000, Philadelphia accounted for 82 percent of the $415 million in medical-liability awards in Pennsylvania, and 14 of the 19 awards that exceeded $5 million, according to the Pennsylvania Trial Lawyers Association. (The Wall Street Journal, January 28, 2003)

? More than two out of three medical residents in six medical specialties chose to leave Pennsylvania after completing their training, according to the Philadelphia Daily News, which examined data from the city's major teaching hospitals between 1998-2002. "The resident brain drain is greatest among doctors going into high-risk specialties: ob-gyns, orthopedic surgeons and neurosurgeons. These doctors, not surprisingly, are most likely to be sued for malpractice, and pay some of the highest malpractice insurance premiums." (Philadelphia Daily News, May 28, 2003)

? A good example of Pennsylvania's lawsuit culture came in early 2004 when juries returned $15 million and $20 million verdicts on the same day. (Associated Press February 4, 2004)

? According to Grand View Hospital President Stuart Fine, the medical liability crisis is a main reason why patient access problems are occurring throughout the state and "has caused experienced doctors to leave the area, especially neurosurgeons, orthopedic and general surgeons, obstetricians and cardiologists. Few young doctors are coming in to take their place, and the result is a shortage of doctors." (Morning Call (Allentown, PA), January 23, 2004)

TEXAS

? David Gray is an emergency medical physician who has been thinking about moving to Colorado for several years to avoid lawsuits in Corpus Christi. His group of 16 emergency room doctors were sued six times in the last 30 days, as lawyers rushed to the courthouse to file cases before [recent] lawsuit caps went into effect. (Corpus Christi Caller-Times, September 16, 2003)

? Claims against Texas physicians doubled from approximately 16 per 100 physicians in 1996 to more than 30 in 2000. In the Lower Rio Grande Valley, the number of claims filed is growing at 60 percent a year. (Texas Department of Insurance)

? A pregnant woman showed up in Dr. Lloyd Van Winkle's Castroville office in South Texas, less than 10 minutes from delivery. Her family doctor in Uvalde had recently stopped delivering babies, citing malpractice concerns, and the woman was trying to drive 80 miles to her San Antonio doctor and hospital. (Fort Worth Star-Telegram, January 26, 2003)

? Fifty-two percent of all Texas physicians had medical malpractice claims filed against them in 2000, which is about twice the national average. (The Battalion, October 28. 2002)

FEDERAL SOLUTION

The medical liability crisis is a growing national problem that requires a national solution. If the crisis was just a matter of physicians obtaining or affording medical liability insurance in one state, we might agree that a national approach would not necessarily be required. However, the problem goes far beyond physicians and other health care professionals and institutions. The medical liability crisis has become a serious problem for patients and their ability to access health care services that would otherwise be available to them, including services provided to Medicare and Medicaid patients.

Also, the premise that it is within the ability of every state to enact legislation to effectively resolve their respective medical liability crisis has been shattered by the fact that many state liability reform laws have been nullified by activist state courts or stripped of their most effective provisions under state constitutions that limit reforms. Taking into consideration that studies show the litigation system to be an ineffective, and often unfair, mechanism for resolving medical liability claims, we believe that the time is ripe for a uniform, federal approach to resolving the liability crisis.

Moreover, there is a direct and compelling federal interest in reforming our outmoded medical liability system. According to estimates by the U.S. Department of Health and Human Services (HHS), altogether medical liability adds $70 billion to $126 billion to the cost of health care each year. These are the costs attributed to defensive medicine, which could be significantly reduced by effective medical liability reforms. These costs mean higher health insurance premiums and higher medical costs for all Americans, and especially for the federal government given that one-third of the total health care spending in our country is paid by the Medicare and Medicaid Programs. Further, HHS estimates that excessive medical liability adds $47.5 billion annually to what the federal government pays for Medicare, Medicaid, the State Children's Health Insurance Program, Veterans' Administration health care, health care for federal employees, and other government programs. Recent data from the agency shows that reasonable limits on non-economic damages would reduce the amount of taxpayers' money the federal government spends by up to $50.6 billion per year.

S. 11, A PRACTICAL SOLUTION

The AMA recognizes that injuries due to negligence do occur in a small percentage of health care interactions, and that they can be as devastating or worse to patients and their families than injury due to natural illness or unpreventable accident. When injuries occur and are caused by a breach in the standard of care, the AMA believes that patients are entitled to prompt and fair compensation. This compensation should include, first and foremost, full payment of all out of pocket "economic" losses. The AMA also believes that patients should receive reasonable compensation for intangible "non-economic" losses such as pain and suffering and, where appropriate, the right to pursue punitive damages.

Unfortunately, our medical liability litigation system is neither fair nor cost effective in making a patient whole. Transformed by high-stakes financial incentives, it has become an increasingly irrational "lottery" driven by open-ended non-economic damage awards. It is also an extremely inefficient mechanism for compensating claimants where court costs and attorney fees often consume a substantial amount of any compensation awarded to injured patients.

To ensure that all patients who have been injured through negligence are fairly compensated, the AMA believes that Congress must pass fair and reasonable reforms to our medical liability litigation system that have proven effective. Toward this end, we strongly support S. 11, the "Patients First Act." The major provisions of S. 11 would benefit patients by:

? Awarding injured patients unlimited economic damages (e.g., past and future medical expenses, loss of past and future earnings, cost of domestic services, etc.);

? Awarding injured patients non-economic damages up to $250,000 (e.g., pain and suffering, mental anguish, physical impairment, etc.), with states being given the flexibility to establish or maintain their own laws on damage awards, whether higher or lower than those provided for in this bill;

? Awarding injured patients punitive damages up to two times economic damages or $250,000, whichever is greater;

? Establishing a "fair share" rule that allocates damage awards fairly and in proportion to a party's degree of fault; and

? Establishing a sliding-scale for attorneys' contingent fees, therefore maximizing the recovery for patients.

While it is unfortunate that the Senate has been unable to reach the 60 votes necessary to pass a motion to proceed to debate on S. 11, the AMA strongly urges continued efforts to bring about the reforms in S. 11 that have been proven to stabilize the medical liability insurance market in California. Debate on this important issue must continue in order to improve the situation in crisis states and prevent any more states from slipping into crisis mode.

The reforms in S. 11 are not part of some untested theory--they work. The major provisions in S. 11 are based on the successful California law known as MICRA (Medical Injury Compensation Reform Act of 1975). MICRA reforms have been proven to stabilize the medical liability insurance market in California--increasing patient access to care and saving more than $1 billion

per year in liability premiums--and have reduced the time it takes to settle a claim by 33 percent. MICRA is also saving California from the current medical liability insurance crisis brewing in many states that do not have similar reforms. In fact, the gap between medical liability insurance rates in California and those in the largest states that do not limit non-economic awards is substantial and growing. Data from the National Association of Insurance Commissioners (NAIC) shows that aggregate premiums in California increased by 245% over the 1976 to 2001 period, while premiums in the rest of the United States increased by 750%.

Studies and expert opinions confirm that MICRA reforms lower costs and improve access. In a study on the effect of reforms, Stanford University researchers Kessler and McClellan concluded that direct reforms, including caps on non-economic damages, reduced the likelihood that a physician will be sued by 2.1 percent. Within three years, premiums in direct reform states declined by 8.4 percent. Another study by Stephen Zuckerman et al. looked at several types of reforms and concluded that capping medical liability awards reduced premiums for general surgeons by 13% in the year following enactment of that reform and by 34% over the long term. Premiums for general practitioners and obstetrician-gynecologists were impacted similarly.

When liability insurance premiums are lower, more physicians are able to remain in practice, and the access to quality care is improved. A July 3, 2003, study from the Agency for Healthcare Research and Quality (AHRQ) looked at the distribution of physicians across states with and without caps on non-economic damages since 1970. After adjusting for multiple factors, AHRQ found that by 2000, states with damage caps averaged 12 percent more physicians per capita than states without damage caps.

In a study released in May 2003, the Joint Economic Committee of the U.S. Congress stated: "Some of the key reforms proposed at the federal level, including the cap on pain and suffering damages, have proven successful at producing savings when implemented." The study points to California, praising MICRA as "perhaps the most successful example of reform at the state level," and noting its slower rate of growth in medical liability premiums.

Furthermore, there is strong support for continued efforts to fix our broken medical liability system. A March 2004 poll conducted by HCLA shows that 72 percent of Americans favor a law that would guarantee an injured patient full payment for lost wages and medical expenses but that reasonably limits awards for "pain and suffering" in medical liability cases. These findings are consistent with the results of a Gallup poll released on February 4, 2003, which show that 72 percent of those polled favor a limit on the amount patients can be awarded for "pain and suffering."

CONCLUSION

Unless the hemorrhaging costs of the current medical liability system are addressed at a national level, patients will continue to face an erosion in access to care because their physicians can no longer find or afford liability insurance. The reasonable reforms embodied in S. 11 have brought stability in those states that have enacted similar reforms.

By enacting meaningful medical liability reforms, Congress has the opportunity to increase access to medical services, eliminate much of the need for medical treatment motivated primarily

as a precaution against lawsuits, improve the patient-physician relationship, help prevent avoidable patient injury, and curb the single most wasteful use of precious health care dollars--the costs, both financial and emotional, of health care liability litigation. The modest proposals in S. 11 answer these issues head on and would strengthen our health care system.

The AMA appreciates the opportunity to testify on the impact of medical liability issues on patient care and urges Congress to pass legislation, like S. 11, that would bring about meaningful reforms.