

Iowa Osteopathic Medical Association



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TO: Members of the Medical Malpractice Interim Committee

FROM: Members of the Iowa Osteopathic Medical Association

RE: Medical Malpractice

The Osteopathic physicians of Iowa would much rather spend time caring for their patients than lobbying the legislature. But we are here. This is not a new problem. Many of us saw first hand in the 1980's healthcare providers and the public stand in the House and Senate of Iowa pleading for changes in the state laws in regards to malpractice reform. The failure to adequately address this issue in the 1980s has slowly eroded the physician services available to the citizens of Iowa.

Malpractice insurance carriers such as Continental, St. Paul and The Doctors Company have left the state leaving osteopathic physicians scrambling to find coverage. Good osteopathic physicians who have not had a suit brought against them have seen their rates increasing rapidly leaving some osteopathic physicians unable to afford the premium rates necessary to maintain their practices. In fact, some osteopathic physicians have decided to practice without insurance, this is commonly referred to as "going bare." Many physicians are practicing defensive medicine, a costly and inefficient practice where physicians perform tests or procedures that do not have worthwhile medical benefits as a way to avoid liability. Some physicians are also eliminating high-risk procedures, such as delivering babies. Many others are choosing not to take on indigent patients, as they are often associated with higher risks. Moreover, increasing insurance rates have caused physicians to move their practices to states with lower rates, while others have opted to close their practices all together. The sad reality is that physicians can not efficiently and effectively do their job when they are practicing defensive medicine.

There must be a change in the system.

Let me be clear. The Iowa Osteopathic Medical Association is not asking the Legislature to protect physicians from liability suits. The Iowa Osteopathic Medical Association is not asking the Legislature to prevent patients from being compensated when they are truly injured by a physician. We firmly believe that patients who suffer a loss as a result of true malpractice should be compensated for their loss. If a patient isn't able to work because of a physician's unintentional negligence, the patient should be awarded their lost wages. If a patient requires additional medical care, they should receive that care at no cost to them. But malpractice lawsuits should not be a lottery.

I would like to bring to your attention two studies released by independent government organizations regarding professional liability insurance. The studies are noteworthy both for the fact that (1) their results were obtained by nonpartisan and impartial organizations and (2) their results indicate that capping non-economic damages in medical malpractice cases will not only lower the premium rates for malpractice insurance, but also increase physician availability and access to health care.

The first study titled *The Impact of State Laws Limiting Malpractice Awards on the Geographic Distribution of Physicians*¹ was released in July of 2003 by the Agency for Healthcare Research and Quality (AHRQ). AHRQ, a public service agency within the Department of Health and Human Services, sponsors and conducts research that provides evidence-based information on health care outcomes. Their mission is to improve access to effective health care by ensuring the knowledge gained through their research is utilized in making informed decisions which establish measurable improvements in the quality of the American health system.

The AHRQ report examines the supply of physicians per capita between states that did and did not adopt a cap on either non-economic or total damages in medical malpractice cases. The results indicate that caps on damages may increase the availability of physicians, as states with caps on damages (either non-economic or total damages²) benefited from about 12% more physicians per capita than states without such laws. However, states with relatively high caps on damages were not as likely as states with lower caps to experience an increase in physician supply.

The second is a study conducted by the General Accounting Office (GAO), an independent, nonpartisan arm of Congress that has been given the task of assuring the integrity, accountability and reliability of the federal government for the American people. The GAO studies programs and expenditures and advises Congress and the heads of executive agencies, such as Health and Human Services, in order to assist them in making effective oversight, policy, and funding decisions.

¹ If you would like to view the report in its entirety, it can be found at <http://www.ahcpr.gov/research/tortcaps/tortcaps.htm>

² Total damages consist of (1) economic damages, or awards based on incurred and future costs arising from the injury and (2) noneconomic damages, which compensate for pain and suffering associated with the injury.

The GAO study released in July 2003, entitled *Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates*³ examines a representative sample of seven states (California, Florida, Minnesota, Mississippi, Nevada, Pennsylvania, and Texas) and concludes that while multiple factors have contributed to the recent rise in medical malpractice premium rates, **higher award settlements are the primary contributor to increasing premium rates.** This determination stems from the fact that increased losses suffered in medical malpractice claims make up the largest component of the insurers' costs and in the long run premium rates are set at a level designed to cover such anticipated costs. Moreover, caps on damages would make it easier for insurers to predict the amounts they may have to pay on claims, thus decreasing premium rates.

Our efforts have been focused on caps because of these and other studies that have shown a difference however, we remain open to other mechanisms that may impact the availability of affordable malpractice premiums. So that the osteopathic physicians of Iowa can provide their patients with high quality affordable care, the Iowa Osteopathic Medical Association calls upon the Legislature and the Governor to enact into law common sense liability reforms.

³ If you would like to view the report in its entirety, it can be found at <http://www.gao.gov/new.items/d03702.pdf>