

----- Original Message -----

From: Steven P. Shikiar, MD, FACS <<mailto:sshikiar@njsurgery.com>>

To: Undisclosed-Recipient: ;

Sent: Thursday, February 20, 2003 5:14 PM

Subject: Medical Liability Insurance Crisis - A New Proposal

Tonites message going to 3230 physicians, nurses, podiatrists and others patiently awaiting action on the part of our legislature to assure access to care for all citizens of New Jersey with effective, meaningful Tort Reform. Please send me more e-mail addresses.

**Please visit www.HCMSDoctors.org
<<http://www.HCMSDoctors.org>>**

Our legislature is still dragging its feet and trying to force upon us legislation written by trial lawyers, for the preservation of the rights of trial lawyers, with a CAT fund for trial lawyers to wallow in. This battle is far from over and must be fought continuously. I will continue to do periodic e-mails but obviously I cannot maintain a daily frequency.

Our brilliant Governor, James McGreevey has proposed an extraordinary way of resolving the medical liability insurance crisis. With his great wisdom and profound insight he has stated repeatedly that doctors have the alternative of ceasing to do high risk procedures as a way of limiting your liability exposure and therefore; ultimately, your premium.

Clearly, his intelligence surpasses that of us mere mortals so I suggest that we take him up on his most ingenious plan.

The McGreevey Plan:

Each specialty must select the procedure that is the most likely to result in litigation in the event of an adverse occurrence. The procedure must fit the following criteria:

1. It must be elective. We cannot refuse any emergency treatment.
2. It must be common. Something that only effects .00001% of the population would take years to have an effect.
3. It must not be the entirety of what you do. We must be able to sustain this action for as long as is necessary.

The following are examples:

Obstetrics- any woman who is over 34 is a high risk patient should she become pregnant. Therefore according to the McGreevey Plan Obstetricians will not see new patients who become pregnant past their 35th birthday

Radiology- mammography is the single most common cause of litigation in the State of New Jersey. Therefore, according to the McGreevey plan screening mammography should no longer be available in New Jersey.

Cardiology- Stress testing is elective, and if a patient should have a heart attack after a stress test read as negative the liability potential is extreme. I am sure Governor McGreevey would agree that we should stop doing these in order to control our liability.

Internal Medicine/Family Practice- Most common cause of litigation is medication errors. Usually from poorly written or medications ordered by telephone. All telephone orders and hand written prescriptions should cease in order to control liability exposure. The patients will then be instructed to come to your office for a typewritten prescription.

Orthopedics- Total joint replacements are very high risk. These should not be undertaken in the State of New Jersey in the midst of a liability insurance crisis.

I ask you to comment on these and suggest others. The idea is that this only limits a small aspect of an individuals practice and allows him/her to continue to work while shutting down an important element of medical care that is elective but necessary. It is an action that can be sustained as long as is necessary. It does not place the burden of this entire crisis on any one specialty. And finally, it is what our brilliant distinguished Governor has suggested.

I await your comments.

For those of you who are sending me articles. I will gladly post anything for which you give me a link online. Pure text is not too bad but web stuff copied to an e-mail requires much more processing on my end and paper is out of the question. I do have a full time job. So please, e-mail a link and I will post it to the website and here.

Having said that here are some new articles and letters:

To The Editor
To The Editor2

Hey guys, we made news around the country,

Alan Zaccaria

North Carolina

<http://www.journalnow.com/wsj/nationworld/MGBITA28RBD.html>

Seattle

http://seattletimes.nwsourc.com/html/healthscience/134627736_njdocs04.html

Palm Beach, Fl

http://www.tcpalm.com/tcp/business/article/0,1651,TCP_998_1717454,00.html

Click here: [New Jersey News: The Press of Atlantic City](#)

To any doctor who is going to speak to the press (and the press will interview you at rallies) please read this article. This is not what you want to be saying to a reporter. You must stay on message.

1. This is not about you, or your lawsuits, or the cost of your insurance, or about your HMO insurance reimbursement! The public is not sorry for you.

2. **What does the public care about?** The public cares whether they are losing access to doctors. **This is about the malpractice insurance crisis driving good doctors out of New Jersey.** The public cares whether they are going to have to pay for the CAT Fund.

When you speak to any reporter:

Stay on message. Only talk about the KEY points:

1. Because of skyrocketing malpractice premiums, the best and brightest doctors are being forced out of New Jersey.
2. 24% of ob/gyns in NJ dropped ob last year.
3. There were 84 neurosurgeons in NJ in 2002; now it is 64 and falling. Some counties in NJ, Warren and Sussex, now have no neurosurgeon at all.
4. Caps work. New Jersey needs caps on pain and suffering of \$250,000 (not caps on damages). Other states, including California, have had caps for 25 years; patients do not lose the right to sue, and malpractice rates are controlled.
5. The cost of the CAT Fund will be passed onto you, the citizen, and drive up the costs of health care insurance. The CAT Fund in Pennsylvania is 2.1 Billion dollars in bankruptcy.

Do **not** talk about your falling income, rotten HMO's, your busy life, the cost of vacations and cars, your malpractice history. These are irrelevant!

When picketing:

1. Have a **neat** sign; hold it up. ("NJ Needs Tort Reform", "Caps of \$250K", "The best and brightest doctors are being driven out of NJ", "Tort Reform Now", "24% of obstetricians Quit Last Year!" "Who will deliver our babies? Lawyers?" "The CAT Fund in Pennsylvania is 2.1 BILLION dollars Bankrupt; It is a Catastrophe!")

2. Dress warmly; white coats over sweaters are great!!

3. Stay on public property and keep moving; it is your right to picket.

4. Chat nicely with passersby, and hand out a sheet with the 1 877 KEEP MDS number and Governor McGreevey's number 609-292-6000.

5. Don't argue with anyone!

Overview of Insurance Market and Premium Increases

Dear Steve,

The trial attorneys have been telling us and the legislature that the insurance companies are the problem, implying that they lack investment skills and perhaps profit excessively from insuring physicians and hospitals. The attached document (hopefully I successfully scanned, OCR'd, and

transmitted it) addresses this interesting question. MCIC provides self-insurance to university hospitals, such as Columbia-Presbyterian. Their 33.5% increase this year in cost of insurance has nothing to do with their profits! Their explanation of why costs have been increasing is interesting.

Hopefully, we have completed the first step towards tort reform, but it is only a step. Tampa Bay showed in the Super Bowl that a great defense can stop a great offense; perhaps we need to hire a Jon Grudin.

Joe Willner

Click here: USATODAY.com - Tighten up on insurers

<http://www.usatoday.com/news/opinion/editorials/2003-02-10-oppose_x.htm>

The trial lawyers are fighting back with a dog and pony show of 50 victims of medical errors, which they are parading through the country.

There are only 350 trial lawyers in New Jersey. There are 23,000 doctors.

Get your patients to call **877 KEEP MDS!**

Press Release : Illinois Job Action

<<http://www.hcmsdoctors.org/Politics/Articles/PressRelease.doc>>

Thank you for all of the articles. I will catch up over the weekend. That article sent by Dr. Willner reveals the insurance company perspective on the problem and is the counter argument to the trial lawyers saying that this is an insurance problem. Excellent!!

steve,

the more i think about what we put together, the better it gets. you've made it eminently doable. it will bring the opposition to its knees, the media will jump on it like a 500 dollar whore. not only that, doctors can't be criticized for striking. it's a perfect demonstration. all you're doing is showing the public what medicine will be like if the present situation remains- nationally, as the crisis expands to other states.

the only question is when to let msnj in on it. i would put it out on your site first, build momentum and take credit for it. that's when you let them jump on the bandwagon. i think that even ama would hop on this one because its not a strike. this one could go national quickly and maybe even be the way to get a national bill quickly. its all based on your ability to make it happen here. understand, at this time, you are a more unifying factor to the doctor's on nj than the medical society.

full speed ahead on this one, we're on a roll. lets see what even the threat of it does, my guess is that it will scare the pants off of the opposition.

good luck with your computer.

enthusiastically yours,
steve

Thank you. I look forward to reading the responses.

We must not compromise in any way. It's not clear to me that a limit on all damages to the limit of our policy is a win. That needs to be thoroughly examined. I'm suspicious, especially if there is bipartisan support, and especially if the trial lawyer "puppets" are agreeable. We can win exactly what we want or better. This is the time to do it right.

Well, politics is the art of compromise, but a compromise now that will only strengthen the adversary and lead to a more difficult battle later is unacceptable.

Steve,

I sent this note to Anne Sumers- she suggested I send it along to you.

My 2 cents:

It was good to see you and so many other physicians join together in demonstration last week.

Accomplishments:

- 1) Provided proof that doctors can unite in common purpose.
- 2) We acted thoroughly professionally and brought attention to this serious issue to our patients and legislators.
- 3) We continued to discharge our professional responsibilities- no patient, as far as I know, was harmed in any way.
- 4) Some patients were likely inconvenienced but our goal was certainly not to cause injury. I think most patients were prepared for the action and emergency rooms were not overwhelmed.

Outcome: Of course its too early to tell- In my opinion, the proposed catastrophic fund is unacceptable. It merely provides another deep pocket for trial lawyers and would likely encourage more suits than discourage them. This non-solution would likely have to be funded by physicians in some form, thereby negating any gains from a cap. This measure should be rejected!

Proposal: Set a date- perhaps 1 month from now- if no action is taken by the State, then have another job action with a defined length- 7-10 days ((this one began to peter out after 3 days.)

I recently took my dog to the vet- his bill included an itemized surcharge for "waste disposal". Wondering if anyone has looked into the legality of docs charging a "malpractice surcharge" -it would thus not represent an actual increase in medical fees. We could keep medical fees stationary while adding on fees for these extra expenses (waste disposal, perhaps a HIPPA compliance charge, too).

Regards,
Alan

Alan J. Briker, M.D.

I am proposing an entirely different type of job action that is sustainable indefinitely, by a broad cross section of the medical community, that will put nobody in imminent danger, yet reveal the true nature of the problem, and will not place the burden of an action on only one specialty.

Are you game?

Steve,

I am totally against the CAT-- and one correction-- the lawyers do get their 40-50% from it. A "victim's only" fund would be bad-- but this CAT Fund is a catastrophe!

All my best,

You are wonderful!!!

Anne

If the lawyers are truly concerned about victims rights and compensation for the victims then they should be willing to leave the CAT fund as a victims only fund. They still stand to earn huge amounts of money from a settlement.

They don't care about victims. They only want a huge pig trough to feed from. Expose them for the hypocritical liars that they are. Get your patients calling (877) Keep MDs and tell their legislators that they do not want to fund a slush fund for trial lawyers.

Good luck. Thank you so much for sending the info. The doctors in Broward County (Ft. Lauderdale), FL have been fighting the med mal crisis since December 2001 and believed they were all alone. We flew to Tallahassee last February 2002 and many of the docs in other parts of Florida laughed at us. Next week we will be having another white coat coat when the Florida House Select Committee on Medical Liability Insurance meets in Ft. Lauderdale. In March we are having an all day CME event and flying the next day to Tallahassee again in a 737 with 173 docs. Physicians in Florida are lucky because Governor Jeb Bush is in support of caps on non-economic damages. Cynthia Peterson, EVP, BCMA

Florida, you are not alone. New Jersey, New York, West Virginia, Texas, Georgia, Illinois, Connecticut, Virginia, Massachusetts and many other states hear you, support you, applaud you. Do not give up the fight. The Sun must shine on our profession again in the Sunshine State!!

Good evening,

My thanks again for your activity. It is time that we start planning for another work stoppage. It should at a period of time that will be disruptive to the legislature. I do not know their schedule. I will try to look into their calendar.

There is a consensus that the compromise is only in name alone.

We also have to look at the doctors who did not close their offices. There is economic pressure that we can bring to bear. They should not get our referrals.

Also can we limit who we see in our offices? It has been suggested that we stop treating all malpractice lawyers and legislatures and their families.

Thanks

You always have the right to refuse to see anyone in your office. If, however, you have already established a relationship with a patient you have the obligation to continue to provide them medical care and afford them ample opportunity to find another doctor before you suspend that care. In such a situation, all communication should be done by certified mail and carefully documented.

Dear Steve,

The obstetricians of the department of Ob-Gyn of Saint Barnabas Medical Center, Livingston, NJ met on Friday. Dr. Mark Olesnicky gave us an update on the progress in Trenton. As a group, we unanimously agreed not to accept any plan with a "slush" fund. We stand firm in our desire to only accept a plan with a \$250,000 cap on pain and suffering. We are going back to work on Monday. At the completion of our daily hours we will be placing the same message on our phones that we used during the job action, telling patients to go to the emergency room for any urgent or emergent medical conditions and also to call the governor's office and 1-877-KEEPMDS. We will continue to have regular meetings to discuss the malpractice situation. Our next target date for action is March 3rd. On that date we will, as a group, stop accepting new obstetrical patients into our practices. We feel this will get the public's attention and force them to put pressure on their legislators. We urge all obstetricians in the state to do likewise. We will also support any further job action or march. Keep up the good work.

Sincerely,
John A. Kindzierski MD FACOG

What do you think of what I have proposed above?

Dateline: Philadelphia, PA
Sunday 2-9-2003

DJP 2-9-2003 AMA Update: Editorial Board Visits; Congressional Hearing Medical Liability; Public Citizen; Lagniappe

This e-mail contains four items:

ITEM ONE: Editorial Board Visits: New York Times; Medical Economics
ITEM TWO: Congressional Hearing
ITEM THREE: Public Citizen asks FTC to investigate New Jersey doctors
ITEM FOUR: LAGNIAPPE

Hit delete if not interested.
Best regards,
Donald
Donald J. Palmisano, MD, JD
AMA President-Elect

Beeper 1-888-912-8375

E-mail: Donald_Palmisano@ama-assn.org

Or

DJP@intrepidresources.com

NOTICE: I believe the more we communicate with each other, the better is our chance for success with AMA's goals. I certainly learn a lot from the feedback I get regarding these updates. If anyone wishes to be removed from the updates at any time, just hit the reply button and state "remove" in subject line and you will be removed from the mailings.

Also, if you have a colleague who wishes to be added to the list, have her or him drop me an e-mail.

ITEM ONE: Editorial Board Visits: New York Times; Medical Economics

After representing AMA in Washington at the press conference on HR 5, the HEALTH ACT for medical liability reform, I flew from Washington to New York where I met Dr. Yank Coble, AMA President, and also Mike Lynch and Robert Mills of AMA media. The next morning, Friday, we met with the editorial board of the New York Times to discuss medical liability, the uninsured, and Medicare reform. Next we drove to New Jersey to meet with the editorial board of Medical Economics. After an interview concerning AMA's new market concentration of health insurers study, Yank and I met with 15 editors and reporters to discuss medical liability reform, the uninsured, and Medicare reform as well as other topics. It was snowing in New York and New Jersey and that brought about another travel adventure described in more detail in Lagniappe.

ITEM TWO: Congressional Hearing on Medical Liability

I am now en route to a Congressional Field Hearing of the Subcommittee on Oversight and Investigations Committee on Energy and Commerce of the U.S. House of Representatives. The topic is the Medical Liability Insurance Crisis and the hearing will be held at St. Mary's Medical Center, Langhorne, Pennsylvania.

More details after the hearing.

ITEM THREE: Public Citizen asks FTC to investigate New Jersey doctors

Public Citizen home page is www.citizen.org <<http://www.citizen.org>>

Public Citizen press release is at:

<http://www.citizen.org/pressroom/release.cfm?ID=1321>

and the letter to the FTC is posted at Public Citizen web site at:

<http://www.citizen.org/congress/civjus/medmal/articles.cfm?ID=8976>

AMA EVP Dr. Michael Maves has alerted the Federation executive directors on 2-7-2003 about this issue with a special memo and attachment.

Attachment is not included in my e-mail but the memo is below.

Memo to: Executive Directors

State Medical Associations

National Medical Specialty Societies

From: Michael D. Maves, MD, MBA

Date: February 7, 2003

Subject: Initiatives to Pass Medical Liability Reforms

The AMA has received inquiries regarding its position on the actions of individual physicians in response to the medical liability insurance crisis in several states. Press reports in recent days have focused on the actions of physicians in New Jersey. The attached has been prepared in response to those inquiries and I am sharing it with you in the event you find it helpful.

As the attachment points out, legal and ethical issues in the area of collective actions are complex--including the point at which individual physician's actions become collective actions. The facts of each situation will vary and a close examination of each situation by qualified local counsel is urged before your society decides upon a course of action in response to member requests.

Despite everyone's best intentions and efforts, critics of the medical profession can be expected to raise their voices in protest and to promote negative publicity. Earlier this week, Public Citizen called upon the FTC to commence an antitrust investigation related to events in NJ. While an action like this was not a surprise, Public Citizen will likely make every effort to publicize their request.

ITEM FOUR: LAGNIAPPE

A travel story follows. Skip if not interested.

En route from Washington, DC Friday night, the plane had a delayed takeoff because the truck that did the de-icing got stuck in the snow/slush. One hour later, we took off and I arrived in Atlanta for my connection to the flight to New Orleans. I had 10 minutes to make the connection and had to go from "A" concourse to "E" concourse. Of course both gates at distal ends! Got to plane before takeoff but they would not let me on.

Very frustrating. I was told I would have to stay in Atlanta and would not be able to get to New Orleans that night.

Also heard from another passenger that there was a problem with availability of a room.

I decided I was going to get to New Orleans that night and quickly found a flight to Baton Rouge that was leaving in 30 minutes. I went to that concourse and got on the standby list. I tried to get them to give me a cab voucher to drive from Baton Rouge to New Orleans. They said they didn't do that anymore. HmMMM**.

I gently suggested that I talk to the supervisor who said it was too late to call Baton Rouge. HmMMM** I then went to the ultimate supervisor and explained in my most appreciative way how important it was to see my wife and grandkids this week end.

She had a kind heart and wrote me a voucher and gave me a boarding pass for the flight.

Next, I informed two other passengers in the same situation and they rode in the cab with me from Baton Rouge to New Orleans. This was about an hour and a half drive.

The airline paid for the cab.

It turns out that one of the other passengers was an orthopedic surgeon from New York

who was giving a lecture on ankle surgery in the morning at 9 AM at the national orthopedics meeting in New Orleans. The other passenger was one of the lead attorneys in the giant tobacco case that started 3 weeks ago in New Orleans and is expected to last 6 months. The attorney told us interesting tales about the discovery and testimony in the case. He also said he did not sue doctors and wanted to learn more about our position on medical liability reform. He said he got a lot of info from ATLA.

I will tell my grandkids that success in reaching a destination or in getting medical liability reform is dependant on not giving up or listening to naysayers who say it is not possible.

Finally got home at 1:45AM Saturday. Unfortunately, my luggage never arrived. Eventually my luggage caught up with me before I got on the flight to Philadelphia today.

Thank you Dr. Palmisano. All of these "victims groups" are just fronts for the trial lawyers. They cannot work in the light of day. They must hide in the shadows and use the art of misdirection and deception to forward their objectives.

To quote President Bush: We will leave them no refuge. We will flush them out and expose them.

Tell your patients that they must call (877) Keep MDs or the trial lawyer financed legislature will pass legislation placing the burden of multimillion dollar lawsuits on their shoulders via their health insurance. Do this in your office while they are in the waiting room.

Hi from Wheeling!

Your accolades are much appreciated. Yes, the WV State Senate did pass a good medical bill this past Friday. It looks to be pretty solid as it goes into conference committee this week. Then, the Governor will have to sign it - which - from all accounts will happen. We are mostly happy with the proposed reforms - which include a 250 thousand non-economic cap - with an increase to 500 thousand in certain situations (probably every one - knowing our legal system. But the language clearly states - PER OCCURANCE rather than per plaintiff or defendant; A 500 thousand total trauma cap (which also includes any incidents of an emergent nature); joint liability is eliminated; collateral sources to be offset from the verdict. Periodic payments is missing - but we will try to have this reinserted in conference committee.

The bill also designates that a committee be formed to find a funding source for the creation of a "Catastrophic Fund" to compensate any economic damages not covered by the caps. This is probably where we'll get hammered with another assessment - though I will make it my personal mission to make sure lawyers will have to pony up for this fund.

All of these reforms are tied to the creation of a physicians mutual - which must be operational by September 1, 2003. This is a little scary - but we are assured that once physicians pay a \$1,000 assessment for start-up - there is no PERSONAL liability if the thing goes belly up.

We recognize that the tort reforms will have to stand up to a State Supreme Court challenge - which is certain to occur - the only question is when. Our next target is campaigning for and ELECTING a conservative judge in November, 2004. I apologize for the length - let me know if you have any other questions - and GOOD LUCK!!

Kathy

Kathy Fortunato, RN Executive Director
The Ohio County Medical Society, Inc.
30 Medical Park, Suite 200
Wheeling, WV 26003
(304) 243-5081

Congratulations West Virginia. Good Luck!!

Steve,

I am a pediatrician with an office in Marlton. I am part of a large pediatric group in southern New Jersey called Children's Health Associates. Our group collectively includes about 50 pediatricians. Most of us were closed last Monday and Tuesday and many of us were at the rally in Trenton. Together, we provided sufficient coverage in the emergency rooms of Virtua Hospitals to see all children who needed to be seen. We returned to work on Wednesday because we felt that we couldn't continue to inconvenience children (the ultimate innocent victims).

My partner and I had two experiences in our office this week that we found interesting. On Friday, I was talking to a father who made it clear he was on our side of the malpractice issue and that he had little or no respect for trial attorneys in general and personal injury attorneys in particular. When I asked him his occupation, he told me he is a tax attorney!! He went on to say that in his opinion malpractice attorneys do not care at all about their clients (this, he said, isn't true of **some** malpractice attorneys; it is true of **all** such attorneys) and that the only attorneys he holds in lower regard are divorce attorneys!

On Saturday, my partner, Michael Falk, was talking to a mother who turned out to be the wife of a malpractice attorney. She **and** her husband are sympathetic to our cause; her husband apparently acknowledges serious problems in his field! I wonder how many respectable attorneys have disdain for their colleagues in the field of malpractice. By the way, Michael Falk had a very sympathetic article written about him last week in the Philadelphia Inquirer and the next night was given a live interview on radio on WPHT 1210 AM in Philadelphia.

Keep up the great work. I don't know how you do it. Do you sleep?
Ben Rosenblum MD

I cannot imagine how a malpractice attorney is sympathetic to our cause. Perhaps you were being given lip service so as to avoid being cut from your practice?

Steve-

The time has come not only to "preach to the choir" ie. our colleagues and patients-

but also to the public at large. It is truly amazing that many individuals, even in the well educated segment of the public have only the most superficial knowledge of what is truly happening in our medical liability insurance crisis.

The present "job action" has afforded me time to speak to friends who are not only physicians/nurses- but also business people and educators. Most often their perceptions of the medical crisis is gleaned from accounts in the media which frequently leave them confused and often misled. I believe that many of the accounts are slanted to favor the politicians and legislators whose access by the media is quite important for breaking news events. I have, whenever the opportunity presents with people, discussed the medical crisis and the challenges that we face. Once advised of the true situation the question I get is "what can I do- how can I help". I usually have a few petitions to the governor along with fax, phone #'s and email address of Gov. McGreevy, Sen. Vitale, Sen Matheussen, and Assm. Cohen. The people I talk to eagerly espouse our cause and are quite anxious to "spread the word". I have also made it known that I would make myself available as time permits to address groups and I have some dates in the making.

Our efforts to resolve the medical liability insurance crisis are now gathering momentum and moving forward. The battle has begun. Lets take every opportunity we can to EDUCATE THE PUBLIC!! **They are our allies and they are ,essential to our cause!**

I am hoping that our efforts will meet with rapid success- but I am prepared for the long haul. Impending war will certainly modify our plans but- in the end, we will win both battles.

Kenneth M. Blanc, MD, FACS
Lourdes Medical Cntr.
Willingboro, NJ.

I think I have been doing that for the passed 9 months. The only reading material in my office in the passed two months is that on malpractice crisis (and some of my own promotional literature) but entertainment weekly is not permitted. These are the articles in my waiting room:

TO OUR PATIENTS

To Our Patients

Dear Valued Patient

Dear Valued Patient Spanish

Patients Beware

Patient Beware Spanish

Common Good

Food for Thought

Synopsis of the Crisis

YOU WANT TO READ?

A WONDERFUL QUOTE SUMS UP THIS PAST SEVERAL WEEKS TO MONTHS REGARDING THE PROFESSIONAL INSURANCE LIABILITY CRISIS AND ALL THE STUFF WE HAVE GONE THROUGH PROFESSIONALLY AND PERSONALLY. THIS QUOTE IS FROM **MARTIN LUTHER KING, JR.**

"THE ULTIMATE MEASURE OF A MAN IS NOT WHERE HE STANDS IN MOMENTS OF COMFORT AND CONVENIENCE, BUT WHERE HE STANDS AT TIMES OF CHALLENGE AND CONTROVERSY".

Steven F. Rubin, D.O., FACOFP

I want you all to remove the word can't from your vocabulary. We can do what we need to do. There is only a degree of difficulty.

Steve,

This is how I would put it, as per Dr. Niranjana Rao and myself, speaking for Middlesex County Medical Society.

1. Although we do not believe it is a common occurrence, we acknowledge the possibility that there are occasional extreme or unusual cases in which the plaintiff in a malpractice action legitimately deserves compensation beyond that which is provided by all economic damages plus \$250-300K noneconomic damages.

2. Thus, the concept of a fund to compensate these plaintiffs beyond a \$250-300K cap on noneconomic damages may merit consideration.

3. We understand that these cases must be so tragic, and probably borne of such dire economic straits, that we want to make sure that in these times of budgetary distress all the funds allocated to these plaintiffs be allocated entirely to them.

4. Thus, the funds dispersed by the state administered catastrophic fund should not be encumbered by any contingent legal fees. Reasonable administrative fees needed to compensate attorneys for the time required for them to access this fund should be compensated for at a reasonable hourly rate, not to exceed (approximately) 1% of the portion of the award to be administered from the catastrophic fund. This is reasonable compensation for their work, as specified below.

5. Access to this fund should not automatically rollover from a monetary jury verdict. If one thing has been highlighted from this job action, it is that jury verdicts have been excessive and unreliable indicators as to the true severity and accuracy of a malpractice judgment. Thus, while the judgment of the jury should be respected, their indication that they consider a judgment of greater than \$250-300K in non-economic damages warranted should be regarded as a recommendation to an expert panel which may then consider the appropriate amount of excess compensation. This panel should be

composed of experts from both the legal and medical fields. They should have the ultimate discretion of adjusting the total non-economic damage award. Only cases involving manifest injustice or extreme economic depravity on behalf of the plaintiff in which the economic component of the award does not adequately address the plaintiff's ability to sustain his or her present level of economic livelihood should be considered.

6. The work of the panel should be limited. The case has already been argued in court and a verdict rendered. The work of the panel is to review the case and determine how much, if any additional reimbursement should be made available to the plaintiff from the catastrophic fund. As such, their work should largely consist of a review of existing data. Little additional work should be required of the plaintiff's attorney to accomplish this.

7. As the payouts from this fund will be subjected to very little legal expense, the state may rest assured that a much greater percentage (i.e., close to 100%) of the additional award from this fund goes directly to addressing the pain and suffering of the plaintiff. Thus, especially in this time of budgetary constraint, and mindful of the example set in Pennsylvania, it seems reasonable to cap any additional awards administered from this fund at \$500,000.00.

8. This compromise addresses all of the legitimate concerns raised by the legislators, especially those raised by Senator Vitale. It would address the problem of "poor people hurt by doctors", whoever they may be. It will not support the excessive compensation given to trial attorneys who litigate against doctors in these cases, however it maintains a fair level of compensation for them.

If we let the CAT go the way its been proposed, we lose.

Best,

Chris Gribbin, MD

Immediate Past President, Middlesex County Medical Society

**Very nice work. I look forward to reading the commentary that is sure to follow.
Hint Hint.**

Steve,

I'm Charles Scott--I spoke at the podium on Tuesday a few speakers after you. I am the President of the American Academy of Pediatrics for NJ. Please add me onto your listserve. I am interested in what happens, especially after tomorrow's meeting. I have a meeting arranged for 7:30 am with Senator John Adler on Wednesday. I have known John for some time (having done the B'ris ceremonies on 3 of his boys), but I'm not sure where he stands on the issue. I'm part of the 60 pediatrician group about which Ben Rosenblum just wrote to you an hour ago. When we plan our next action (not "if", but "when", since I suspect it will come to that), it may be better for primary doctors to man

the fronts for sick patients only as opposed to closing completely. The newspapers always focus on the mother who feels her child was abandoned. We need all the positive PR we can get, plus we need to mobilize the public with petitions and phone calls--the primaries (Peds and FP's) can do that best. That's why it may be best for us to stay in the he offices and see the sick. Otherwise, there will be incomplete penetration of participation. In our area, most FP's stayed with business as usual.

Peds varied from closing completely to cancel wells and only do same day sick, to business as usual. A bit more notice and a bit more guidelines to all groups next time would be my suggestion.

Let's keep our fingers crossed about tomorrow. I have to admit not being overly optimistic.

Thanks for your coordination of the effort.

Chuck Scott

What do you think of what I have proposed at the top. What does a pediatrician do that is common, elective and high risk for litigation if there is a bad outcome?

Dr. Rigalosi:

First: I have a question about leadership in the months or years ahead in the struggle against the powers in the legislature against meaningful tort reform: I assume that more days or weeks will be needed when we collectively convene to focus attention on patient advocacy issues. Because there will likely be legal actions forthcoming alledgeing restraint of trade, what kind of leadership will be needed that could be effective against these threats? Can it be "organized" in any fashion, or must it be truly "grass-roots?" Are there any organizations in NJ that can lead major advocacy rallies in this environment? The Medical Society of NJ?

secondly,

I am copying to you the contents of an email I have sent to NY Times, Star-Ledger, Bergen Record, and USA Today.

"NJ legislators will probably put a cap on pain and suffering that is a phoney cap, ie. a cap with a "catastrophic" fund set up to pay awards beyond the "pseudo-cap" of \$300,000. So for a pain and suffering award of 10 million dollars, the "fund" will take care of it.

like a money tree: money just grows on the tree.

I believe that this plan has been tried in Pennsylvania and has been a dismal failure. In Pennsylvania the Catastrophic Fund is \$2.1 Billion in debt. They are then coming to the physicians to kick in \$30,000 to replenish the fund.

When the NJ fund runs out of money, who do you think will be assessed to "make it good?"

I don't believe in Santa Claus, the tooth-fairy, or catastrophic funds that are like money trees, but I do believe that the fund, as long as it lasts, will be good for legislators and trial lawyers. It will keep the doctors working until they've really had enough.

From what I can see, the patients are with us in this one, unlike the crisis of the early '70's.

Thank you for listening. John H. Lifland MD"

thank you, jlifland@aol.com

The patients are with us as long as they are made to understand how this affects them. They do not care about how this affects you beyond how it will make you treat them. We don't want a slush fund because the expense is being shifted to health insurance and will likely result in many more New Jerseyans unable to afford health insurance. This will not happen immediately, because the assesment will only be 2 or 3 dollars for now. When the lawyers have consumed all \$25 Million in the slush fund they will then come back for more. They will keep coming. If you ask the question "How much money do they want?", the answer is simple; All of it.

Thank you for all of your efforts. We should also demand that only those "potentially responsible" be held legally liable or open to suit. Those who came in after the fact, and may have saved the patient are often included. The practice of naming anyone whose name is in the chart must stop!

That is part of the proposed legislation. All should familiarize yourselves with this bill.

Draft Compromise Proposal Summary of Proposed Medical Liability Committee Substitute

Here's some information to pass on to everyone.

We had 8 letters about the work action in the Bergen Record today!

Four Important Ways to Influence Politicians:

1. **Letters to the editor:** copy your e-mail letter and paste it in an e-mail to: (send 4 separate e-mails)

1. eletters@starledger.com (Star Ledger)
2. letters@nytimes.com (NY Times)
3. LetterstotheEditor@northjersey.com (Bergen Record)
4. wsj.lets@wsj.com (Wall Street Journal)
5. To send a letter to USA Today, go to their website at

www.USATODAY.com, then click on "contact us", then click on "letters to the editor"; they have a form to fill out with your name and numbers, and there is a box you can paste your letter into.

Newspapers will publish: short letters (less than 250 words), on one topic, backed by facts, preferably referencing a recent article. Include your address and phone at bottom so they can verify that indeed you wrote it; if they are going to publish it, they will call you.

All newspapers edit and shorten the letters you write to them.

Stress in all letters the **impact to consumers** and to **patients' access to health care**:

1. The best and brightest doctors are being driven out of NJ by staggering malpractice rates.
2. The CAT Fund cost will be paid for by **you**; it will raise the cost of **your** medical insurance.
3. **Make it personal:** "I have stopped delivering babies because..." or "My

patient had to be transferred last night because we have no neurosurgeon anymore."

2. Politicians care what constituents think: Ask 5 people today to call **877-KEEP MDS** and the governor at **609-292-6000**. It takes 30 seconds to call. Do it yourself, first-- --- you'll see. You call, say your name, say that you support the doctors, do not want the CAT Fund, and you want caps on pain and suffering! It's easy!

3. Collect 3 doctor's e-mails a day and send them to sshikiar@njsurgery.com!

4. Join the Medical Society of New Jersey; visit www.msnj.com and sign up today.

Why am I still only reaching 12% of New Jersey physicians? Get me e-mail addresses for all of New Jersey and we will then see what can be accomplished.

Thank you for the updates. I am an Otolaryngologist and have been fighting for tort reform for ten years. Your state is on the right track. Pennsylvania has delayed a walkout and is the reason why we still rate as one of the worst states in the USA.

I have no problem with government or lawyers policing medicine. Only what are the rules. They change for every case. (Why did you do the test? Why didn't you do the test?) I also think that in all fairness the medical community should police the lawyers-- checks and balances.

I bring this up only because even if you give doctors malpractice for free, the burden of lawsuits do not benefit doctors or patients. I know you are well aware of this.

I welcome your ideas to rally our PA doctors, especially the apathetic who are just as responsible as the lawyers are.

What would you think of a year boycott of not caring for lawyers whose firms sue doctors? This could be a national campaign.

Also boycott support for NPR which seems to always have a slant against doctors. Hit them in their pocket books.

Thanks again.
Roy Stoller

Thank you Roy. I understand your frustration. I have been doing this newsletter once, twice or three times a week for almost a year. Until December I was talking to 500 doctors. I received almost no responses and minimal help. Only recently has the power of this tool become apparent to the people I am reaching. Wake up Pennsylvania! Master your own destiny. Nobody is going to do it for you. You must make your own future. There is no such thing as luck, only will.

Dear Steven,

Thanks you so very much for your dedication to get tort reform. Doctors in our area are opposed to establishing a fund. What spin are you getting?

Linda

I'd say that we agree with you!!

Steve,

More thoughts:

Much has been said here on the need to continue the momentum you and others have started. I spoke with the Chair of Med Exec today. I would like to see hospital staff dues raised substantially to cover the necessary funding of Medical Society membership, PAC contributions, etc. Too many physicians feel the fight is not their problem. We could pay dues through our primary hospital and only pay staff dues at our other hospitals. This war will be waged, sadly, on the pols and lawyers terms and that takes money.
P.LaStella, MD

I have no problem with that. I still speak to many doctors who are not members of MSNJ and their county medical societies or the AMA in spite of all of the recent developments in the political arena. But this type of activity is not new. MSNJ won Joint Negotiations, Prompt Payment and other very important legislation over the past few years. We fight an ongoing battle on many fronts that affects practicing physicians throughout the state. If MSNJ is guilty of something, it is of not effectively getting the word out as to what they do. A Newsletter to members is good, but how to you entice potential members if you don't communicate your activities to them?

The face of medicine has changed. You must be involved in the politics that affects your profession. Failure to do so will assure that the politics will overwhelm you. This costs money. I do not wish to tell you the money I have personally spent in the passed 2 years above and beyond my membership dues. Let's just say that I do not ask of anybody that which I have not done or am not prepared to do myself.

Unfortunately the "compromise" offered sucks; just more money for the blood suckers lawyers. We must close down the system **completely** because they think this will blow over and we go back to normal. Pity

We must act with restraint and careful forethought to keep public opinion on our side. We may not like it right now, but we do answer to a higher calling and cannot stoop to the level of the prostitutes who falsely claim that role.

Steve:

Last week was a wake up call to NJ doctors. Honestly the response was much more than I expected. It only emphasized the fact that there is deep frustration and resentment in the medical community about the status of our profession today. Last week clearly showed the power of unity. But I agree there is a lot of work to be done. You have been urging everybody to join the society and contribute to PAC. May I suggest that PAC forms a chapter in each hospital. The chapter will have reps from each dept. The dept reps personally approach every member and urge them to join and contribute. I think you will have a much better response. This is not coercion or shaming someone. This is political persuasion. You can convince someone on a one to one basis. I do not believe in forcing others or shaming them into doing anything. It is much

more powerful if they are convinced. And eventually they will. Need volunteers?
Abe.

You cannot force any action from another individual, particularly individuals who are as strong willed and individual as physicians. You must persuade by example. There will always be a few stragglers who will exist as parasites on the rest of us but even they may eventually be brought into the fold.

We should consider another job action around the time of the election this fall. We need to target politicians who support us and then support them. We also need to target those who are against us. I for one would love to stand out in front of the polls on election day with my signs and talk to people to have them vote for pro doctor candidates. It would be like the old ward politics of South Philley or New York.

I don't think we should wait until fall. This must be a multi-pronged effort, and I plan to write more on the politics in the near future. We must keep the pressure up now, tomorrow, next week, next month, in the winter, spring, summer and fall. Our legislators expect us to go back to sleep. They have permanently awakened us and there is no turning back now!!

Every seat of the state legislature is up for election this year. If anybody out there lives in a district with one of these "anti-physician" assemblymen or senators, and would like to take a stab at running for office against them, please contact me soon. The NJ Libertarian Party annual convention is Sat. March 1, and any district that crosses county lines would have to be nominated at the state convention.

I last did it 2 years ago when I ran for Assembly in the 11th district, and had a great time! You will receive a lot of support from others who are extremely knowledgeable of the process, and if enough physician-supporters (and their patients) come on board, we can raise a good amount of money for a couple of well-targeted races. Petition signatures for ballot access are also a piece of cake; our waiting rooms alone would provide enough signatures within a week or two. Remember, the state legislature is a part-time position, so one could conceivably continue to practice while in office. Once on the ballot, lots of free media exposure is provided through editorial board interviews, TV interviews, and possible inclusion in debates.

As the biggest political proponent of free-market reform of our bureaucratically-crippled healthcare system, the LP is IMHO a natural "political home" for physicians, small business owners, and the like. (Especially those of you who consider yourselves "politically homeless.") Stand up and really be heard! There is nothing like a direct threat to a professional politician's job by a well-funded challenger to set their pants on fire, even if you don't win the election.

John M. Taylor, MD, FACS
Long Branch, NJ
jmtaylor99@comcast.net
(732) 483-1800

I will write much more on this in the near future, however I did want to make one comment now. If you are going to run for office run as a democrat or a republican. Running independent only guarantees a victory for the opposition by

drawing off votes that may have been cast for a party favorite. This strategy almost never works. We must make a list of our friends and our enemies in the legislature. Our friends will be supported. Our enemies will be replaced.

Do not now write me to tell me that this is impossible. It is only difficult.

Every doctor should be registered for one party or the other. This gives you voting rights in the primaries.

Dear Anne, The trip to Trenton was an eye opener. This seems to be a Democrat Vs Republican thing with a few undecideds. As we discussed I feel several important points are:

1. There must be a CAP on damages fro physicians of \$250,000.
2. This must be a total amount for the the case in question,i.e. not \$250,000 for this and then another \$250,000 for that etc.
3. If a "slush" fund is created(I do not favor this at all) for extreme cases it must have a total cap of \$1,000,000
4. Any cases that are referred to the "slush" fund for evaluation must be approved by an impartial committee whose sole function is to evaluate and determine the final payment
5. It would be ideal if the "slush" fund payments were over and above the tort system and not subject to the attorney's commission-thus the injured party would truly get the benefit of the award(real justice!!)
6. All expert witnesses should be from New Jersey
7. All expert witnesses should have their opinions backed up by accepted written standards and not just an opinion
8. Failure to back up opinions with accepted documented standards or outright untruths should be subject to peer reviews and penalties
9. Frivolous law suites should have the penalty of all legal costs the defendant pays and "pain and suffering" for the defendant
10. The malpractice carrier should not be able to raise the rate of the insured for any law suite the insured is found innocent of or dropped no matter what the legal costs
11. The internal review process that the hospital and medical community hold MUST be nondiscoveralbe.

Just some food for thought. Bob

Thank you for all of you correspondence. I am now hopelessly behind but will keep up the task. Five days of tropical sun, warm water, white sand, reggae music, jerk chicken and fruit punch have given me the energy I need to fight on. On a final note the following words are to be removed from the vocabularies of every doctor in New Jersey:

Can't, Cannot, Impossible, No, Never, Not

Replace these with Can, Will, Difficult but doable, Yes, Now.

Let's adopt the McGreevey plan and publicize it as such. Our Governor has done so much good for the State of New Jersey. Let us now honor him with a solution to the medical liability insurance crisis named after his infinite wisom in his

honor!

If the citizens of New Jersey should find that they don't like the McGreevey Plan then they should call **(609) 292-6000** and inform our brilliant Governor that...

We Need Tort Reform Now!!!

Sincerely,

Steven P. Shikar, MD, FACS
Vice President, Hudson County Medical Society