

MEDICAL LIABILITY REFORM

Position Paper

ISSUE: A new barrier in access to care has emerged in America. This barrier has resulted from medical liability forces which are driving healthcare professionals from their obstetrical practices. The increasing economic cost associated with malpractice insurance is part of the problem, but stories abound of frustrated healthcare providers scaling back their practices, seeking early retirement, or moving out of high risk geographic areas because they are tired of lawsuit abuse.

BACKGROUND: Obstetrics has always been a medical specialty where much is at stake. While the majority of deliveries have happy outcomes, those that do not are particularly tragic and frequently result in litigation. Pursuing a lawsuit may be appropriate when a poor birth outcome arises from negligence and other avenues of redress have been unsuccessful. Unfortunately, in what the U.S. Department of Health and Human Services calls “The New Health Care Crisis,” our system of tort—that portion of our judicial system which deals with injury lawsuits— is all too often inappropriately utilized, does not reliably identify physician negligence, does little to deter bad conduct, and does not consistently provide just compensation for those injured. Similar concerns regarding the reliability and consistency of our tort system have been expressed by the Institute of Medicine, Harvard School of Public Health, JCAHO, Progressive Policy Institute and others. Indeed, in some parts of our country, our tort system is viewed less as a system of justice and more as a lottery.

In an effort to retain affordable malpractice insurance and reduce their risk of being sued, family physicians across the country who are otherwise qualified and committed to obstetrics, have stopped delivering babies. Even more alarming, in many places, *obstetricians* have stopped delivering babies. According to a 2004 ACOG press release, 14% of OB-GYN Fellows have given up the obstetrical portion of their practices because reimbursement for prenatal and obstetrical care doesn't economically offset the increased costs of malpractice insurance. Nurse midwives, too, have faced rising insurance rates and difficulty in finding obstetrical networks with which to affiliate. Additionally, new studies paint bleak pictures of demoralized resident physicians leaving their state once training is completed, and medical students avoiding high risk specialties such as obstetrics, because of concerns of excessive and unwarranted lawsuits.

All of this has resulted in reduced confidence in our tort system and reduced access to obstetrical care in too many parts of our nation. Traditionally, the places hardest hit have been rural, poor, and historically medically underserved, but lately, large metropolitan centers have been experiencing significant problems as well.

STRATEGY: In addressing these medical liability issues, NPA supports the following:

1. At every level of healthcare, measures should be introduced which serve to reduce or eliminate medical errors and improve patient safety.
2. At every level of healthcare, disclosure policies should be developed to promote open, honest communication when medical mistakes have occurred.
3. Legislative efforts to restore fairness, integrity, confidence and efficiency to our medical liability system must continue to be explored and implemented.

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