Reform of the medical liability system should be considered as part of a comprehensive response to surging medical malpractice premiums that endanger Americans’ access to quality medical care.

----Lincoln Chafee, Current Governor of Rhode Island and ex-U.S. Senator

The effect of malpractice reform was the subject of a recent article in the New England Journal of Medicine. In Texas, we have had the benefit of good, progressive malpractice insurance liability limits since 1977, with further changes to the initial laws passed in 2003 under Proposition 12, also known as Limit Awards in Civil Lawsuits Against Doctors and Healthcare Providers. In response to this recent article, one of our Past Presidents, Dr. Patricio Pazmiño, has chosen to write about the effects of Proposition 12 in Texas. Additionally, we have 2 guest commentaries by the AMA Advocacy representative, Dr. Roxanne Tyroch, and another former EPCMS President, Dr. Andres Enriquez regarding issues of Medical Malpractice Insurance.

We invite all El Paso County Medical Society Membership to give us written commentaries on their personal experiences/opinions with malpractice insurance.

In this issue, we will also again highlight 10 abstracts that were presented at the Texas Tech Research Colloquium in May of 2014. This will be the third of 4 installments.

Happy Holidays to all-- thank you for making 2014 wonderful. We look forward to more submissions in 2015!

Alison L. Days, MD
Editor, El Paso Physician Magazine
THE REAL EFFECTS OF MALPRACTICE REFORM IN TEXAS

This commentary is in repute of recent article published in the New England Journal of Medicine on the lack of effect on malpractice reform.1

The article by Waxman et al1 is misleading. The authors studied only one of about 24 existing medical specialties and yet extrapolated their results to conclude “that malpractice reform may have less effect on costs that has been projected.” The authors did not consider the effects of costs on other specialties, malpractice carriers, hospital corporations, university medical centers, health insurers, patients and communities that benefited from malpractice reforms.

Prior to the passage of Proposition 12 in Texas approximately 85% of medical liability claims were frivolous/meritless and failed.2 This abuse led to a skyrocketing increase in healthcare liability insurance premium and forced 76% of medical liability insurance carriers to leave Texas.3

Since 2003 there has been a significant reversal of these pernicious trends. Our malpractice premiums have decreased 30-46% and affected communities now have coverage by neurosurgeons, orthopedic/trauma surgeons, ob-gyn doctors, etc. Furthermore, the number of physicians in Texas has doubled over the past decade and there is “increased access to healthcare” (Please see enclosed Texas map).4-5 Discussion of malpractice reforms cost must take into account such real world examples.

References:
3. Montemayor J. Medical malpractice insurance overview and discussion. Study presented by Commissioner of Insurance, Texas Department of Insurance to Texas House Committee on Civil Practices, Page 6, 78th Texas Legislature, Regular Session (Feb. 12, 2003).

Patricio Pazmiño PhD MD FACP FASN

AMA ADVOCACY FOR MEDICAL LIABILITY Reform

The AMA strongly supports comprehensive medical liability reform (MLR), including reasonable limits on non-economic damages similar to successful reforms in California and Texas.

The "Patient Protection and Affordable Care Act" (ACA) included multiple provisions concerning the establishment and implementation of national care and practice standards and guidelines for health care providers, with potential for new causes of legal action against physicians.

On April 10, 2013, Rep. Phil Gingrey (R-GA), who has long been a proponent for MLR, introduced H.R. 1473, the "Standard of Care Protection Act of 2013." The Senate companion bill S. 1769 was introduced by Sen. Pat Toomey (R-PA) on November 21, 2013. This legislation would clarify that the care standards and guidelines specified in the ACA, Medicare and Medicaid statutes cannot be used to create new causes of legal action against physicians providing care to patients. In addition, it would preserve state medical liability laws. AMA supports H.R. 1473 and S. 1769.

Additionally, the AMA supports H.R. 1733, the “Good Samaritan Health Professionals Act of 2013,” and its Senate companion bill S. 2196 (2013-2014), the “Good Samaritan Health Professionals Act of 2014” has been introduced. This legislation would help ensure that needed medical volunteers are not turned away due to confusion and uncertainty about the application of Good Samaritan laws, as was the case in the aftermath of hurricanes Katrina and Rita. H.R. 1733 was referred to the House Energy and Commerce Subcommittee on Health and the House Judiciary Subcommittee on The Constitution and Civil Justice.

Liability insurance carriers do not typically provide coverage outside the state where a physician is licensed to practice. To remedy this problem, Rep. Tom Latham (R-IA) introduced H.R. 3722 on December 12, 2013, a bill to provide protection for sports medicine professionals, including physicians. Its Senate companion bill was introduced by Senators Amy Klobuchar (D-MN) and John Thune (R-SD) on April 8, 2014. AMA supports this legislation.

The Council on Medical Service of the AMA pledged in 2012 to continue to monitor the effects of the Affordable Care Act on physicians and report back to the House of Delegates. The Council’s analysis finds that the ACA (affordable care act) embodies much of the AMA proposal for expanding health insurance coverage and choice, and is consistent with several other aspects of AMA policy.

There also are key policy gaps that the ACA did not address, but are nonetheless critical to improving the health care system, including medical liability and antitrust reform, as well as replacing the SGR. As previously noted, AMA Board of Trustees Report 6-1-13 highlights ongoing AMA advocacy efforts to strengthen the ACA, and take meaningful steps toward creating a stronger, better-performing health care system.

Civic Impulse, LLC. Govtrack.us. H.R. 1733 (113th): Good Sa-
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Roxanne Tyroch, MD, FACP

My name is Andres Enriquez I am the owner and president of Franklin Medical Center on the Westside of El Paso. My story is probably like most Family Practice Solo doctors trying to start up a business in 1998, my medical malpractice at that time was about 2000k a year with 300/600 coverage. I had decided to start up my own business with hospital call and extended hours from one year to the next my medical malpractice went up to 22k a year. As a solo doctor with a new clinic the jump was incredible and one that I would have to take out a loan for. When I called my carrier to discuss the increase her reply was, “you need to move to Houston”. My practice continued to grow and the following year a new shock was placed in my stocks, my annual premium jumped to 28k by that time I was maxed on all my credit cards and loans. I had no choice but to drop my coverage and go without. One week went by and I had no medical malpractice insurance, and during that time I had a law suit file. I was blessed to be in a family with two attorneys. I approached and discussed the situation with them and they agreed to represent me for a steak dinner. The case was dismissed and I had to enter the JUA pool of Texas for coverage, it was not until I talked with the El Paso County Medical Society that they recommend TMLT for coverage and help. I enrolled in their insurance plan my first bill was 12k I couldn’t believe it, finally a break for a small solo practice. The following year my premium dropped to 7k could not believe what tort reform had done for me and my up and coming practice. I continued to be impressed with TMLT and their commitment to helping doctors not just with medical malpractice but over all taking care of our future. They proved their commitment when they announced their Trust Rewards Program and their intentions of forming a retirement plan for doctors at no cost for us. The Trust Reward Program sets up a “Nest Egg” for enrolled members. It is at No Cost to the physician and the account is funded annually. As of this date, $150 million has been allocated for TMLT members. I always talk to all my colleagues and encourage them to join. “It’s a no brainer”.

This is my story and a simple one at that, TMLT has definitely made an impact in my practice and in my future.

Andres Enriquez MD  
Franklin Medical Center  
836 East Redd Rd  
El Paso, Texas