



# EDITORIAL

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## Solving the medical liability riddle

**Q**uestion: What's the greatest threat to OBG practice in America? Answer: The escalating cost of professional liability insurance. One hundred million dollar "jackpot" judgments against physicians—once unimaginable—now occur regularly in many states. As a result, the cost of liability insurance exceeds \$100,000 a year for many obstetricians. Doctors are quitting medical practice or retiring early. In some areas of the country, women cannot get gynecologic or obstetric care anywhere near their homes. And premiums are likely to go even higher—unless there is tort reform.

### Look to California

**C**alifornia's 25 years of experience with tort reform show that it works. Once implemented, reform did not actually decrease the state's litigation rate. In fact, there are 50% more lawsuits per capita in California than elsewhere. The difference? Tort reform reduces the likelihood of "mega-awards"—damages in excess of \$1 million, which no insurance system can survive a high number of.

Here's how California's tort reform works. The Medical Injury Compensation Reform Act (MICRA) caps noneconomic damages ("pain and suffering") at \$250,000, limits attorneys' contingency fees, and allows patients to retain a higher portion of their awards. MICRA is often cited as the reason the past year's spike in medical liability rates has bypassed California's physicians.<sup>1</sup>

By stabilizing the professional liability insurance system, tort reform helps ensure high-quality health care. Many trial attorneys

and their congressional allies claim tort reform will damage the quality of patient care. This is a specious argument. Tort reform has not affected the quality of California's patient care.

### A rough road to federal legislation

**E**arlier this year, Rep Jim Greenwood (R, Pa) proposed federal tort reform legislation [HR 4600, "Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2002"], which would mandate the following important changes:

- a \$250,000 cap on noneconomic damages (pain and suffering), except in states that already have more stringent caps in place;
- a limit on punitive damages to 2 times the economic damages or \$250,000, whichever is greater;
- prevention of double payments for the same expense by multiple insurance companies or federal payers;
- imposition of a 3-year statute of repose and a 1-year statute of limitations on lawsuits;
- a requirement that each defendant's share of damages match his or her percentage of responsibility;
- a cap on attorneys' contingency fees at a fixed percentage based on the size of the award;
- an allowance for damages to be paid in installments rather than as a lump sum in selected cases; and
- permission for each state to develop alternative dispute resolution processes.

Democrats in the House strongly opposed the legislation. As reported in the Association of American Medical College's Washington

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Highlights, “Ranking Minority Member John Conyers (D, Mich) doubted any link between malpractice premium increases and malpractice lawsuits. He suggested that premiums are high because the rate of medical errors is high” and added that “overworked residents and inadequate nurse staffing are contributing to the high rate of medical errors.”<sup>2</sup>

Rep John Dingell (D, Mich) claimed that tort reform “won’t lower doctors’ premiums” and that “lawsuits aren’t the problem, insurance company investment and business practices are.” He urged his colleagues to “Vote NO on this misguided and misleading legislation.”<sup>3</sup>

On September 10, the House Judiciary Committee approved HR 4600. On September 26, HR 4600 passed the House by a 217-203 vote, largely along party lines. However, the Senate subsequently declined to act on a companion version of the bill sponsored by John Ensign (R, Nev) and supported by Jesse Helms (R, NC) and George Voinovich (R, Ohio).

## A change in the air

**I**n the next session of Congress, Republicans will control both the House and the Senate, making liability tort reform more likely than ever. This is a unique opportunity for obstetricians and gynecologists to make their voices heard. Contact your senator and representative and ask them to support federal legislation reforming the tort liability system. The American Medical Association Grassroots Action Center at [www.ama-assn.org/go/grassroots](http://www.ama-assn.org/go/grassroots) makes it easy to get in touch with members of Congress about this issue. This is a once-in-a-lifetime opportunity to protect the interests of your patients. Don’t miss it! ■



### REFERENCES

1. Albert T. California tort reform endangered: Court may void group protection. *amednews.com*. June 24, 2002. Available at: [www.ama-assn.org/sci-pubs/amnews/pick\\_02/pr110624.htm](http://www.ama-assn.org/sci-pubs/amnews/pick_02/pr110624.htm). Accessed November 12, 2002.
2. Mark-up of medical liability reform legislation postponed. *Washington Highlights*. July 26, 2002. Available at: [www.aamc.org/advocacy/library/wash-high/2002/072602/\\_6.htm](http://www.aamc.org/advocacy/library/wash-high/2002/072602/_6.htm). Accessed November 12, 2002.
3. Congressional memorandum, Representatives Dingell and Andrews, September 25, 2002.