Task Force Meeting Attendance Sheet

Medical Malpractice Task Force

Date: 9/29/05 **Meeting Type:** Working Session

Location: 328 NW State Capitol

Committee Member	Present	Absent	Excused
Representative Curtis Gielow, Chair	☒	☐	☐
Representative Mike Huebsch	☒	☐	☐
Representative Ann Nischke	☒	☐	☐
Representative Jason Fields	☒	☐	☐
Representative Bob Ziegelbauer	☒	☐	☐
Mr. David Strifling	☒	☐	☐
Ms. Mary Wolverton	☒	☐	☐
Dr. Clyde "Bud" Chumbley	☒	☐	☐
Mr. David Olson	☒	☐	☐
Mr. Ralph Topinka	☒	☐	☐

Totals: 10 0 0

John Reinemann

John Reinemann
Task Force Clerk

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cont. pt. 4

Rec'd 9/14/05
Copy for Task Force Record

* Distributed to Task Force members 9/15/05

WMC
REPRESENTING WISCONSIN BUSINESS
Wisconsin Manufacturers & Commerce

Wisconsin Manufacturers' Association · 1911
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President

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Vice President
Government Relations

James R. Morgan
Vice President
Education and Programs

Michael R. Shoys
Vice President
WMC Service Corp.

September 14, 2005

The Honorable Curt Gielow
State Capitol, Room 316 North
Madison, Wisconsin 53708

Dear Representative Gielow,

I write to you in your capacity as chairman of Speaker Gard's Medical Malpractice Reform Task Force. The *Wisconsin State Journal*, on September 9, 2005, reported:

> "Wisconsin's top insurance regulator [Insurance Commissioner Jorge Gomez] predicted Thursday that the state's low medical malpractice premiums won't skyrocket because of the state Supreme Court's rejection of jury award limits, even as private insurers pleaded for swift action to reinstate them."

We were surprised by this testimony because Commissioner Gomez espoused a different viewpoint in December of 2003 when he appeared before the Ohio Medical Malpractice Commission. Materials Commissioner Gomez submitted as part of his testimony in Ohio contend:

- "A recent publication from the American Medical Association listed WI as one of only 6 states in the country that is not in a medical malpractice crisis."
- "Factors contributing to this include . . . tort reform."
- "The [Wisconsin] non-economic damage cap and the wrongful death cap both have contributed to the well being of the medical malpractice environment in WI. *It is estimated that the non-economic damages cap has resulted in a $144 million reduction in ultimate loss reserves."* [Emphasis added.]

In the final report of the Ohio Medical Malpractice Commission, Ohio hailed Wisconsin as a "non-crisis state as defined by the American Medical Association." "A primary feature of such tort reform . . . is caps on non-economic damages in medical malpractice lawsuits," the Ohio Commission reported. For you review, I have taken the liberty of attaching the December 17, 2003, minutes of the Ohio Medical Malpractice Commission meeting, a copy of Commissioner Gomez' submission, and the final report of the Ohio Medical Malpractice Commission.

501 East Washington Avenue
Madison, WI 53703-2944
P.O. Box 352
Madison, WI 53701-0352
Phone: (608) 258-3400
Fax: (608) 258-3413
www.wmc.org

We support your efforts to restore caps on non-economic damages in medical malpractice cases in order to control healthcare costs and to help keep good physicians in our state. And, we look forward to working with you and your legislative colleagues to enact meaningful litigation reform for all employers and employees in Wisconsin.

Sincerely yours,

Jim Haney

James S. Haney
President

Cc: WMC members

JSH:rjp

END

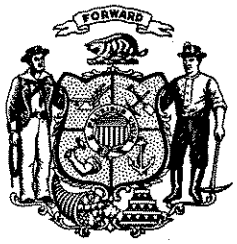

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EXHIBIT 1
WISCONSIN STATE JOURNAL ARTICLE

2>State Expert: Loss Of Caps Not Problem

Malpractice Rates Won't Soar

Wisconsin State Journal :: BUSINESS :: C10

Friday, September 9, 2005
BEN FISCHER bfischer@madison.com 608-252-6123

Wisconsin's top insurance regulator predicted Thursday that the state's low medical malpractice premiums won't skyrocket because of the state Supreme Court's rejection of jury award limits, even as private insurers pleaded for swift action to reinstate them.

Even without the limits on non-economic damages ruled unconstitutional in July, doctors will still have the state's public fund that insures large claims and generally "responsible" juries to protect them, Insurance Commissioner Jorge Gomez told a legislative task force.

"The (American Medical Association) has identified a whole bunch of states in crisis, and Wisconsin is not one of them and Wisconsin will not be one of them anytime in the near future, regardless of what your committee or the Legislature decides," said Gomez, who acknowledged possible problems but downplayed their likelihood.

A leading private malpractice insurer painted a very different picture of how unrestrained juries wreak havoc on actuaries. Even if large jury awards are rare, they say, the looming possibility forces premiums skyward.

"The single biggest thing that really helps them set those rates is predictability," said Andrew Ravenscroft, vice president of Madison-based Physicians Insurance Co., which controls about 40 percent of the Wisconsin market.

The committee is working to craft new proposals to reinstate the limits but mollify the Supreme Court's contentions that the original 1995 limits were arbitrary, as well as avoid a veto from Democratic Gov. Jim Doyle.

Wisconsin doctors pay some of the lowest malpractice premiums in the country - family practice doctors pay as little as $8,000 annually, less than a quarter of what their colleagues in Illinois pay.

Opponents of jury award limits say the state-run insurance pool that covers claims over $1 million will keep those rates down without hindering the rights of victims. Supporters say rates are low because of the caps and will go up dramatically without them.

"I think (Gomez's) testimony reflected the fact that he used to be a trial lawyer and perhaps a little bias," said Rep. Curt Geilow, R-Mequon, the committee chairman and a caps supporter.

Meanwhile, Wisconsin Citizen Action continued to pressure the pro-caps contingent. They argued that poor business practices by insurance companies - not lawsuits - drive the cost of insurance up. In a press release, the organization said PIC raises rates far in excess of their actual costs.

Republicans have pledged to introduce legislation by mid-October as groups like the Wisconsin Medical Society say their members are already seeing the onerous effects of the ruling.

Geilow said legislation will likely include indexing for life expectancy to address the court's concerns. Under such a scheme, young victims of doctors' mistakes could potentially collect more than an older victim.

Return to story

END

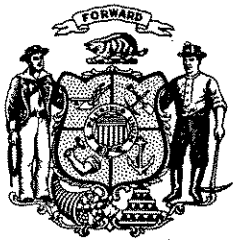

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EXHIBIT 2

– OHIO MEDICAL MALPRACTICE COMMISSION MINUTES – moved & seconded as corrected

MEDICAL MALPRACTICE COMMISSION
Meeting Minutes
December 17, 2003

The seventh meeting of the Medical Malpractice Commission was held Wednesday, December 17, 2003 at the Ohio Department of Insurance, 2100 Stella Court, Columbus, OH 43215. The Chairman called the meeting to order at 1:07 p.m.

Commission members present were Chair Ann Womer Benjamin, D. Brent Mulgrew, William Kose, Wayne Wheeler, Steve Collier, Gerald Draper, Ray Mazzotta, Frank Pandora, and George Dunigan.

Attendees from the Ohio Department of Insurance were William Tsibulsky, Holly Saelens, Peg Ising, Michael Fulwider, Jim Harrison, Melissa Hull, Laurie Peacock, and Cheryl Fanaro.

SPECIAL GUESTS:

The Chair welcomed the following special guest speakers:

1. Phillip Troyer and Jennie Schlosser from Medical Protective.
2. Gerald S. Leeseberg, of Leeseberg & Valentine, on behalf of the Ohio Academy of Trial Lawyers. Mr. Leeseberg is a partner of a firm that specializes in medical malpractice, products liability, and general personal injury.
3. Jorge Gomez, Commissioner, Wisconsin Department of Insurance.
4. Thomas R. Rushton, Deputy Superintendent, New Mexico Insurance Division.
5. Cynthia D. Donovan, Deputy Commissioner of Financial Services Operations; and Annette Gunter, Medical Malpractice Manager, Indiana Department of Insurance.

MINUTES OF MEETING HELD OCTOBER 22, 2003:

The Chair presented the minutes for the October 22, 2003 meeting for approval. The minutes were approved as submitted.

COMPANY UPDATES:

The Chair requested updates on Medical Protective and OHIC.

MEDICAL PROTECTIVE

Phillip Troyer, Associate General Counsel at Medical Protective Insurance Company (a GE Company), began by requesting that questions regarding underwriting guidelines be directed to Jennie Schlosser, Ohio Underwriting Manager for Medical Protective.

Mr. Troyer gave a brief outline of Medical Protective's status. He noted that the company has grown a great deal over the past years. In 2001 they show $325 million in written premium; in 2002 they show $570 million in written premium; and in 2003 it will be $700 - $800 million in written premium.

Being a GE Company, Medical Protective does have additional capital to invest, but even so, there are limitations on the extent of growth it can sustain. In the fall of this year, it

was decided that the company would slow its growth and the company began to review underwriting guidelines and where to invest capital in 2004.

With regard to underwriting guidelines, Ms. Schlosser stated that Northeast Ohio has the strictest guidelines, and the southwestern area has the least restrictive guidelines. The company looks at rating categories and breakdown of specialties. Specialties with the tightest restrictions are Emergency, Neurology, Pathology, Pulmonary, and Radiology. The strict limitations are to cut back on the company's growth. Medical Protective will not cover single doctors in these specialties, nor part-time physicians. When asked if the company is looking to decrease its presence in the Northeast, the response was "not decrease, but slow it down."

Mr. Draper explained that while medical liability rates are adequate and appropriate, affordability is still an issue. Mr. Draper asked what the Commission could recommend to the Governor and Ohio Legislature to help curb these rate increases.

Mr. Troyer made two suggestions:

1. Maintain competition in the market;
2. Rates are based on loss cost. Anything the legislature can do to reduce losses, whether it is to put a cap on economic damages, is going to be helpful.

OHIC UPDATE

Mr. Mazzotta reported on the status of OHIC, stating that business is continuing as usual. He stated that for 2004 the Company has a higher capacity in Ohio, yet OHIC will be more restrictive outside of Ohio.

OLD BUSINESS:

DRAFT INTERIM REPORT:

The Chair noted that only four suggestions have been received so far. More are needed as Jim Harrison of the Department drafts an outline to distribute during the first week of January, or shortly thereafter.

The next meeting of the Commission is tentatively set for January 21 in the morning.

DATA COLLECTION:

After consultation with the Department lawyers the Department confirmed that it cannot give individual statistics on the data collection market conduct exam. However, the Department expects to prepare a report showing aggregate data. The Chair stated that perhaps expanded access to this data should be discussed as a potential recommendation to the Legislature.

NEW BUSINESS:

OHIO ACADEMY OF TRIAL LAWYERS:

The Chair introduced the first witness, Mr. Gerald Leeseberg.

Mr. Leeseberg began by stating that the Ohio Academy of Trial Lawyers (OATL) believes that physicians are being charged too much for medical malpractice coverage. However, the OATL supports a thorough and fair evaluation of the problem.

Mr. Leeseberg discussed how HB 215 deals with medical review panels and medical case screening panels. Because of HB 215, a group of interested parties is trying to evaluate the legislation and feels that medical panels generally do not work. While all parties in the group feel HB 215 in its present form is unworkable, the group is meeting to discuss alternatives. Mr. Leeseberg stated that one proposal he made is certification of medical malpractice attorneys. He also drafted language for HB 281 regarding costs and sanctions to be assessed against plaintiffs who pursue cases found not to have merit.

After talking about medical review boards, Mr. Leeseberg stated that he was critical of Indiana's Patient Compensation Fund because it is not cost effective and requires almost four years to get a case through the medical review panel in Indiana (before going to trial). Mr. Leeseberg requested that all Commission members be given a copy of the report prepared by Tillinghast, Towers & Perrin in 1997 regarding the Indiana Patient Compensation Fund. Copy attached to the minutes. In conclusion, Mr. Leeseberg offered his future help in finding solutions to the issues.

JORGE GOMEZ, COMMISSIONER, WISCONSIN INSURANCE DEPARTMENT:

The Chair introduced Jorge Gomez, the Commissioner of Insurance for the State of Wisconsin. Commissioner Gomez gave a general overview of Wisconsin's Patient Compensation Fund which covers all doctors in the state. The Fund is governed by a Board and has seemed to stabilize the market in Wisconsin. A copy of the overview is attached.

THOMAS RUSHTON, DEPUTY SUPERINTENDENT, NEW MEXICO INSURANCE DIVISION:

The Chair introduced Mr. Thomas Rushton, Deputy Superintendent of the New Mexico Insurance Division. Mr. Rushton presented the Commission with an overview of New Mexico's Medical Review Commission and the New Mexico Patient Compensation Fund. Copies of the handouts are attached.

INDIANA DEPARTMENT OF INSURANCE PATIENT COMPENSATION FUND:

The final speakers for this meeting were Cynthia D. Donovan, Deputy Commissioner of Financial Services Operations, and Annette Gunter, Medical Malpractice Manager, Indiana Department of Insurance. They presented a slide production of an overview of the State of Indiana's Compensation Fund. Copy attached.

The Chair announced the next meeting date would be January 21, 2004 at 10:30 a.m. at the Department of Insurance. The focus will be on the preliminary report.

The meeting was adjourned at 5:06 p.m.

These minutes respectfully submitted by

Cheryl Fanaro
Executive Administrative Assistant III

END

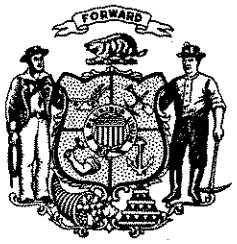

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EXHIBIT 3
— COMMISSIONER GOMEZ SUBMISSION TO OHIO MEDICAL MALPRACTICE COMMISSION

_WISCONSIN

Current state of medical malpractice insurance in WI

A recent publication from the American Medical Association listed WI as one of only 6 states in the country that is not in a medical malpractice crisis.

Factors contributing to this include the existence of the Patients Compensation Fund, tort reform and Wisconsin juries.

The Fund, and WHCLIP, provide health care providers with coverage while ensuring that funds are available to compensate injured patients. Participation in the Fund is mandatory, thereby eliminating the risk of adverse selection.

The non-economic cap and the wrongful death cap both have contributed to the well being of the medical malpractice environment in WI. It is estimated that the non-economic damages cap has resulted in a $144 million reduction in ultimate loss reserves. In addition, one factor that stands out is that WI, as compared to some other states, does not allow for punitive damages in medical malpractice.

In Wisconsin, we have not seen the very large jury verdicts that have been reported in other states. It is not uncommon to see verdicts in the $3-8 million dollar range, although some of those are reduced due to the caps.

The Board of Governors takes a very active roll in the Fund; it monitors the medical malpractice environment and is proactive in addressing changes in the practice of medicine. The Board has established a special committee to address recent changes and provide recommendations to include the areas of out of state practice and telemedicine. Currently the Fund will cover a WI physician practicing outside the state as long as more than 50% of his/her practice is in WI, and their primary insurance follows them out of state.

Since the inception of the Fund, there have been multiple changes affecting the fund, both environmental and legislative. The Board has strived to address these timely and effectively.

EXHIBIT 3
— COMMISSIONER GOMEZ SUBMISSION TO —
OHIO MEDICAL MALPRACTICE COMMISSION

Wisconsin Patients Compensation Fund

The Patients Compensation Fund provides medical malpractice insurance above primary limits established by law, currently $1,000,000/$3,000,000. The Fund provides unlimited coverage although there is a cap on non-economic damages and a cap on wrongful death. There is no cap on economic damages or medical expenses. In addition, punitive damages are not allowed pursuant to WI statutes.

As of December 31, 2002, there was a total of 12, 750 Fund participants comprised of 10,767 physicians, 122 hospitals, 455 nurse anesthetists, and the remainder consisting of health care entities.

Participation in the Fund is mandatory, however, the regulations do allow for exemption from Fund participation if the health care provider meets specific criteria. As of December 31, 2002, 9,577 providers licensed in WI were exempt from participation in the Fund. The majority of those were exempt either due to practicing less than 240 hours a year, or they were not practicing in the state.

From July 1, 1975 through December 31, 2002, 4,799 claims had been filed in which the Fund was named. (In order to recover from the Fund in Wisconsin, the Fund must be a named defendant) The total number of claims paid during this period was 597, totaling $535,168,653. 3,888 of those claims were closed with no indemnity payment.

The Fund operates with an annual administration budget of approximately $750,000, and an operating budget of $50,000,000. The administration budget includes the salaries of staff, general office expenses, actuarial services and investment consulting services. The Operating budget includes claim and loss adjusting expenses, as well as claims services and risk management services.

The Fund provides a written report to the Legislature on an annual basis which includes financial statements prepared in accordance with accepted accounting procedures and includes the present value of all claims reserves.

EXHIBIT 3
— COMMISSIONER GOMEZ SUBMISSION TO —
OHIO MEDICAL MALPRACTICE COMMISSION

Fund Operations

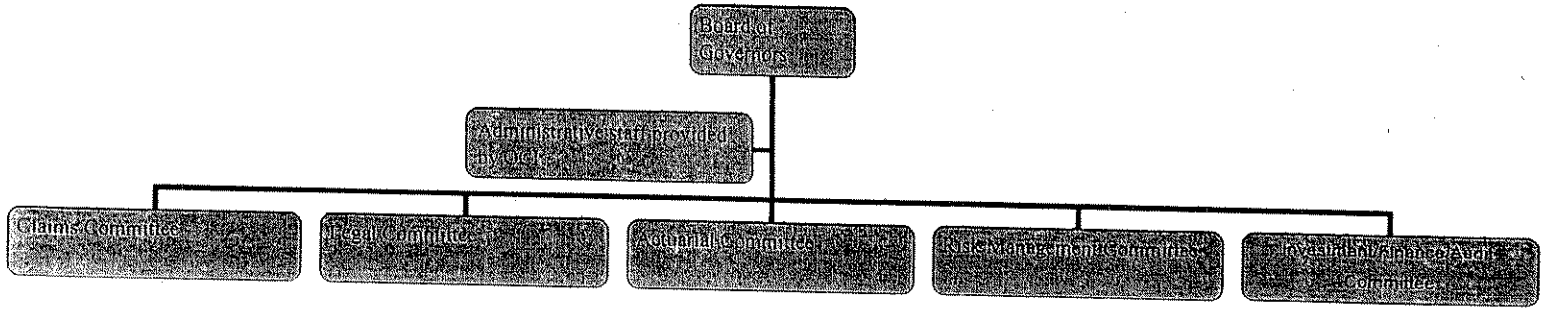
The Fund maintains a data base containing information on each licensed health care provider. The Fund receives data directly from the Department of Regulation and licensing regarding physicians and their license numbers. All health care providers must have on file with the Fund either a certificate of primary insurance (which must be filed by the primary carrier) or an exemption. If neither have been filed, the provider is in noncompliance, and if not resolved after receipt of 2 notices from the Fund, a letter is sent to the Department of Regulation and Licensing and the Medical Examining Board is notified and may take licensure action.

The Fund sends out assessment notices (bills) to all providers based on the information obtained from the primary carrier (we do not underwrite each risk). If the provider does not submit payment on a timely basis, that provider will be reported to the Department of Regulation and Licensing as being noncompliant with the Fund and the Medical Examining Board by take licensure action.

When claims are filed naming the Fund, coverage is first confirmed, then outside counsel is hired to represent the Fund. Chapter 655 Wis. Stat., does provide for the primary carrier to provide the Fund with an adequate defense, however, as a result of an appellate court decision ruling, the Fund must hire separate counsel on each case. The Fund counsel's role is to answer on behalf of the Fund, and monitor the case. In some instances the Fund's attorney may take an active role. These instances include when the primary tenders their limits to the Fund, or when the case has significant potential exposure to the Fund.

When a claims is settled or there is a judgement entered, the Fund tries to negotiate the use of structured settlements. This process is closely monitored by the Claims Committee.

EXHIBIT 3
— COMMISSIONER GOMEZ SUBMISSION TO OHIO MEDICAL MALPRACTICE COMMISSION —



Board of Governors: The Fund is governed by a 13-member Board of Governors that consists of 3 insurance industry representatives, a member named by the Wisconsin Academy of Trial Lawyers, a member named by the State Bar Association, 2 members named by the Wisconsin Medical Society, a member named by the Wisconsin Hospital Association, 4 public members named by the Governor, and the Commissioner of Insurance who serves as the chair. Administrative staff is provided by OCI.

The Claims Committee is responsible for the establishment of claim policies and procedures for the Fund and WHCLIP. The committee monitors the work performed by the claims contractor, reviews all claims with a reserve of $500,000 or more, and provides settlement authorizations on claims with a value in excess of $1 million. In addition, the committee monitors issues that arise from the claims, and makes recommendations to the Board regarding referrals to the legal committee or possible statutory changes as deemed necessary.

The Legal Committee advises the Board on legal issues, including retroactive coverage requests, appeals, proposed statutory changes, administrative rule changes, and other issues that affect eligibility or Fund participation.

The Actuarial and Underwriting Committee advises the Board on actuarial and underwriting issues. The Committee reviews actuarial data provided by the outside actuarial firm and makes recommendations to the Board regarding; setting of annual Fund fees, Fund loss and LAE reserves, WHCLIP rates, WHCLIP loss and LAE reserves.

The Finance/Investment/Audit Committee's responsibilities include establishing, monitoring, and amending as necessary, the investment strategy for the Fund and the Plan to ensure obligations are met. The Committee periodically reviews investments for compliance with investment guidelines and evaluates cash flow liquidity needs. In addition, the committee oversees the financial reporting process. Responsibilities include review of financial position and results, as well as correspondence with auditors concerning audit scope, accounting issues, internal controls, and management recommendations.

The Risk Management Committee works to implement programs and provide education to Fund and Plan participants to reduce patient/claimant compensable injuries, reduce Fund losses and associated expenses, improve the general quality of medical care, and reduce the premiums of participating health care providers.

Administrative Staff

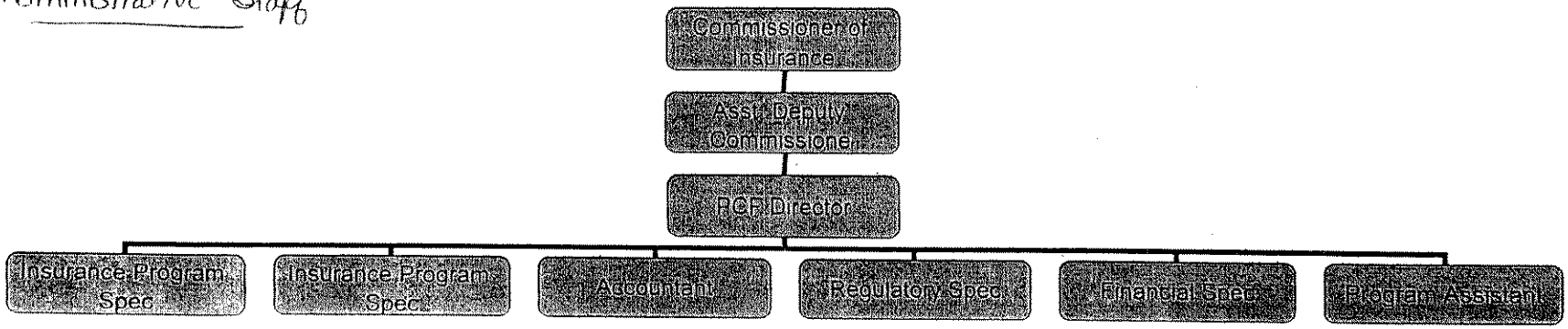


EXHIBIT 3 — COMMISSIONER GRAMER SUBMISSION TO OHIO MEDICAL MALPRACTICE COMMISSION

Fund Director: Responsible for the administration of the fund, including oversight of all aspects of the day to day operations of the Fund as well as oversight of the Plan manager for WHCLIP. Also oversees the work performed and contract compliance of 4 outside vendors.

Insurance Program Specialist - Claims: Responsible for the direct oversight of the claims manager, claims payment processing, and peer review. Serves as the liaison with the OCI IT department as is the Claims Committee staff member.

Insurance Program Specialist: Responsible for the preparation of reports, RFPs, and contracts. Conducts surveys for data collection related to billing and reports to the legislature. Assists with day to day operations as needed.

Accountant: Reponsible for the preparation of financial statements, monitoring of cash flows, preparation of vouchers for payment. Also serves as staff member to the Investment and Actuarial Committees. The accountant also maintains records of the future medical expense accounts.

Regulatory Specialist: Responsible for the insurance certificate filings. The processing of disks submitted, the follow up on errors, and the initiation of noncompliance procedures when a coverage gap is noted. Approximately 45,000 filings annually.

Financial Specialist: Responsible for all aspects of the billing function. Sends out bills, handles inquiries, reconciles group billings, initiates noncompliance procedures when a providers does not pay assessments on a timely basis. Approximately 35,000 bills annually.

Program Assistant: Responsible for all data entry of exemption forms and insurance certificates. Provides general support to all Fund staff. Enters all vouchers for payment. Provides general support to the Board of Governors including preparation of agendas.

EXHIBIT 3
— COMMISSIONER GOMEZ SUBMISSION TO —
OHIO MEDICAL MALPRACTICE COMMISSION

Outside Vendors

The Fund currently contracts with four outside vendors to provide services to the Fund. These include:

Actuarial services

The Fund contracts with an actuarial firm to provide the Board with recommendations regarding reserve levels for future claim payments and loss adjusting expenses, and to provide actuarial assistance in rate determination.

Claims services

The Fund contracts with an insurer to provide claims management services. The vendor actively manages claims and works closely with outside counsel as well as representatives of primary insurers.

Risk Management Services

The Fund and WHCLIP jointly contract with an outside vendor to provide risk management services to all WHCLIP policyholders Fund participants. This includes providing information on risk management as well as continuing education credit opportunities.

Investment consulting

The investments of the Fund are held by the State Investment Board pursuant to Wis. Statutes. The Investment Committee of the Board of Governors, works with an investment consultant to establish investment guidelines to be followed by the Investment Board, and to provide the Committee with annual analysis of performance of the investment portfolio.

END

END

EXHIBIT 4

OHIO MEDICAL MALPRACTICE COMMISSION REPORT

FINAL REPORT AND RECOMMENDATIONS

OF THE

OHIO MEDICAL MALPRACTICE COMMISSION

APRIL 2005

Commission Members

Ann Womer Benjamin, Esq.
Director
Ohio Department of Insurance
Columbus, Ohio
Chairman of the Commission

Steve Collier, Esq.
Connelly, Jackson & Collier LLP
Toledo, Ohio

George F. Dunigan II
Director of Government Relations
Ohio University COM/OOA
Columbus, Ohio

Ray Mazzotta
President & CEO
OHIC Insurance Co.
Columbus, Ohio

Frank Pandora II, Esq.
Sr. VP & General Counsel
Ohio Health
Columbus, Ohio

Gerald Draper, Esq.
Roetzel & Andress LPA
Columbus, Ohio
(Member from inception of Commission through June 2004.)

William Kose, MD
Rawson, Ohio

D. Brent Mulgrew
Executive Director
Ohio State Medical Association
Hilliard, Ohio

Hans Scherner, Esq.
Scherner Hanson & Cornwell LLC
Columbus, Ohio
(Member from July 2004 until conclusion of Commission)

Wayne Wheeler, MD
Portsmouth, Ohio

I. INTRODUCTION

Overview

The Ohio Medical Malpractice Commission was created in 2003 in legislation to address the medical liability crisis in Ohio. That legislation, Senate Bill ("S.B.") 281 (R-Goodman), was enacted in response to concerns that rapidly rising medical malpractice insurance premiums were driving away health care providers and compromising the ability of Ohio consumers to receive the health care they need.[1] The bill contained a comprehensive set of tort reforms aimed at addressing litigation costs and stabilizing the Ohio medical malpractice market. Governor Bob Taft signed S.B. 281 on January 10, 2003. The bill became effective on April 11, 2003.

In order to further analyze the causes of the current medical liability crisis, and to explore possible solutions in addition to tort reform, S.B. 281 created the Ohio Medical Malpractice Commission ("Commission"). The Commission is composed of nine members, including representatives of the insurance industry, health care providers, and the legal system. (Exhibit A). The Commission's first meeting was held in May 2003 and at the June meeting Commission members adopted the following mission statement:

"Provide available, affordable, and stable medical liability coverage for the Ohio Medical Community while providing for patient safety and redress for those who are negligently harmed."

The Commission's statutory requirements and mission statement indicate a desire among all members to conduct a thorough analysis of the causes of the current crisis. All Commission members are united in their intent to avert another crisis in which the health care of Ohio consumers could be compromised, and to mitigate the current crisis as possible. The Commission does note that many members voiced concern with the overall health system, including reimbursement rates for Ohio providers. Although reimbursement may be relevant to the affordability of medical liability coverage, the Commission has not examined that issue.

The enactment of S.B. 281 in Ohio was intended to respond to concerns raised by providers that Ohio medical liability insurance had become unaffordable, thereby creating a situation where medical liability insurance was no longer available to certain physicians.[2] Ohio's tort reform efforts were preceded by enactment of similar laws in other states. Among the states already with medical malpractice tort reform are Colorado, Indiana, Wisconsin, Louisiana, California, and New Mexico. These states are commonly referred to as "non-crisis" states as defined by the American Medical Association. A primary feature of such tort reform, including Ohio's, is caps on non-economic damages in medical malpractice lawsuits. While caps in some states include caps on economic damages (Colorado, Virginia, and Indiana) and lower caps than Ohio implemented, Ohio established caps on non-economic damages generally at $500,000, with a $1,000,000 cap for catastrophic injuries involving permanent and substantial physical deformity, loss of a limb or bodily organ system, or for an injury that deprives a person of independently caring for himself and performing life-sustaining activities.

Senate Bill 281 also changed the statute of repose to generally bar claims initiated more than four years after the occurrence of the act or omission constituting the basis of the claim, required a plaintiff's attorney whose contingency fees exceed the applicable amount of the limits on damages to file an application in the probate court for approval of the fees, and mandated lawsuit data reporting to the Department of Insurance.

Charge of Commission

As provided by S.B. 281, the Commission has two charges. First, the Commission is required to study the effects of the tort reforms contained in S.B. 281 on the medical malpractice marketplace. Second, the Commission is required to investigate the problems posed by, and the issues surrounding, medical malpractice. The Commission is required to submit a report of its findings to the Ohio General Assembly in April 2005.

Another piece of legislation impacting the Commission, Senate Bill 86 (R-Stivers), became effective on April 13, 2004. (Exhibit B). Senate Bill 86 added several additional charges to the Commission's mission. Those new charges require the Commission to

- Study the affordability and availability of medical malpractice insurance for health care professionals and other workers who are volunteers and for nonprofit health care referral organizations;
- Study whether the state should provide catastrophic claims coverage, or an insurance pool of any kind, for health care professionals and workers to utilize as volunteers in providing health-related diagnoses, care, or treatment to indigent and uninsured persons;
- Study whether the state should create a fund to provide compensation to indigent and uninsured persons who are injured as a result of the negligence or misconduct by volunteer health care professionals and workers; and
- Study whether the Good Samaritan laws of other states offer approaches that are materially different from the Ohio Good Samaritan Law.

Onset of the Ohio Medical Liability Crisis

In the late 1990's, the Ohio medical liability insurance market began to slip into what we now recognize as a crisis. Rapidly rising costs caused the profitability for insurers doing business in Ohio to plummet. In 1999, Ohio's medical liability insurers reported underwriting costs that were 50.2 percent higher than the premium they collected. In 2000, underwriting costs exceeded premium by 67.9 percent. (Exhibit C). Underwriting costs are those directly related to providing insurance, including claim investigation and payment, defense of policyholders and operating expenses. By 2000, companies were forced to react to the increasing costs and began to raise rates dramatically. By late 2001, insurers were leaving the market and rates were rapidly rising.

Since 2000, nine insurers have left the Ohio medical liability market. St. Paul, First Professionals, Professionals Advocate, Lawrenceville, Phico, Clarendon, CNA, Farmers, and Frontier all withdrew from Ohio and other states due to the difficulties faced in this line of business. The surplus lines market, where providers turn when admitted insurance carriers turn away business, grew significantly.

Health care providers faced increasing difficulty finding affordable medical liability insurance coverage since rates were rising rapidly. The five major medical liability insurance companies in the state, Medical Protective, ProAssurance, OHIC Insurance Company, American Physicians, and The Doctors Company, which collectively cover nearly 72 percent of the Ohio market, raised their rates dramatically. The attached exhibit shows the average rate change for Ohio "Physicians and Surgeons" since 2000. (Exhibit D). The average change in 2002 was the highest at 31.2 percent. Some areas of Ohio, such as the counties in the northeast and along the eastern border, experienced even higher increases. Medical specialties such as OB/GYNs, neurosurgeons, radiologists, and emergency/trauma providers were hit particularly hard.

Despite the rate increases, the premiums collected by medical liability insurers in Ohio have not been sufficient to cover the costs of providing insurance, such as the cost of investigation, defense and payment of claims and operating expenses. Financial reports by Ohio medical liability insurers have not shown a profit since the mid-1990's, with insurers reporting underwriting losses in each of the last five years. (Exhibit C). All five of the top insurers received downgrades from rating agencies over the last five years, and today only two have high "A-" ratings and one is unrated.

Another fact illustrating the crisis is the number of inquiries by Ohio providers and requests for help made to the Ohio Department of Insurance. Since late 2002, the Department has assisted 223 doctors regarding their medical liability insurance coverage. Many of the calls demonstrated that certain specialties such as obstetrics were particularly impacted by rate increases. Another 17 doctors asked the Medical Coverage Assistance Program (MCAP) to help them secure medical liability insurance coverage. Additionally, the Department has documented that 228 doctors have retired, reduced or eliminated high-risk procedures, or moved to another state. Of those doctors, 97 decided to drop their private practice, reduce or eliminate high-risk procedures, or otherwise change the service they provide; 68 decided to retire and 63 have moved to another state. As a result of these ongoing dialogues and concerns about the availability of physicians, the Department conducted a survey of Ohio providers to ascertain their concerns about the current crisis.

Impact of the Crisis on Doctors and Their Patients

In the summer of 2004, the Ohio Department of Insurance commissioned a survey of 8,000 doctors to understand how rising premiums affected the doctors' practices and their patients. (Exhibit E). The results demonstrated that the rising medical liability insurance costs have significantly affected physician behavior. Nearly 40 percent of the 1,359 doctors who responded to the survey indicated that they have retired or plan to retire in the next three years due to rising insurance costs, yet only 9 percent of the respondents were over age 64.

Northeast Ohio can anticipate the highest number of those retirements, with more than 40 percent of the local physicians planning to leave in the next three years.

Ohio's patient population is being impacted, with a significant reduction in patient services already having occurred. Sixty-six percent of doctors surveyed indicated that they have turned down high-risk procedure patients or have referred those patients elsewhere. The situation is critical in southeast Ohio, where 95 percent of doctors surveyed have declined or referred high-risk patients. In northeast Ohio, 48 percent of OB/GYN and family practice physicians reported they have stopped delivering babies due to high medical liability insurance costs. Over half of the osteopathic doctors who responded indicated that they are no longer delivering babies.

Rising insurance costs also have affected where doctors see patients. Doctors have reduced the number of patients they see in nursing homes and in home care and hospice settings. Southeast and northeast Ohio have been hit particularly hard with 60 percent of responding southeast Ohio doctors having cut their in-home visits, and 54 percent of responding northeast Ohio doctors reporting that they have done the same. Responding doctors also indicated that, as a result of these high medical liability premium costs, they are being forced to see more patients to remain financially viable and many are cutting staff. In short, the survey reported that high medical liability premiums are having an effect on health care services in Ohio, and that Ohio could soon face a crisis of access to care.

Initial Signs of Recovery

The Ohio medical liability market is beginning to show signs of recovery. Two new medical liability companies, OHA Insurance Solutions, Inc. and Healthcare Underwriters Group Mutual of Ohio, have been licensed in Ohio in the last year and a half. The five major medical liability insurers in the Ohio market have stayed in Ohio throughout these difficult times. These companies indicated to the Commission during a joint legislative hearing on April 19, 2004 that among other factors, Ohio's enactment of medical malpractice tort reform legislation made them more confident about the future of Ohio's medical liability marketplace.

Medical liability rates appear to be slowly stabilizing. In 2004, rates for the top five companies increased an average of 20 percent. The average increase, while still high, is smaller than that of the two previous years. So far in 2005, two of the top five insurers, Medical Protective and The Doctors Company, have filed and implemented rate changes averaging 12 percent. Moreover, in the past year, some of these insurers have filed decreases for some regions of the state. The Doctors Company lowered rates for General Practice by 1 percent in northwest and in southeast Ohio, and by 9 percent in central and southwest Ohio. Medical Protective filed a decrease of 3 percent for General Practice in northeast Ohio. By the end of 2005, Ohio may see average rate changes below 10 percent.

Ohio medical liability insurers are also slowly moving toward profitability, which helps ensure that the medical liability companies will remain in the market and will fulfill their financial obligations to their policyholders. Underwriting losses have steadily

decreased since 2000. (Exhibit C). While the latest year's results are not yet available, continued movement toward profitability is expected and the industry could report an operating profit for 2004 in Ohio. If that occurs, this will be the first year since 1997 that Ohio's medical liability insurance industry has reported a profit.[3]

Still in Crisis

While the Ohio medical liability market is beginning to recover, it is still in a state of crisis. Positive signs in the marketplace do not mean that doctors are no longer facing extremely high premiums. Although rate increases are stabilizing, doctors in Ohio are still suffering from the effects of rising rates. Premiums are overall much higher than they were just five years ago. For example, rates for OB/GYNs in Cuyahoga County for the top five companies averaged $60,000 in 2000. Now the average is $145,000. In Athens County, the average rate for neurosurgeons was $54,000 in 2000. Today the average is $125,000. General surgeons in Franklin County paid an average of $33,000 in 2000, and now face an average premium of $68,000.[4]

The continuing difficulties in finding affordable medical liability insurance coverage raise concerns that health care providers, particularly those in high-risk specialties, will further limit care, leave Ohio, or leave the profession entirely. Ohio health care consumers may experience increasing difficulty seeing the provider of their choice. Costs to consumers may also rise if providers defensively over-prescribe, over-treat, and over-test their patients to avoid potential lawsuits.

II. FINDINGS AND RECOMMENDATIONS OF THE COMMISSION

In this environment, the Commission held 26 meetings over a two-year period in order to meet its statutory charges. Speakers with expertise on particular medical malpractice-related topics were invited to testify before the Commission. The Commission heard testimony from actuaries, doctors, state regulators and other experts. A list of the Commission's meetings, the topics covered, and the witnesses who testified before the Commission is attached. (Exhibit F). Based upon a review of the testimony, the Ohio Medical Malpractice Commission makes the following findings and recommendations.[5]

A. Effects of Senate Bill 281

The Commission concludes that because of the nature of ratemaking - primarily relying on loss experience over a period of time - and the fact that most medical malpractice cases now being heard in Ohio courts are not subject to S.B. 281 because they were brought and/or arose before its effective date, the Commission cannot conclusively evaluate the effects of the new law on the Ohio market, or on medical malpractice cases in Ohio.

However, based on testimony and data from states that do have tort reform in place, the Commission fully expects tort reform to have a stabilizing impact on the medical malpractice market in Ohio over time. Insurance department representatives from Indiana, Wisconsin, and New Mexico testified about the positive impact damage caps and patient

compensation funds have had on their respective markets and statistics from those states and Louisiana show their relative market stability compared to Ohio's. (Exhibit G). In addition, the Texas commissioner testified that an in-house, peer reviewed study of their recent tort reform, which included a $250,000 cap on non-economic damages, estimated a 12 percent reduction in medical malpractice rates. Countrywide, those states with longstanding tort reform have more stable markets than Ohio's, and the American Medical Association's designation of non-crisis states also reflects this fact. (Exhibit H).

In addition, at the Commission's joint meeting with members of the House and Senate Insurance Committees on April 19, 2004, representatives of the five major medical liability insurers in Ohio (which hold about 70 percent of the market share) testified. Several indicated their increased confidence in operating in Ohio in light of the passage of medical malpractice tort reform, notwithstanding the fact that the industry has been losing money in Ohio since 1998. (Exhibit C). The Director of Insurance also has reported to the Commission that Department conversations with these insurers over the last two years indicate that a major reason they are still operating in Ohio is the passage of tort reform, since they are not compelled to remain in the market but are more optimistic the market will improve with tort reform.

RECOMMENDATION:

The Commission strongly recommends that S.B. 281 remain in effect in Ohio with the expectation that it will help to stabilize the medical malpractice market over time.

B. Ratemaking

The Commission heard testimony about ratemaking. Testimony included discussion of the ratemaking process, Department review of medical malpractice rate filings, various rate review standards such as "prior approval" and "file and use," and the role of investment income on ratemaking.

The Commission acknowledges and agrees with the testimony of most witnesses, including insurance actuaries, that the primary driver of medical malpractice rates is the costs associated with losses and defense of claims. For the three most recent years of financial reports, these costs have exceeded premiums collected by the top five medical malpractice insurance companies in Ohio by an average of 23.7 percent and have increased by 57 percent (241,488,088 to 378,313,587). (Exhibit I). In the last five years, rates for those insurers have increased more than 100 percent. (Exhibit D). The entire medical liability insurance industry has lost money in Ohio since 1998. (Exhibit C). Profit figures in Ohio for 2002 and 2003 show that the costs to provide this insurance exceeded premium by 46 percent in 2002 and by 30 percent in 2003.

Allegations that investment losses have caused the rapid rise in medical malpractice premiums in Ohio in the last several years are without basis. Returns on investments have been about 4 percent to 5 percent since 1999. Ohio law and regulation prohibit the recoupment of investment losses in prospective rates, and the Department ensures through

its rate review that this does not occur. ORC §3937.02 (D). Further, investment income primarily plays a part in ratemaking with respect to the estimated return on funds placed in reserves, to determine whether sufficient reserves, including investment earnings, will be available to pay claims. The Department reviews companies' estimates used in these calculations carefully.

Ohio's regulatory system for property and casualty rates is known as "file and use," meaning that while companies must file their rates with the Department, they may use them immediately. The Department can reject rates if after review the Department determines the rates are unfairly discriminatory, inadequate or excessive. Other states have different systems, such as "use and file" (no prior review) and "prior approval" (requiring insurance department approval before use). None of these systems appears to be distinctive in improving rates or insurance markets. In fact, according to some companies, prior approval often results in delays and political bickering before rate changes can be implemented, potentially impacting a company's financial condition. This concerns insurance regulators who also oversee the financial condition of insurance companies to protect consumers.

No legal requirement exists to compel companies to file their rate changes on a regular basis, although the practice in Ohio's volatile medical liability market has been for companies to file rate changes at least annually, and usually before a change has become effective to allow the Department time to review it beforehand. The Department has implemented procedures in the last two years to intensify scrutiny of rates and to hold companies accountable for proposed increases.

In addition, no legal requirement exists to compel companies to remain in Ohio. Despite the hard Ohio market and lack of profits in medical liability coverage, five major companies have remained in Ohio, two more have been licensed in the last year, and 32 additional companies continue to write at least $1 million in coverage each. This is a more positive trend following the departure of nine companies from Ohio between 2000 and 2002.

RECOMMENDATIONS:

1.) The Commission does not recommend a change in the rate review system in Ohio since rates are well regulated.

2.) The Commission recommends that the Department require medical malpractice companies to file and justify their rates, even if no change is requested, at least once every year.

C. Data Collection

Senate Bill 281, the tort reform bill, required clerks of court to report medical malpractice lawsuit data to the Department, which developed a system for collecting the data. However, testimony of the Department and county clerks indicated the insufficiency and unreliability of the data collected under that system. As a result, the Commission

recommended in its Interim Report the passage of legislation requiring more comprehensive data reporting.

Subsequently, House Bill 215 (R-Schmidt) was enacted September 13, 2004, requiring detailed data reporting to the Department by insurance companies and self-insureds. The Department recently promulgated O.A.C. 3901-1-64, effective January 2, 2005, implementing H.B. 215 and requiring medical malpractice insurers and others who assume liability to pay medical, dental, optometric, and chiropractic claims to report judgment, settlement and other closed case data to the Department. Further, H.B. 425 (R-Stewart, effective April 27, 2005) contained uncodified language requesting the Ohio Supreme Court to adopt a rule requiring attorneys to report fee expense information to the Department.

The Commission concludes that the new data reporting and collection requirements appear to be comprehensive and sufficient at the present time but should be evaluated after being fully implemented to determine whether additional changes are warranted.

Confidentiality of data continues to be an issue, however. The Commission agrees that the data should remain confidential, except in the aggregate. Members expressed concern that if specific individual case data were released, insurers might not be as forthcoming with accurate data and individual medical providers could be put at some risk. Two members believe that raw data should be available so that the public can draw its own conclusions.

RECOMMENDATIONS:

1.) The new data collection provisions of H.B. 215, O.A.C. 3901-1-64, and H.B. 425 should be evaluated annually after each annual cycle of data has been collected. The annual report by the Department required by H.B. 215 should provide the basis for this evaluation.

2.) Data collected should remain confidential as required by current law.

D. Medical Error Reduction

While long known to members of the medical and legal profession, errors in the delivery of health care occur. The Institute of Medicine report issued in 2000 entitled *To Err is Human: Building a Safer Health System* focused attention on this issue. In addition, although redundancies and checks within the health care delivery system help reduce error, medical errors do occur. Whether or not most errors result in lawsuits is not clear, although a 1991 New England Journal of Medicine article evaluating a 1984 New York study indicated that only 7.7 percent of actual cases of error result in lawsuits. In addition, a 2003 GAO report estimates that 70 to 86 percent of all medical malpractice verdicts result in no payment, suggesting that not all cases are deemed meritorious.

The Commission heard testimony regarding several initiatives occurring in Ohio to address medical error. A major initiative in this area jointly sponsored by the Ohio State Medical Association, the Ohio Osteopathic Association, and the Ohio Hospital Association is the Ohio Patient Safety Institute. This organization, formed in 2000, has investigated the development of a statewide system for reporting medical errors and has undertaken a variety of initiatives to raise the awareness of participants in healthcare delivery throughout the state to patient safety and the need for improvement. Another initiative was presented to the Commission by the Ohio University College of Osteopathic Medicine, which has developed a Patient Safety Committee to research the causes of error and promote a culture of safety. Commission member Frank Pandora pointed out that most large hospitals and hospital systems have initiatives to reduce error in health care delivery underway. The Ohio State Medical Board also has an interest in reducing medical error and a responsibility to investigate medical error brought to it in the form of complaints received. The Medical Board testified that it lacks sufficient resources to investigate all complaints received in a timely fashion.

The Commission heard testimony that much of the work in the area of patient safety is based on a "systems" approach to the reduction of medical error. The approach recognizes that the occurrence of an error in the delivery of health care may involve the failure of a system to perform appropriately rather than the failure of a single or small number of members of the health care delivery team. Such an approach does not necessarily de-emphasize individual responsibility but recognizes that systems should be designed to reduce the opportunity for error to occur, and in order to improve must go beyond the emphasis on individual blame.

In addition, the Commission heard testimony that improving the structure of the health care delivery system to improve safety will require extensive capital investment in the near future. Improving data systems and investment in technology to improve safety will need capital resources currently unavailable to many participants in the system. The Commission encourages the exploration of creative ways for state government to assist in the capital investment in the health care delivery system to make it the safest possible system.

Ohio lacks a statewide uniform medical error reporting protocol, requirement or system. Although the Joint Commission on Accreditation of Health Care Organizations imposes reporting requirements of so-called sentinel events on its accredited hospitals, these requirements do not extend to the outpatient environment and do not cover the entire scope of "medical errors."

The Commission also finds that, in spite of efforts by organizations described above, the state does not have an adequately funded, centralized system for the evaluation and dissemination of best practices in the area of patient safety. Six states have established "patient safety centers" with varying oversight and funding but all with a general mission of educating health care providers on best practices. The intended goals of such a center in Ohio would be to coordinate patient safety efforts at institutions across the state, work to identify best practices in patient safety, educate health care providers about best practices,

identify funding sources for the implementation of best practice strategies, develop data collection systems and protocols for error reporting and make appropriate recommendations to the legislature concerning the funding of such activities. Such a center should be structured as a partnership among appropriate state government units and appropriate private institutions, organizations and associations.

The Commission strongly believes there is a need for a coordinated and directed effort in medical error reduction. An important step would be the development of a medical error reporting system to allow the systematic study of the errors occurring to develop appropriate response to them. Confidentiality of data needs to be addressed. Members expressed concern that if specific individual patient, physician and hospital data were released, as opposed to aggregate data, such release may weaken the reporting of medical errors. The improvement of patient safety in Ohio is an important and appropriate goal and will require governmental support and partnerships with components of the health care delivery system.

The Commission believes that cooperative ventures among the Department of Health, the Ohio State Medical Board, other agencies, private institutions and organizations may be fostered to develop and implement a statewide protocol for medical error reporting and a statewide repository for such information. This would require legislation mandating and funding such an initiative, which would add legitimacy to this effort.

RECOMMENDATION:

The Commission strongly recommends the creation of a "patient safety center" as described above which would include the development of a medical error disclosure to patients protocol and a statewide uniform medical error reporting system.

E. Health Care Access, Recruitment, and Retention

The Commission heard specific testimony from leaders at medical education institutions in Ohio that recruitment of new doctors and retention of experienced doctors, particularly in certain specialties like surgery and obstetrics, have been impacted by the medical malpractice crisis. In addition to anecdotal evidence from doctors and hospitals across the state, the Doctors' Survey commissioned by the Department in the summer of 2004 reflected the alarming response from almost 40 percent of doctors responding to the survey that they have retired or plan to retire in the next three years due to rising insurance expenses. The Doctors' Survey also indicated an impact on health care access because of doctors' increasing unwillingness to conduct certain high-risk procedures or to see patients in certain locations (such as nursing homes) and doctors' increasing practice of ordering more tests to defend their medical decisions.

The State Medical Board testified that the number of licensed doctors in Ohio is increasing, but it does not keep track of the number of licensed doctors who are retired, who moved their practices to another state, or who have otherwise limited their practice by curtailing high-risk procedures.

The Commission concludes that a correlation exists between the medical malpractice crisis and access to health care and recruitment and retention of doctors. The efforts of the Department and legislature to stabilize the medical malpractice market should help Ohio retain physicians in the long-term. Various institutions are exploring their own initiatives to retain and recruit physicians, including providing coverage through captives and risk retention groups.

RECOMMENDATIONS:

1.) The Commission recommends the investigation of programs to forgive educational loans and other incentives for doctors in certain specialties and for those doctors who agree to stay in Ohio for a specified period of time.

2.) The State and the Department should continue to monitor patient access to health care and doctor departures, and advise appropriate parties and agencies of such issues.

F. Patient Compensation and Other Compensation Funds

The Department conducted a feasibility study of patient compensation funds in 2003 (Pinnacle Report) pursuant to the directive in S.B. 281, and hired another consultant in 2004 to develop specific models for a patient compensation fund (PCF) in Ohio (Milliman Report). Milliman recommended that an Ohio PCF provide coverage over a primary layer of $500,000, up to $1 million in coverage, and require participation by all health care providers, including self-insured providers, which would pay premiums to fund the PCF. The Milliman report concluded that the anticipated change in overall premium based on the recommended model would be about a 5 percent reduction. The Department's position is that the long-term stabilizing impact of a PCF warrants its serious consideration, but other Commission members were not persuaded by this argument. However, Commission members did recognize the thorough research of the Department and Commission on PCFs. Members do not believe that a PCF with only a 5 percent possible reduction in premiums would be beneficial. Ohio healthcare providers indicated they sought a more significant impact on premiums for them to support implementation of a PCF.

The Commission also heard testimony on two specialized funds in Virginia and Florida for birth-related injuries. No information appears to be available in Ohio on the extent of these types of cases.

RECOMMENDATION:

The Commission recommends that no further action on a PCF, funded solely by health care providers, be taken at this time.

G. Captive Initiative

The Department has developed legislation that would permit the formation of and provide for the regulation of captive insurers in Ohio. The Commission heard testimony about the advantages of captives - among other benefits, cheaper rates because of lower administrative costs - but discussed the need for financial standards and oversight in Ohio to protect doctors and patients. The Commission believes that such legislation could increase insurance capacity in Ohio, particularly needed in the medical liability market.

States like Vermont and South Carolina have captive statutes which allow captives to write a wide range of commercial coverage, not just medical liability. These states have attracted more companies to form captive insurers in their states rather than in offshore jurisdictions.

RECOMMENDATION:

The Commission recommends that the Department continue to investigate captive formation in Ohio, which could result in related legislation.

H. Non-Meritorious Lawsuits

The Commission recognizes that claims, settlements and lawsuits generate costs for insurance companies, whether or not any money is paid out to the claimant. The Commission heard considerable testimony that these cost factors drive premium increases. The failure to mitigate these costs will impact a provider's liability premium regardless of the underlying merits of the lawsuits involved.

Consistent with these concerns and recommendations made in the Commission's Interim Report, the General Assembly enacted H.B. 215 (effective September 13, 2004) which requested the Ohio Supreme Court's implementation of a rule of civil procedure requiring an affidavit of merit for the plaintiff at the initial filing of a medical malpractice case. The Supreme Court has finalized amended Civil Rule 10, which will be effective July 1, 2005. In addition, H.B. 215 provided for the filing of affidavits of non-involvement to excuse certain named parties, with the goal of dismissing certain inappropriate parties earlier in the process, thereby reducing associated costs. This provision became effective September 13, 2004.

Finally, H.B. 215 gives the Ohio State Medical Board disciplinary authority over out-of-state medical experts who come into the state to testify. This provision allows the Medical Board to monitor the caliber and veracity of medical experts in an effort to curtail unqualified "experts" from lending ostensible credibility to non-meritorious lawsuits.

The Commission also heard testimony on the viability of binding arbitration, pretrial screening panels, and medical review boards. The Commission research indicates many issues still need to be resolved regarding these proposals, including whether they are constitutionally feasible, reduce costs or save time. Evidence from states which currently

employ such measures was not conclusive on these issues. A pilot program for a less formal mediation alternative could avoid many of the constitutional issues which surfaced in the debate over pretrial screening panels and could be tested through the pilot program to evaluate its effectiveness.

RECOMMENDATIONS:

1.) The Commission recommends a pilot project of a less formal mediation alternative in conjunction with the Supreme Court.

2.) Although cost is a factor (typically a specialized court costs $100,000 per year per county), the Commission recommends a pilot project in one or more counties that establishes medical malpractice courts or dockets, which may provide increased efficiency and competency.

3.) The Commission recommends that the process reforms enacted in H.B. 215 be evaluated by the Supreme Court after they have been in effect for two years to determine their impact on medical malpractice cases. This evaluation should be reported to the Governor, legislative leadership, and the Department.

I. Charitable Immunity

The Commission was given a new task in Senate Bill 86 of the 125th General Assembly, which extended the charitable immunity law to volunteer health care professionals regardless of where they provide the service. The Commission was directed to review the following and finds accordingly with respect to each issue:

(1) The affordability and availability of medical malpractice insurance for health care volunteers and nonprofit health care referral organizations: According to testimony before the Commission, 87 percent of the members of the Ohio Association of Free Clinics find it difficult to access affordable professional liability coverage despite both the existence of Ohio's charitable immunity law and no lawsuits filed against Ohio free clinics. At least one Ohio medical liability insurance carrier is offering coverage for free clinic staff.

(2) The feasibility of state-provided catastrophic claims coverage to health care workers providing care to the indigent and uninsured: The Commission heard testimony from Virginia and Iowa, states that indemnify or provide state coverage for charitable providers. Ohio currently only indemnifies its state employees and does not have a statutory mechanism to indemnify others. To provide indemnification or to pay premiums would be a significant funding issue in Ohio.

(3) The feasibility of a state fund to provide compensation to persons injured as a result of the negligence of health care volunteers: Providing a state fund to compensate injured persons would also face funding hurdles. Further, since no claims have been made against Ohio free clinics, the Commission does not believe that a state fund to provide

compensation to persons injured as a result of the negligence of health care volunteers is currently warranted.

(4) Other states' Good Samaritan laws: The Commission also learned that Ohio's approach to charitable immunity is comparable to a majority of other states' approaches.

The Commission finds that S.B. 86 is a good step toward encouraging charitable care in Ohio. However, free clinics still have difficulty obtaining affordable medical liability coverage, even though no claims have been made against Ohio free clinics.

RECOMMENDATIONS:

1.) The Commission recommends the issuance of guidelines by the Ohio Department of Insurance which would require medical liability insurance carriers to incorporate into their underwriting and pricing of policies for free clinics appropriate modifications to reflect past and prospective claim experience in Ohio.

2.) The Commission recommends the inclusion of free clinics in a statewide medical error reporting system in order to ensure that patients are receiving the best care possible.

J. Medical Liability Underwriting Association

House Bill 282 (R-Flowers, enacted April 4, 2004) provided for the transfer of the $12 million previously held by the 1975 Ohio Joint Underwriting Association into a new fund that could be used to create a new medical liability company or to fund other medical malpractice initiatives as approved by the Ohio General Assembly. The legislation also gave the Director of Insurance authority to create a Medical Liability Underwriting Association ("MLUA") if the current medical malpractice market were to further deteriorate. The MLUA would write primary insurance coverage for doctors unable to find coverage.

RECOMMENDATION:

Due to the unpredictable and volatile nature of the medical malpractice market, and the Department's recent testimony on stabilizing but still uncertain market conditions, the Commission strongly urges the legislature to retain the current funding set aside for the potential enactment of the MLUA and for future medical malpractice initiatives.

K. Miscellaneous Recommendations

1.) During the hearings, several physician witnesses testified on the difficulty of affording the current premiums for professional liability coverage. Even more troublesome than the current pricing is the necessity of purchasing prior acts or "tail" coverage to protect and maintain existing coverage limits after retirement or changing companies. Under previous custom a company would grant a deceased,

disabled or retiring practitioner continuing coverage for any events/claims occurring during the existence of the policy's terms at no additional cost. Medical liability insurers traditionally provided tail coverage as a prepaid component of prior premiums. Companies require an amount equal to 1-2 years of mature premium prior to the physician retiring before the end of the five-year vesting period, or changing from one company to another. Additionally, market conditions have forced some physicians to switch professional liability companies several times, creating the necessity of purchasing of multiple tail policies.

According to comments by Texas Insurance Commissioner Jose Montemayor, the state of Texas has a mechanism to address part of this problem. When a company that sold policies in Texas leaves and refuses to offer a tail policy for a physician's liability coverage, the existing Texas Joint Underwriting Authority ("JUA") is authorized to provide that tail policy coverage to the physician when he or she purchases primary coverage from the JUA.

As stated earlier in this report, nine companies left Ohio between 2000 and 2002, forcing their policyholders to find tail liability policies from those companies even if the companies' financial conditions were questionable or the companies were no longer doing business in the state. Ohio has already recognized the importance of maintaining the availability of medical professional liability insurance by creating the statutory authority to establish the MLUA. The MLUA would provide primary coverage in case the remaining carriers were to decide to leave Ohio or limit their participation in the market.

The Commission recommends that the Department of Insurance investigate the economic implications of the MLUA or another state insurance entity providing prior acts or tail coverage if the original insurer has become insolvent or stopped doing business in the state. The results of this investigation could provide the basis for legislation.

2.) The Commission recommends that if the Department determines that the long-term medical malpractice market has stabilized and the future funding of an MLUA is unnecessary, then the current MLUA funding should be directed to fund other medical malpractice initiatives.

3.) The Commission recommends that the Department continue to monitor the medical liability market in Ohio, and recommends that biennially, beginning two years after issuance of this report, the Department provide a market analysis of the medical liability market to the Governor and the legislature.

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[1] Senate Bill 281 (124th General Assembly, enacted April 11, 2003), section 3(B)(1) and (2): "[T]he General Assembly declares its intent to accomplish all of the following by the enactment of this act: (1) To stem the exodus of medical malpractice insurers from the Ohio market; [and] (2) To increase the availability of medical malpractice insurance to Ohio's hospitals, physicians, and other health care practitioners, thus ensuring the availability of quality health care for the citizens of this state. . . ."

[2] Senate Bill 281 (124th General Assembly, enacted April 11, 2003), section 3(A)(3)(c): "As insurers have left the market, physicians, hospitals, and other health care practitioners have had an increasingly difficult time finding affordable medical malpractice insurance. Some health care practitioners, including a large number of specialists, have been forced out of the practice of medicine altogether as a consequence. The Ohio State Medical Association reports 15 percent of Ohio's physicians are considering or have already relocated their practices due to rising medical malpractice insurance costs."

[3] "State of the Medical Malpractice Market," Ohio Department of Insurance Director before the Ohio Medical Malpractice Commission, February 28, 2005.

[4] Top five companies' medical malpractice 2000-2004 rate filings submitted to the Ohio Department of Insurance.

[5] Minority views will be expressed separately.

END

END

EXHIBIT 5

"OOPAC" REPORT ON GOMEZ TESTIMONY

OOPAC
Ohio Osteopathic Political Action Committee

February 2004

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Robert S. Juhasz, DO
George Thomas, DO

* * * * * *

2004 Elections

Ohio Primary Election
Tuesday, March 2, 2004

General Election
Tuesday, November 2, 2004

Polls are open 6:30 AM to 7:30 PM. Voters must be registered 30 days before the election.

* * * * * *

What is OOPAC?

The Ohio Osteopathic Political Action Committee (OOPAC) augments legislative activities by raising money to support candidates for state office who are responsive to the concerns of osteopathic physicians.

OOA Works to Retain JUA Funds for Medical Liability Solution

The Ohio House of Representatives unanimously passed a bill granting authority to the Ohio Department of Insurance (ODI) to transfer $12 million left in the state's former Joint Underwriting Association (JUA) to an ODI trust fund for possible future use in combating the medical liability insurance crisis.

The bill was initiated by ODI at the suggestion of Ohio Osteopathic Association Executive Director Jon F. Wills, who pointed out the account was scheduled to be dissolved and transferred to the General Revenue Fund by the end of 2003. Wills and OOA Director of Government Relations George F. Dunigan participated in "mark-up" sessions with ODI officials, healthcare providers and Rep. Geoff Smith (R-Columbus), chair of the House Insurance Committee, to finalize a substitute version of the bill that was acceptable to both the insurance community and healthcare providers.

The bill, HB 282, gives ODI the authority to create a new Medical Liability Underwriting Association, which could provide insurance coverage for physicians if the private insurance market significantly deteriorates.

The bill now goes to the Ohio Senate for further consideration.

Wills noted the OOA consistently opposed efforts to dismantle the JUA, particularly in 1991 when the state took some $50 million from it to help balance the state budget. "OOA was strongly opposed to the action," he said, "because the money came from premiums paid by Ohio's medical community and should have been retained or used to support initiatives to promote patient safety or provide an insurance safety net in times of emergency."

Wills said the OOA only supports the reactivation of the JUA as a last resort and firmly believes the remaining assets should be used in new ways to complement the private market. For example, the JUA could offer tail policies over a defunct company, reinsurance for licensed medical professional liability companies in the Ohio market, and excess coverage for high-risk medical specialties like obstetricians and neuro or vascular surgeons.

Wills explained to legislators that Ohio physicians continue to experience dire financial consequences that are seriously impacting patient access to care. "Since January 2003, professional liability insurance premiums have increased an average of 30 percent, in spite of the passage of tort reform legislation," he said. "Three of the five companies offering medical professional liability coverage in Ohio have been downgraded by insurance rating services--and one remains on the watch list."

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Ohio Med Mal Commission Examines Other States' Systems

In an effort to better understand what other states have done to address the medical professional liability insurance crisis, the Ohio Department of Insurance's (ODI) Medical Malpractice Commission examined model medical review boards and patient compensation funds from other states during the group's December 2003 meeting.

Ohio Osteopathic Association Director of Government Relations George F. Dunigan serves on the Commission.

Jorge Gomez, from the Wisconsin Office of the Commissioner of Insurance, said his state's Patient Compensation Fund was created in 1975 to provide excess medical malpractice insurance for healthcare providers. The fund is governed by a 13-member board that is assisted by a Legal Committee, a Claims Committee, an Underwriting and Actuarial Committee, an Investment and Audit Committee, a Risk Management Steering Committee, and a Peer Review Council. Administrative costs, operating costs, and claim payments are funded through assessments on participating healthcare providers. Participation in the fund is mandatory. As of December 31, 2002, there were 12,750 fund participants including 122 hospitals with 28 affiliated nursing homes; 10,767 physicians; 455 nurse anesthetists; 22 hospital-owned or controlled entities; 10 ambulatory surgery centers; two cooperatives; 52 partnerships; and 1,292 corporations actively participating in the fund. Physicians comprise 85 percent of the participants and corporations make up 10 percent.

Gomez said non-economic caps and wrongful death caps have contributed to the well being of the medical malpractice environment in Wisconsin. "It is estimated the non-economic damages cap has resulted in a $144 million reduction in ultimate loss reserves," he said. "In addition, one factor that stands out is that WI, as compared to some other states, does not allow for punitive damages in medical malpractice."

New Mexico Division of Insurance Deputy Superintendent Thomas R. Rushton explained the New Mexico Medical Review Commission had received a total of 3,297 applications involving 4,485 providers. He said the Commission found 77 percent of providers were not negligent. Rushton noted the percentage has remained virtually unchanged over the past decade.

"When I started this job 14 years ago, the patients were prevailing in 19.5 percent of their claims against individual providers. Now that percentage has been reduced to 3.5 percent," Rushton said. "As many states are experiencing run-away malpractice insurance premiums I am getting calls from administrators in several of these states who are desperate to learn about the unique New Mexico system."

Indiana officials said their final adjudication and settlement process might be a possible solution for Ohio. Their system requires:

- A healthcare provider's insurer notify the state's Insurance Department Commissioner of any malpractice case upon which the insurer has placed a reserve of at least $125,000. The notice and all related communications and correspondence are confidential.
- All malpractice claims settled or adjudicated to final judgment against a healthcare provider are reported to the Commissioner by the plaintiff's attorney and by the healthcare provider, insurer, or risk manager within 60 days following the final disposition of the claim.
- The report to the Commissioner must include the nature of the claim; the damages asserted and the alleged injury; the attorney's fees and expenses incurred in connection with the claim or defense; and the amount of the settlement or judgment.

Indiana Department of Insurance Deputy Commissioner of Financial Services Operations Cynthia D. Donovan and Medical Malpractice Manager Annette Gunter briefed the

continues on back page

Blackwell's Sales Tax Repeal Could Hurt State Health Programs, Higher Ed

An effort led by Ohio Secretary of State J. Kenneth Blackwell to repeal the one-cent sales tax increase that the Ohio General Assembly enacted to help balance the state budget is under close scrutiny by social service advocates, medical organizations, and others including the Ohio Osteopathic Association,

State lawmakers approved the temporary statewide sales tax increase effective July 1, 2003, as part of the state's two-year budget package. Legislators said the increase was necessary to balance Ohio's $49 billion budget. The increase, from 5 percent to 6 percent, is expected to raise $2.4 billion for state programs over the biennium. By law, the tax is scheduled to revert back to 5 percent on June 31, 2005.

Since Ohio law does not permit a direct referendum on the sales tax increase, Blackwell's Citizens for Tax Repeal is using the initiative statute process. Its effect is the same as a direct referendum. Under the process, Citizens for Tax Repeal collected more than 155,000 signatures in hopes of forcing the issue before the Legislature. They need 96,870 valid signatures of registered voters in at least 44 of Ohio's 88 counties. But opponents filed protests to his petitions in 40 counties with other protests likely to follow.

The Campaign to Protect Ohio's Future and Citizens for Fiscal Responsibility say an early end to the temporary penny-per-dollar increase would cost the state $800 million for the next fiscal year and lead to an equal amount of cuts in healthcare, education, safety forces, and other essential areas. That figure equals more than the combined budgets of the departments of Aging; Alcohol and Drug Addiction Services; Development; Health; Mental Retardation and Developmental Disabilities; Minority Health; and the Rehabilitation Services Commission.

Although Citizens for Tax Repeal has not offered a substitute source of funds, Blackwell said spending cuts could be made in Medicaid coverage for the poor, including the nursing home reimbursement, which have automatic increases built into Ohio law.

If Blackwell is successful, the Legislature would have four months to pass the repeal. If they fail to act, Blackwell's group could collect another 96,870 signatures and put the issue on the November 2, 2004, ballot. Voter approval would end the tax December 2. However, opponents' protest filings along with hearings in each county to determine valid signatures, and then possible court appeals ultimately give supporters little time to collect additional signatures to qualify for the fall ballot.

Feds' Moratorium Affects Ohio Bill

An 18-month federal moratorium, issued in December 2003 on new physician-owned specialty hospitals, mirrors pending legislation in Ohio. This federal moratorium makes it unnecessary for proponents to seek enactment of similar state legislation proposed in HB 71 by Rep. Jon Peterson (R-Delaware).

The federal moratorium is contained in Congress' HR 1, the Medicare Modernization Act, which was signed into law. Both in its original form and as subsequently modified, the federal law parallels Peterson's approach.

As a statewide organization representing DOs, osteopathic hospitals, and the Ohio University College of Osteopathic Medicine in Athens, the OOA leadership strongly believes it is necessary when developing any policy position to consider the collective needs of the entire osteopathic community as related to patient care and community service. The OOA released a white paper on the issue. It is available at www.ooanet.org/pdf/whitepaperboutiquehospitals.pdf.

Government, Healthcare Leaders Discuss Future of Medicine at OOA Health Policy Forum Videoconference

Some 200 physicians, medical students, and hospital staff at 12 locations across Ohio participated in the second annual Health Policy Forum videoconference hosted by the Ohio Osteopathic Association (OOA) on January 26, 2004. The four-hour session was broadcast via OhiONE, a videoconferencing and telemedicine system that provides real-time, two-way video communication among the Ohio University College of Osteopathic Medicine and hospitals affiliated with the Centers for Osteopathic Research & Education (CORE).

Ann Womer Benjamin, director of the Ohio Department of Insurance; Sen. Eric Fingerhut (D-Cleveland); David Martin, president of The Premium Group, Inc.; Barb Edwards, deputy director of the Ohio Department of Job & Family Services; Tina Kielmeyer, chief of Injury Management Services at the Ohio Bureau of Workers Compensation; Mary Yost, vice president of Public Affairs for the Ohio Hospital Association; and Paul Martin, DO, were among those participating in the broadcast. OOA Health Policy Chair Peter A. Bell, DO, of Columbus, and OOA Executive Director Jon F. Wills served as moderators.

The Forum kicked off with a panel presentation, *Medical Professional Liability Insurance Crisis -- What's Next?* featuring Womer Benjamin, David Martin, and Fingerhut. Womer Benjamin discussed the work of the Medical Malpractice Study Commission which she chairs and recent amendments to retain JUA funds while David Martin, who is president of one of the largest brokers for medical malpractice in Ohio, provided an update on the market. Fingerhut said tort reform is not enough to address the situation, which he compared to a burning house. "The house is burning, it's a four-alarm fire and the response has been with a garden hose," he said. "And that garden hose is directed at a yapping dog next door."

The Ohio Department of Job & Family Services contributed to the dialogue with Edwards' discussion on the future of Medicaid in Ohio. "This is a huge part of the state's budget," she said. "Ohio's blind and disabled population is the smallest segment at 24 percent currently receiving Medicaid but they consume 74 percent of the funding available."

As for workers compensation, Kielmeyer spoke of the group's Health Partnership Program and other quality initiatives instituted by the Bureau. She noted BWC is aiming to contain skyrocketing medical costs.

The Ohio Hospital Association's Yost and OOA President Paul Martin, DO, discussed specialty hospitals and economic credentialing. Yost explained the federal moratorium on building new specialty hospitals and said the 18-month freeze provides an opportunity for the entire healthcare community to address the issue. Paul Martin explained the OOA's position that hospital privileges should be based on training, expertise, competence, and a staff development plan and should be unrelated to professional or business relationships or having medical staff membership or privileges at another hospital system. He stressed that physicians and hospitals must work together and remain focused on providing quality, cost effective healthcare services that address the needs of Ohio patients.

Wills echoed the sentiment. "This debate is causing the two groups to shift focus from what is important—and that is patient care," he said. "The community is not served when they don't work together and this is frustrating for everyone involved. The Health Policy Forum was an attempt to bridge the two sides."

The 12 sites airing the closed-circuit telecast were OhioHealth/Victorian Village Health Center (Columbus), Doctors Hospital of Stark County (Massillon), Grandview Medical Center (Dayton), Richmond Heights Hospital, St. Vincent Mercy Medical Center (Toledo), Cuyahoga Falls General Hospital, St. Joseph Health Center (Warren), Southern Ohio Medical Center (Portsmouth), O'Bleness Memorial Hospital (Athens), South Pointe Hospital (Warrensville Heights), St. John West Shore (Westlake), and Ohio University College of Osteopathic Medicine (Athens). Speakers were located at the Columbus, Dayton, and Warrensville Heights locations.

OhiONE—Osteopathic Network of Excellence—is the latest high-tech learning equipment for medical students, interns, residents, and others. OhiONE gives CORE sites the ability to interact with other colleges of osteopathic medicine across the nation as well as other hospitals on the network, such as the Cleveland Clinic. Users are able to converse back and forth during basic science and clinical tutorials; case-study presentations and discussions; live demonstrations of surgeries; examinations; and guest lectures, like the Health Policy Forum.


Ann Womer Benjamin

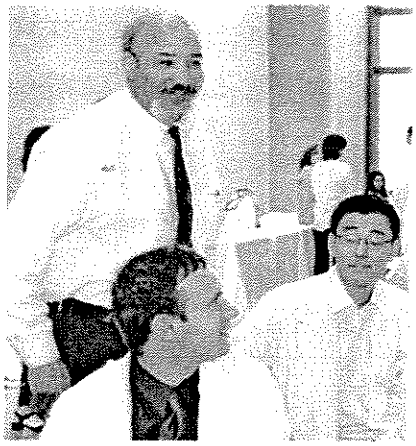

Sen. Eric Fingerhut


Barb Edwards


Tina Kielmeyer


Mary Yost


Paul Martin, DO



DO Day 2003 (l-r) State Sen. Tom Roberts, of Dayton (standing) meets with medical students from Grandview Hospital while state Rep. Jeanine Perry, of Toledo, chats with a medical student after he checked her blood pressure.

OOA Gears Up for Next DO Day

Last year, the OOA hosted a very successful DO Day at the Ohio Statehouse as some 200+ osteopathic physicians, medical students, and others were highly visible at committee hearings, Senate session, and throughout the Statehouse complex where signs and banners announced the occasion. Plans are underway to repeat the highly-regarded event on Wednesday, April 28, 2004.

DOs, medical students, and other supporters of osteopathic medicine are encouraged to attend. While specifics are still to be determined, the event will include a health fair, meetings with legislators, recognition in the House and Senate chambers, and an opportunity to showcase osteopathic medicine in Ohio. All members of the General Assembly, their staff, lobbyists, media, and Statehouse visitors will be invited to stop by the Atrium to visit displays, have a health screening, and meet with physicians and medical students to discuss healthcare issues facing all Ohioans.

At the 2003 DO Day, Senate President Doug White (R-Manchester) was among the legislators participating in health screenings. Other legislative leaders who attended included Senate Minority Leader Greg DiDonato (D-New Philadelphia); House Speaker Pro Tempore Gary Cates (R- West Chester); House Minority Leader Chris Redfern (D-Port Clinton); and House Minority Leader Dale Miller (D-Cleveland). Statehouse press also attended the event, as did a Statehouse photographer who posted photos on his website.

In addition to blood pressure, blood sugar, and cholesterol screenings provided by Ohio University College of Osteopathic Medicine (OU-COM) Community Service Programs, South Pointe Hospital offered oxygen level screenings and Amelia G. Tunanidas, DO, provided OMT (and even manipulated a legislator). Other exhibitors included the Auxiliary to the Ohio Osteopathic Association, OhioHealth/Doctors Hospital, as well as displays from several OU-COM departments highlighting research, technology, financial impact, medical missions, and outreach services of the profession. Tours of the OU-COM Mobile Health Unit were also on the schedule, as the van was parked just outside the Statehouse.

DO Day at the Ohio Statehouse

Wednesday, April 28, 2004

Watch your OSTEOFAX for details!

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Lawmakers Give PTs Direct Access

Legislation permitting the practice of physical therapy without a prescription or referral from a physician, dentist, podiatrist or chiropractor was approved by the Ohio General Assembly and is on its way to enactment.

Throughout the legislative process, the Ohio Osteopathic Association and other healthcare organizations voiced concerns about the bill, citing patient safety as a key factor. The physician groups were successful in adding language to the bill which restricts access to only patients who are considered "walk ins;" restricts access to cash patients; increases the educational requirements for physical therapists who seek to treat these patients; and mandates notification by PTs to the patient's physician.

An amendment to require formal collaborative agreements--where physicians and physical therapists jointly develop written treatment protocols--was not accepted.

continued from inside

Commission

Ohio commission on the background, funding, surcharges, and complaint system of the Indiana Patient Compensation Fund and the Medical Review Panel. The panel has the sole duty to provide expert opinion as to whether or not the evidence supports the conclusion that the defendant acted or failed to act within the appropriate standards of care as charged in the complaint. After reviewing evidence, the panel issues one or more of the following opinions: malpractice; no malpractice; or material issue of fact, not requiring expert opinion.

The opinion is admissible as evidence in any action subsequently brought by the claimant. However, the opinion is not conclusive, and either party, at their expense, has a right to call any member of the medical review panel as a witness.

A panelist has absolute immunity from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of duties.

The OOA Works for You, So You Can Take Care of Patients

New Medical Liability Insurer OKed

OHA Insurance Solutions, Inc. (OHAIS) was licensed to sell medical liability coverage statewide to a limited number of physicians starting January 1, 2004, and to hospitals two months later. OOA Executive Director Jon F. Wills serves on the Ohio Hospital Association Task Force that studied the medical insurance market.

Medicaid Reform Underway

The Ohio Commission to Reform Medicaid, a panel of executive and legislative branch appointees, began their work comparing Ohio's reimbursement rates and spending to other states; determining quality and efficiency; and exploring how the system can become more cost effective. Financially, Medicaid has the potential to bankrupt the budget of the state of Ohio—as well as every other state in the country. Five years ago, the state Medicaid budget was approximately $5.5 billion. Today, that number has grown to $8.8 billion, a 60 percent increase. In the next two years it is expected to increase to more than $10 billion.

Higher Education Commission

The chancellor of the Ohio Board of Regents suggested to the Governor's Commission on Higher Education and the Economy that regents be given authority to eliminate unnecessary duplication in graduate programs and conduct an evaluation of state spending for medical schools. The OOA is monitoring the Commission's response. The state currently spends about 8 percent of overall subsidy for medical education.

OOA Fights FCC

In collaboration with the nationwide association community, the OOA successfully fought for relief from proposed Federal Communications Commission (FCC) regulations governing "unsolicited" fax communications. The proposed fax rules would have significantly hampered OOA's communication with member physicians, including publications like the OSTEOFAX.

Physician-Hospital Relations

The OOA has initiated meetings with other healthcare and medical associations to examine physician-hospital relations and stimulate the parties to look toward collaborative and cooperative alternative mechanisms in order to fulfill community healthcare needs in the future. The OOA envisions getting beyond the morass of current challenges to look at the bigger systemic issues and help create a positive vision for the entire healthcare community.

OOA Co-Sponsors Rx Assistance Site

The OOA teamed with PhRMA and 35 other healthcare organizations to provide a free online patient assistance database enabling Ohioans to find information about prescription drug coverage programs. Rx for Ohio, at www.rxforohio.org, connects visitors with information about more than 1,400 medicines available at no cost.

House of Delegates

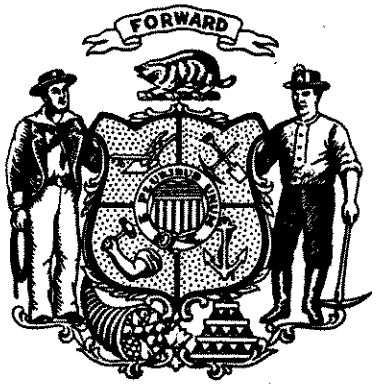
Per tradition, the OOA House of Delegates will convene during the Ohio Osteopathic Convention, slated for June 24-27, 2004, in Sandusky at The Lodge at Sawmill Creek. In a change from recent years though, delegates will meet in afternoon sessions. The House schedule is below.

OOA House of Delegates
The Lodge at Sawmill Creek, Sandusky

Friday, June 25, 2004
2:00-4:00 PM
House of Delegates
4:00-5:30 PM
Reference Committee Meetings
5:00-7:00 PM
College Alumni Receptions
7:00 PM
Fun Night

Saturday, June 26, 2004
12:00 Noon
Convention Luncheon
1:45 PM
Academy Caucuses
3:00-5:00 PM
House of Delegates
7:00-10:30 PM
Inaugural Reception & Banquet

END



END

CURT GIELOW

State Representative

Response Ltr to Rep. Colon et al., part of public record

September 26, 2005

Honorable Representative Pedro A. Colon
Honorable Representative Jon Richards
Honorable Representative Bob Turner
Honorable Representative Jim Kreuser
State Capitol
Madison, Wisconsin

Gentlemen:

Thank you for your letter of September 15, 2005 expressing your collective views on the issue of medical malpractice reform as now being discussed by the Speaker's Task Force on Medical Malpractice.

Before the end of October the Task Force will develop recommendations for legislation that will again establish maximum awards for non-economic damages in medical malpractice cases that will hopefully meet any future challenge of constitutionality. The Task Force members are mindful of the suggestions and opinions of the Supreme Court and I'm sure will try to comply as best possible by recommending responsive solutions.

As you have all suggested the Task Force will hopefully provide thoughtful rationale and findings in bringing forth its recommendations for legislation.

I do not share your opinion that without injured patient or victim input we can reach a reasonable recommendation that will meet constitutionality.

Thank you for your thoughtful letter.....even though you spelled my name wrong!

Respectfully yours,

Curtis C. Gielow
State Representative
Chair, Speaker's Task Force on
Medical Malpractice Reform

State Capitol: P.O. Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-0486 • Toll-Free: (888) 534-0023 • Rep.Gielow@legis.state.wi.us
District: P.O. Box 504 • Mequon, Wisconsin 53092 • (262) 242-2728

Speaker Gard's Medical Malpractice Reform Task Force
September 29, 2005
Meeting Minutes

Members: Present: Rep. Curt Gielow, Rep. Mike Huebsch, Rep. Anne Nischke, Rep. Jason Fields, Rep. Bob Ziegelbauer, Mr. David Strifling, Dr. Clyde "Bud" Chumbley, Ms. Mary Wolverton, Mr. Ralph Topinka, and Mr. David Olson. Absent: None.

At approximately 10:05 a.m., the Chair of the Task Force, Rep. Curt Gielow, called the meeting to order.

The meeting began with opening remarks by Chairman Gielow setting out the mechanics to be followed at the hearing: Legislative Council staff would review the memorandum outlining the recommendations received from Task Force members, each Task Force Member would explain his/her recommendation and a discussion on each point would follow.

The clerk called the roll.

Richard Sweet of the Legislative Council reviewed the Wisconsin Legislative Council memorandum 'Re: Possible Recommendations' dated September 27, 2005. Members of the Task Force discussed each recommendation and option. The Task Force came to a consensus on several items that will be in the recommendation letter to the Speaker of the Assembly and several items/options that would be removed from further consideration.

Prior to adjournment Chairman Gielow discussed the plan for the next hearing of the Task Force. It is anticipated that the next hearing will be the final hearing of the Task Force. Legislative Council will draft a letter of Task Force recommendations to submit to the Speaker of the Assembly. That draft letter will be distributed to Task Force members prior to the next hearing and will be discussed at the next hearing. Task Force members are asked to review the draft letter and to be prepared to discuss and possibly vote on the recommendations contained in the letter at the next hearing.

The next hearing of the Task Force will be: Thursday, October 6, 2005 at 1:00 p.m. in room 328 NW, State Capitol.

The hearing was adjourned at approximately 12:00 p.m. (noon).