

# People's Medical Society®

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STATEMENT OF THE PEOPLE'S MEDICAL SOCIETY  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
AMENDMENT TO THE HEALTH CARE SERVICE MALPRACTICE ACT  
HB-2122

THE HONORABLE THOMAS P. GANNON, PRESIDING  
TUESDAY, JULY 9, 1996

Mr. Chairman, and members of the committee, my name is Michael A. Donio, and I am director of projects for the People's Medical Society, a national health care consumer organization with more than 7,000 members in the Keystone state. The People's Medical Society, founded some 13 years ago, is the country's largest health care consumer advocacy organization, and is headquartered in Allentown. On behalf of our national and Pennsylvania members, I want to thank you for permitting me to testify here today on the reforms proposed in HB-2122, issues that are vital to all medical consumers.

Once again the rights of the citizens of the Commonwealth of Pennsylvania are under assault by a group of professionals who believe themselves to be above the law and exempt from any personal liability.

The doctors, represented by the Pennsylvania Medical Society and the Pennsylvania Osteopathic Medical Society, support this

"so-called" tort reform measure that, if enacted, would only create more obstacles to justice, and further discourage injured consumers from having their day in court. Legislative bodies should not be about limiting a citizen's access to the courts, but should be about protecting constitutionally given rights.

The overall intent of HB-2122 is to place physicians above the law and give them a virtual exemption from liability. Why should we, as the public, and you who are elected to represent our interests, allow one profession to be above the law? Have we done it for plumbers, contractors, architects or other professionals? I think not! So why do it for the medical profession, which long ago lost its Marcus Welby image?

The spate of frivolous lawsuits so often raised is nothing more than a smoke screen. If the truth be known, there are far more injured consumers who are unable to obtain the services of an attorney, than there are filing frivolous law suits. I have personally spoken with older women who tell me they were injured by a physician, yet are unable to find an attorney who is willing take their case. Why? Because these women are told by attorneys that their lives aren't worth much once they reach 65, and even if they would recover damages, it wouldn't be enough to make the case worthwhile.

As bad as women are treated by the tort system, children are treated worse. The youngest and most vulnerable among us are having their legal rights infringed before they are old enough to

understand what is happening. In state after state, physicians and their lobbyists have attempted to convince lawmakers to reduce the statute of limitations making it more difficult for a child or his/her family to file a lawsuit for injuries that occurred at or shortly after birth, but weren't discovered until later.

What do we say to these children and their families whose rights have been abrogated by a medical profession that is more interested in protecting its financial interest than the health interests of patients? Section 205-A subsections (c), (d), and (e) are not in the best interests of minors or their parents.

The "so-called" arbitration agreement found in Section 601-A through 606-A is nothing more than forcing the consumer to sign-away his/her access to the courts, a right guaranteed by the Constitution. Since when does the state have the right to suspend the American Constitution?

How can the proponents of HB-2122 look us in the eye and tell us the consumer does not have the right to be fully informed on medical procedures? Section 201-A goes against the very idea of an informed consumer making an informed decision. Informed consent is the very foundation of a positive and productive physician/consumer relationship. Full disclosure should be commonplace, and occur whenever a service or procedure is required. In fact, shortly after the founding of the People's Medical Society, our first major effort was to draft model

legislation that would require full disclosure of all medical information. This includes hospital nosocomial infection rates, outcomes of surgical procedure by surgeon, the rate of c-sections, and so forth. I should note, that much of the legislation that created the PA Health Care Cost Containment Council was derived from the People's Medical Society's model disclosure act.

Anything less than full disclosure to the patient borders on gross negligence. HB-2122 not only does nothing to advance the exchange of information between consumer and physician, but actually permits physicians to determine to what extent they will provide the medical consumer with any information. This must not be permitted.

Two additional onerous items found in HB-2122 are Section 403-A periodic payment of damages, and Section 203-A the collateral source rule. For some members of the medical community, it's not enough that the consumer has been injured by malpractice, they want to make the person endure more suffering by requiring periodic payments when a consumer is fortunate enough to win a case. As written this "reform" applies to all personal injury cases. I would wager that a physician injured by a defective product would be the first to scream if his lawyer told him his award was reduced and he couldn't collect total damages because the PA legislature said he'd received enough compensation.

Can you imagine the scene where a surgeon, who is driving along in his/her Mercedes, is broadsided by a delivery truck and is left with hand injuries so severe that surgery is no longer possible. Even if the surgeon goes to court and wins, he/she can only collect periodic payments for injuries suffered and loss of income. And, adding insult to injury, many physicians carry rather hefty disability insurance, the collateral source rule found in HB-2122 would be invoked to reduce the award. I wonder if the physicians who marched on Harrisburg on May 7th thought of that potential development?

In conclusion, I offer the following:

The real issues are Tort Reform---Liability Insurance Reform---Medical Licensing Board Reform. To lay the entire blame for this situation at the feet of so-called suit happy medical consumer is wrong, and totally misses the point. We are in reality facing a three-headed problem.

Reasonable people will entertain some adjustments to the tort system if they believe the system is honestly being abused, but it must be demonstrated beyond a reasonable doubt. As a health care consumer organization, we certainly don't encourage lawsuits, unless the situation presented is so egregious as to demand it. We would prefer that the consumer experience a positive outcome and encounter no serious problems. Even if one allows for some lawsuits, we have very little proof that the system is being abused. This becomes even more apparent when you consider that for every 20 cases filed, only one case ever gets

to court.

The pricing policies of liability insurance companies must be examined. Is this industry toying with physicians by creating too many risk pools, where there are too few physicians to adequately spread the risk and responsibility; thereby contributing to higher costs for liability insurance? National statistics would tend to support the claim that liability insurance for all surgical specialties, as a percentage of office expenses, is no more costly than office space--5.4 percent versus 5.0 percent.

Many physicians in PA are insured by their own "bed pan mutual". Are they, in actuality, raising the rates on themselves??? An investigation of the industry by a legislative body is the only fair way to resolve this situation. If doctors are serious about reform, they should be demanding that their members who cause most malpractice be stripped of their licenses. Yet, studies show virtually no bad doctors are turned in by their colleagues.

And finally, it's time that the Medical Licensing Board becomes more responsive to consumers and begins to properly discipline the profession. One method to achieve this goal is to require that it be composed entirely of consumer. Not just one or two, but 100 percent consumer members. Technical Advisory Panels composed of medical practitioners would be available to assist the consumer members.

In addition, the board should be funded at a level sufficient to hire extra inspectors and investigators to track down leads and collect evidence needed to take action against a malpracticing physician. A reasonable funding mechanism is for the board to collect a licensing fee of more than a few dollars. We believe a flat fee of \$1,000 or a percentage of gross is a workable solution.

In summary then, as consumers, we are calling upon the legislators of PA to support the rights of medical consumers and reject HB-2122 on the merits. The real "malpractice crisis" is malpractice itself and HB-2122 does nothing to resolve it. If, on the other hand, the intent of HB-2122 is to make it more difficult for injured consumers to have their day in court, and to seek the justice guaranteed by the Constitution, then it will be very successful. For the good all Pennsylvanians', we call upon the legislature to reject HB-2122, and vote to support consumer rights.