Testimony
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Good morning. My name is Lee H. McCormick, MD, and I am the president of the Pennsylvania Medical Society. The Medical Society is the state's largest physician association, representing some 19,000 doctors of all specialties from across the Commonwealth. I am a family practitioner in the South Hills area of Pittsburgh.

I appreciate the opportunity to talk to you about the issue which our research shows us is the number one concern of physicians and has been for more than 20 years. That issue is tort reform. It is pursuit of that goal, and the court's role in that pursuit, which is what I'm here to talk with you about today.

As members of the General Assembly, you have lived with this issue, so you have heard these concerns sometime in the past. But I think it's important to review them with you briefly once again because of their importance to physicians in the state.

First, let me start by telling you the three main concerns physicians have with the current tort system. First, too little of what we pay into the system actually goes to those who the system was intended to benefit -- and that's our patients. You've heard us say before that studies show only 47 cents of every malpractice dollar collected goes to patients. The other 53 cents goes mostly to lawyers for both sides and to administrators. It seems to me that there is something inherently wrong with any system that spends 53 percent on administrative costs. I dare speculate that if it were discovered that Blue Cross/Blue Shield was only using 47 cents of every dollar it collected on health coverage -- well, there would be a rate change pretty quickly.

Second, the current system is like a lottery. We all agree that those who deserve payment aren't always the ones getting the 47 cents. And beyond that it takes an average of five to six years for claims to work their way through the process. The system is too slow and too arbitrary.

Third, the system is expensive and the expense is unpredictable. For example, Philadelphia-area physicians pay probably the highest liability rates in the nation. The effect of that fact on doctors is similar to the effect Philadelphia consumers felt a few years ago when they were paying the highest auto insurance rates in the country. And because of the way our system works with the CAT Fund, there can be an unscheduled liability premium payment due at the end of the year, depending on claims payment unpredictability. Even though there has only been one "emergency surcharge" -- that one in 1995 -- it can bring havoc to physician offices at just the time when we are gearing up to pay the next year's liability bill.

So those concerns give you an idea why this issue is of such interest to physicians. Knowing this, the Pennsylvania Medical Society has worked over the past 25 years to

make improvements in the system. Let me give you some history which will help explain our concern.

Let's turn the clock back to 1975. The liability market in Pennsylvania was out of control -- insurers were threatening to leave. Doctors had reached the breaking point. We worked with this legislature and reached an agreement. We would agree to mandatory insurance and the CAT Fund system and, in return, would get meaningful tort reform which would help fix a system which was out of whack. What physicians wanted most was a binding arbitration system which would have a dual effect -- it would move cases to resolution faster and by doing so would save the system money. The legislature passed a bill with an arbitration system -- not a binding one, but one where the appeals went to the court. It wasn't long until the Supreme Court struck that provision saying that it slowed the process, ironically just what we were trying to fix with binding arbitration. The Court also said that the reforms interfered with our patients' right to a jury trial.

So when all was said and done, tort reform was struck down and the CAT Fund remained. Wasn't that quite a deal for physicians? No one likes the CAT Fund and now more than 20 years later, we're trying to figure out a way to get rid of the Fund, but the $2 billion unfunded liability is standing in our way.

Now let's move forward to 1996. Increases in the amount of CAT Fund surcharges and that one emergency surcharge in 1995, led to crisis. Physicians still saw a system totally out of whack and threatened not to pay their 1997 CAT Fund surcharge unless there was some meaningful tort reform. There was an opportunity for some meaningful reform. As an organization, we analyzed carefully what had happened in 1975 and thought we would learn from the Court's insistence that the process be made quicker. We worked with the Trial Bar this time to come up with tort reform which would eliminate frivolous cases, reduce transaction costs and speed the system. The proposals were agreed upon by everyone, including the Trial Bar. Rarely has any legislation, particularly on such a controversial subject, enjoyed such widespread support and such a complete absence of opponents. Did the final proposal include everything we wanted? No. But we thought it was a step in the right direction and decided to work with a broader based coalition in the future to achieve more reforms.

A year ago, after we reached agreement on language that accomplished some of our goals, the amended bill passed unanimously in both the House and the Senate and was quickly signed by the governor. Then, in January 1997, the Supreme Court suspended certain provisions and directed its Civil Procedural Rules Committee to consider similar rules. We asked the court to adopt the suspended rules, which were designed to speed up the court process and deter frivolous lawsuits. We told the Court that those rules were among the least controversial and most widely supported in Act 135.

Despite written support from the Medical Society and the Trial Bar, the Rules Committee changed the Act's provisions. Let me briefly outline a few of the Rules Committee's actions.

Act 135 attacked frivolous lawsuits by requiring attorneys, before they file a lawsuit, to have a reasonable basis in fact and in law for believing that they can prevail. The Court agreed, but instead of imposing a mandatory award of attorneys' fees in frivolous cases, the Supreme Court left that decision to the court's discretion. This change diluted the effectiveness of this provision.

Act 135 also set up time frames for completion of discovery, obtaining an expert witness report, all running from the date of the filing of the lawsuit. The revised Supreme Court rules also set up time frames, but does not mandate them and runs those dates from the earliest trial date, not the filing of the lawsuit. These changes will not significantly speed up the system.

Finally, Act 135's intent was to eliminate the frivolous suit early. We believe this provision could have had a significant impact. The Supreme Court instead requires an expert report, but only after the earliest trial date. That will not be nearly as effective in eliminating the frivolous cases early.

So that's where we are today. We've been through lots of work and even more compromise. And what do we have to show for it? A liability system that everyone, including the public, thinks needs to be changed. The public can't affect change without the legislature. The legislature made the changes that were agreed upon by all the parties, and some of those changes were suspended and turned back to the Court's own authority. Honestly, it's frustrating, especially when the proposals are reasonable and have widespread support.

Let's face it. We know that not everyone would agree with the proposals of the Pennsylvania Medical Society. But if we're going to make the system better, the legislature needs the ability to be innovative. Unfortunately, the Court has stymied not only innovation, but also stymied your efforts to help us.

So where does that leave us? Sadly, after 20 years, we've made little progress towards addressing the real problems created by our medical liability system.

Thank you and I'll be happy to answer your questions.