SOUTH DAKOTA STATE MEDICAL ASSOCIATION
POLICY

Subject:	Medical Malpractice Reform
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POLICY STATEMENT

The medical liability insurance system experienced a period of crisis in the early 1970's, when several private insurers left the market because of rising claims and premium rates. This exodus of capacity resulted in an availability crisis and created an affordability issue for those physicians and hospitals lucky enough to find insurance.

During the 1980's, a second crisis shook the industry, as claim frequency and severity increased again and premiums rose rapidly. The affordability crisis had a dramatic effect. Physicians in specialties such as obstetrics and gynecology cut back on high-risk procedures and high-risk patients to reduce their risks and hold down their premiums. Some physicians closed practices in states where premiums and the risk of being sued were especially high.

Despite efforts by the SDSMA to pass significant measures related to medical liability in the 1970's, medical liability coverage and costs remain a problem.

AMA Policies on Medical Malpractice

AMA Policy H-435.953 Minor Statute of Repose/Limitations states, the AMA supports federal legislation that would establish a Minor Statute of Repose/Limitations that includes the following language: An action by a minor upon a medical claim shall be commenced within three years from the date of the alleged manifestation of injury, except that actions by a minor under the full age of six years shall be commenced within three years of manifestation of injury or prior to the minor's eighth birthday, whichever provides the longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care organization have committed fraud or collusion in the failure to bring an action on behalf of the injured minor. (BOT Action in response to referred for decision Res. 230, A-05)

AMA Policy H-435.978 Federal Medical Liability Reform states, the AMA: (1) supports federal legislative initiatives implementing the following medical liability reforms: (a) limitation of $250,000 or lower on recovery of non-economic damages; (b) the mandatory offset of collateral sources of plaintiff compensation; (c) decreasing sliding scale regulation of attorney contingency fees; and (d) periodic payment for future awards of damages; (2) reaffirms its support for the additional reforms identified in Report L (A-89) as appropriate for a federal reform vehicle. These are: (a) a certificate of merit requirement as a prelude to filing medical liability cases; and (b) basic medical expert witness criteria; (3) supports for any federal initiative incorporating provisions of this type would be expressly conditional. Under no circumstances would support for federal preemptive legislation be extended or maintained if it would undermine effective tort

reform provisions already in place in the states or the ability of the states in the future to enact tort reform tailored to local needs. Federal preemptive legislation that endangers state-based reform will be actively opposed. Federal initiatives incorporating extended or ill-advised regulation of the practice of medicine also will not be supported. Effective medical liability reform, based on the California Medical Injury Compensation Reform Act (MICRA) model, is integral to health system reform. (BOT Rep. S, I-89; BOT Rep. I-93-53; Reaffirmed: BOT Rep. 8, I-98; Reaffirmation A-00; Reaffirmation I-03; Reaffirmed: Sub. Res. 910, I-03)

South Dakota Medical Malpractice Statutes

In 1976, the South Dakota Legislature passed several medical malpractice reforms including a statute of limitation on medical malpractice actions of three years from the occurrence of the alleged malpractice, error, mistake, or failure to cure occurred for persons aged six and older. This was reduced to two years in 1977. The Legislature also passed binding voluntary arbitration of medical malpractice disputes and a cap on general damages in malpractice recoveries of $500,000 (a later cap of one million dollars on all damages adopted in 1986 was held unconstitutional and this statute was revived.

In 1977, the Legislature amended the state's collateral source rule and made evidence of payments from certain collateral sources admissible in malpractice actions. The Legislature also preserved the confidentiality of peer review committee proceedings, records, and reports. In 1979, the Legislature extended the statute of limitations to professional corporations and in 2002 the Legislature passed a bill that abrogated the loss of chance doctrine as set forth in Jorgenson vs. Vener, 2000 SD 87, 616 NW2d 366 (2000)).

SDSMA Position

The SDSMA is opposed to any efforts to reform state laws governing medical liability that would increase costs of or decrease access to medical malpractice insurance.

AUTHORITY

South Dakota State Medical Association Council of Physicians, 11/5/2021; Reaffirmed by South Dakota State Medical Association Board of Directors 11/8/2021.