PENNSYLVANIA OSTEOPATHIC MEDICAL ASSOCIATION
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TESTIMONY

HOUSE BILL 1105
to the
HOUSE COMMITTEE ON JUDICIARY
July 18, 1989

As President of the Pennsylvania Osteopathic Medical Association I would like to thank you for the opportunity to submit written testimony on House Bill 1105, on behalf of over 3,000 osteopathic physician members of the statewide professional association representing osteopathic physicians in Pennsylvania.

As the issue of professional liability insurance continues to be a cause for great concern to the medical profession, we once again review proposed legislation aimed at correcting some of the inequities of the present system. In the past several years we have seen drastic changes in the way physicians practice, due largely to malpractice insurance costs. We have seen physicians actually give up practicing certain specialties, particularly in the areas of neurosurgery, obstetrics and other high risk specialties. Rising malpractice insurance premiums have forced general practitioners to cease delivering babies, therefore reducing access to complete, high quality health care in some rural areas, an increasingly serious adverse effect of the liability crisis.

We have supported the basic concepts of past tort reform legislation and wish to express our support of the concepts in House Bill 1105, currently being considered by the committee.

However, in order to give our full support to House Bill 1105, there are two important changes which have to be made. These changes were requested in writing to the committee chairman and we were informed that they would be taken care of, but, to date, they have not been addressed. The requested changes are as follows:

The term "osteopath," as used in Section 103, should be deleted and "osteopathic physician or surgeon," which was the original language, should be maintained. In addition, under Section 1006(b), which designates appointees to the committee, we requested that the language be amended to state that one member will be chosen from a list submitted by the POMA.

Additional comments regarding the bill are as follows:

Under Article II-A:

Section 202-A: We feel that if informed consent can be obtained from other than the patient, from his or her "authorized representative," then the term "authorized representative" must be more clearly defined.

Sections 204-A, Collateral Source; 205-A, Punitive Damages; and 206-A, Joint & Several Liability, are reasonable, are in the best interest of all concerned, and will help to control costs.

Section 207-A: We support the proposed two year statute of limitations from the date of discovery, up to a maximum of four years, with exceptions for foreign objects left in the body and for minors. We believe that this proposed amendment will produce savings if enforced by the courts.

The items enumerated under Article III-A, Pre-Trial Procedure, are all mechanisms which we believe will expedite the process, saving both time and money.

Article IV-A, Trial Procedure, qualifications of expert witnesses:

We strongly feel that an expert witness should only be a licensed physician qualified or certified in the same health care specialty (field of practice) and currently engaged in the "practice" of the same health care specialty. As osteopathic physicians, we believe that only our peers would qualify as expert witnesses when the action involves an osteopathic physician. We believe that a jury can be misled by medical experts who are not practicing physicians, or who may be testifying outside the area of their own specialty. House Bill 1105 should require that an expert witness be a practicing physician actively engaged in direct patient care in that specialty. An expert witness should be a physician peer who can explicitly address the area in question. This would be only fair and just to all parties involved.

A physician practicing and teaching could be acceptable, however, a physician who is teaching, or who is in an administrative or research position and not practicing at all, should not be permitted to be an expert witness against a practicing physician.

In addition, it would be unjust to have a professor, administrator, researcher or a physician practicing in an urban area testify against a rural primary care physician. A physician practicing in an urban setting has access to more sophisticated methods and equipment than a physician practicing in a rural setting. Further, accepted standards may vary according to specialty and practice setting (rural vs. urban). Therefore, standard of care issues should be addressed only by a peer - another osteopathic physician practicing in the same specialty and/or care setting.

Also, if it is necessary for an arbitrator to make a determination as to who may serve as an expert witness, the arbitrator's qualifications should be defined.

Article 601-A proposes mandatory reporting of awards, by the insurer, to the appropriate State board and, as required by the Health Care Quality Improvement Act of 1986, to the Federal Government, with the Insurance Department monitoring compliance. We believe that this is fair and appropriate. However, the filing of a successful claim against a physician, especially those in high risk specialties, should not brand that physician as a bad doctor.

Physicians in Pennsylvania (D.O.s and M.D.s), through their state medical associations, have made tremendous strides in accomplishing meaningful discipline of doctors to reduce the risk of incompetency to the public. Osteopathic physicians continue to work diligently to maintain the highest quality of care for their patients and continuously work to safeguard against anything less.

POMA has maintained a good working relationship with its State Board of Osteopathic Medicine (SBOM). The Association works closely with the SBOM to assure that osteopathic physicians are properly informed in order to maintain the highest standards of the profession, and to institute fair disciplinary actions when necessary for its members. Our recently revised osteopathic practice act includes many safeguards for ensuring that the public receives only the highest quality of care.

Delays in case reviews and disciplinary actions have been caused by the process procedure which is under the control of the SBOM. There have been cases in which the physician has been convicted by the courts, served a sentence, and is back in practice before the case is ever brought to the SBOM's attention for review and enforcement of disciplinary action. We have voiced our concerns over this process, and we hope that with the proposed changes the State Board of Osteopathic Medicine may be able to act in a timely and appropriate manner.

In conclusion, we ask that the committee carefully consider our comments when taking action on House Bill 1105. We are available at your convenience for further discussion of this important issue.