

ELLEN M. BARD, MEMBER

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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CAUCUS
PENNSYLVANIA FIREFIGHTERS' &
EMERGENCY SERVICES
CHILDREN'S
RENEWABLE ENERGY

MEMO

Date: January 19, 2001

To: Members of the General Assembly

From: Rep. Ellen M. Bard

Re: Access to Health Care

I thought you might find the attached letter to be of interest.

EMB/eo

January 11, 2001

Ellen Bard
1175 Old York Road
Abington, PA 19001

Dear Ms. Bard:

I'm sure by now you've been contacted by a number of your constituents concerned about the astronomical cost of medical malpractice insurance and the effect this will have on health care in our region.

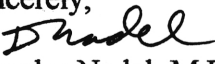
No one can deny that malpractice exists, and that pain and suffering should be financially compensated, but the escalating awards and settlements (one over *one hundred million dollars* recently) in our area has already bankrupted the CAT fund and will, unchecked, destroy the practice of medicine in Pennsylvania.

For far too long insurance companies and the medical community have been seen as a "deep pocket," or, in the words of one trial lawyer, "the goose that laid the golden egg." This form of rape is now producing these inevitable consequences: experienced physicians retiring early, surgeons no longer operating, hospitals losing their ability to treat trauma patients, and talented young physicians avoiding our entire state.

If our families didn't live here, my wife and I would have taken our practices elsewhere long ago. Coming out of training now you would have to be *insane* to want to practice here. As a result, the excellent care available and taken for granted in the Delaware Valley will surely deteriorate. The collapse of our medical system will not only affect all your constituents, young and old, this change will affect *you* and *your family!*

Meaningful Tort Reform has been long overdue in Pennsylvania. I find it astounding that we are only one of five states in the country without tort reform, and that we are second only to New York in medical malpractice payments. We need a cap on the amounts that can be rewarded, we need to deter frivolous lawsuits, and we need this relief *now*.

Thank you for taking the time to hear my concerns.

Sincerely,

Douglas Nadel, M.D.
1648 Cloverly Lane
Rydal, PA 19046
(215) 481-0763



Pennsylvania Trial Lawyers Association

Office of the President
TIMOTHY A.

SHOLLENBERGER

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To: Honorable Susan Laughlin

From: Timothy A. Shollenberger

Date: February 6, 2001

Chairman Micozzie suggested that I share with you a portion of the remarks I made at the February 1st hearing of the House Insurance Committee on the issue of reform of the Medical Professional Catastrophe Loss Fund.

Other speakers made mention of the need for reform of the medical malpractice liability system. There are already at least six different tort reform measures in place which pertain to medical malpractice claims, three of which were enacted as part of the Act 135 amendments to the Health Care Services Malpractice Act of 1996 (the landmark agreement negotiated between the trial lawyers and Pennsylvania Medical Society).

They are:

1. 40 P.S. Section 1301.812-A (a)-(c) which restricts the right to bring a claim for punitive damages. Under this section, even gross negligence is insufficient to support a claim for punitive damages. Punitives cannot be awarded against a health care provider who is only vicariously liable for the actions of its agent unless they knew of and allowed the conduct of the agent to occur. Punitives are also capped at two times the compensatory damages;
2. 40 P.S. Section 1301.827-A which permits a health care provider to file an affidavit of non involvement. Upon filing of such an affidavit, the provider is dismissed from the case unless it can be shown that the provider was properly identified as a party and either was involved in or obligated to provide care and treatment to the patient;

3. 40 P.S. Section 811-A which tightens the requirements for bringing a claim against a provider for lack of informed consent before administering certain medical procedures. A health care provider is not liable if they provide a description of the risks and alternatives of a designated procedure that is sufficient to advise a "reasonably prudent patient". The section also requires the claimant to call an expert witness to determine whether the procedure is of the type requiring informed consent as well as to identify the risks, alternatives and the risks of these alternatives.
4. There is a "de facto" cap on damages for the vast majority of physicians. The amount recovered by the injured party is governed by the amount of coverage, not the amount of the verdict or award. A multi-million dollar award means nothing unless it can be collected. Under current law, this "de facto" cap is \$1,200,000, making it one of the lowest caps in the nation.
5. There is also a "de facto" collateral source rule judicially created by the recent Supreme Court decision of Moorhead v. Crozer Chester Medical Center, ___A.2d ___, 2000 WL 1869461 (Pa., December 22, 2000). The Court held that an injured party cannot recover any more than they are obligated to pay for the medical services provided, even if that amount is less than the reasonable value of those services.
6. There are already mechanisms in place to discourage the bringing of frivolous suits. Medical malpractice cases are extremely expensive cases to bring to trial with high "transaction costs", particularly for expert witnesses. Virtually every case is handled on a contingent fee basis, so if there is no recovery there is no fee. In the vast majority of cases, the "transaction costs" are advanced by the attorney but are repaid to the attorney from the proceeds of the settlement or verdict. If there is no settlement or verdict, the attorney receives no fee and in an overwhelming number of cases loses the transaction costs as well because the client does not have the ability to repay them.

We believe that since these measures are already in place and premiums are surging, restricting the rights of victims of medical malpractice is neither the cause of -- nor the solution to -- the problem.

The Pennsylvania Trial Lawyers Association stands ready to discuss meaningful reform of the CAT Fund including its privatization. As in 1996, we are prepared to discuss all aspects of the issue, including the medical malpractice system. *Taking away the rights of victims of medical malpractice is not the solution to the problem of the cyclical fluctuations in health insurance rates.*

Thank you for considering these comments.

ROBERT W. GODSHALL, MEMBER
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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES:

TOURISM AND RECREATIONAL
DEVELOPMENT
MAJORITY CHAIRMAN

GAME AND FISHERIES
INSURANCE
LEGISLATIVE BUDGET AND FINANCE

MEMORANDUM

DATE: May 4, 2001
TO: All House Members
FROM: Representative Robert W. Godshall 
SUBJECT: Co sponsorship – Med CAT Fund

As you know, our Commonwealth's health care delivery system is nearing a crisis situation. Reimbursements for physicians and other licensed providers are falling while the costs of doing business – malpractice insurance, Med CAT Fund surcharges, employee wages, and equipment – continue to escalate. Pennsylvania's health care insurance market is dominated by three major players. What's more, only two of those insurers actually compete against each other.

To complicate matters further, many of these adverse factors are not found in our neighboring states. As a consequence, many of our best-trained and highly-educated physicians are leaving Pennsylvania to practice in more medicine friendly states. The result for our constituents will be a lack of access to quality health care services.

I believe if the Commonwealth's physicians and other licensed professionals had the right to jointly negotiate provider contracts with health care insurers, we would see an end to this brain drain. To that end, I have decided to introduce legislation sponsored in the last legislative session by former Rep. J. Scot Chadwick.

With this legislation, we will be able to end the exodus of Pennsylvania's best and brightest medical providers. I hope you will join me in co-sponsoring this bill by either calling at 783-6429 or email @ jhugendu@pahousegop.com.

RWG:jh



Robert J. Pavlis, M.D.
Allan J. Press, M.D.
Kevin D. Clark, M.D.
Douglas W. Bowers, O.D.

May 14, 2001

Representative Susan Laughlin
555 Merchant Street
Ambridge, PA 15003

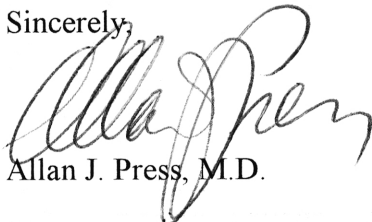
Dear Representative Laughlin:

I have been practicing as a physician for 27 years and have never wanted to do anything else for my professional career. However, providing medical care in Pennsylvania is becoming an increasing financial challenge, with decreasing reimbursements for managed care plans and increased practice expenses.

I am particularly concerned over the high cost of malpractice insurance. Our malpractice premiums are nearing the exorbitant mark, in part due to incredible settlements of hundreds of millions of dollars. Although the number of malpractice cases has remained constant over the last few years, the amount of those awards has increased dramatically. In particular, the Philadelphia courts seem to have significant problems relative to the rest of Pennsylvania.

I want to urge you to make tort reform a top priority in this upcoming legislative session to ensure continued access to care for patients in Pennsylvania. I appreciate your concern and am confident that you will help to enact changes that will enhance the lives of residents of this commonwealth.

Sincerely,



Allan J. Press, M.D.

AJP:rl

Laughlin, Susan

From: Hain, Diane
Sent: Wednesday, May 02, 2001 5:00 PM
To: Members & Legislative Assistants
Subject: MEDICAL MALPRACTICE CAT FUND

May 2, 2001

TO: Members of the Democratic Caucus
FROM: Tony DeLuca, Democratic Chairman
Insurance Committee
RE: Draft response to constituents interested in the Medical Malpractice CAT Fund

Many of you have been approached by constituents and organized interests who have an interest in the Medical Professional Liability Insurance Catastrophe Loss Fund (CAT Fund). The House Insurance Committee has held several hearings this session to listen to the medical community, attorneys, and most importantly, the public, on this important issue. While no one disputes the need to compensate victims of malpractice, sentiments on how to implement a fair system vary greatly. A related issue concerns the privatization of the CAT Fund and the unfunded liability under the present system.

The attached draft response provides a balanced discussion of the issue and alternative approaches to resolve problems with the system. Since many of your contacts will have a particular perspective on the issue, you may want to modify the letter to address their specific concerns.

The Insurance Committee will be meeting in Pittsburgh on May 9 and 10 for additional hearings. Meanwhile, transcripts of the hearings and other information are available through my office.

DRAFT LETTER FOR MEMBERS RE MEDICAL MALPRACTICE CAT FUND:

Dear ---:

Thank you for offering your professional comments on medical malpractice in the Commonwealth.

The Health Care Services Malpractice Act (Act 111), initially passed in 1975, had two purposes. First, the act established a mechanism to ensure persons who sustained injury or death as a result of medical malpractice would obtain fair and reasonable compensation. Second, the act ensured professional liability insurance would be available at a reasonable cost. A key component of this reform was the establishment of the Medical Professional Liability Insurance Catastrophe Loss Fund (CAT Fund), which provided a mechanism for annually distributing the costs of medical malpractice through a complex system of surcharges on providers. For a time, the system functioned as it was intended and surcharges were modest in relation to the coverage provided. Over time, as claims inevitably were submitted and settled, surcharges increased.

In 1996, the General Assembly amended Act 111 of 1975 (Act 135) to address concerns about the solvency of the CAT Fund and the substantial increase in the annual surcharge, particularly for certain specialties. As amended by Act 135, the act reduces certain costs to the system through expedited settlement

procedures and a series of procedural changes in the litigation and settlement of medical malpractice cases. In addition, a method for allocating surcharges more fairly was instituted based on the prevailing primary premium, and providers were required to purchase higher basic coverage limits.

During the 2001/2002 Legislative Session, the House Insurance Committee held several public hearings on this issue. The complexity of the issue and proposed remedies of those testifying present a unique challenge to lawmakers. The debate is not over whether or not victims should be compensated. Everyone agrees that they should. However, different constituencies offer different solutions. The medical community maintains the high cost of medical malpractice insurance is causing medical professionals to leave the state. Therefore, they would like to see changes in tort law enacted, including caps on awards and limitations on frivolous lawsuits as just two examples. While the Pennsylvania Supreme Court ruled against the implementation of certain tort law provisions of Act 135, other provisions remain unchallenged, including changes in the definition of *informed consent*, punitive damage standards, physician authority to file an affidavit of non-involvement, and periodic payment provisions. Others suggest the CAT Fund should be replaced with a system of private insurance coverage.

Attorneys representing victims of malpractice maintain that reducing legitimate verdicts on behalf of the injured unfairly shifts the cost of malpractice from practitioners and institutions to their victims. Inadequate reimbursements from managed care plans and a shortage of nurses in many hospitals are contributing factors in the incidence of malpractice in the Commonwealth. The legal community suggests that mandatory reporting of medical errors, disciplining medical professionals by the appropriate professional licensing boards, and increasing medical malpractice premiums based on loss experience would reduce the incidence of malpractice.

Again, I appreciate your interest in this issue and will consider your views when legislation comes before the House for final passage.



Pennsylvania Trial Lawyers Association

Office of the President

TIMOTHY A.

SHOLLENBERGER

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June 8, 2001

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Dear Representative Laughlin:

You may have received a cosponsorship memo from Representative McIlhinney asking you to cosponsor legislation proposing an amendment to the Constitution of the Commonwealth of Pennsylvania authorizing the General Assembly by law to limit the amount of malpractice awards.

There is no crueller, more anti-consumer part of so-called tort reform than "caps on damages." While supporters of this "patient abuse" constantly ask for legislative or judicial relief to curb "frivolous lawsuits," i.e., small damage filings, they also want draconian limits on malpractice that even they concede are serious.

The infrequent number of large jury awards are almost invariably for serious, life-altering malpractice on young children, whose parents or guardians are faced with providing round-the-clock professional care, which can easily cost \$50,000 to \$75,000 per year.

If any "cap" becomes law, the innocent victim and his guardian will be left bankrupt and unable to provide care for the unfortunate who through no fault of his or her own has had his or her life severely compromised.

If and when this legislation is introduced, it will be the single worst piece of proposed legislation in recent years. We urge you in the strongest terms not to be a cosponsor or if you have already signed on, to ask Representative McIlhinney to remove your name.

Once again 12 million Pennsylvanians are asked to surrender their rights in favor of negligent physicians and hospitals who want to shift the blame - and the true costs - on innocent Pennsylvanians. Indeed, what is needed is "patient safety" legislation which would mirror the widely - acclaimed Massachusetts law on physician profiling, patient safety courses and a "culture of safety" attitude rather than the current "culture of secrecy" that pervades Pennsylvania medicine.

The issue of what is driving medical malpractice insurance rates is complex, and should not be determined at the expense of injured Pennsylvanians.

Page Two
June 8, 2001

Thank you for your attention to this matter.

If you have any questions, please feel free to contact us at your convenience.

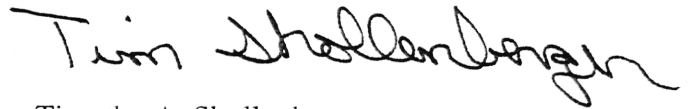


Mark E. Phenicie

MEP:jw

Enclosure

Sincerely,



Timothy A. Shollenberger



Pennsylvania Trial Lawyers Association

Office of the President

TIMOTHY A.

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June 14, 2001

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HMO'S IGNORE FEDERAL LAW AND FAIL TO REPORT ADVERSE EVENTS

Dear Representative Laughlin:

Recently I wrote you regarding the role of HMO's and other managed care plans in the early exit of physicians from the market place. Now it appears that HMO's are also a big player in the culture of secrecy that pervades the health care delivery system, a system in which preventable medical errors which kill and maim innocent patients are swept under the rug.

Under federal law, HMO's are required to report "adverse events" to the National Practitioner Data Bank. A recent study revealed a startling statistic: From 1990 to 1999, while managed care became the dominant form of health care in the United States, covering more than 100 million Americans, HMO's reported only 715 adverse actions. This fact is shocking when one considers that 44,000 to 98,000 people die in our nation's hospitals every year from malpractice and medical errors.

HMO executives were quoted as saying that they often work out quiet deals with inept doctors. Under such arrangements, a doctor resigns from a health plan, and in return the health plan promises not to file a report with the federal data bank.

Pennsylvania is apparently even worse than other parts of the country when it comes to reporting of inept doctors, especially when one considers that not one doctor was disciplined by the State Board of Medicine from January 1, 2000 through February 2001.

Health plans ought to do more than just pay lip service to the goal of patient safety. If they did, more preventable medical errors would be reported and inept doctors would be forced to make patient safety a priority or risk being removed from the system. Under such a system, medical errors will be reduced, there will be fewer malpractice claims and malpractice premiums would decrease.

Page Two
June 14, 2001

The issue of what is driving medical malpractice premiums and the CAT Fund surcharge is a complex issue requiring careful study. If premiums are to decrease, the number of preventable errors must decrease. The Pennsylvania Trial Lawyers is pleased to participate in this debate.

Sincerely,

A handwritten signature in black ink that reads "Tim Shollenberger". The signature is written in a cursive style with a large, sweeping "T" and "S".

Timothy A. Shollenberger

May 31, 2001

TO: All Members of the Pennsylvania House of Representatives

FROM: James M. Redmond, Senior Vice President, Legislative Services

SUBJECT: Medical CAT Fund

Issue: Legislation to reform the Medical CAT Fund is to be introduced.

Background: The Medical Professional Liability Catastrophe Loss Fund (CAT Fund) was created in 1976 and provides excess coverage above the required primary coverage limits for medical malpractice cases. All hospitals, physicians, podiatrists and nursing homes are required to participate. Hospitals and physicians believe the Fund is not the best way to provide medical liability coverage and believe that the Fund's activities should be shifted to the private sector.

The House Insurance Committee has held several hearings on legislation to reform the CAT Fund. As a result of these hearings and discussions with Representatives Micozzie and DeLuca, the Pennsylvania Medical Society (PMS) and The Hospital & Healthsystem Association of Pennsylvania (HAP) recently reached an agreement on reform of the Fund. Representatives Micozzie and DeLuca have agreed to introduce legislation that incorporates the recommendations of HAP and PMS.

The legislation would phase down the Fund and transfer responsibility to the private sector by using bond financing with an annual assessment on health care providers to pay principal and interest costs. Proceeds of the bond would be used to pay all current claims. Under this plan, an authority would be created to replace the current CAT Fund. The authority would terminate when all claims have been resolved. Any remaining funds would be returned to health care providers.

HAP Position: Please sign on to the Micozzie/ DeLuca bill to reform the CAT Fund.

/ca

MARY ANN DAILEY, MEMBER
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

June 15, 2001

COMMITTEES

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TECHNOLOGIES

BOARDS & COMMISSIONS

PENNSYLVANIA TRAUMA SYSTEMS
FOUNDATION

DELEGATIONS

MONTGOMERY COUNTY REPUBLICAN
DELEGATION, SECRETARY

TO: All House Members

FROM: Representative Mary Ann Dailey
146th Legislative District

SUBJECT: Introduction of Legislation

Next week I plan to introduce a package of three bills designed to reduce medical errors and better ensure patient safety and quality health care.

Over the past year, many articles have been published about patient safety and medical errors; issues which are important to all Pennsylvania citizens. Each article indicates that medical errors are on the rise and patient safety is declining, yet research in this area is limited, at best. Some have implied inadequately trained, unlicensed healthcare workers are providing care, while others blame cost-cutting efforts of hospitals. It is the intent of my legislation to identify and address the problems.

The first bill would establish a toll-free hotline through the Attorney General's Health Care Unit for licensed health care workers to report instances where patient safety is compromised or medical errors have occurred. In turn, it would be incumbent upon the Attorney General's Health Care Unit to investigate the complaint. Fear of job loss or employer reprisal has prevented some healthcare professionals from reporting poor healthcare practices in our nation's hospitals. It is for this reason, that caller confidentiality would be assured through the Attorney General's Health Care hotline created by the **Patient Safety and Quality Assurance Act**.

The second piece of legislation charges the Health Care Cost Containment Council with collecting data on both patient safety and quality health care indicators. This data would be used to create a hospital report card. The report card would be published in the Pennsylvania Bulletin and could be used by the public to make informed decisions about where they choose to receive health care. The report could also be used by each hospital to improve health care delivery and to compare themselves to similar hospitals.

The final bill **would clearly define health care duties that can not be performed by unlicensed assistive personnel (UAPs)**. Currently, many hospitals employ nursing assistants or other unlicensed health care workers to perform the statutory or regulatory duties of licensed health care professionals. My legislation would place those duties back into the hands of those who have the education and experience to perform them.

If you wish to cosponsor any or all of this legislation, please contact my secretary, Elana Maynard, at 2-9963 or by e-mail at emaynard@pahousegop.com.

Previous Cosponsors of HB 2688:

MANDERINO, VANCE, ARGALL, BARRAR, BELFANTI, BROWNE, CAPPABIANCA, DeLUCA, HALUSKA, HARHAI, LEH, MUNDY, PETRARCA, ROSS, SAYLOR, SOLOBAY, E. Z. TAYLOR, TIGUE, TRELLO, TRICH, TRUE, WILT, RUBLEY, BARD, MARKOSEK, FLICK, THOMAS and BENNINGHOFF.

Previous Cosponsors of HB 2689:

MANDERINO, VANCE, ARGALL, BARRAR, BELFANTI, BROWNE, CAPPABIANCA, DeLUCA, HALUSKA, HARHAI, LEH, PETRARCA, ROSS, SAYLOR, SOLOBAY, E. Z. TAYLOR, TRELLO, TRICH, TRUE, WILT, MARKOSEK and FLICK.

Previous Cosponsors of HB 2690:

VANCE, MANDERINO, ARGALL, BARRAR, BELFANTI, CAPPABIANCA, DeLUCA, HALUSKA, HARHAI, LEH, PETRARCA, SAYLOR, SOLOBAY, E. Z. TAYLOR, TIGUE, TRELLO, TRICH, TRUE, WILT, MARKOSEK, BARD, RUBLEY and FLICK.

Secretaries:

Please notify your member immediately. Thank you.

NICHOLAS A. MICOZZIE, MEMBER

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COMMITTEES

INSURANCE COMMITTEE, CHAIRMAN
HEALTH & HUMAN SERVICES

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

MEMORANDUM

SUBJECT: Proposed Legislation
(Medical CAT Fund)

TO: All House Members

FROM: Nicholas A. Micozzie, Chairman
House Insurance Committee

As you know, the medical industry has been hit hard over the last couple of years by the skyrocketing costs imposed on them by the Medical Malpractice CAT Fund, an archaic mechanism from which the industry has long sought relief.

Earlier this year, Representative DeLuca and I requested that the hospitals and the physicians present a unified plan to reform the Medical Malpractice CAT Fund. The Hospital and Health System Association of Pennsylvania and the Pennsylvania Medical Society have reached an agreement that they recently reviewed with us. Representative DeLuca and I have agreed to introduce legislation that incorporates the recommendations of HAP and the Medical Society. I hope that you will join us in introducing this important legislation.

The Medical Professional Liability Catastrophe Loss Fund was created in 1976 and provides excess coverage above the required primary coverage limits for medical malpractice claims. All hospitals, physicians, podiatrists and nursing homes are required to participate in the Fund. This legislation would phase out the Fund over a six-year period and transfer responsibility to the private sector by using bond financing with an annual assessment on health care providers to pay principle and interest costs. Proceeds of the bond would be used to pay all current claims. Under this plan, an authority would be created to replace the current CAT Fund. The authority would terminate when all claims have been resolved and any remaining funds would be returned to health care providers.

If you are interested in joining us as cosponsors of this legislation, please contact Sheila Earhart by Groupwise or email searhart@pahousegop.com or call my office at 783-8808 **by June 5, 2001.**

EDWARD A. JAEGER, M.D., F.A.C.S.
OPHTHALMOLOGY AND OPHTHALMIC SURGERY

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November 5, 2001

The Honorable Susan Laughlin
555 Merchant Street
Ambridge, Pa. 15003

RE: House Bill 1802

Dear Representative Laughlin:

I am writing to ask your active support for HB 1802. As you know, this bill addresses CAT fund reform and Tort reform along with other aspects of patient and third party payor issues.

In obtaining an overview of information from various sources, and including my own experiences as a physician, I am struck by two facts. They are:

In the year 2000 there were three verdicts that set award dollar records in Philadelphia County.

Malpractice awards in Philadelphia exceeded the entire state of California last year.

While the ads have touted this as a "reimbursement issue", there is a much deeper problem that is affecting physicians, patients and the health care system. While I do not wish to compromise legitimate liability cases, the present situation has gone far beyond a reasonable status.

I urge you to support House Bill 1802. Thank you for your consideration.

Sincerely,

EJA

Edward A. Jaeger, M.D.

EAJ/slj

*Susan - I trust you have
been well. We are still
awaiting your Phil award.
EJA*