Approved 4-27-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Wint Winter, Jr. (Chairperson) at

3:30 ~~a.m.~~/p.m. on March 20, 1989 in room 313-A of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Legislative Research Department
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Dr. Ed Hammond, Western Kansas Development Board
Brad Smoot, Kansas Coalition For Tort Reform
Paul E. Fleener, Kansas Farm Bureau
Gerhard Metz, Kansas Chamber of Commerce and Industry
Craig J. Shumard, M.D., St. Joseph Medical center in Wichita
Harold Steadham, William Newton Memorial Hospital In Winfield, Kansas
Frank D. Norton, Private Citizen and Attorney from Salina, Kansas
Jerry Slaughter, Kansas Medical Society
Wayne Stratton, Kansas Medical Society and Kansas Hospital Association
Ted Faye, Health Care Stabilization Fund
Tony Valenti, Actuary, Blackwood, New Jersey

Senate Concurrent Resolution 1610 - Constitutional amendment to limit noneconomic damages on claims for personal injury.

The chairman announced the testimony we hear today will be from the proponents of the resolution.

Dr. Ed Hammond, Western Kansas Development Board, appeared on behalf of Jerry Aldridge in support of the resolution. The weather would not permit Mr. Aldredge to be available to testify. Dr. Hammond explained he is chairman of this board which consists of 162 people. The group has a task force concerning health care and their conclusion was to support SCR 1610. The issue was thououghly discussed and researched, and they voted unanimously in favor of the resolution. A copy of testimony from Mr. Aldridge is attached (See Attachment I).

Brad Smoot, Kansas Coalition For Tort Reform, appeared in support of the resolution. He stated the legislature has already thoroughly studied the issue of caps on noneconomic damage awards and has recognized the need for, and desirability of, such limits on awards. Because of recent state court decisions, a constitutional amendment is necessary to restore to the Legislature the authority to limit noneconomic damages. The people of Kansas should be given the opportunity to vote on this issue. Mr. Smoot referred to the boxes of testimony that has been provided to the legislature in previous years. The boxes are on file in the Office of Legislative Services. A copy of his testimony is attached (See Attachment II).

Paul E. Fleener, Kansas Farm Bureau, testified in support of the resolution. He stated we talked economic development in this state. But unless we make a climate of opportunity for business, for industry, for agriculture, for commerce, and for health care providers, there will be no economic development. A copy of his testimony is attached (See Attachment III).

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 20, 1989.

SCR 1610 - continued

Gerhard Metz, Kansas Chamber of commerce and Industry, testified it is time that the people of Kansas had an opportunity to vote on an issue which they consistently have indicated as important to them. A copy of his testimony is attached (See Attachment IV). Mr. Gerhardt then read the testimony of Edward G. Bruske, President of Kansas Chamber of Commerce and Industry (See Attachment V).

Ernie J. Chaney, M.D., St. Joseph Family Practice Residency Program and Professor University of Kansas School of Medicine, testified the medical liability crisis as we are experiencing in Kansas is fragmenting the specialty of family medicine, a specialty that has served as the backbone of health care for Kansans for many years is being jeoparidzed. Copies of his handouts are attached (See Attachments VI).

Craig J. Shumard, M.D., St. Joseph Medical Center in Wichita, testified last fall, nearing the end of my residency and professional training, I began looking for practice opportunities. Several factors were considered in my decision for practice; namely, that of geography, economics and professional relationship. In my top five categories that I considered, the question of liability was in this. A copy of his testimony is attached (See Attachment VII).

Harold Steadham, William Newton Memorial Hospital in Winfield, Kansas, testified I would only repeat that an affirmative vote for this resolution is placing confidence in the people of Kansas to make a decision on what it is they think is fair. Trust the people, give them an opporunity to make the final decision. A copy of his testimony is attached (See Attachment VIII).

Frank C. Norton, Private Citizen and Attorney from Salina, Kansas, testified it is certainly true that work can be done in reducing malpractice suits by the greater use of screening panels. Cooperation among lawyers and doctors can reduce litigation costs. Peer review can reduce malpractice cases. Some type of arbitration system can be devised to resolve some medical malpractice disputes. However, none of these deal with the "big strike". Only noneconomic caps deal with this unknown. Copies of his testimony and a report of the Task Force of the Salina Area Chamber of Commerce are attached (See Attachments IX).

Jerry Slaughter, Kansas Medical Society, testified we believe the record, not only in Kansas, but across this country, has shown that this problem simply can't be solved without some reasonable reform of the tort system. In fact, the record nationwide of tort reform legislation demonstrates that the debate over tort reform has passed well beyond the point of whether the tort liability system needs to be reformed. Rather, the tort reform debate has come to focus largely on what kinds of tort reform should be enacted. A copy of his testimony is attached (See Attachment X). Committee discussion was held with Mr. Slaughter.

Wayne Stratton, Kansas Medical Society and Kansas Hospital Association, appeared to respond to questions. He discussed the U.S. Supreme Court case that upheld the State Supreme Court decision concerning cap on noneconomic damages. The chairman requested he make that information available to the committee. Committee discussion was held with Mr. Stratton. The chairman requested staff to check with K.U. Medical center concerning increase of physicians from rural to urban and get information to back up Mr. Slaughter's statements.

Ted Faye, Health Care Stabilization Fund, appeared to respond to questions. He introduced Tony Valenti, an actuary from Blackwood, New Jersey. The chairman inquired of the effectiveness or lack of caps on rates. He stated there is no doubt a cap whether statutorialy imposed would have the effect of reducing the surcharge. He stated limitations will work; no sizeable percentage or dollar amounts. The insurance environment in the State of Kansas already has involved itself in "tail" coverage. Limitations studied in the past have reduced 70% to 75% due to reduction of coverages. In response to a question Mr. Faye replied in House Bill 2661 there is 35% reduction that is part of the problem you are

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 20, 1989

SCR 1610 - continued

going to face. A committee member inquired how do we lower rates for physicians? Mr. Vanenti replied there is only one avenue which will reduce premiums, it is limitations of coverage. A committee member inquired if the constitutional provision is enacted by the voters of the state and we place a cap on noneconomic damages, what will be the economic coverage by the insurance company? Mr. Valenti replied, fund coverage stacks. Another committee member inquired what percentage of the premium is the result of the "tail" coverage? Mr. Valenti replied since "tail" coverage is provided, the load is 10% to 12% of current liabilities in each year as accrued losses. A committee member inquired will a cap of $250,000 on noneconomic loss reduce frequency of claims or not? Mr. Valenti replied, it will not overall. In response to a question, Mr. Slaughter replied there has been a turn down of claim frequency.

The meeting adjourned.

Copy of the guest list is attached (See Attachment XI).

Copies of additional material from the Kansas Coalition For Tort Reform is attached (See Attachment XII).

Copy of a letter from Ashok K. Bhargava, M.D. is attached (See Attachment XIII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: ____________

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Todd Herman	2505 General Hancock	Close-Up Ks / Hays
GRANT BANNISTER	413 WEST 6TH/HAYS/6760[illegible]	CLOSE-UP KS
Rich Dame	HOISINGTON	B.L.E.
Rorene R Valentine	Wichita	St. Francis
Mary Ellen Conlee	Wichita	Ks. Assoc. for Small Business
Shane Bangerter	Lawrence	Leg intern for Banks
Jim Renne	Lawrence	Intern Ben Vidricksen
KEVIN ROBERTSON	TOPEKA	Ks Consulting Engrs
Sara Sanders	Topeka	KTLA
Mike Germann	Wichita	Boeing Military Airplanes
Richard Allman	Topeka	KTLA
Patrick Murphy	Manhattan	"
DICK COMPTON	HAYS	MIDWEST ENERGY
John W. Johnson	Wichita	KTLA
G. McCallister	Topeka	KTLA
R.G. FREY	TOPEKA	KTLA
Tom Palace	Topeka	KLSI
DON LINDSEY	OSAWATOMIE	UTU
Nancy Macy	Salina	visitor
LARRY MAGILL	TOPEKA	IIAK
L. M CORNISH	"	Kansas Ass'n Prop/Cas Ins Cos
Roger Denning	Hays	CLOSE-UP KANSAS
Brandon Prough	Hays	" "
Jim Gleason	Topeka	Visitor
Chris Hildenbrand	Hutchinson	Close-Up Kansas

Attachment XI
Senate Judiciary Committee
3-20-89

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 3-20-89
3:30 P.M.

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Gerhard Metz	Topeka	KCCI
Tom Bell	"	KHA
Walt Bolton	Wichita	KAFP
Craig Shumard M.D.	Wichita	KAFP
Frank G. Norton	Salina	Norton Wasserman Jones + Kelly
Jeanne Norton	Salina	
Karla Robinson	Lyons	
Barton Turner	Lyons	Close Up Ks.
Roger Alden	Lyons	" " "
Stephanie Wall	Lyons	Close Up Kansas
C. Moses	Lyons	"
Denise Smith	Geneseo	"
Becky McClure	Lyons	"
Allison Bolton	"	"
Cherie Auman	Hays	Close Up Kansas
Jennifer Schmeller	Hays	Close Up Kansas
Joel Tramel	Hays	Close Up Kansas
Mark Purdy	Hays	Close Up Kansas
Shirley Campbell	M. Vale	
Raymond Gray	Goodland	Close Up Kansas
Staci Rupp	Goodland	"
Angie McKee	Goodland	"
Roger Barr	Topeka, Ks.	T.C.U.
Pam Pearson	Silver Lake	T.C.U.
Patricia Henshall	Topeka	[illegible] / OJA

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 3-20-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Chester Peckover	Buhler, Ks.	USD313 (Close Up Kansas)
Robert Mealy	Topeka	Senr Pro Tem Ofc.
John C. Bottenberg	Topeka	Ks Railroad Assoc.
[illegible]	Topeka	KID
Tony Valenti	Blackwood, N.J.	DANI Associates, Inc.
Bob Hayes	Topeka	Ks. Ins. Dept.
Chip Wheelen	Topeka	Ks Medical Society
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Janis Lee	Kensington	Senator
Ron Smith	Topeka	Ks Bar Assoc
Lori Callahan	Topeka	American Ins. Assoc.
Brad Smoot	Topeka	Tort Reform Coalition

March 20, 1989

TO WHOM IT MAY CONCERN:

Thank you for the opportunity to "testify" before the Judiciary Committee. Because of the adverse weather conditions we are experiencing in Western Kansas I am unable to travel to Topeka.

You will notice from the map the Western Kansas Policy Development Board represents 54 counties in Western Kansas. I am the Chairman of the Rural Health Care Task Force which reports back to this Board.

Our position on SB 1610: LET THE PEOPLE HAVE A SAY IN THEIR DESTINY
Give them the right to vote on this issue.

The constitution was placed into being by the people and for the people and it is our position that the people should have a say in how this constitution influences their destiny.

If need be the Western Kansas Policy Development Board is willing and able to secure the grassroots support for this issue, within the 54 counties we represent.

Thank you for your consideration on this very important issue.

Respectfully submitted

WESTERN KANSAS POLICY DEVELOPMENT BOARD

Jerry Aldridge, Chairman
Rural Health Care Task Force

Attachment I
SJC
3-20-89 P.M

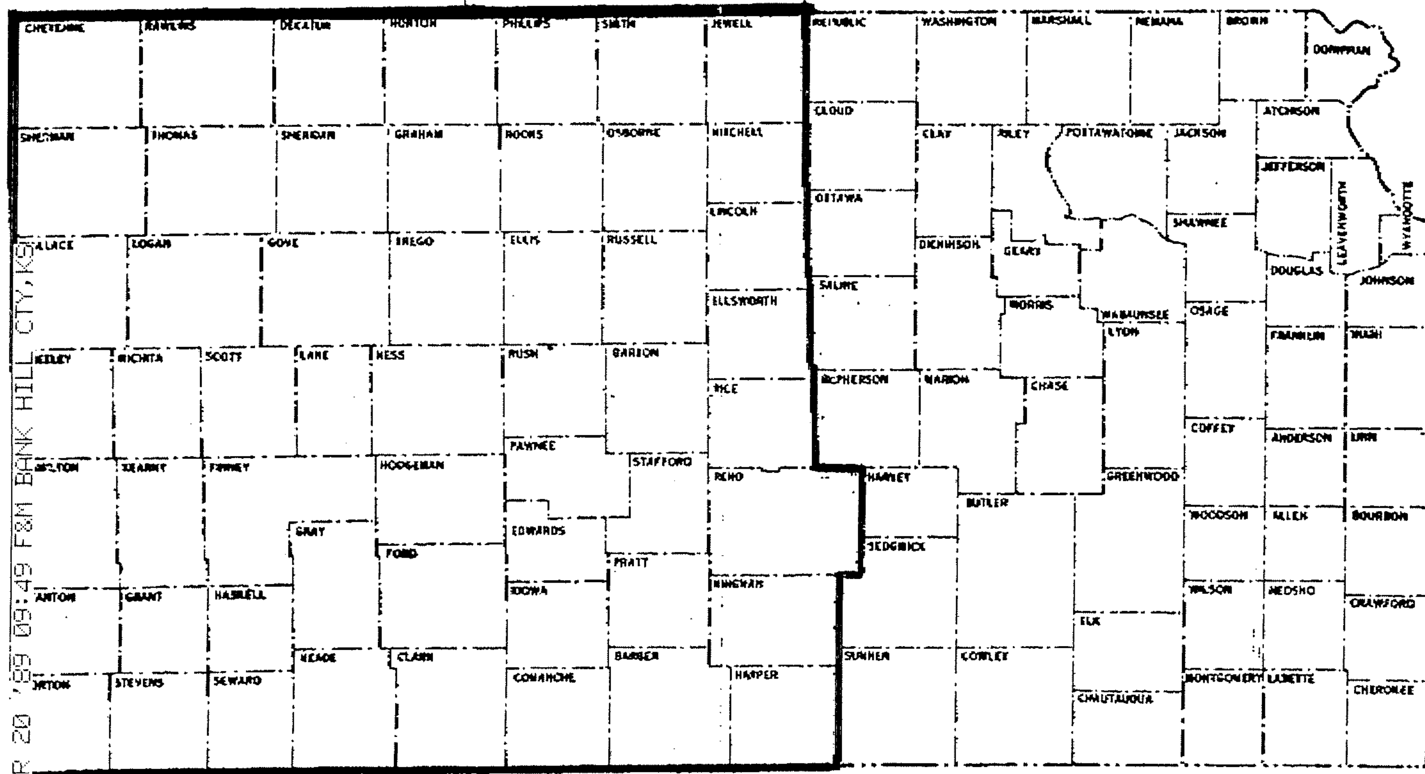
MAR 20 '89 09:49 F&M BANK HILL CTY,KS P.2

The Western Kansas Region

Let's Turn PRO

P EOPLE
R ESOURCES
O RGANIZATION

Western Kansans
Working Together



Western Kansas Policy Developmen Board

"Helping Western Kansas Ad to a Changing World"

WESTERN KANSAS POLICY DEVELOPMENT BOARD

Rural Health Care Task Force

PROBLEMS:

1. The region is underserved by physicians
2. Need for more nurses and other allied health personnel
3. Excessive high cost of malpractice insurance which is a disincentive to the attraction and retention of physicians in the area.
4. Overall cost of health care is high and continuing to rise.
5. Difficult for hospitals, particularly rural hospitals, to obtain full MEDICARE and MEDICAID reimbursement.
6. As a result of #5 hospitals are experiencing financial stress which in most Western Kansas counties causes stress on local tax base.
7. An increasing proportion of the population in western Kansas is reaching senior citizen status which relates to # 5 and # 6 above.

AREA OF CONCERN # 1: MALPRACTICE

Statement of the Problem:

Past legislative efforts to develop equitable medical malpractice insurance controls have been declared unconstitutional by the state supreme court.

Kansas Board of Healing Arts says Kansas has lost more than 600 physicians in the past year. Other physicians has stopped providing obstetrics and other areas of their practice. This is hurting Western Kansas.

Malpractice Insurance Carriers are pulling out of the state.

SOLUTIONS:

1. Western Kansas Policy Development Board (WKPDB) should communicate with newspaper editors and actively disseminate information about this issue to the public in their respective counties.
2. Actively work with the Governor's Task Force on this issue and secure a position on the Governor's Task Force so we can be heard.
3. A Constitutional Amendment must be considered
4. Examine the feasibility of implementing a worker's compensation type of system in medical malpractice.
5. Attorney fees be limited in medical malpractice cases
6. Develop grassroots support for those legislators taking responsible action

POLICY DEVELOPMENT:

1. Get involved with the Governor's Task Force on Malpractice issues, work very close with the Governor, legislator, etc. to solve this issue.
2. Communicate with grassroots people on this issue. If needed help secure support for a constitutional admendment.

KANSAS COALITION FOR TORT REFORM

TESTIMONY OF BRAD SMOOT
Coordinator/Kansas Coalition for Tort Reform
Before the Senate Judiciary Committee
regarding Senate Concurrent Resolution 1610
March 20, 1989

Mr. Chairman and Members:

I am Brad Smoot, Coordinator of the Kansas Coalition for Tort Reform, appearing today as a proponent of Senate Concurrent Resolution 1610. It was at the request of our Coalition that this Committee graciously agreed to introduce SCR 1610 concerning the proposed constitutional amendment permitting limits on certain damage awards in civil cases. On behalf of the Coalition allow me to thank you all for introducing this resolution and for conducting these public hearings.

The issues presented here often appear complex and difficult. They are matters about which well-meaning and well-informed persons most certainly will disagree. We truly appreciate the time, dedication, and thoughtfulness that will be required in your deliberations.

At the outset allow me to say a brief word about the Kansas Tort Reform Coalition. As many of you are well aware, the Coalition has been around for many years and our members have conferred with legislature numerous times on various issues relating to the civil liability system. The Coalition is composed of more than 40 members, including businesses large and small; professionals; farm organizations; and other statewide associations. Together we are quite possibly the largest and most diverse organization likely to appear before you.

In our efforts to efficiently represent our membership in presenting support for this resolution, we have prepared a small notebook for each of you containing, among other items, the testimony of the conferees. This notebook also contains a variety of other information including:

a. a history of tort reform measures and other changes in health care and insurance laws recently passed by the Legislature;

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b. a copy of our position statement;

c. data on the medical malpractice liability problem;

d. a sampling of endorsement letters from our members and others, including the Governor and Insurance Commissioner;

e. a sampling of editorial comments from the newspapers around the state; and

f. a summary of non-economic caps in other states.

I hope you will find the notebook useful in following the testimony today and helpful as you study and deliberate on this issue.

In addition to the conferees here today, we have asked Ted Fay, Chief Attorney, HCSF; Anthony Valente, HCSF Actuary; Wayne Stratton, KMS General Counsel; and Lori Callahan, Attorney for American Insurance Association, to be present to help respond to any questions you may have regarding the issues and resolution after the conferees have finished their presentations.

We hope that this format will be a more efficient way to inform the Committee but should you have any questions which are not answered by today's presentations, I trust you will allow us to respond in writing before the Committee takes final action.

Before turning to the resolution itself, I want to make three brief points and then discuss some of the more significant elements and issues presented by the language of the proposed resolution.

The three points are these:

I. The Legislature has already thoroughly studied the issue of caps on non-economic damage awards and has recognized the need for, and desirability of, such limits on awards.

II. Because of recent state court decisions, a constitutional amendment is necessary to restore to the Legislature the authority to limit non-economic damages.

III. The people of Kansas should be given the opportunity to vote on this issue.

I.

First, the Legislature has long believed that it could

limit tort liability in various situations including the granting of absolute immunities. The Legislature has also limited liability to particular dollar amounts as in wrongful death actions and claims under the Kansas Tort Claims Act. Specifically, the Legislature has assumed it had the constitutional authority to place limits on damage awards in medical malpractice cases.

In 1986, then Governor John Carlin signed into law a comprehensive medical malpractice reform act which included a $250,000 cap on non-economic damages. 1986 House Bill 2661 followed an exhaustive study by the Special Interim Committee on Medical Malpractice and another study conducted by the Kansas Citizens Committee on Tort Reform and Insurance Matters appointed by the Insurance Commissioner. Again, this action was taken based on the assumption that the Legislature had authority to limit such damages in tort cases. The vote was 113 to 10 in the House and 33 to 7 in the Senate for House Bill No. 2661.

In 1987, the Legislature assumed once again that it had the constitutional authority to limit civil damages and applied limits on pain and suffering awards in all personal injury cases other than medical malpractice cases. The vote was 32 to 8 in the Senate and 79 to 46 in the House on House Bill No. 2472.

Finally, in 1988, you passed a uniform cap on non-economic damages in all personal injury cases. HB-2692 also passed by overwhelming majorities in both houses, with a 32 to 7 vote in the Senate and a 73 to 52 vote in the House.

The issue of whether there is a need to place some kind of limit on non-economic damages has been exhaustingly studied by the Kansas Legislature and others. And each year the conclusion is the same--statutory limits on such awards are necessary and desirable. By overwhelming majorities in both houses and with bi-partisan support, you and your legislative colleagues have already decided this issue of public policy. And Governors of both parties have agreed.

II.

In your notebooks you will note the chronological listing of legislation you have enacted to respond to the liability and insurance issues raised over the last decade. You will also note that a number of these changes were directed at the insurance industry and health care providers. Simply put, the Legislature has taken a comprehensive look at the liability and insurance availability crises. It has attempted to further regulate and reform not only the courts but also the insurance industry and the health care provider system. The insurance and health care provider limitations and regulatory measures are still in effect and operating. Only those attempts to change the

civil liability system have been declared unconstitutional.

It is significant that these civil liability reforms which we believe are most effective and will have the greatest impact on spiraling health care and product liability costs, namely caps on non-economic damage awards, are the only laws which have been invalidated by the court.

You have been briefed by staff on the effects of the Medical Malpractice Victims Coalition v. Bell case from June of 1988. There can be little question that the decision in the Bell case spells doom for the 1987 and 1988 legislative enactments limiting non-economic damages. In fact, the Kansas Bar Association Journal article given to you by staff reaches this exact same conclusion. See page 23.

In addition, the 1987 and 1988 non-economic damage caps have recently been challenged in Samsel v. Wheeler Transport Services, Inc., a case row under advisement in the Kansas Supreme Court. At the earliest, the case will not be decided before first adjournment of the 1989 Session and there is little hope that the court will reverse its position as expressed in the Bell decision. In fact, the Kansas Trial Lawyers Association, from whom you will hear tomorrow, has filed a brief arguing that the Bell case is controlling. In short, there is little reason for anyone to hold his breath waiting for the court to change its mind. We must proceed.

Consequently, we believe a constitutional amendment is the only solution. Having attacked the problem already from many different sides, there is little else to be done except restore the Legislature's authority to limit damages.

III.

According to our state constitution, the authority of the legislative, executive, and judicial branches of state government is delegated to each branch by the people. According to Section 2 of the Bill of Rights, "all political power is inherent in the people." It is the people of Kansas who have the power to determine which branch of government will have authority over any given procedure, issue or governmental function. As you know, the First, Second and Third Articles of the constitution are dedicated to the balanced distribution of governmental functions and authority. And any powers not delegated by the terms of the constitution are retained by the people in accordance with Section 20 of the Bill of Rights.

One of the most significant powers retained by the people of Kansas is the power to amend their constitution. The procedure for such amendment is specifically provided for in the constitution.

The introduction of SCR 1610 by this Committee began the procedure for submitting to the voters of Kansas the issue of whether the Legislature should have some authority to limit awards for non-economic damages in personal injury lawsuits.

The submission of constitutional amendments to the voters is not a new or unusual practice. Since 1970, Kansans have amended their constitution twenty times, averaging two amendments per election. Extremely important and complex issues of public policy have been presented to the voters for their determination, including the complete restructuring of the judicial branch, lotteries, liquor and apportionment, to name just a few. Obviously, the voters of Kansas are capable and accustomed to deciding important matters of public policy. If you have any doubt that the people can decide this issue, please rest assured that the proponents and opponents will make every effort to help inform the voters.

We believe the people ought to have the right to express themselves on this issue and determine whether the Legislature should have some say over civil damage awards.

IV.

There are certain elements of the constitutional amendment which I would like to highlight for the Committee's consideration. 1) In Section 1 of the Resolution at paragraph (a) you will note that the amendment would merely authorize the Legislature to place limits on non-economic damages. The use of the word "may" is permissive and does not require the Legislature to act. Moreover, the amendment itself does not impose caps or limits of any kind. Frankly, today's discussion need not focus on the need for any limit on damage awards. Rather the issue is whether the Legislature ought to have the power to impose some reasonable limits.

The Resolution would simply authorize the Legislature to do what it has already tried to do three separate times.

2) The amendment applies to all personal injury cases, not just medical practice cases. Following the Supreme Court decision in the Farly case, the Legislature has embraced the idea that such limits should apply to all cases equally. Consistent with current law the broader term "personal injury" was selected. The term is defined in the explanatory statement, Section 2, at lines 53 through 57. The term "personal injury" is in common usage in Kansas law. We have found 242 references to it in 65 statutes.

3) The amendment would authorize the Legislature to limit non-economic damages. It does not authorize the Legislature to limit pecuniary or economic losses such as medical

expenses, past and future, or lost earnings, past and future. Non-economic damages are defined in Section 1(b) lines 37 through 43. You will note that such damages include pain and suffering and other damages for which there is no measure, mathematical formula or method of calculation. As you know it is this type of unlimited damages which give rise to extreme and unpredictable awards.

4) The second sentence of paragraph (a) guaranties that the power granted by the amendment shall not be limited by other provisions, except that the Legislature is not empowered to place limits on damage awards where the injury was caused by criminal conduct. Consequently, upon conviction for a crime such as assault and battery or drunk driving, a defendant who injures another would not be covered by any limits imposed by the Legislature on non-economic damages.

CONCLUSION

We have worked very hard to draft an amendment which would respond to the specific problem presented by our recent state court decisions. We are asking for nothing more from this body than it has already given. We are proposing no more power for the Legislature than it has already presumed to have.

The Legislature is to be commended for what it has done in the area of tort reform and in insurance and health care provider regulation. Today we are not asking for anything new. We ask only that the people be given a chance to determine if the Legislature should play a role in limiting civil damages for non-economic losses. We would like to see the reforms made by the Legislature have a chance to work. Without a constitutional amendment, that is not possible.

Thank you.

JJS032090K2/5

PUBLIC POLICY STATEMENT

SENATE JUDICIARY COMMITTEE

RE: S.C.R. 1610 - A constitutional amendment to limit non-economic damages

March 20, 1989
Topeka, Kansas

Presented by:
Paul E. Fleener, Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee:

My name is Paul E. Fleener. I am the Director of Public Affairs for Kansas Farm Bureau. Chairman Winter, and Committee Members, we have been coming before Legislative Committees since the "Sen. Wes Sowers Committee" in 1976 discussing the problem areas in medical malpractice and, to more recent committees, the problem areas in tort reform.

Mr. Chairman, this Legislature has demonstrated **again and again and again** its willingness to deal with the problems facing agriculture, business, industry, and health care providers all over this state. You have dealt with product liability. You have sought to deal with medical malpractice and a crisis that exists.

But what happens to your efforts? Your good faith efforts to keep the **faith** with Kansans have been thwarted by intrepretations of a supreme court which apparently believes you violate the constitution when you do the good things you do in tort reform.

Chairman Winter, and Members of the Committee, this Legislature has shown what must be done. We're here today to ask

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you to show the way once again. We're asking you to submit to the people of Kansas a constitutional amendment which would **authorize ... allow** - NOT direct and require the Legislature to do what needs to be done in the area of tort reform. What is being asked as we come before you to support S.C.R. 1610 is that you give the people of this state an opportunity to vote whether or not there should be a limitation on non-economic damages. Should the Legislature even have the authority to enact laws to limit the amount of non-economic damages awarded for **any claim** for personal injury. No matter where it arises.

Rural Kansas needs your help in this matter. All of Kansas needs your help in this matter. It is not a rural/urban issues. We are losing specialist who practice in larger communities, particularly those close to border cities. We are losing general practitioners in rural areas. Or some are giving up a portion of their practice.

We talked economic development in this state. But unless we make a climate of opportunity for business, for industry, for agriculture, for commerce, and for health care providers, **THERE WILL BE NO ECONOMIC DEVELOPMENT.** There will be deterioration of communities. Deterioration of opportunity for growth and development. So we ask your favorable consideration of S.C.R. 1610.

Our policy positions in support of this resolution are attached to our testimony. We would be pleased to respond to question at the appropriate time.

POLICY POSITIONS

KANSAS FARM BUREAU

Printed below are the policy positions on tort liability reform and rural health care which were adopted by the voting delegates from 105 county Farm Bureaus, representing farmers and ranchers in the 105 counties in Kansas, at the December 4-6, 1988 Annual Meeting of Kansas Farm Bureau.

Tort Liability Reform

We support additional tort reform measures which would:

* Limit use of contingency fee arrangements;
* Prohibit the filing of liability claims in circuits other than those whose jurisdiction includes the location of the event from which the liability claim arises, or the plaintiff's home address;
* Prohibit any person from filing a liability claim if the person is trespassing or breaking a law at the time of an injury;
* Prohibit publication of the dollar amount sought in any malpractice suit; and
* Limit the amount of money which can be recovered in any malpractice suit.

We support adoption by the Legislature and submission to the electorate of a comprehensive amendment to the Kansas Constitution which will authorize the Kansas Legislature to enact tort reform laws which will withstand Constitutional challenge and Supreme Court interpretation.

Rural Health Care

Access to high quality and affordable health care is essential to all Kansans. We support the following measures which will assist in preserving this vital service to rural Kansas:

1. Eliminate the rural/urban differential in Medicare reimbursement for hospitals and physicians;
2. Reduce the shortage of health care professionals by encouraging students to enter the health care professions. We also encourage nurses already educated but not working at present to reenter their profession. We do not support implementation of the Registered Care Technologists program proposed by the American Hospital Association;
3. Create a state scholarship program for health care professionals similar to the existing medical scholarship program for doctors that requires some service in rural areas; and
4. Require Osteopathic and Optometry students on state scholarship programs to practice for a time in underserved areas.

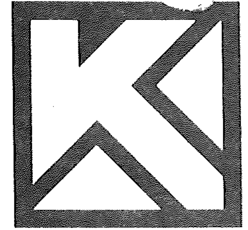
We strongly support a comprehensive amendment to the Kansas Constitution which will authorize the Kansas Legislature to enact appropriate tort reform laws, including necessary legislation in regard to medical malpractice, which will withstand Constitutional challenge and Supreme Court interpretation.

We believe the financial stability of some hospitals is being threatened by the increasing number of non-paying patients. We will support the following:

1. Amend state law to allow hospitals greater access to small claims courts so they may collect more debts from those who can pay;
2. Establish a statewide risk pool for those who cannot access health insurance due to pre-existing conditions; and
3. Change the health care coverage rules to make preventive care as well as emergency care available to the medically needy.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

HCR 1610 March 20, 1989

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Judiciary Committee

by

Gerhard Metz, J.D.
Director of Taxation

Good afternoon Mr. Chairman and members of the committee, and thank you for the opportunity to testify today in favor of HCR 1610. I am Gerhard Metz, representing KCCI and its more than 3500 members across the state. On their behalf, and on behalf of Mr. Edward Bruske, president of KCCI, I urge you to send this resolution on to your colleagues with a favorable recommendation.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

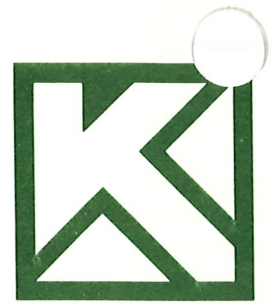
The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Attachment IV
Senate Judiciary Committee
3-20-89

You have before you this afternoon a letter from Mr. Bruske, which he has asked me to present to you. With your indulgence, I will read this letter, and, during the question period at the close of testimony this afternoon, attempt to respond to any questions you may have about KCCI's position on this issue.

The members of the Kansas business community recognize the need for a fair, stable system of resolution for civil lawsuits. The kind of predictability that limits on certain kinds of awards would allow is an important factor in planning for costs and allowing for the ongoing expenses that businesses must face. They believe that you, as legislators, have spoken repeatedly to the issue, only to have your efforts frustrated in the courts. Recognizing that you are able best to determine what limits should be set, the proponents of this measure would leave those determinations to you.

It is time that the people of Kansas had an opportunity to vote on an issue which they consistently have indicated as important to them. We ask no more than your support for that opportunity to vote on this important issue. Thank you, again, for the chance to speak to you today.



March 20, 1989

Kansas Chamber of Commerce and Industry

Mr. Chairman and Members of the Committee:

On behalf of KCCI and all 3700 members I would like to express our strongest support for Senate Concurrent Resolution 1610. The amendment proposed in this resolution is straightforward, and would result in a clarification, once and for all, of the question of whether the Kansas Legislature can set limits for the awards of non-economic damages in personal injury cases.

The arguments for and against tort reform have been made over and again for the past four years. KCCI has consistently supported measures that would ensure some measure of certainty in the costs arising from civil lawsuits. The kind of damages which could be limited under the provisions of this resolution are those least susceptible to objective ascertainment and verification. Non-economic damages are over and above the compensation awarded for actual, out-of-pocket expenses and the necessary costs of making the complaining parties whole.

We support the concept behind the way the amendment is drafted: there is no limit set in this resolution, and its language is purely permissive. We believe that the legislature can and should determine what limits, if any, should apply for non-economic damages.

The people of Kansas have spoken through their elected representatives in the legislature on the issues of fairness, balance, and predictability in civil lawsuits. KCCI supports the right of the people to vote, once and for all, whether these legislative enactments should stand, once made.

Kansas businesses need stability and some degree of predictability in the court system in order to plan current operations and future growth. Providing a means for legislation to address these concerns within the bounds of the Constitution will be in their best interest. I therefore urge your support for Senate Concurrent Resolution 1610.

Sincerely,

EDWARD G. BRUSKE
President

sjb

Attachment V
Senate Judiciary Committee
3-20-89

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 Phone (913) 357-6321

March 20, 1989

Formal Testimony

to

Kansas Senate

Judiciary Committee

The Honorable Wint Winter, Jr., Chairman

The Honorable Jerry Moran, Vice Chairman

by

Ernie J. Chaney, M.D.

Director, St. Joseph Family Practice Residency Program

Professor, Dept. of Family and Community Medicine, UKSM - Wichita

Chairman, Medical Liability Committee, Ks. Acad. of Family Physicians

Attachment VI
SJC
3-20-89 P.M.

I am Ernie J. Chaney, M.D., Professor of Family and Community Medicine, University of Kansas School of Medicine-Wichita and Director of the St. Joseph Family Practice Residency Training Program in Wichita.

I appreciate the opportunity to relate some of my thoughts concerning medical liability and Senate Concurrent Resolution 1610.

I am aware of the time constraints facing us this afternoon, and I will try to be concise.

I have enclosed a copy of my testimony, as well as, a copy of the 1988 Kansas Academy of Family Physicians' Practice Survey, which focused on obstetrics and medical liability. This survey will serve as the basis for much of my testimony today.

I am a graduate of the University of Kansas School of Medicine. Following my medical training at KU, I had the opportunity and privilege of practicing in northcentral Kansas in Republic County in the town of Belleville from 1957 to 1983. In the community of Belleville, I was responsible for the health care needs of the people in Republic, Jewel, Smith, Cloud, and Washington counties, as well as a number of patients in southern Nebraska.

As a Family Physician in this rural community, the scope of my practice of Family Medicine was quite extensive and did include operative obstetrics and other procedural oriented skills. The breadth of my practice was very comprehensive. The people of the community of Belleville and surrounding counties relied on me... their Family Physician to help them resolve their health care needs,

ether they came to my office with a spiking fever, the operati room if they had an acute appendicitis, the obstetrical suite to deliver their baby, or the emergency room to suture a laceration, my patients and the citizens of that community in Kansas were assured of qualified, comprehensive health care.

The assurance of qualified and comprehensive health care is dwindling at an alarming pace. As indicated in the 1988 Kansas Academy study that each of you have before you, Family Physicians are eliminating obstetrics as a part of their practice and that service for their patients, primarily because of the medical liability crisis in our state of Kansas.

Based on the 1988 survey response of approximately 300 Family physicians, 152 Family Physicians are currently maintaining obstetrical practice for the patients of their communities. One hundred forty six of the responding Family Physicians have quit providing obstetrical care, citing medical liability as the major reason for discontinuing this service.

Many of you may remember me coming before this very committee last year and sharing statistics based on a similar study conducted by the Academy in 1987. With two consecutive years of research dedicated to profiling the practice situation of Family Physicians as it relates to obstetrical practice, we feel very confident in stating that the patients and citizens of Kansas Family Physicians have seen 82 Family Physicians quit obstetrics from 1987 to 1988. This statistic coupled with the previous 4 to 5 years of steady decline of Family Physicians doing obstetrics has us quite concerned as to who will deliver the approximate 7,500 to 8,000 babies that are annually delivered by Kansas Family Physicians.

The 1988 survey clearly demonstrates that the majority of Family

ysicians maintaining obstetrical service are in the rural areas c our state. These rural based Family Physicians continue to maintain obstetrics, in spite of the escalation in medical liability premiums,out of a strong sense of responsibility to the patients of their communities and the real fact of inaccessibility to other qualified health care providers. Let me stress that based on two years of research regarding this situation, we sense that these rural based Family Physicians are desperately trying to hang-on and maintain the services, specifically obstetrical service, that their patients depend on in their communities.

My perspective of the specialty of Family Medicine and how the issue of Medical Liability effects my specialty has been broadened by serving as President of the Kansas Academy of Family Physicians and also as President of the American Academy of Family Physicians, the country's largest medical specialty society.

The medical liability crisis as we are experiencing in Kansas is fragmenting the specialty of Family Medicine...a specialty that has served as the backbone of health care for Kansans for many years is being jeopardized. To demonstrate this fragmentation beyond obstetrical care, we must realize that in order to be granted a lower risk classification and a lower liability premium, not only does obstetrics need to be eliminated, but other minor surgical procedures such as D & C's, vasectomy's, and colonoscopy's (which incidentally is a very important diagnositic procedure in the detection of colorectal cancer screening) must be eliminated as well. As you can see, the erosion of services continues for patients of Kansas Family Physicians due to the medical liability crisis.

As mentioned earlier, I currently serve as the Program Director of the St. Joseph Family Practice Residency Program. It is my job to train the Family Physicians of tomorrow...the Family Physicians who

hope will stay in our state of Kansas to practice the good and comprehensive skills we have taught them.

Unfortunately, due to the medical liability crisis in Kansas, we continue to see dwindling interest in our specialty by students and an overall lack of interest in practicing in Kansas by our Residents in training. From talking with my Residents at St. Joseph, other Family Practice Residents and Program Directors in the four other Family Practice Residencies in Kansas, I can assure you that the issue of medical liability is weighing heavily in their decision to leave Kansas.

Last year, five out of seven Residents stayed in Kansas. This year, only two out of seven will remain in the State. Our Residents today, and your Family Physicians of tomorrow are greatly concerned about this crisis. Our Kansas Family Practice Residents are afforded the opportunity of quality education in Family Medicine with the opportunity to learn good obstetrical skills and then, because of the liability issue, they are unable to practice in their State. This is most certainly a sad commentary and a frustrating paradoxical situation. We make tremendous investments in educating our Family Physicians for the future, but yet, because of the liability situation they cannot afford to practice the level of medicine they have been trained to. Worse yet, we are losing and will continue to lose those Family Physicians and other physicians in other specialties of medicine that we train to other states unless specific measures are taken to end this crisis.

If anyone has a question as to the demand for Family Physicians in Kansas, I can assure you the demand is there. As a Program Director, I get requests, daily, from communities in Kansas needing Family Physicians. Included in your packet are some letters from Kansas communities who are desperately in search of Family Physicians to

ve and practice in their communities. These requests range frc Belleville to Wellington and Ulysses to Atchison. As you can imagine, the medical liability situation is impeding the placement of Family Physicians in these communities and compounds the overall problem of health care dislocation for the people of our State.

While my day-to-day contact is with Family Practice Residents, I have recently visited with Dr. Dan Roberts, Director of the OB/Gyn Residency Program at HCA/Wesley. He shares a mutual concern for the future of the OB/GYN Residents and whether they will stay in Kansas to practice. This program, which is highly regarded as an excellent one, is graduating three physisians in this specialty. One physician owes a considerable sum to the State of Kansas because of the scholarship program. However, he is going to practice in Oklahoma, because by practicing there where the liability issues are much more stable, he will be able to pay back his scholarship loan in two and one-half years. The other two graduates are taking fellowships in perinatology and fertility, two areas of extreme importance to the citizens of our State, and both of these physicians have stated they are not planning to stay in their native state to practice because of the liability issue.

I do want to express my appreciation for those of you who voted for the Tort Reforms that have been passed in the last two years. It is apparent that a constitutional amendment is necessary to make those Tort Reforms functional.

As I have eluded to throughout my testimony, the group truly hurt by the liability crisis are the patients and citizens of Kansas. It seems only fair that this issue and the future of health care in Kansas be decided and voted on by the people being affected the most, Kansans...

HUTCHINSON CLINIC, P.A.

February 16, 1989

Ernie J. Chaney, M.D.
Director
St. Joseph Medical Center
Family Practice Program
1131 South Clifton
Wichita, Kansas 67218

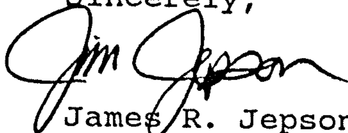
Dear Doctor Chaney:

I enjoyed visiting with you yesterday morning. It really is alarming and distressing to see what is happening in Kansas, knowing that no solution is in sight in the foreseeable future.

Again, I appreciate your willingness to help us in our recruitment of family physicians. I will be sending you the letters to hand out to your residents and post on the bulletin board.

Best regards.

Sincerely,



James R. Jepson
Administrator

JRJ/md

2101 N. Waldron Hutchinson, Kansas 67502 (316) 663-6121
TOLL FREE: 316 AREA CODE USE 1-333-1261; 913 AREA CODE USE 1-800-362-0386

THE MEDICAL CENTER
1100 North Main Street / Hutchinson, Kansas 67501 / 316-663-2151
10 South Main / South Hutchinson, Kansas 67505 / 316-663-2281

Family Practice
Industrial Medicine
Jerome S. Spitzer, M.D.
Elwyn J. Taylor, M.D.
William D. Davis, M.D.
David C. Hanson, M.D.
Martha Byers, M.D.
Dennis J. Kepka, M.D.
Marcia C. Budge, R.N., F.N.P.

Internal Medicine
Bradley J. Scheel, M.D.
William R. Savage, M.D.

Gastroenterology
indle C. Johnson, M.D., F.A.C.P.

Orthopaedic Surgery
Sports Medicine
John B. Jarrott, M.D.

Surgery
Elias Hourani, M.D.

Obstetrics & Gynecology
Grady N. Coker, Jr., M.D.
Richard A. Gard, M.D.
Lowell Byers, M.D.

Pediatrics
Robert N. Shears, M.D.
David H. Tweito, M.D.
Philip L. Cherven, M.D.
James Lynn Casey, M.D.
Richard Knapp, C.H.A.

Neurology
Calvin G. Olmstead, M.D.

Radiology
Stephen C. Mills, M.D.

Marriage & Family Therapy
Anthony C. Beauchamp, Ph.D., L.S.C.S.W.

Administration
Darrel T. McCool
Barbara A. Wheaton

November 9, 1987

St. Joseph Family Practice Residents
1131 South Clifton
Wichita, KS 67218

Dear St. Joseph Family Practice Residents:

This letter is to introduce Medical Center, P.A. of Hutchinson, Kansas to all St. Joseph Family Practice residents who are interested in exploring an opportunity in Hutchinson or one of the surrounding rural communities.

Medical Center, P.A. is a growing multi-specialty group made up of twenty physicians representing various specialties (see attached physician profiles). Medical Center, P.A. has eighteen physician employee/shareholders in the main clinic. Presently, we are in the final stages of a $1,500,000.00 building expansion project which will ultimately permit the addition of ten new physicians. We have a satellite facility in South Hutchinson with two full-time family practice physicians, and a satellite office in Buhler with one full-time physician. Within the next thirty days we should complete the acquisition of a third satellite facility in a nearby community. The emphasis of Medical Center, P.A. recruitment at this time is in Family Practice, and we are looking for three additional physicians, both in our main clinic as well as our satellite locations.

The Medical Center offers a first year salary guarantee plus bonus to all new physicians. We provide health insurance for physician and family, comprehensive group and individual disability insurance for all physicians, and a $50,000.00 life insurance policy. In addition, first year physicians receive a $1,500.00 annual dues, fees, and subscription allowance, a $100.00 per month social club allowance, and we pay all medical malpractice premiums.

MEDICALODGES, INC.

Health Care Fa...lies

316-251-6700 • P.O. BOX 509 • COFFEYVILLE, KANSAS 67337

March 7, 1988

Dr. Ernie J. Chaney
1131 S. Clifton
Wichita, KS 67201

Dear Dr. Chaney:

In this age of rapidly increasing health care needs, have you ever considered expanding your current practice to include some of the nearby growing communities?

If you have, we would like to take this opportunity to introduce to you the Community of Goddard.

Goddard, as you know, is only thirteen miles west of Wichita on Hwy. 54. The town is growing and in need of a local clinic and doctors to address the people's needs.

We have an excellent site right on Hwy. 54 adjacent to the Goddard water tower. There is also a 110-bed nursing home within walking distance. This, of course, could be an advantage for anyone considering a new clinic, plus it offers the opportunity of encouraging others in the area to become your patients.

Should you have an interest in this opportunity, we would appreciate a call or a letter. Please contact us at 512 West Eleventh, P. O. Box 509, Coffeyville, Kansas 67337, phone number, (316) 251-6700. We will make arrangements to visit you and go into more detail.

Sincerely,

MEDICALODGES, INC.

Kermitt Schanno

Kermitt Schanno

KS/mjb

The University of Kansas Medical Center
School of Medicine-Wichita

Family & Community Medicine

M E M O R A N D U M

DATE: February 6, 1989

TO: Residency Directors
(See Distribution)

FROM: Andrew M. Barclay, M.D.
Associate Professor and Chairman
Department of Family and Community Medicine

SUBJECT:

Doctor Hadley from Ottawa, Kansas, phone number 913/242-3891, called today, 2/1/89. He is currently solo in a modern three man office; two other physicians have left within the last few years. The office is in an office building where most of the physicians in town practice, three to four blocks away from the 5--bed hospital. Dr. Hadley performs obstetrics. Ottawa is approximately 50 miles from Kansas City and Topeka and 25 miles from Lawrence.

There is guaranteed salary of $60,000 a year with malpractice, health and disability insurance. Dr. Hadley is Board certified and is in his early 50's.

AMB/lth

DISTRIBUTION: Ernie Chaney, M.D.
John Danby, M.D.
Thomas Houston, M.D.
Rick Kellerman, M.D.

1010 N. Kansas • Wichita, Kansas 67214-3199 • (316) 261-2607
Main Campus Lawrence • Medical Center, Kansas City and Wichita

Bob Wilson Memorial Grant County Hospital

415 North Main Street

Ulysses, Kansas 67880

January 26, 1989

E.J. Chaney, M.D.
Residency Director
Family Practice Center
1131 S. Clifton
Wichita, KS 67218

Dear Dr. Chaney:

Bob Wilson Hospital in Ulysses, KS, is beginning a search for doctors. We are looking for two Family Practice physicians who have a subspecialty, or at least a strong interest, in Obstetrics.

Mary Madding suggested that I write to you about our recruitment effort, since you would be the one who would bring this practice opportunity to the attention of your residents or others who might be interested.

I have enclosed a Position Profile that you might post. I will be happy to send additional information about Ulysses and the hospital, should there be a need.

Ulysses and the surrounding area is in a growth period. There is much new construction in progress and the hospital will break ground this spring on a Trauma Center addition. New doctors to our area would be a part of this exciting time.

Please call, collect, if you or any of your residents would like to discuss this practice opportunity. Thank you for your assistance.

Sincerely,

Susan Popejoy

Susan Popejoy, Recruitment Coordinator
826 N. Durham, Ulysses, KS 67880
(316) 356-2843

Decatur County Hospital
& Long Term Care Unit

810 West Columbia
Box 268
Oberlin, Kansas 67749

POSITION PROFILE

Specialty: FAMILY PRACTICE

Location: Oberlin, Kansas is an attractive, progressive, and friendly community of 2,500 in a county of 4,800 located in Northwest Kansas. Oberlin residents talk about the quality of life in our community, excellent schools, active churches, recreational opportunities, good shopping, and the lack of big-city crime, pollution, and congestion problems. Oberlin is known throughout the state as an innovative community and has received the state Pride Pacemaker Award three times, the only community our size to earn this recognition.

Oberlin is less than one hour from excellent fishing and camping facilities, two hours from major shopping, and approximately four hours from Denver, Colorado.

Practice Opportunity: This is an outstanding opportunity in Oberlin (Decatur County) for two Board Certified/Board Eligible family physicians wanting an established rural practice but who want to be associated with an excellent clinic and hospital. Oberlin Medical Arts Clinic has an established four physician practice and is replacing two physicians who have recently retired or moved for personal reasons. The clinic Medical Staff is comprised of two young Board Certified physicians and a general surgeon. In addition to the Oberlin Clinic, the hospital and physicians operate in conjunction with surrounding communities three small satellite clinics on a weekly basis. The service area of the clinic is in excess of 6,000 people.

The modern, well-equipped clinic building, located adjacent to the hospital, has exam and office space for up to three additional physicians and no equipment purchase is necessary. All physicians contribute in a pro-rated manner to the office expense and there is no required investment for the incoming physician.

The hospital is in the process of expanding its services and physical plant. The county overwhelmingly supported a $2.7 million bond issue to add 8,000 square feet of outpatient area, renovate all rooms, and add 12 beds to the co-located skilled nursing facilty. When completed in mid-1989 the facility will have 27 fully staffed acute care beds and 50 Long Term Care beds. The Administration and hospital Board are supportive and work well with the Medical Staff.

A. M. PEDERSON, M.D.
300 COLORADO STREET
PLAINVILLE, KANSAS 67663
TELEPHONE (913) 434-4609

April 29, 1988

University of Kansas School of Medicine
Department of Family and Community Medicine
1010 N. Kansas
Wichita, Kansas 67214-3199

Dear Sirs:

Along with many other communities in western Kansas, we here in Plainville are facing an acute physician shortage. Dr. Rick Kellerman is leaving Plainville to join the residency training program in Salina.

Plainville presents an attractive opportunity for any physician interested in rural practice.

If you know of anyone interested, please have them contact me at 913-434-4609 or Dr. Kellerman at 913-434-4649.

Thank you,

A M Pederson MD

A. M. Pederson, M.D.
300 Colorado
Plainville, Kansas 67663

AMP/sh

cc Wesley Medical Center
St.Francis Medical Center
St.Joseph Medical Center

St. Luke Hospital

1014 East Melvin
Marion, Kansas 66861

Please take a few moments to review the enclosed material as a short introduction to the Family Practice opportunity available in Marion, Kansas.

If you're looking for the opportunity to practice medicine in a pleasant, rural community of 2,000 friendly people, Marion is the right choice. A perfect place to raise a family with close proximity to major metropolitan centers.

St. Luke Hospital/Nursing home, located in Marion, is a modern, exceptionally well equipped 25-bed acute care hospital with an attached 18-bed intermediate/skilled nursing home. The hospital has available all patient care services including the following: Mobile CT Scanning, Mammography, Nuclear Medicine, Birthing Room, Full-time General Surgeon, Inhouse Certified Nurse Anesthetist, Respiratory Therapy, Physical Therapy, Home Health and Durable Medical Equipment Programs.

Marion County is designated as a critically underserved area for Family Practice physicians and qualifies for the Type I, Kansas Medical Scholarship Program. The County's population is approximately 13,000. The Active Medical Staff of St. Luke Hospital consists of one Doctor of Osteopathy in Peabody, one Family Practice physician and one General Surgeon in the City of Marion.

The Hospital District owns a five year old medical office building adjacent to the Hospital and two outlying clinics located in communities ten miles from the City of Marion. All three of these clinics are fully equipped and available to a new physician.

This is a tremendous opportunity and it would be our pleasure to assist in providing you with additional information.

Sincerely,

Don Hodson, M.D., A.A.F.P.
(316) 382-3722

Stephen Cranston, M.D., F.A.C.S.
(316) 382-2177

Ruth Sherman, D.O.
(316) 983-2171

Craig Hanson, Administrator
(316) 382-2177

The University of Kansas Medical Center

Office of the Executive Vice Chancellor

March 15, 1988

Edward Donatelle, M.D.
Professor and Chairman
Department of Family Practice
KUMC - Wichita

Dear Ed:

A young physician in family practice in Larned, Kansas was recently killed in an automobile accident. They have been recruiting for another physician as an underserved area and now are in a very critical situation. It sounds to me as though this would be a real opportunity for a young physician in the medical scholarship program. For that matter, any family physician.

I would appreciate it if you would contact your housestaff to see if any might be available and interested in the position. For details, they should contact Mr. Steve Spence, St. Joseph's Hospital, 923 Carroll Street, Larned, Kansas 67550.

Most sincerely,

D. Kay Clawson, M.D.
Executive Vice Chancellor

DKC/pgw

cc: Mr. Steve Spence
Mr. Walter Gehlbach

CITIZENS MEDICAL CENTER

CMC 100 E. COLLEGE DRIVE
COLBY, KANSAS 67701-3799 913-462-7511

November 14, 1988

Robert K. Purves Family Practice Center
E. J. Chaney, M.D.
1131 S. Clifton
Wichita, KS 67218

Dear Dr. Chaney:

The Colby, Thomas County area of northwest Kansas is a designated medically underserved area of the state. We are seeking two family practice physicians to complement our active staff of four (4) family practice, one general surgeon and one in-house radiologist.

Citizens Medical Center is a JCAHO-accredited facility opened in 1982 consisting of 40 beds, three-bed special care, surgery/recovery unit, birthing room, clinical lab, radiology, ultrasound, physical therapy, weekly mobile CT scan, cardiopulmonary, and consulting specialists visiting on a rotating schedule. Also, a hospital-based home health agency service is offered.

Thomas County has a population of 8,500 and Colby is the County Seat with approximately 5,800 people. We are quite proud of our full service community and the respected role our hospital enjoys within and outside the community.

We are offering a comparable standard relocation package, and would be pleased to discuss this opportunity in further detail with those interested.

Please assist us in reaching those doctors who may be interested in our offer. Thank you for your assistance.

Very truly yours,

Ross T. Schultz
Administrator

RTS:gy

ST. JOSEPH HOSPITAL CONCORDIA, KS

SJH

FAMILY PRACTICE

St. Joseph Hospital and Medical Staff are seeking a Family Practice Physician wanting to locate in a rural area with a primary market of 30,000.

Concordia, Kansas is an attractive, progressive, rural community, located in North Central Kansas. There are excellent schools, including a two year community college, active church and excellent recreational opportunities. Concordia is less than one hour from three of the largest lakes in Kansas and offers the best hunting and fishing in the MidWest.

The candidate will have a choice of joining a multi-speciality group, partnership or solo practice. The active Medical Staff of 14 physicians covers Family Practice, Pediatrics, Radiology, Psychiatry, Surgery, Urology and Internal Medicine.

The compensation package consists of $70,000 to 80,000 personal income guarantee plus coverage of all practice related expenses which includes:

* Malpractice Insurance
* Health and Life Insurance
* Disability Insurance
* CME Allowance
* Furnished Office
* Complete Clerical and Professional Staff
* Professional Association Membership
* Productivity Incentives

For more information call Wade Castonguay or Renita Goodwin at (913) 243-1234.

Dec 22, 1988

Dear Dr Chesney;

I am handwriting this letter to you in hopes that it will prevent it from being lost among other letters of a similar nature which you no doubt receive.

I am a recent graduate of Wesley's FP Program, and am currently practicing in Wakeeney Ks with Marlin Locke. I am enjoying it immensely! There are things to do in western Kansas and medicine here is very challenging.

I'm mainly writing to alert you and your residents to a community in western Kansas where a similar experience could be found. Plainville is a town of about 2500 people in a county of 8000 residents, and is located 23 miles north of Hays. Currently there are 3 physicians in Rooks county, serving the people through a county hospital in Plainville. The hospital has about 25 beds, has up-to-date equipment and is well cared for. Adjoining the hospital is a brand new clinic owned by

community. The town would actively support a new physician, and the financial package available <u>is the best I've seen.</u> In fact, if I weren't happy in WaKeeney I'd give Plainville very serious consideration. It is an excellent example of the best western Kansas has to offer in the way of good schools, a peaceful town for raising a family, etc. In the past, Plainville has had some state champion football and wrestling teams as well.

Perhaps most importantly, for the resident looking for a place to practice, is the availability of consultants and diagnostic testing. Hays is very close and offers MRI, CT, sonography, and about 40-50 specialists for backup.

In short I believe Plainville to be very much worth looking at. I would very much appreciate your sharing this information with your residents.

Best Wishes during the holiday season!

Sincerely

Dave Bolling

Interested persons call Keith Unrein (913)-434-4615

HOLTON CHAMBER OF COMMERCE
104 West Fifth
Holton, Kansas 66436
913-364-3963

A MEDICAL PRACTICE OPPORTUNITY WORTH A GOOD LOOK

The City of Holton, Kansas is an ideal location for physicians looking for a special community to practice medicine. Holton is a community of 3,200 people, and is the County Seat of Jackson County, located in Northeast Kansas. Situated 30 miles north of Topeka, Holton serves as a trade center for over 11,000 people.

Medical services are currently being provided by two physicians who live in Holton. Joel Hutchins, M.D., age 38, operates the West Side Family Practice, and is residency trained in family practice. Carlos Chavez, M.D., age 54, has a general practice at the Holton Medical Center. Dr. Chavez also has training in Pathology and Surgery. Both clinics,which are adjacent to the Holton City Hospital, have ample space and office personnel to support additional physicians. The complex includes services provided by Holton Medical Pharmacy, which is also located in the clinic building. In addition to the two registered pharmacists employed by the Holton Medical Pharmacy, a third registered pharmacist is located in the downtown area. Other health care professionals located in the Holton business district include four Dentists, two Chiropractors and one Optometrist.

Physcician Recruitment has been a high priority in the past year within the Holton Community. Within the past month, James Seeley, M.D., who has practiced in Holton for twenty-two years, announced his retirement from general practice here. Holton was already on the critically underserved list for the Kansas Medical Scholarship Program, and with our service area population, the need for physician recruitment is urgent.

A full range of services are available at the Holton City Hospital. Over twenty consulting specialty physicians regularly visit Holton to see patients and consult with local physicians. The City Hospital provides access to mobile services and supporting professional personnel. The Holton City Hospital has recently updated its facilities. In addition, the Hospital cooperates with a number of area health care and social service agencies, such as the United States Indian Health Center, located in Holton.

HOLTON HAS IT!

The Holton Chamber of Commerce, the Holton City Hospital and the Holton Medical Pharmacy are heading a joint effort to recruit two or more physicians. Contact persons for Physician Recruitment are the following:

Margaret Telthorst, Executive Director
Holton Chamber of Commerce
104 West 5th
Holton, Ks. 66436
913-364-3963/2101 (O)
913-233-7333 (H)

Jeff Reinert, Administrator
Holton City Hospital
510 Kansas Avenue
Holton, Ks. 66436
913-364-2116 (O)
913-364-4504 (H)

Frank Gilliland, R.PH.
Holton Medical Pharmacy
418 West 5th
Holton, Ks. 66436
913-364-2114 (O)
913-364-4626 (H)

We will be happy to provide more information and would like the opportunity to show you what we have to offer.

HOLTON CITY HOSPITAL

510 KANSAS AVENUE
HOLTON, KANSAS 66436
(913) 364-2116

January 5, 1988

Family Practice Program
St. Joseph Med. Center
3600 E. Harry
Wichita, Ks. 67218

I am writing to ask your assistance in our physician recruitment efforts. The Holton area is an ideal location to practice and there is substantial community loyalty and enough patients to financially support four or more family physicians. Our goal is to locate at least one physician by July 1, 1988 with continued efforts to add to our medical community. Actual practice arrangments are flexable and can be customized to meet the physicians' needs.

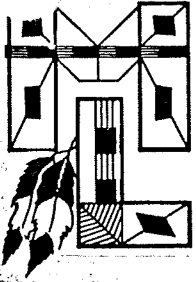
If I can provide more information please let me know. I will appreciate your personal involvment in helping Holton.

Thank you for your assistance.

Sincerely,

Jeff Reinert
Administrator

enc.



Medicine Lodge Memorial Hospital

710 North Walnut
Medicine Lodge, Kansas 67104
(316) 886-3771

John G. Bradley, M.D.
1131 South Clifton
Wichita, KS 67218

January 12, 1988

Dear Dr. Bradley:

Medicine Lodge Memorial Hospital and Physicians Clinic currently has need for a Family Practice Physician. We currently have two General Practice Physicians practicing in this clinic and one General Surgeon.

The Hospital Board has put together a recruitment package including a $60,000.00 minimum first year income, moving expense, health insurance coverage, two weeks vacation, two weeks continuing education, and first year malpractice insurance coverage and will consider loan repayment if applicable. These terms are negotiable.

The Hospital also offers an attached Clinic facility with the physician receiving their collected charges minus direct expense. Ancillaries are provided by the Hospital. We presently have excellent Laboratory, X-Ray, Physical Therapy and Respiratory Therapy facilities.

If you are interested in this excellent opportunity, I would appreciate the opportunity to visit with you. Feel free to call me collect, or write if you would like additional information.

Sincerely,

Kevin A White

KEVIN A. WHITE
Administrator

Business: (316)886-3771
Home: (316)886-5000

Enclosures

KAW/tw

POSITION PROFILE

SPECIALITY: Family Practice

LOCATION: Atwood, Kansas is an attractive, progressive and friendly community of 1500 located in Rawlins County in northwest Kansas. County residents talk about the quality of life in their community - excellent schools, active churches, good recreational opportunities, and the lack of big city crime, pollution and congestion problems.

Atwood is four hours from the Denver metropolitan area, and five hours from all the major ski resorts. Thirty miles to the north is Swanson Reservoir, which offers excellent fishing, boating and water sport activities. The area immediately surrounding Atwood offers some of the best hunting available in the state, including pheasant, wild turkey and deer. Rawlins County supports the arts actively through the Western Plains Art Association, which brings many outstanding programs to the area each year. There are many opportunities for involvement in major civic organizations as well.

PRACTICE OPPORTUNITIES: There is an outstanding opportunity in Atwood for a family practitioner wanting a rural practice, but who also wants the support of two other family practitioners and a multitude of consulting specialists who hold regular clinics in Atwood. Specialities represented include internal medicine, general surgery, orthopedic surgery, urology, cardiology, podiatry, pathology, oncology, otolaryngology, and radiology. The general surgeon, pathologist and radiologist are available at all times. There are at present two family practitioners practicing in the community. They each practice in a solo practice. One of them maintains four outlying clinics in surrounding communities, which has broadened the service area from approximately 4,000 people to over 5,000.

The hospital is one of the finest of its size. It is very progressive, well managed, financially sound, and responsive to physician needs. The hospital has 24 beds, two of which are critical care beds. In addition it has four nursery isolettes, a recovery room, a surgical suite, a delivery suite, and a well-equipped emergency room. The hospital has outstanding ancillary services including ultrasound, mammography, and nuclear medicine. Work is being done to secure a mobile CT scanner. The hospital staff is young, well educated, and responsive to both the needs of patients and physicians. The ambulance service is manned by well-trained EMT's, and emergency air transport is available.

The new family practitioner can expect cooperation from both family practitioners in the community. Both of them are expressing concern about their workload and growing practices. They are both committed to the fact that the community can support three family practitioners, and are both eager to have assistance. An opportunity exists for a solo practice, a solo practice with shared overhead, or

Practice Opportunity (continued)	a partnership practice, depending upon the preference of the new physician. Regardless of the option selected, the physicians do cooperate in taking call and covering for each other to allow for time off, vacations and for continuing medical education.
SERVICE AREA:	The northwest Kansas area offers unmatched professional opportunity. The service area surrounding Atwood, Kansas has very adequately supported three physicians for over four years. The third physician recently left to pursue a radiology residency, thus creating an almost overwhelming workload for the remaining two. This practice should be viable almost immediately, and it is possible to project a very sound and rewarding practice for many years down the road.
COMPENSATION PACKAGE:	This opportunity includes a highly attractive first-year income guarantee plus a full package of benefits. ...$50,000 first-year base income guarantee. ...$20,000 contract for covering the emergency room. This contract is available to all family practitioners practicing in Atwood, Kansas, and is not limited to the first year of practice, but is an ongoing contract which is re-negotiated annually. In reality this brings the base income guarantee to $70,000. ...First year malpractice insurance (paid up to $5,000). ...Health insurance allowance of $250/month for the first year. ...Moving expense advance. ...Housing allowance of $250/month for the first year. ...Four weeks off the first year for vacation and CME. For those with medical scholarships, Rawlins County is designated a critically underserved area.
CONTACT:	Pamela Thomas, Administrator Rawlins County Hospital 707 Grant P.O. Box 47 Atwood, Kansas 67730 (913) 626-3211

POSITION PROFILE

SPECIALITY: Family Practice

LOCATION: Atwood, Kansas is an attractive, progressive and friendly community of 1500 located in Rawlins County in northwest Kansas. County residents talk about the quality of life in their community - excellent schools, active churches, good recreational opportunities, and the lack of big city crime, pollution and congestion problems.

Atwood is four hours from the Denver metropolitan area, and five hours from all the major ski resorts. Thirty miles to the north is Swanson Reservoir, which offers excellent fishing, boating and water sport activities. The area immediately surrounding Atwood offers some of the best hunting available in the state, including pheasant, wild turkey and deer. Rawlins County supports the arts actively through the Western Plains Art Association, which brings many outstanding programs to the area each year. There are many opportunities for involvement in major civic organizations as well.

PRACTICE OPPORTUNITIES: There is an outstanding opportunity in Atwood for a family practitioner wanting a rural practice, but who also wants the support of two other family practitioners and a multitude of consulting specialists who hold regular clinics in Atwood. Specialities represented include internal medicine, general surgery, orthopedic surgery, urology, cardiology, podiatry, pathology, oncology, otolaryngology, and radiology. The general surgeon, pathologist and radiologist are available at all times. There are at present two family practitioners practicing in the community. They each practice in a solo practice. One of them maintains four outlying clinics in surrounding communities, which has broadened the service area from approximately 4,000 people to over 5,000.

The hospital is one of the finest of its size. It is very progressive, well managed, financially sound, and responsive to physician needs. The hospital has 24 beds, two of which are critical care beds. In addition it has four nursery isolettes, a recovery room, a surgical suite, a delivery suite, and a well-equipped emergency room. The hospital has outstanding ancillary services including ultrasound, mammography, and nuclear medicine. Work is being done to secure a mobile CT scanner. The hospital staff is young, well educated, and responsive to both the needs of patients and physicians. The ambulance service is manned by well-trained EMT's, and emergency air transport is available.

The new family practitioner can expect cooperation from both family practitioners in the community. Both of them are expressing concern about their workload and growing practices. They are both committed to the fact that the community can support three family practitioners, and are both eager to have assistance. An opportunity exists for a solo practice, a solo practice with shared overhead, or

Practice Opportunity (continued)

a partnership practice, depending upon the preference of the new physician. Regardless of the option selected, the physicians do cooperate in taking call and covering for each other to allow for time off, vacations and for continuing medical education.

SERVICE AREA:

The northwest Kansas area offers unmatched professional opportunity. The service area surrounding Atwood, Kansas has very adequately supported three physicians for over four years. The third physician recently left to pursue a radiology residency, thus creating an almost overwhelming workload for the remaining two. This practice should be viable almost immediately, and it is possible to project a very sound and rewarding practice for many years down the road.

COMPENSATION PACKAGE:

This opportunity includes a highly attractive first-year income guarantee plus a full package of benefits.
...$50,000 first-year base income guarantee.
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This contract is available to all family practitioners practicing in Atwood, Kansas, and is not limited to the first year of practice, but is an ongoing contract which is re-negotiated annually. In reality this brings the base income guarantee to $70,000.
...First year malpractice insurance (paid up to $5,000).
...Health insurance allowance of $250/month for the first year.
...Moving expense advance.
...Housing allowance of $250/month for the first year.
...Four weeks off the first year for vacation and CME.

For those with medical scholarships, Rawlins County is designated a critically underserved area.

CONTACT:

Pamela Thomas, Administrator
Rawlins County Hospital
707 Grant
P.O. Box 47
Atwood, Kansas 67730
(913) 626-3211

POSITION PROFILE

SPECIALTY: Family Practice, with a subspecialty in Obstetrics (or possibly Pediatrics)

LOCATION: Ulysses, Kansas is an attractive, progressive and friendly community of 5,000, located in southwestern Kansas. Ulysses residents talk about the quality of life in their community ---excellent schools, active churches, a variety of recreational opportunities, and the lack of big-city crime, pollution and congestion problems.

Ulysses is recognized as having some of the best pheasant hunting in the U.S. It is within 250 miles of the Rocky Mountains of Colorado and New Mexico, and close to recreational lakes.

PRACTICE OPPORTUNITY: There is an outstanding opportunity in Ulysses for a primary care physician, wanting a rural practice, but who also wants to associate with a small clinic and hospital. The hospital is visited regularly by specialists consulting in the areas of orthopedic surgery, cardiology, urology, speech pathology, women's health, radiology, and pathology. The county hospital is progressive, well managed, financially sound and responsive to physician needs.

The hospital has 41 acute beds, 4 bassinets and a 3 bed ICU. There are two operating suites with recovery room. The hospital has outstanding ancillary services including ultra sound, nuclear medicine, physical and respiratory therapy, sonography, a fully equipped laboratory and an in-house, staffed, pharmacy.

SERVICE AREA: The southwestern Kansas service area offers a challenging professional opportunity. The immediate county has a population of 7,500, Ulysses being the county seat. The total service area includes a population 16,000 plus.

COMPENSATION PACKAGE: This opportunity includes a highly attractive first year income guarantee plus a competitive package of benefits.

Kearny County, Kansas, Physician Recruitment Committee

Position Profile

February, 1989

Specialty: Family Practice/General Practice

Location: Kearny County is a friendly southwest Kansas rural community of over 4000 people, founded 100 years ago on the Santa Fe trail. The County Seat is Lakin, a city of 2000 population, and the other population center is Deerfield, a city of 600 located 7 miles east of Lakin. The County's strong economic base includes farming, oil and gas, cattle, education, service, retail and local government activities.

Kearny County is within easy travel distance of Kansas population centers to the east and Rocky Mountain recreation to the west. For most of the County's residents, Garden City is within a half-hour drive and offers specialty shopping, dining, and entertainment, a community college, and many specialist medical services.

Practice Opportunity: This is an excellent practice opportunity for a D.O. or M.D. general practitioner desiring a practice in a progressive and economically stable rural community. Plans are developing for a new physician clinic to be attached to the County's modern small hospital in Lakin in order to share its well-equipped and well-staffed clinical and support services. The hospital has a regional reputation for an excellent family birthing center, in addition to more locally utilized medical/surgical, emergency, and extended care services. The practice can also expect referrals from the adjacent retirement community offering intermediate nursing care, and independent living apartments. The

practice might be structured as a solo practice, as part of a small family practice group, or in a salaried arrangement. Plans are being made for a satellite dialysis unit to serve the region, and the opportunity exists to direct the unit with consultation provided by nephrology specialists.

Service Area:

There is currently one full-time D.O. physician, age 61, practicing in Kearny County. In recent years there have been two very successful family practitioners in the county. Our current physician stands supportive of this practice opportunity, and recognizes the desirability of expanding and developing primary care services in Kearny County. The County is currently designated as underserved in primary care, providing some financial incentives and loan forgiveness opportunities.

Compensation Package:

This opportunity could include a highly attractive first year income guarantee plus other compensation including malpractice and family health insurance, moving and interview expense advances, vacation and continuing medical education. The quality of life in Kearny County - its schools, churches, service and social organizations, and community events - cannot easily be put into terms of compensation, but add significantly to this practice opportunity.

For more information, please contact:

John Crump, Chairman
Kearny County Physician Recruitment Committee
P.O. Box 744
Lakin, Kansas 67860
telephone (316) 355-6486 (home)
(316) 355-7111 (messages)

DENNIS L. ROSS, M.D., P.A.
1035 NORTH EMPORIA, SUITE 105
WICHITA, KANSAS 67214

PHONE (316) 263-
AFTER HOURS 262-6262

February 8, 1989

Ernie J. Chaney, M.D.
Robert Purvis Family Practice Center
1131 South Clifton
Wichita, Kansas 67218

Dear Dr. Chaney:

I would like to encourage you to seriously consider the family practice/general practice position at Kearny County Hospital in Lakin, Kansas. This is a very attractive position for a young physician. Kearny County has a history of good financial stability and the community offers tremendous support to the hospital and its physicians. We at Kansas Nephrology Associates are interested in Lakin as the possible location for a satellite dialysis unit to provide patient care to those patients who live in southwest Kansas and southeast Colorado. At the present time, the patients who live in this area are driving long distances to a dialysis unit to receive their care.

We feel that the physician who accepts the position in Lakin would be involved in the dialysis unit in Lakin and would help with the supervision of the dialysis patients. The physician would receive reimbursement for the care that he provides to those patients. The physician also would be closely involved in the operation of the dialysis unit.

In summary, we feel that a unique opportunity exists in Lakin and offers an excellent opportunity for a young physician.

If you have any questions regarding this position in Lakin, please do not hesitate to call or write me.

With warmest personal regards,

[illegible]
[illegible]

NEPHROLOGY, HYPERTENSION AND METABOLIC BONE DISEASE

Alan Snodgrass M.D.
Box 760
Dighton, Kansas 67839

August 18, 1988

Dr. Chaney
1131 S. Cliffton
Wichita, Kansas 67218

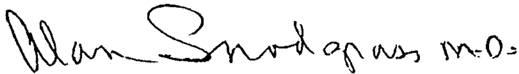
Dear Dr. Chaney:

Lane County Kansas is in need of a second physician located only ninety miles from Colorado. It is an excellant spot for a practice with easy accessibility to the Colorado Rockies. It is a county of 2500 people, two high schools and a small hospital of ten beds with a nursing home of twenty-one beds.

We are capable of general surgery, OB surgery, cardiac monitoring, and general medical illnesses. We have two surgeons who come to town for elective surgical cases. There are also radiologists from Great Bend, Kansas, who staff the x-ray department and provide us with good quality services. The latest in ultrasonography and mammography are available through our hospital.as well as a birthing bed and fetal monitoring equipment.

We invite your residents to come and see us and consider us for a future practice location.

Sincerely yours,



Alan Snodgrass M.D.

AS/mlb

Sumner County Family Care Center

Mitzi Rattenné, M.D.
1323 North A Street
Wellington, Kansas 67152
316-326-2111

November 14, 1988

Ernie J. Chaney, M. D.
1131 S. Clifton
Wichita, Kansas 67218

Dear Ernie:

Thank you for taking the time last Friday to speak with me. As I have promised I have enclosed two brochures from our hospital at St. Lukes. I feel very strongly that Wellington could support at least one, possibly two new physicians. I have not accepted new patients for the past year and a half and have still been quite busy. If a new physician were to join our group here with Dr. Anderson, Dr. Weigand and myself, there are actually a variety of ways in which we could make arrangements for an office practice.

Please refer any interested residents to either my office at 326-2111 or to Larry and Joel's office at 326-3301.

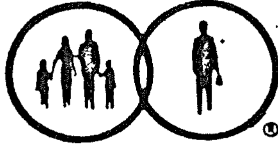
I hope to visit your residency on a Thursday afternoon sometime in December. I will certainly give you a call before dropping in..

Sincerely,

Mitzi E. Rattenné, M. D.

MER:kks

Encl.



Clay Center Family Physicians
P.J. Dalum, M.D.
M.W. Good, M.D.
R.K. Bryant, M.D.
J.L. Browning, M.D.
S.M. Hatesohl, M.D.
Box 520, 709 Liberty — Clay Center, Kansas 67432
Phone (913) 632-2181

7-15-88

Dear Doctor,

We are three young, well established, Board Certified Family Practioners. We are Clay Center Family Physicians and are located in the north central Kansas community of Clay Center. We have an excellent school system and a recently expanded hospital.

This location qualifies for your Kansas Medical Scholarship obligation fullfillment.

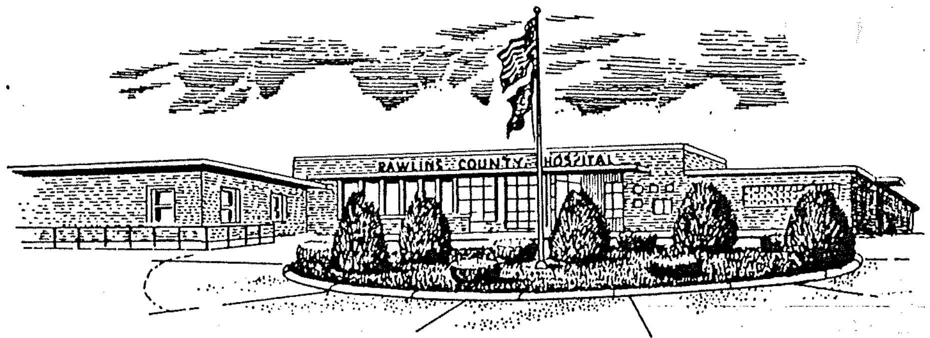
We are seeking a partner to join us in the summer of 1989. If you think you might have interest in a town of 5000 population, please give us a call. We have a lot to offer. Don't overlook us.

Sincerely,

Michael W. Good MD
Jimmie L Browning MD
Stanley M Hatesohl MD

Michael W. Good, M.D.
Jimmie L. Browning, M.D.
Stanley M. Hatesohl, M.D.

Rawlins
COUNTY HOSPITAL



October 13,1988

University of Kansas (Wichita) Program
E. J. Chaney, MD
Robert K Purves Family Practice Center
1131 S. Clifton
Wichita, KS 67218

Dear Dr. Chaney:

Enclosed is a position description, outlining an opportunity for a family practice physician in our community. We have an outstanding situation here, and would be most grateful if you would post the position where all your residents will see it.

If you are aware of anyone with a special interest in rural practice, your assistance in calling attention to this opportunity would be most appreciated. Thank you very much.

Sincerely,

Pamela Thomas

Pamela Thomas
Administrator

PT:emr

St. Lukes Hospital

1323 North A Street • Wellington, Kansas 67152 • AC 316 326-7451

September 8, 1988

E.J. Chaney, M.D.
Director, Family Practice
Residency Program
1131 S. Clifton
Wichita, KS 67218

Dear Dr. Chaney:

St. Lukes Hospital is in need of a Family Practitioner. I would like to provide some information about our hospital and the type of practice that might be available to your residents.

St. Lukes Hospital is a modern, 80 bed Hospital and Skilled Nursing Facility, clean and well maintained, located in Wellington. The Hospital opened in 1972. Its primary service area is Sumner County. There are ten physicians on our active staff and approximately eighteen on our courtesy and consulting staffs. Specialists represented on our staff other than family practitioners include a general surgeon, an orthopedic surgeon, a urologist, a cardiologist, and an oncologist. Some of the specialists are from Wichita and have clinics here in the hospital. More clinics are planned for the future.

There are different options open to the perspective family practitioner. For example, he/she may elect to go solo, join an existing practice or associate with a family practitioner who is retiring.

Sumner County has been officially designated as a CRITICALLY UNDERSERVED area in the primary care specialties. We all agree that a family practitioner is accutely needed in this area and the medical staff endorses the recruitment of that medical specialty.

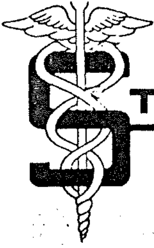
At your convenience, and with your okay, I would like to make an appointment to visit with you for a few minutes concerning our need in Sumner County. If you have any

questions before I try to make an appointment, I would invite you to call me collect at 316-326-7451 or write to me at the hospital.

Cordially,

Chester C. Calhoun
Administrator

CCC:js



STEVENS COUNTY HOSPITAL

1006 S. Jackson, Box 10, Hugoton, Kansas 67951

May 5, 1988

To: Graduating Family Practice Residents

Re: Practice Opportunities, Hugoton, Kansas

Dear Doctor:

We have an excellent opportunity here in Hugoton for you. We are a critically underserved area and in addition we have lost a physician from cancer in the span of four weeks. Therefore the opportunity to establish an outstanding practice is excellent. The nucleus of our Medical Staff is outstanding which includes an excellent Board Certified Surgeon, full time C.R.N.A. with adquate back-up staff. We have good hospital and clinic space that is well equipped.

The community is very wealthy which has enhanced an excellent educational system, many fine churches, good library, museum, business district, wellness center and numerous organized recreational programs.

Our econimic base includes dry land and irrigated farming, ranching, cattle feed lots, commercial trucking, oil and gas along with related service companies.

We do have an excellent opportunity and would be most interested in visiting with you in person.

Sincerely,

Carlyle Kiehne, Administator
Stevens County Hospital

CK:ba

ELLINWOOD DISTRICT HOSPITAL

ELLINWOOD, KANSAS

An Affiliate Of
GREAT PLAINS HEALTH ALLIANCE

May 3, 1988

Dear Family Practice Resident:

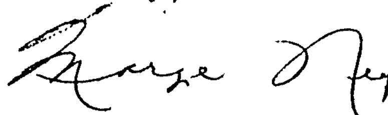
The Ellinwood District Hospital and Board of Trustees ask your consideration when selecting a location for your future practice. Our hospital is licensed for 24 acute beds, with a skilled swing bed care program. The hospital also offers a variety of ancillary services to the community.

Our only physician is nearing retirement age, and a tremendous opportunity exists here for an active young doctor who would be comfortable living in a small community.

As of January 1, 1988, Ellinwood was classified as an underserved area. A genuine need exists here for a doctor with your family practice specialty.

I am enclosing an informative map describing our central Kansas community. I would welcome the opportunity to visit with you and answer any questions. I can be reached during office hours at 316-564-2548. Please consider Ellinwood in your future plans.

Sincerely,



Marge Ney, Administrator

REPUBLIC COUNTY HOSPTIAL
Physician Recruitment Committee

Dear Family Practioner:

Republic County Hospital in Belleville, Kansas is currently looking for a good Family Practice physician. I would like to bring this matter to your attention.

Belleville is located in North Central Kansas, and offers a progressive health care system consisting of a 70 bed hospital (35 skilled nursing care beds), 2 nursing homes, 2 medical-dental clinics and an outstanding EMS service, all with full community support. This health care system prides itself on the state-of-the-art services available to patients, as well as the personal patient care given. The hospital services include general surgery, obstetrics, pediatrics, orthopedic surgery, ENT, full-service laboratory & radiology departments, intensive care and rehabilitative therapy. The health care system serves a trade area of 16,000 people in Republic county and the surrounding areas. Belleville, a rural community of approximately 2800, offers a high quality of life with an excellent school system, fine housing, recreation, and the peacefulness of a small community.

The need for a good Family Practioner is a priority in the community, as of late there have been some important changes in the physician medical staff. One physician has accepted a university staff position and two others have 'cut-back' as they are nearing retirement.

Republic County Hospital and the entire community have cooperated together in order to offer an incoming Family Practice physician the following:

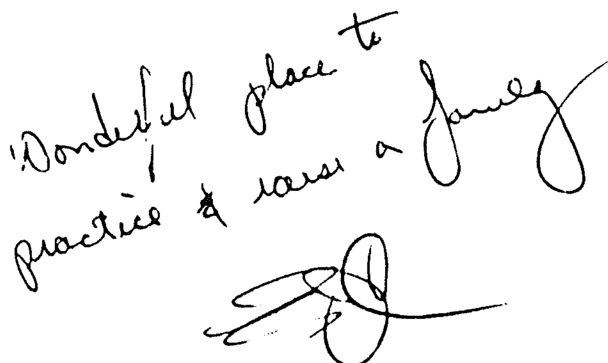
-- A guaranteed salary of $60,000 for the first year.
-- Payment of student loans on a monthly basis.
-- Moving and relocating expenses.
-- The opportunity to choose a practice at either of the existing medical clinics or establishing a separate practice.

I certainly believe Belleville and Republic County Hospital have alot to offer any interested Family Practioner. I hope you take the time to consider this information and please feel free to contact me with any questions. Thanks.

Sincerely,

Susan Bergstrom

Susan Bergstrom
Physician Recruitment Coordinator
#913/527-2255



Prairie View Addition 24th & G
Belleville, Kansas 66935-2499

PRACTICE POSITION AVAIBLE

There has recently developed an opening for the practice of medicine in Ottawa, Kansas. Three family physicians have suddenly decided to move from the community, leaving one doctor to handle the entire practice. The reason for leaving were entirely personal and not because of any disagreement.

The practice is with the Ottawa Medical Clinic, Chartered which has been in existence for over 25 years. The remaining doctor, D. C. Hadley, M.D. has been with the group for 22 years. The office is located in a 15 year old professional building and has over 3000 square feet of space and is designed for three doctors. There are excellent medical facilities in Ottawa with a very cooperative medical staff. The practice has always consisted of family physicians, but could be filled by other primary care physicians such as internists, pediatricians or obstetricians.

Ottawa is located in northeast Kansas and combines the advantages of rural atmosphere and recreational opportunities with the proximity to larger metropolitan areas.

Doctor Hadley is a charter diplomate of the American Board of Family Physicians and has been a member of the American Medical Association, Kansas Medial Society, and both American and Kansas Academies of Family Physicians for 22 years.

For more information you may contact D. C. Hadley, M.D., 1320 Ash, Ottawa, Kansas 66067; telephone 913-242-3891

Phillip E. Bortmes, D.O. — Robert E. Sutton, M.D.
805 Barker Drive — Box 243
Oswego, Kansas 67356
Phone 316-795-2525

April 14, 1988

Mary Madding
Department of Family Practice
1131 S. Clifton
Wichita, KS 67218

Dear Mary:

I have enclosed some propaganda to post somewhere in the Family Practice Department for the residents in hopes that they would like to meet Mr. Vietti and myself on May 4. As you know we have made arrangements to attend your Family Practice Department on that date for the purposes of recruiting for Oswego and Altamont, Kansas.

If you could please post these in the appropriate place it would be much appreciated. I look forward to seeing you and your residents.

Best regards,

Robert E. Sutton, M.D.

RES/deb

April 29, 1988

Ernie J. Chaney, M.D.
St. Joseph Family Practice Center
1131 South Clifton
Wichita, Kansas 67218

Dear Dr. Chaney,

The Community of Wamego, Kansas is currently recruiting two family practice physicians with interest in pediatrics, to the area.

Office space with first year guaranty and practice management, if desired, is offered through Wamego City Hospital, a municipal hospital which is contract-managed by Stormont-Vail Regional Medical Center, Topeka, Kansas, to qualified, interested physicians. The office space is located in a new professional building attached to the Hospital. The space contains five offices, ten examination rooms, a business office and a large waiting area.

Wamego is a very progressive, young community of nearly 4,000 population drawing from a trade area of 15,000, located in the Flint Hills region fifteen miles east of Manhattan and forty miles west of Topeka.

There are currently two family practice physicians located in Wamego who maintain very busy practices.

The relaxed, rural-flavored atmosphere of the area has enticed several businesses and industries as well as young families to locate in the community.

The recruitment committee would gratefully appreciate your advising the family practice residents in your program of the opportunities available in our community.

For more information or to schedule a visit, please contact Mr. Lannie W. Zweimiller, Administrator, Wamego City Hospital, 711 Genn Drive, Wamego, Kansas 66547, telephone 913/456-2295 or myself at 913/456 2775.

Respectfully,

Cheri Pugh, Chairwoman
Wamego Community Physician
Recruitment Committee

CP;jb

WAMEGO
CITY HOSPITAL

711 GENN DRIVE • WAMEGO, KANSAS 66547

April 22, 1988

Ernie J. Chaney, M.D.
St. Joseph Family Practice Center
1131 South Clifton
Wichita, Kansas 67218

Dear Dr. Chaney,

The Wamego, Kansas Community is currently recruiting two family practice residents with an interest in pediatrics, to the area.

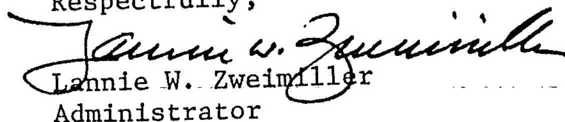
Office space with first year guaranty and practice management, if desired, is offered through Wamego City Hospital, an affiliate of Stormont-Vail Regional Medical Center, Topeka, to qualified, interested physicians.

Members of the recruitment committee would like to visit further with you and any interested residents regarding the opportunities available in Wamego.

Would you please consider our request to visit and advise me of dates and times you may have available?

We appreciate your consideration.

Respectfully,



Lannie W. Zweimiller
Administrator

LWZ:jb

BE Smith Associates, Inc.

King's Cove Office Park • 10000 West 75th Street • Executive Suite 108 • Shawnee Mission, KS 66204 • (913) 262-7379

March 28, 1988

Dr. Jerome G. Streit, MD
1131 S. Clifton
Wichita, KS 67218

Dear Dr. Streit,

Our health care consulting firm would like to introduce you to the community of Smith Center, Kansas, and to the people who reside in that community. The population in Smith Center and the county number over 6,000. However, the physicians and local hospital draw patients from beyond the county lines, and from up north in Nebraska. Their total drawing area probably exceeds 10,000-15,000 population.

In July of this year, this population will have the services of only one family practice physician, and one surgeon. Therefore, the physician recruiting committee of Smith Center has requested our firm help recruit two additional family practice physicians. It is our considered opinion, after visiting with the physicians, hospital officials, and community leaders that the community can fully support a total of three family practice physicians.

The community which includes business, civic organizations, and a very active physician recruiting committee is programmed into this recruiting effort. They are immensely proud of their community, including their local hospital with progressive health care programs. Their unbounded community spirit and support surrounding health care is the very best.

There is an amazingly good mix of young professionals with families, and older population who work hard together to make Smith Center a very livable community. Their good life is further enhanced by the best pheasant and quail hunting anywhere. Fishing, golf, and other outdoor recreation is at your fingertips, with clear, clean air to breathe. And, they feel their schools are also the best.

(PLEASE TURN TO BOTTOM HALF OF BACK PAGE)

Decatur County Hospital
& Long Term Care Unit

810 West Columbia
Box 268
Oberlin, Kansas 67749

September 23, 1988

E.J. Chaney, M.D.
Robert K. Purves Family Practice Center
1131 S. Clifton
Wichita, KS 67218

Dear Dr. Chaney:

Enclosed please find a Position Profile and a brochure on Oberlin, the practice site community. I would appreciate it if you would post the opening for consideration by your third year residents.

We feel that this is an exceptional opportunity for new physicians coming into the field and would appreciate a listing of your third year students so that I could contact them directly.

Again, thank you for your help in making known this opportunity.

Sincerely,

Charles P. Myers

Charles P. Myers
Administrator
(913) 475-2208

Enclosures

CPM/mdm

Executive Summary

In September of 1988, the Kansas Academy of Family Physicians (KAFP) surveyed their membership (591 Family Physicians) to assess the Family Physicians role in obstetrical service/practice for their Kansas patients. Additionally, the survey response defined the impact and potential consequence of the medical liability crisis for the obstetrical patients of Kansas Family Physicians.

The information and data in this report is based on a 50% (298) response from the 591 members, representing an average age of 46 years with 16.5 years of practice experience.

According to the survey and other resources, Family Physicians deliver approximately 20% (7,687) of the infants in Kansas on an annual basis.

Citing medical liability as the primary reason for ceasing obstetrical service, forty nine percent of Family Physicians (146) were not performing obstetrics.

The 1988 survey coupled with a similar survey conducted by the KAFP in 1987, provides information as to the number of surveyed Family Physicians who have discontinued obstetrics during the last four years. A close examination of the year 1987 vs. 1988, finds approximately 82 Family Physicians have discontinued obstetrical service during this one year time period.

Currently, 51% (152) include obstetrics as an active part of their practice. The majority (62.7%) of these Family Physicians maintaining obstetrical service are located in the rural communities in Kansas. It is very apparent from the survey response that these rural based Family Physicians are maintaining obstetrical service out of a strong sense of community responsibility and the inaccessibility factor of other qualified providers to provide qualified comprehensive prenatal care for their obstetrical patients. The rural based Family Physician is trying desperately to maintain obstetrical service, in an effort to alleviate dislocation of health care for their patients and community.

Conclusion

The survey by the Kansas Academy of Family Physicians supports the fact that patients of Kansas Family Physicians are realizing an erosion of services provided by their Family Physician. The primary reason for this erosion, that is the discontinuation of specific services and procedures (specifically obstetrics), is due primarily to the medical malpractice crisis in Kansas. With medical liability premiums escalating upward in significant proportions, the Family Physician is facing and will continue to have to reckon with the question of eliminating certain services or quite possibly look for alternative practice situations that allow for reasonable and equitable medical liability premiums.

Unless specific measures are taken to remedy the medical liability crisis in Kansas, the trend exhibited in this survey of Family Physicians discontinuing services to their patients will only continue to accelerate. This fact, coupled with attrition of physicians in general will severely compromise health care delivery and pose a situation of health care dislocation for the patients of Kansas physicians. This situation has been compounded by the recent trend of Kansas Family Practice Residency Graduates, due to the current malpractice atmosphere, looking to establish practice in other states.

1988 KAFP Practice Survey

Research Report on Obstetrics and Medical Liability

In September of 1988, the Kansas Academy of Family Physicians (KAFP) surveyed their membership (591 Family Physicians) to assess the Family Physicians role in obstetrical service/practice for their Kansas patients.

In addition to obtaining information reflective of the Family Physicians current role in this specific area of medical practice, the survey response defined the impact and potential consequence of the medical liability crisis for the patients of Kansas Family Physicians.

The information and data in this report is based on a 50% (293) response from the 591 members of the KAFP, representing an average of 16.5 years of practice experience by those responding Family Physicians.

The average age of the responding Family Physician is 46 years of age. Individual responses from the survey, indicated that the average age of the Family Physician in rural Kansas is slightly over 46 years of age, while the Family Physician in the urban community has an average age of 44 years.

When examining the deliveries of infants by Family Physicians, we observed several interesting points. The survey response, coupled with the distribution and geographical location of Family Physicians and Obstetricians, indicates that Family Physicians delivered approximately 20% (7,687) of the infants in Kansas in 1987. The KAFP Research Team utilized the 1987 Kansas Department of Health and Environment's Live Births by County of Residence data to examine the obstetrical caseload in all 105

counties in Kansas. In addition to the actual surveys returned (293), the county by county data allowed us to extrapolate births performed by medical specialty (Family Physician or OB/GYN). This extrapolation was done by examining the total births by respective county and the health care providers by specialty in the respective geographical area (county). We estimated that physicians with training in Osteopathy practicing in Kansas delivered approximately 2,000 infants in 1987.

By isolating the 1988 survey, we found that the population of Family Physicians maintaining Obstetrics as an active part of their practice is dwindling (see Figure 1). In fact, we noticed a constant downward trend since 1985 of Family Physicians providing obstetrical services. Close examination of the 1988 figure of Family Physicians providing obstetrical services, yielded 49% of Family Physicians (149) are not providing Obstetrics, citing medical liability as the primary reason (72.4%) for not providing this service (see Figure 1).

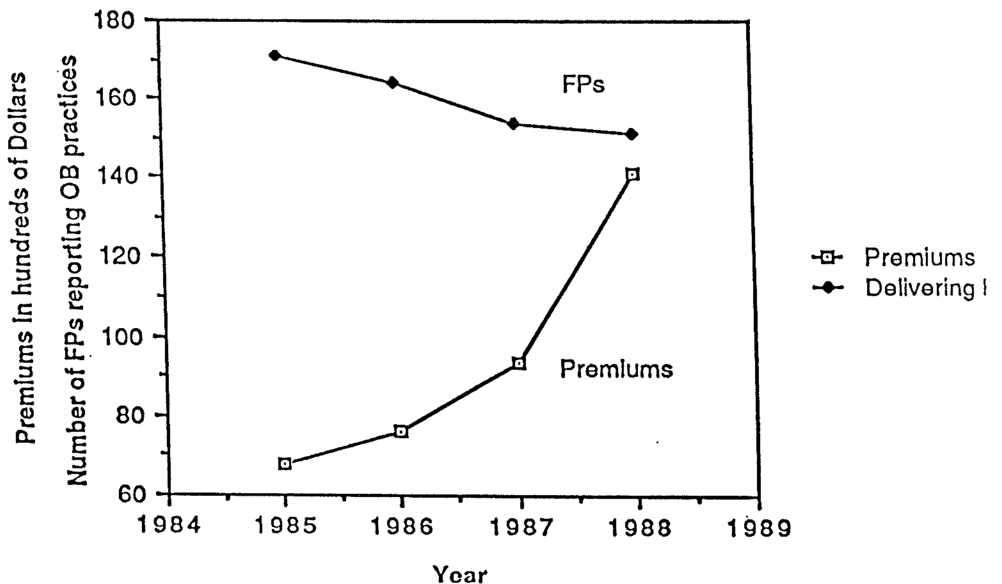


Figure 1. Comparision of number of physicians providing obstetrics with rising malpractice premiums

A comparison of a similar practice survey conducted by the KAFP in September 1987 to the most recent 1988 survey, found a significantly greater number of Family Physicians providing obstetrical services in 1987. The '87 survey indicated 233 Family Physicians providing obstetrical services as compared to 151 in '88. While acknowledging that the 1988 survey did not yield the exact response rate as the 1987 survey, we can, however, assume that based on the specific nature of the survey toward obstetrical procedure, that the majority of the non-respondents in both years have already discontinued Obstetrics. With this calculated assessment in mind, we conclude that the actual number of Family Physicians who discontinued Obstetrics within this one year time period to be approximately 82. This is supported by the 1987 survey and the projection of those Family Physicians that when asked "if annual premiums continue to increase (question #12 on the 1987 survey), will you continue obstetrical practice", 90 Family Physicians indicated they would stop obstetrical services. The 1988 survey posed a similar question in an attempt to project the potential "fallout" of Family Physicians discontinuing obstetrics. Twenty-four percent of the Family Physicians who are currently practicing obstetrics have stated they will cease this portion of their practice in the next twelve months. With this projection in mind, the actual impact of this trend will result in 36 Family Physicians discontinuing obstetrics in the coming year.

Because Kansas is predominantly a rural state, we felt that it was imperative to examine the rural versus urban health care setting. As Figures 2 and 3 indicate, the Family Physicians in the rural areas of Kansas are maintaining Obstetrics as a part

of their practice at a greater level than those in the urban communities. Figure 4 demonstrates this urban vs. rural correlation with the downward trend (less deliveries) in the urban setting accelerating at a greater degree than we observe in the rural setting. It is interesting to note the constant level of deliveries performed by Family Physicians in the rural setting from 1985 through 1987. However, consistent with the overall number of Family Physicians discontinuing Obstetrics, we noticed a slight decline beginning to show for the rural Family Physician delivering babies from 1987 to 1988. We conclude that the urban Family Physician is more likely to discontinue Obstetrics,

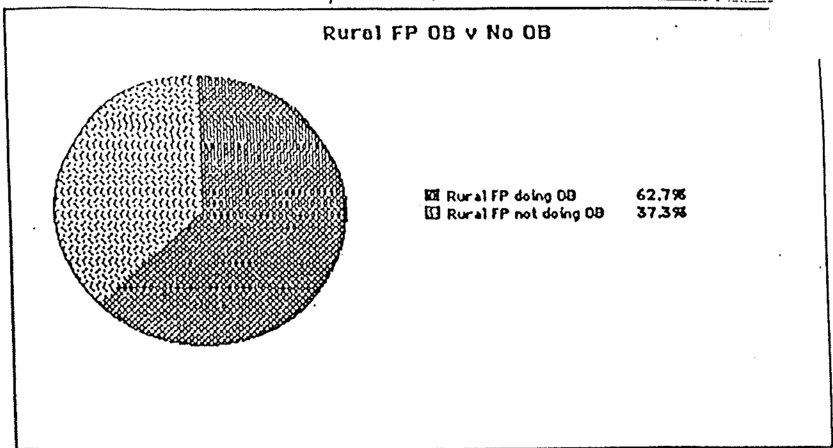


Figure 2. Comparision of rural FP's providing OB services with rural FP's not providing OB services.

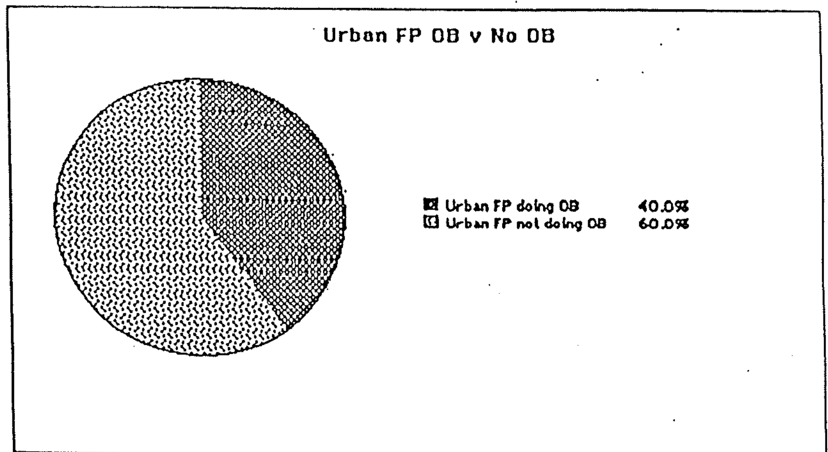


Figure 3. Comparision of urban FP's providing OB services with urban FP's not providing OB services.

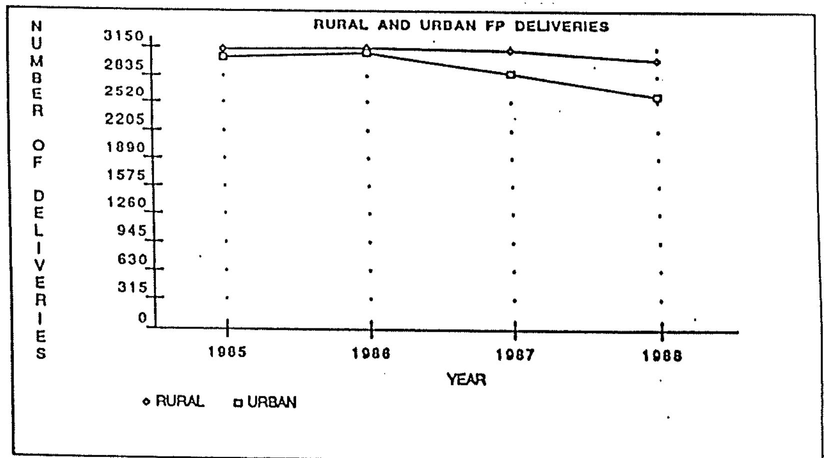


Figure 4. Comparision of number of deliveries by rural FP's with urban FP's.

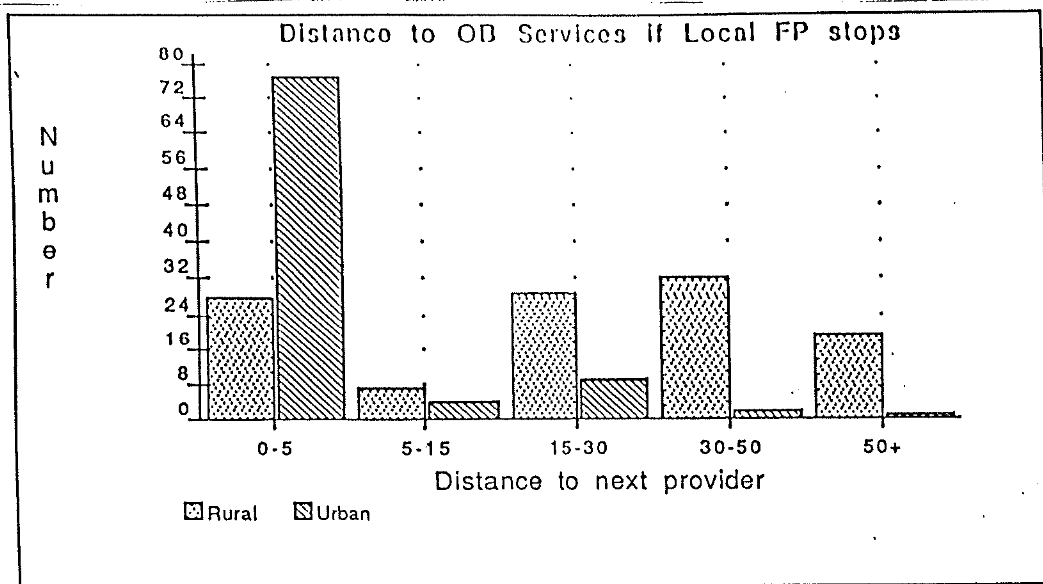


Figure 5. Comparision of dislocation of rural patients with urban patients if primary care physicians discontinued OB services.

realizing a lower medical liability premium, whereas, the rural Family Physician is less likely to discontinue obstetrical service to his/her patient out of community responsibility and acute awareness of the inaccessibility to other health care providers in the rural areas of Kansas.

Figure 5, demonstrates the accessibility factor in both the urban and rural setting. As expected, the urban Family Physician has other qualified providers to handle Obstetrics for their patients if they should choose to discontinue obstetrical services. Therefore, the health care dislocation problem is not as acute in the urban setting for the patients of urban based Family Physicians. Of note, however, is the higher average number of deliveries the urban Family Physician performs. This indicates that Urban Family Physicians are filling a need in

their communities for providing obstetrical service. By sharp contrast, the unique characteristics of health care delivery in rural areas, specifically, consideration of driving distances to qualified medical personnel, the weather factors, and potential compromised road conditions are issues and consequences that must be addressed for the patient in precipitated stages of labor. With this in mind, rural Family Physicians realize the acute problem of health care dislocation as it specifically relates to obstetrical care. An example of particular concern respective to health care dislocation in Kansas is the western portion of the state. There are currently 18 Obstetricians and 163 Family Physicians practicing in the geographical area of the 47 counties that make up Western Kansas. Taking into consideration the 6,195 births in Western Kansas in 1987, the steady decline of Family Physicians performing obstetrics, and the small number of 18 Obstetricians (five of these specialists are located in Reno County), there is great cause for consideration toward the question of who is taking care of obstetrical patients and who will continue this service in the future.

A statewide picture of the number of Family Physicians providing obstetrical services vs. those not providing obstetrical services, is provided in Figure 6. This bar graph allows a close look at the specific KAFP Districts and the number of Family Physicians performing/not performing Obstetrics. KAFP Districts #1 and #3 are considered urban districts because of the majority of members practicing in Kansas City (District 1) and Wichita (District 3). The remaining districts are considered rural areas, with several urban communities located in these districts. The number of Family Physicians in rural

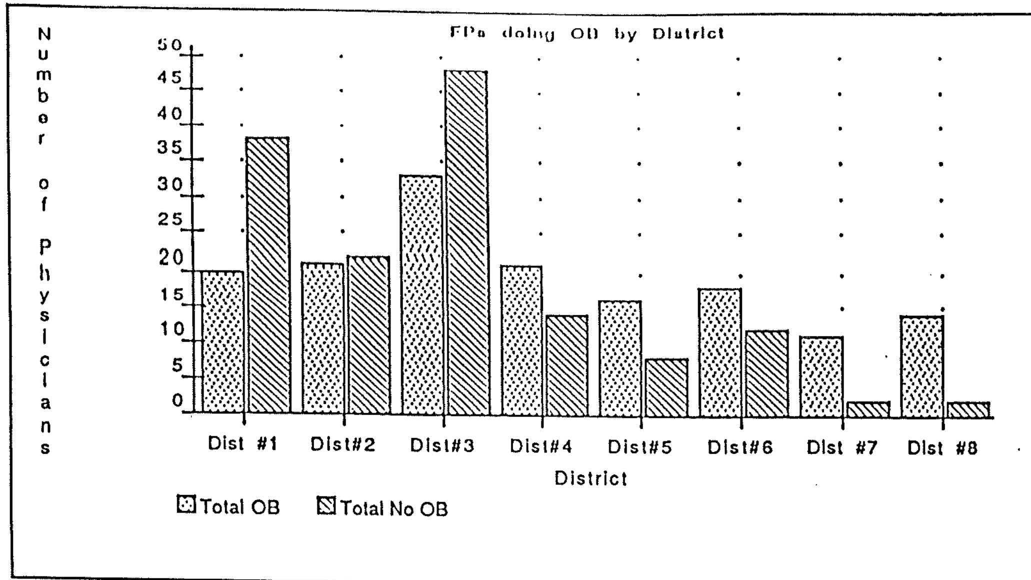


Figure 6. Comparision of KAFP Physicians by District providing/not providing OB services.

communities in these "rural districts" is greater than the number of Family Physicians in the urban communities. Page 10 of this report highlights the KAFP districts and the number of births reported by county for 1987, according to the Department of Health and Environment.

By virtue of the statistical methodology utilized to interpret the 1988 data, we took a retrospective look at those Family Physicians that indicated they already had discontinued obstetric services. The year 1983 seemed to serve as a time period when the number of Family Physicians discontinuing Obstetrics began to accelerate. In an effort to explain this statistic, we noted the impact of the Health Care Stabilization Fund and the surcharges imposed by the fund. In fiscal years 1981, '82, '83 the fund, because of statutory restrictions (no surcharge levied to Health Care Providers when the "Fund" balance exceeded 10

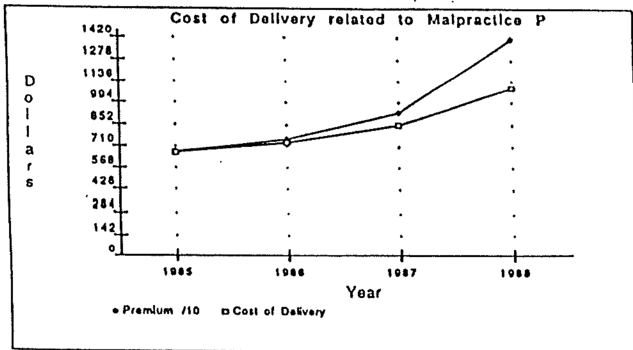


Figure 7. Comparision of annual cost of delivery increases with escalating malpractice premiums.

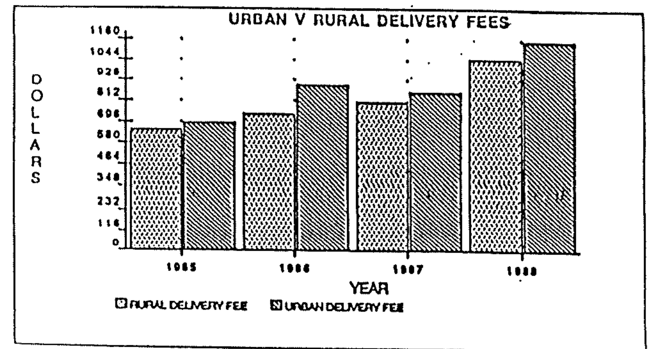


Figure 8. Comparision of delivery fees charged in rural areas with delivery fees charged in urban areas.

million dollars) did not impose any surcharge to the providers. Beginning in fiscal year 1984, the Fund began again to levy surcharges ranging from 50% in 1984, 80% in fiscal '85, 110% in fiscal '86, 90% for both fiscal '87 and '88, with the most recent surcharge of 125%. As the Fund and commercial carriers consistently sought and were granted increases in premiums, the growing number of Family Physicians discontinuing Obstetrics also grew each respective year.

We examined the charge for delivery of an infant by Family Physicians and noted an average increase of both urban and rural Family Physicians, 61.7% from 1985 to 1988 (See Figure 7). We attribute a great degree of the increase in the charge for delivering an infant to the increased cost of this service encumbered by Family Physicians, i.e. escalating malpractice premiums, a basic component of a physicians overhead (cost of conducting practice). The bar graph in Figure 8 portrays the median charge by Family Physicians in rural communities and urban communities respectively. Figure 8 shows both the charge for delivery and

cost of malpractice premiums, illustrating the comparative changes in charge for delivery and cost of malpractice insurance. While both trendlines in Figure 8 exhibit increasing dollar figures, we be noted the dramatic upward acceleration of medical liability premiums with respect to the more modest increase in delivery charges made by Family Physicians. While many Family Physicians attempt to maintain charges for services in accordance with the cost of delivering these services, it is often the case that the charges set and requested for services performed are not adjusted upward parallel to the rising cost of performing the specific service. In essence, physician charges are always "playing catchup" to the cost factors of practice expenses.

While the increase in the malpractice premium is escalating dramatically for those Family Physicians providing obstetrical services, those Family Physicians who have ceased obstetrical services are still effected by increased premiums. Figure 9, indicates increased cost of premium to for Family Physicians in both categories.

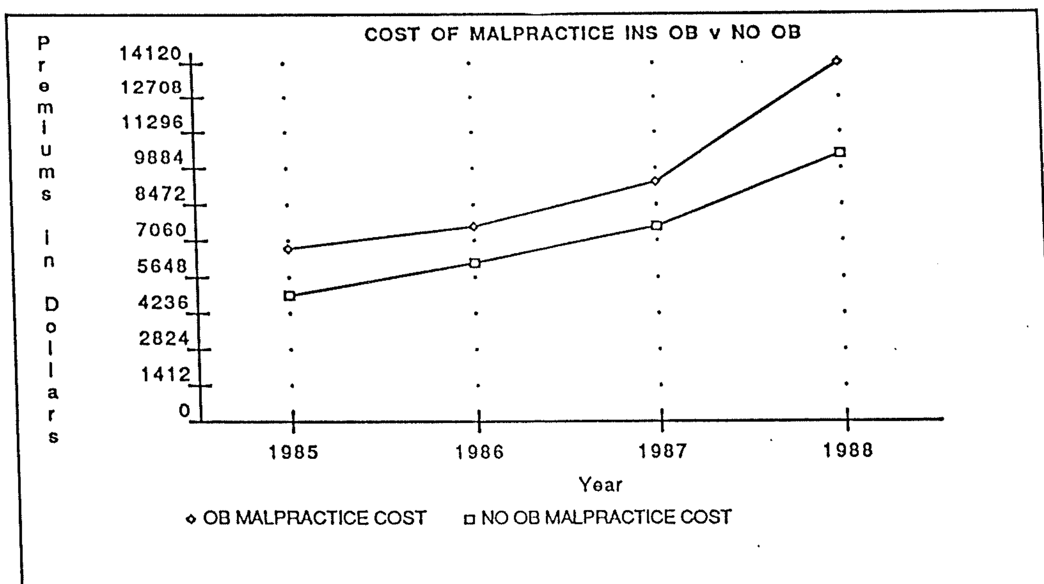


Figure 9. Comparision of malpractice premiums of FP's not providing OB services with FP's providing OB services.

CHEYENNE 34 | RAWLINS 47 | DECATUR 49 | NORTON 64 | PHILLIPS 84 | SMITH 46 | JEWELL 59 | REPUBLIC 88 | WASHINGTON 87 | MARSHALL 166 | NEMAHA 146 | BROWN 169 | DONIPHAN 111

SHERMAN 96 | THOMAS 120 | SHERIDAN 42 | GRAHAM 40 | ROOKS 84 | OSBORNE 57 | MITCHELL 87 | CLOUD 132 | CLAY 113 | RILEY 1051 | POTTAWATOMIE 240 | JACKSON 146 | ATCHISON 252

WALLACE 45 | LOGAN 41 | GOVE 41 | TREGO 47 | ELLIS 341 | RUSSELL 98 | LINCOLN 36 | OTTAWA 65 | DICKINSON 250 | GEARY 1128 | WABUNSEE | SHAWNEE 2386 | JEFFERSON 212 | LEAVENWORTH 850 | WYANDOTTE 3017

ELLSWORTH 81 | SALINE 716 | MORRIS 82 | OSAGE 199 | DOUGLAS 995 | JOHNSON 5117

GREELEY 30 | WICHITA 40 | SCOTT 72 | LANE 33 | NESS 49 | RUSH 34 | BARTON 473 | RICE 149 | MCPHERSON 378 | MARION 141 | CHASE 30 | LYON 578 | FRANKLIN 338 | MIAMI 358

HAMILTON 28 | KEARNY 85 | FINNEY 756 | HODGEMAN 30 | PAWNEE 82 | STAFFORD 69 | RENO 903 | HARVEY 442 | BUTLER 731 | GREENWOOD 103 | COFFEY 106 | ANDERSON 102 | LINN 90

GRAY 110 | FORD 559 | EDWARDS 55 | PRATT 120 | KINGMAN 113 | SEDGWICK 7274 | WOODSON 50 | ALLEN 198 | BOURBON 200

STANTON 42 | GRANT 130 | HASKELL 80 | KIOWA 55 | ELK 38 | WILSON 147 | NEOSHO 233 | CRAWFORD 433

MORTON 59 | STEVENS 77 | SEWARD 395 | MEADE 67 | CLARK 31 | COMANCHE 30 | BARBER 85 | HARPER 77 | SUMNER 356 | COWLEY 528 | CHAUTAUQUA 54 | MONTGOMERY 579 | LABETTE 346 | CHEROKEE 270

DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV
DISTRICT V
DISTRICT VI
DISTRICT VII
DISTRICT VIII

1987 Birth Census by County of Residence--Kansas Dept. of Health and Environment

Districts 1 through 8 are KAFP membership districts

KAFP Practice Survey - 1988

1. Age — 1. ____________

2. Years in practice — 2. ____________

3. Please circle the style of practice that best describes your situation.
   - 3a. Solo
   - 3b. Group
   - 3c. Multi-specialty groups

4. Are you currently Board Certified? (Circle) — 4. Yes No

5. Please indicate the internship/ residency that you participated in. — 5. One year ______ Three year ______

6. Location of internship/residency program — 6. ____________

7. Are you currently practicing Obstetrics? — 7. Yes No

8. How many deliveries annually? (Be as precise as possible) — 8.
   - 1985 ____________
   - 1986 ____________
   - 1987 ____________
   - Projected Estimate 1988 ____________

9. Please indicate your charge per delivery.

routine - vaginal	C-Section	
____________	____________	1985
____________	____________	1986
____________	____________	1987
____________	____________	1988

10. Please estimate the number of deliveries performed where little or no charge was received/collected. — 10.
    - 1985 ____________
    - 1986 ____________
    - 1987 ____________
    - 1988 ____________

11. What was your annual malpractice premium including Health Care Stabilization Fund Surcharge? — 11.
    - 1985 ____________
    - 1986 ____________
    - 1987 ____________
    - 1988 ____________

12. Who is your current commercial carrier for your professional liability insurance? — 12. ____________

13. With the increase in commercial premiums (i.e. St. Paul, Medical Protective, etc.) and the increase in the Health Care Stabilization Fund Surcharge (90% to most recently 125%), will you continue obstetrics as an active part of your practice? — 13. Yes No

-. To measure the degree of dislocation of health care services, if you were to discontinue OB, how far would your patients have to travel for their obstetrical care?

14. 0-5 miles ______
5-15 miles ______
15-30 miles ______
30-50 miles ______
50 + miles ______

15. If you have discontinued obstetrical service, please indicate the year you ceased this service.

15. ______

16. Why did you discontinue OB? (If more than one answer applies, numerically rank order the primary, secondary, etc., reasons)

Malpractice premiums ______
Inability to obtain privilege ______
Lifestyle (i.e. time) ______
Lack of support/coverage in your community ______

17. How many malpractice cases have you been a defendant? ______

18. How many cases were OB related? ______

19. What course did your respective case take?

Went to trial ______
Settled out of court ______

20. Please indicate the duration (in terms of months) of the specific case you were involved in, from the time the suit was filed to the time of settlement and/or resolution through jury trial. ______

21. Would you favor a per delivery charge? (indexing of your premium) for your professional liability coverage.

20. Yes No

22. Do you feel the efforts of education (malpractice caravan with the Insurance Commissioner office) and public relations (Family Physicians Care for Kansans) were effective programs conducted by the Kansas Academy?

21. Yes No

23. Please indicate any colleagues that have within the past two years, left the State to practice or who has taken early retirement due to the medical liability climate in Kansas.

______
______
______
______
______

24. Comments/suggestions

______
______
______
______
______
______
______
______
______

10-15-88

March 20, 1989

Formal Testimony

to

Kansas Senate

Judiciary Committee

The Honorable Wint Winter, Jr., Chairman

The Honorable Jerry Moran, Vice Chairman

by

Craig J. Shumard, M.D.

Third Year Family Practice Resident and Chief Resident

University of Kansas School of Medicine-Wichita Family Practice Residency

at St. Joseph Medical Center

Attachment VII
SJC
3-20-89 pm.

TESTIMONY TO BE GIVEN TO THE SENATE JUDICIARY COMMITTEE

March 20, 1989

I'm Craig J. Shumard, M.D., Third Year Resident in Family Practice as well as, Chief Resident at St. Joseph Medical Center, Wichita, Kansas. I'm a graduate of the University of Kansas School of Medicine in Kansas City and Wichita. I completed my undergraduate degree at Wichita State University and was born and raised in the suburb of Wichita.

This last fall, nearing the end of my Residency and professional training, I began looking for practice opportunities. Several factors were considered in my decision for practice; namely, that of geography, economics and professional relationship. In my top five categories that I considered, the question of liability was in this.

In practice, I do plan on doing operative as well as routine obstetrics, and I did review some price lists for insurance categories both in Kansas as well as other states. As you well know, the states north and south of us have markedly lower insurance rates enabling the physician to continue to perform obstetrical services. After reviewing the statistical data on insurance premiums, as well as some of my geographical preferences, I initially felt that Kansas would be nice to stay in, geographically, since the outdoor activities that I enjoy are here in this State. I felt that, economically, I could move to neighboring states and enjoy the same, if not better, geographic opportunities and, at the same time, reduce my premiums by one-half to two-thirds. My current understanding is that the rough estimate for insurance premiums for physicians in Nebraska performing obstetrics and some operative obstetrics, is in the neighborhood of $8,000 -

$10,000 after four to five years of practice. It has been my impression, that after four to five years after starting practice in Kansas, I would be paying approximately $25,000 -$28,000. Recently, a classmate of mine informed me that one quote from Medical Protective for her to do non-operative obstetrics would be $15,000 per year. For her to do operative obstetrics (only C-sections), she would be required to pay $19,000 per year.

It is my impression, in talking with some classmates and other residents in other specialties in Wichita, that from a pure economic standpoint, it is absurd to stay in the State of Kansas when one considers that he or she must pay anywhere from $10,000 to $40,000 per year difference in insurance premiums. Most residents feel that this kind of money could easily be put to better use by paying back State scholoarships rather than paying this money to insurance companies and the State's Stabilization Fund. The new practicing physician must consider insurance tail coverage as well if the Stabilization Fund is abolished. There is question as to whether or not the physician is at risk of having his assets garnished to cover awards not covered by the malpractice insurance companies.

It would only make sense, then, for current practicing physicians or new incoming physicians to avoid practicing in Kansas, since if you are a current practicing physician, the Stabilization Fund is abolished, he or she would not only have to pay additional tail coverage when he or she elected to discontinue practice or retire, but in addition, there is question as to whether or not his or her assets will be attacked.

In conclusion, it basically makes it difficult, if not impossible, for

primary care specialties, especially ones practicing surgical procedures and obstetrics, to continue to stay in Kansas. For this reason, I felt that it would be much more advantageous to leave my home State than to stay and expose myself to the consequences of an uncertain State.

March 17, 1989

Testimony on Senate Resolution 1610:

Let me introduce myself. I am Harold Steadham, the Administrator of William Newton Memorial Hospital in Winfield, Kansas. The hospital is a 99 bed facility that has been in operation since 1927, serving Winfield and the surrounding communities. On the first of August, I will complete 20 years as the Administrator of the hospital. Prior to that, I was an Administrator for 13 years and an Assistant Administrator for 2 years. I emphasize my tenure, because I would like for you to understand that I have been a part of all of the many changes that have occurred in healthcare over the last 30 years, including the dramatic advances in medical technology as well as the increasing cost of medical malpractice insurance.

I am here today to bring you a perspective about the problems we face in medical liability from the viewpoint of an Administrator of a community hospital.

Over the past 10 years, numerous studies have been done by government, associations, insurances and private agencies about the increasing cost of medical malpractice insurance. In the recent past, the availability of malpractice insurance reached a crisis. In the early 1970's, many states, including Kansas, enacted legislation to meet the crisis of availability of medical malpractice insurance. Again in the 1980's, we face a malpractice insurance crisis. The legislature was wise enough to enact legislation designed to deal with the problem through reform in the tort system, however, the supreme court determined this legislation was not constitutionally viable. The fact that these solutions have not been allowed to take affect has added to a situation that is developing into

SJC
3-20-89 Am
Attachment VIII

a major crisis for many hospitals, physicians and communities. We want to assist you in the search for an answer and it is my hope that reviewing our situation will help you to arrive at acceptable answers to the medical malpractice problem.

Medical malpractice affects us all in one way or another, either through injury or increased cost to health care providers, insurers, or consumers. First, I would like to address the high cost of medical malpractice insurance by illustrating my hospital's increasing cost, which is comparable to the increases of all other hospitals and physicians. The 1989 malpractice insurance premium for our hospital is 4 1/2 times higher than it was in 1984. The premium for the Stabilization Fund is 11 times higher and the total cost is 6.7 times higher in 1989 than it was in 1984. This fixed cost is distributed over a decreased number of hospitalized patients.

Another high cost of medical malpractice is measured in decreasing service to patients. Three family practice physicians on our medical staff have discontinued OB services because of the high cost of their malpractice insurance. Another one is considering discontinuing OB cases when his premium comes up for renewal. One of the fundamental services of a family practice physician is obstetrics; delivering babies, caring for the mother, children and the family. The discontinuance of the delivery of babies interrupts the entire purpose of patients selecting family practice physicians. The insurance premium increased so much that they could not afford to pass on the cost to the OB patients they served. Plus it should be remembered, that these family practice physicians in the communities of

Kansas are the doctors who generally have been taking care of the Medicaid OB's. I hope you are aware that Medicaid payments are fixed and when the cost of providing OB service increases, there is no way to get additional reimbursement. In 1987, our hospital delivered 292 babies, 53 were Medicaid patients, or 18% of the total. In 1988, we had 324 deliveries and 67 were Medicaid OB's, an increase of 26% over the previous year and they now represent 20.7% of the total births.

In Winfield, we would have faced a serious crisis, similar to that faced by smaller communities when the family practice physicians discontinued OB, except we have two OB/GYN specialists on our medical staff. Their premiums have increased at a greater rate, even than the family practice physicians. I checked with one of our OB physicians and in 1987 his malpractice premium was $34,023.00, in 1988 it was $46,719.00 and in 1989 it is $61,841.00. As an aside, I would only comment that you are aware that some of the highest awards have been attributed to obstetrical claims, and some OB/GYN doctors are considering limiting their practice to GYN only.

In the tort reform legislation, known as House Bill 2661, all but one provision was declared unconstitutional and the exception that remained was mandatory risk management and reporting. This provision was included on the theory that if the medical profession had better peer review and a means to identify high risk providers and controls through reporting were provided, malpractice claims would be reduced and thereby ultimately reduce cost.

We, as a hospital and medical staff, accepted this, developed a plan for risk management and considered it an advantage to reduce the incidence of medical malpractice. We have embraced the Peer Review Risk Management Program as a condition of licensure. Our hospital has aggressively pursued a risk management program, geared toward quality assessment. We accept this as our responsibility to reduce claims by improving medical care and reducing risks to the best of our ability.

The hospital and medical staff's risk management peer review program is only one piece of the puzzle.

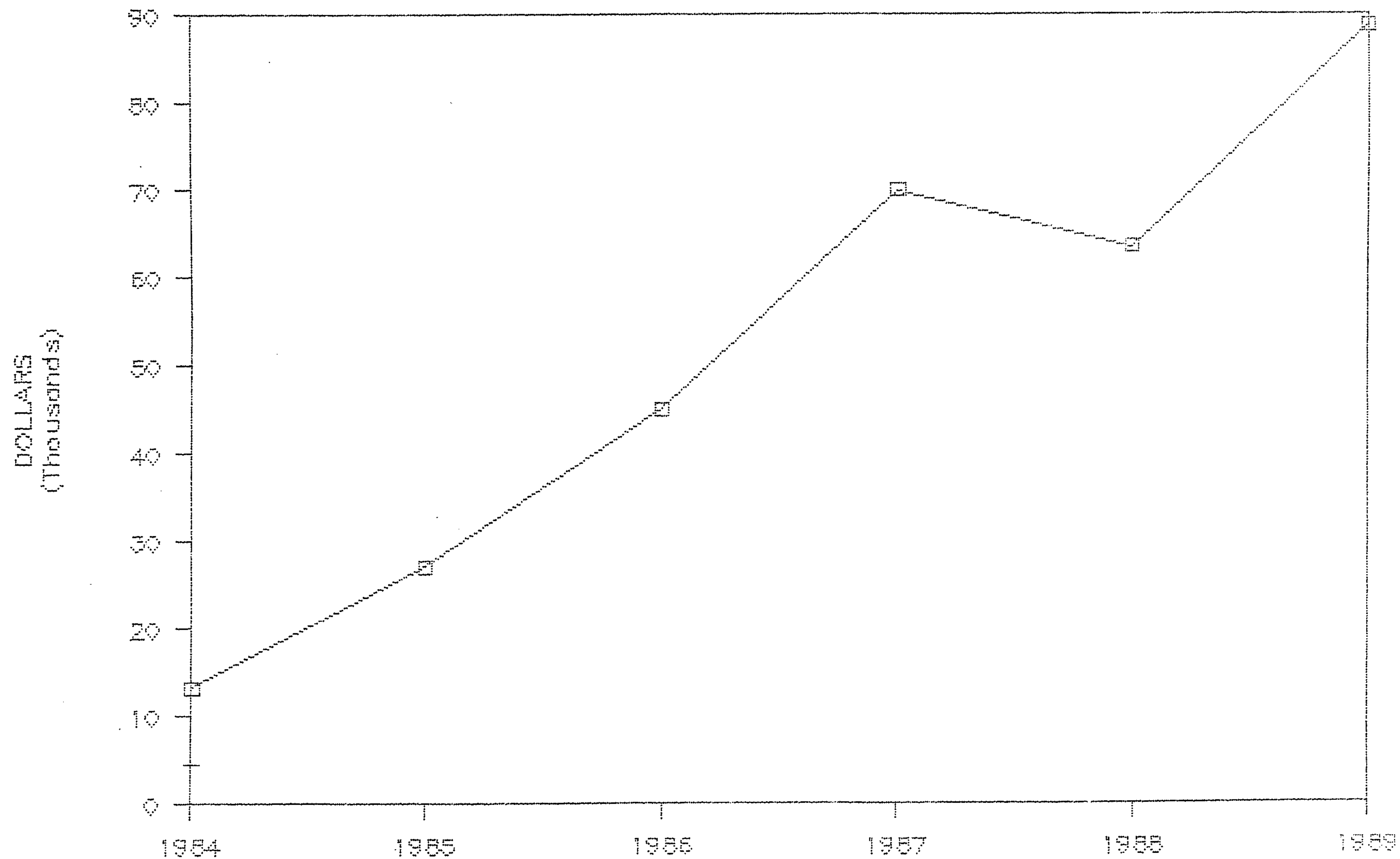
Your committee is considering another major piece of that puzzle that should be put in place to help solve liability problems and to contain the spiraling cost of liability insurance.

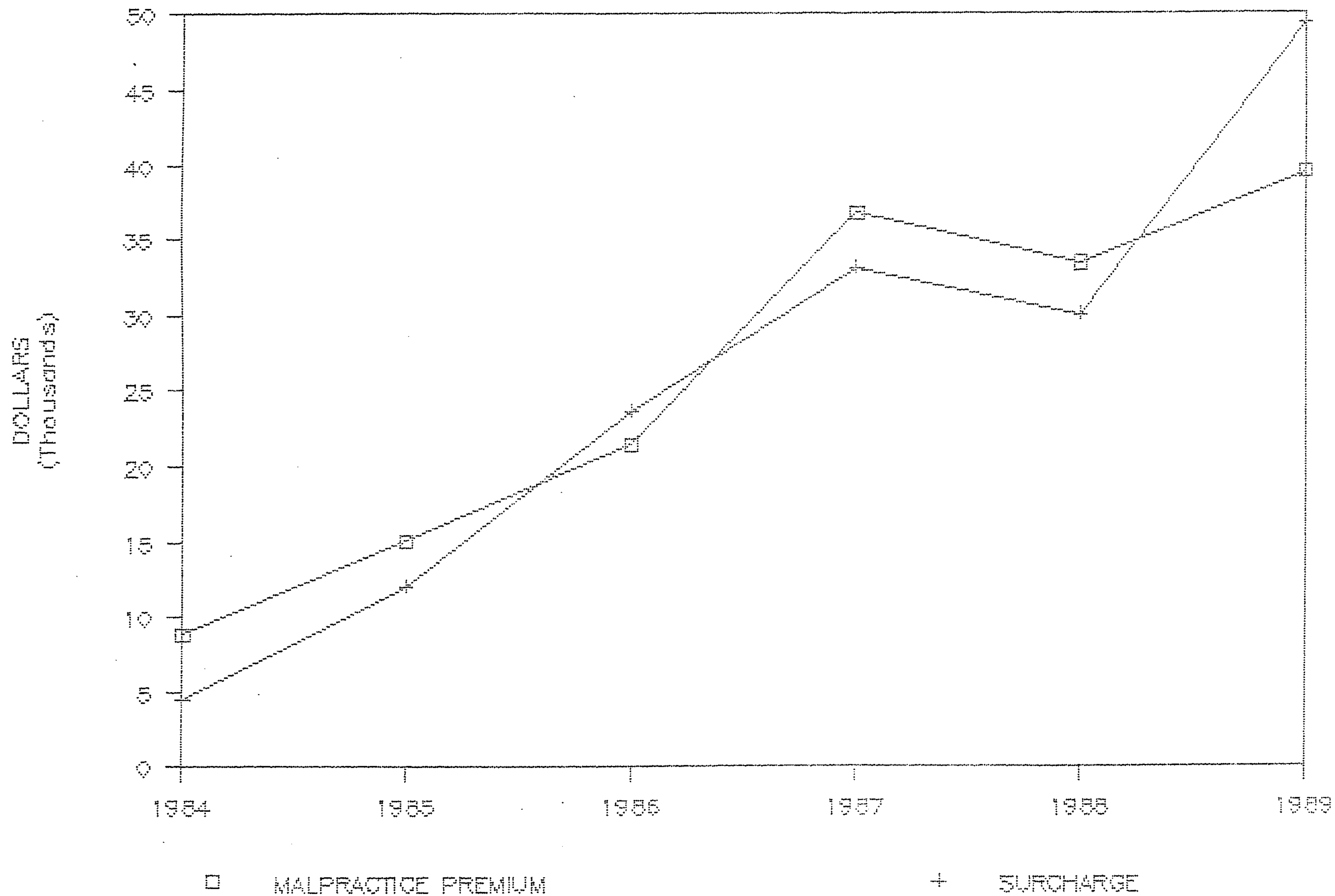
This committee, after study, has an opportunity to recommend the passage of Senate Resolution 1610 that will contribute greatly toward solving one major aspect of liability reform. Non-economic damages are impossible to accurately ascertain, and can be manipulated by emotion and are inevitably subject to speculation.

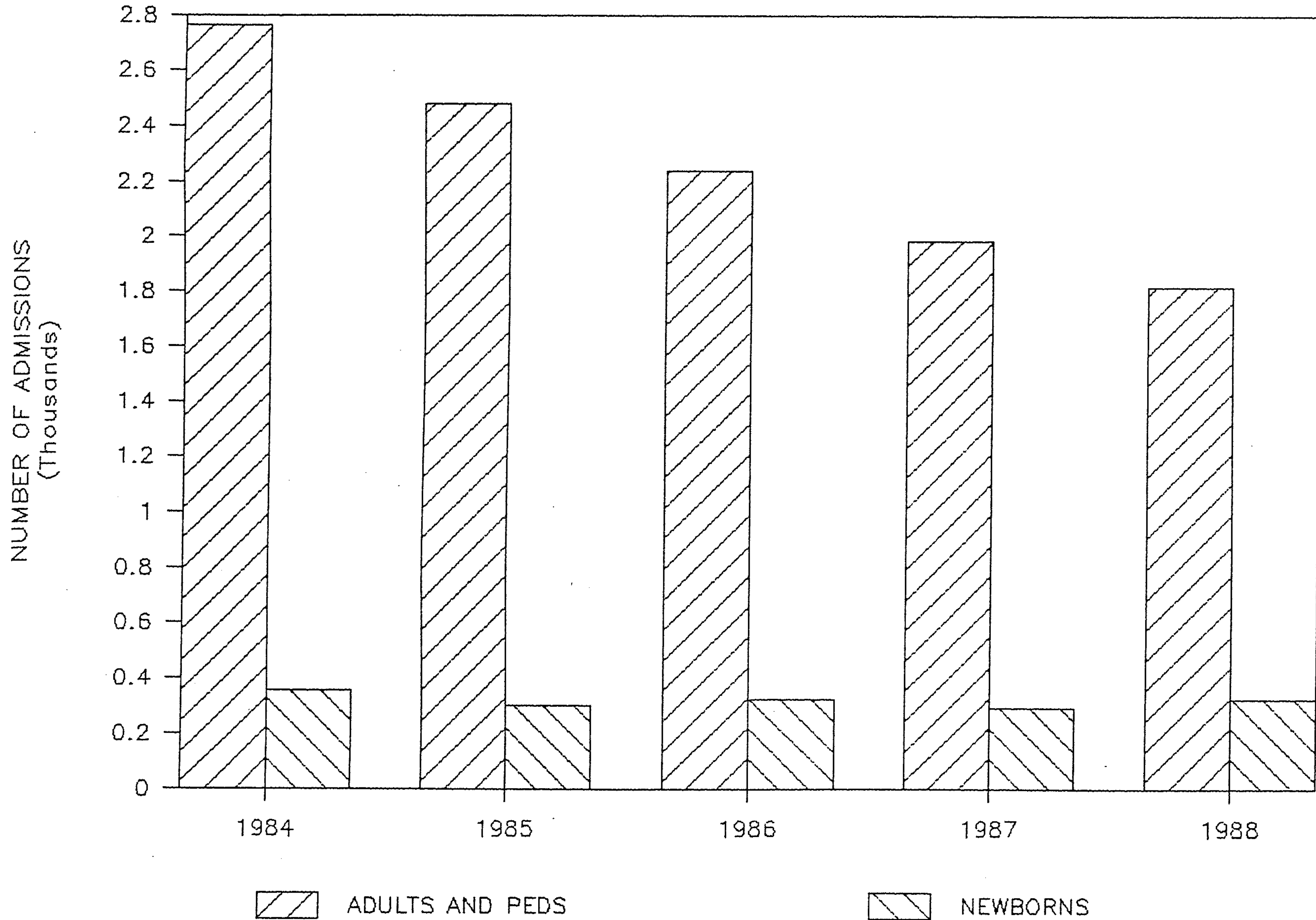
One major advantage you have, is that your resolution will allow the legislature to permit the wishes of the people to be heard concerning this matter. Since the resolution calls for a constitutional amendment to be voted on by the people, it offers you the best assurance that you are fulfilling your responsibility in representing the best interest of the people. Permitting a vote on a constitutional amendment is the most

democratic way to determine whether or not the people of Kansas understand the problem and believe changes are necessary.

I thank this committee for the opportunity to express these views and bring you this information and respectfully request your endorsement and recommendation of the passage of Senate Resolution 1610. I would only repeat that an affirmative vote for this resolution is placing confidence in the people of Kansas to make a decision on what it is they think is fair. Trust the people, give them an opportunity to make the final decision.


WILLIAM NEWTON MEMORIAL HOSPITAL
TOTAL MALPRACTICE INSURANCE PREMIUM
DOLLARS
(Thousands)
0
10
20
30
40
50
60
70
80
90
1984
1985
1986
1987
1988
1989


WILLIAM NEWTON MEMORIAL HOSPITAL
MALPRACTICE INSURANCE PREMIUM HISTORY
DOLLARS
(Thousands)
50
45
40
35
30
25
20
15
10
5
0
1984
1985
1986
1987
1988
1989
MALPRACTICE PREMIUM
SURCHARGE


WILLIAM NEWTON MEMORIAL HOSPITAL
ADMISSIONS 1984–1988
NUMBER OF ADMISSIONS (Thousands)
2.8
2.6
2.4
2.2
2
1.8
1.6
1.4
1.2
1
0.8
0.6
0.4
0.2
0
1984
1985
1986
1987
1988
ADULTS AND PEDS
NEWBORNS

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March 20, 1989

JUDICIARY COMMITTEE, KANSAS SENATE
SCR NO. 1610
FRANK C. NORTON, ESQ.

I appear before you and give this testimony not as a representative of any group or as a lawyer retained to advocate a position. I appear before you as, first a citizen, and second, a lawyer who is very concerned about a crisis.

At the 105th Annual Meeting of the Kansas Bar Association in June of 1987, former Chief Justice of the Kansas Supreme Court, David Prager, said, "The Duty of a Kansas Lawyer is to tell it like it is". Although that statement described the basic duty of a Kansas lawyer in connection with disciplinary sanctions that could be imposed against him, I feel that it also characterizes the duty of the legal profession to all of society.

When an issue as contentious as medical malpractice develops, it is only natural that the persons and professions involved in the issue are defensive of their respective positions. Duty as seen by a lawyer representing a medical malpractice plaintiff is to attempt to recover the largest possible amount permitted by the legal system and subject to compliance with sound ethical standards. The exercise of this duty does not imply malice on the part of the lawyer. The fact that the lawyer is willing to take his chances of being paid only if the result is successful, does not change his motives. The lawyer feels that the client is seldom over-compensated because he is sympathetic with the client's cause.

Duty, as seen by the physician is to treat the patient the best he can without guaranteeing any specific result. If the patient does not get the result he or she expects, a claim against the physician is considered. It is only natural that a physician would be offended by such a claim. Because lawyers, physicians and patients are human, some abuses occur but for the most part they are simply doing their duty and exercising their rights within the legal system.

Attachment IX
Senate Judiciary Committee
3-20-89

We have all heard the statement many times that, "the sole cause of medical malpractice cases is medical malpractice".[1] That sounds simple enough, but when we remember that we are talking about the human body it is far less clear. The complexity of the body makes it impossible to predict with accuracy the side effects of many medical procedures. "...Modern medicine - in conformity with the wishes of most of society - substitutes itself in part for nature. This human intervention represents a shift from nature to man and permits a legal system to shift the risk from nature (which cannot be sued) to the human agents (who can). But to ask doctors to serve as risk-bearers for nature could have catastrophic effects on the practice of medicine and the course of medical research. For, no society can afford the costs of untoward effects properly attributable to nature. The attempt to force some segment of society to do so (doctors, taxpayers, or whomever) could lead to doctors refusing to attempt a..." medical procedure.[2]

As claims increased in the medical malpractice arena, most of us stood by and watched medical costs rise at alarming rates. We realized that a significant part of that cost related to "defensive costs" brought about by unnecessary testing and unnecessary procedures in order for the physician to defend himself. "In 1975, HEW variously estimated the costs at $1 billion, $3 billion, $5 billion and $7 billion.[3] For the most part, we accepted these costs. It was not until we began to lose doctors that many of us decided that we must work toward a solution.

Those of us from rural areas want not only physicians, we want medical treatment. It is not enough to have a mid-wife if you need an OBGYN. It is not enough to have a family practitioner if you need a surgeon. It is not enough to have a surgeon if the surgeon will not perform any operation that involves any more than minimal risks.

It is important to calculate the financial impact of the health care industry in each community. We must realize that without adequate medical care in a community, it will not be

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[1] Robert E. Cartwright, "Medical Malpractice: A trial lawyer's view in Legislators Guide in the Medical Malpractice Issue, Washington, D.C.; Georgetown University Health Policy Center, 1976 p. 61".

[2] The Litigious Society, Jethro K. Lieberman Basic Books, Inc., 1981 p. 72.

[3] Liberman, p. 85

considered as a candidate for new or increased industry. More important, however, is the life and death, as well as quality of life, issues that are involved for those who live in any community which loses its physicians. These are our concerns. These are the reasons that we are here today.

The arguments are not new. Most every argument that you will hear on both sides have been made when this issue has been debated in the past.

After the 1988 Kansas University Medical Center Physicians Census was released showing an increase in the number of physicians in Kansas it was contended that "things must be OK". Those of us living in Salina and in comparable communities are not helped by an increase in physicians in residency in Johnson County. To look only at the physician count is to not understand the problem. If we would increase the number of family practitioners by three, that will not help us if we need a surgeon or a OBGYN. We must have a climate which will permit high risk specialists to practice if we are to have adequate treatment. The problem must be analyzed by the availability of all practices and all specialists. This was best addressed by the 1988 Kansas Medical Under Served Areas Report by the Office of Institutional Research and Planning of the University of Kansas Medical Center.

Some argue that the study by the Office of Judicial Administration regarding state court verdicts in 1988 shows that there are no significant problems. There were some twenty-three state court verdicts in medical malpractice cases. Of that total, sixteen verdicts were in favor of the physician. Of the seven verdicts against the physician, only two were in excess of $1,000,000 and ranged from $40,000 to $2,353,100.

In prior national studies, it was pointed out that between 66% and 80% of malpractice cases that ultimately went to trial, ended in a verdict for the physician.[4] Obviously, not every medical malpractice claim goes to trial. Federal and state statistics show 28% of all payments are made without the injured party asserting a claim. These payments are made in order to avoid the costs of additional claims. Charting the total number of cases in which a plaintiff who asserted a claim was actually paid, (these included claims paid without a suit being filed,

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[4] In The Malpractitioners by John Gunther (Garden City: Doubleday, Anchor Press 1978, p. 18)

prior to trial, during trial and after a trial) shows the plaintiff recovering 78.5% of the time.[5] An insurance industry study indicates that claims of $5,000 or less account for 50% of all claims but only 1% of all monies paid.[6] The statistics can go on and on. However, the real test is what is happening to insurance rates. Insurance rates continue to increase in astounding multiples. Criticism has been directed against the insurance industry claiming that it is exacting excess profits in the medical malpractice area. Such a contention, however, is inconsistent with the basic competitive character of the insurance industry. The insurance industry will compete when there is a profit.

It is argued that there is no proof that a non-economic damage cap will guarantee a reduction in insurance premiums. That argument was made when the matter of non-economic caps was reviewed by the California Supreme Court.[7]

What, then, is the cause of the increased costs of insurance for medical malpractice? It appears to be the uncertainty in the non-economic recovery area. This area involves pain and suffering, disability, disfigurement, inconvenience, mental anguish, humiliation, loss of capacity to enjoy life, bereavement, loss of society, loss of companionship, loss of consortium, loss of reputation and other losses which are intangible in nature.[8] The implication has been that in this area there is the possibility of the "big strike"[9]. The big strike possibility was inferentially responsible for one out of every nine doctors being hit with a malpractice claim in 1977.[10]

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[5]Gunther pp 227-28.

[6]Gunther p. 206.

[7]<u>Fein v. Permanente Medical Group</u>, 165 P2d 665, 690 (Cal. 1985).

[8]<u>Fein v. Permanente</u>, p. 689.

[9]Lieberman, p. 68.

[10]Lieberman, p. 68 and U. S. Department of Health, Education and Welfare, trends affecting the U. S. Health Care System, No. H.R.A. 76-1453, prepared by Cambridge Research Institute (Washington, D.C.: Government Printing Office, 1975), p. 40. Interpreted in Gunther, pp. 125-27, 225-31.

Since claims against insurance companies are not made immediately, only 52% of medical malpractice claims are reported within a year of injury. As late as four years after injury some 4% of eventual claims are unknown. This results in a considerable amount of premium money being placed in loss reserves.[11]

Non-economic caps provide, in part, a stable base on which to calculate insurance rates.[12] Twenty-seven (27) states have passed economic and non-economic caps. In five (5) of those states, including Kansas, it was held that the cap was unconstitutional. Clearly, many states recognize the importance of caps as a method of establishing predictability. The only questions have been whether the caps should be economic or non-economic and the way in which the caps may be established in a constitutional manner.

It is certainly true that work can be done in reducing malpractice suits by the greater use of screening panels. Cooperation among lawyers and doctors can reduce litigation costs. Peer review can reduce malpractice cases. Some type of arbitration system can be devised to resolve some medical malpractice disputes. However, none of these deal with the "big strike". Only non-economic caps deal with this unknown.

Why should this matter be dealt with by the Legislature? Is that what our Constitution and Bill of Rights contemplate? We must remember that as lawyers, legislators and doctors, our duty is to serve the public good.

Section Two of the Kansas Bill of Rights states:

> "All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the Legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by

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[11] Lieberman, p. 63.

[12] Fein v. Permanente, p. 691.

no other tribunal or agency".

In discussing this clause, the Kansas Supreme Court stated:

> "Among the powers retained by the people is the exercise of the police power, or, the power to pass legislation for the general welfare of the people".[13]

We feel that the medical malpractice crisis is a matter with which we, the people, are concerned. With this concern we appeal to you to be given the express authority to create a more stable, predictable climate in the medical malpractice area.

This right - this constitutional right - does not belong to the Governor, the Legislature or the Courts. This right belongs to the people. If the people believe the problem is a crisis, let them exercise their rights.

I have included in my written testimony the written testimony of a number of physicians and other residents of Salina who express themselves in connection with this issue.

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[13] Manning v. Davis, 166 Kan. 278, 281.

REPORT OF THE TASK FORCE OF
THE SALINA AREA CHAMBER OF COMMERCE
ON THE MEDICAL PROFESSIONAL LIABILITY
INSURANCE CRISIS

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SJC
3-20-89

REPORT OF THE TASK FORCE OF
THE SALINA AREA CHAMBER OF COMMERCE
ON THE MEDICAL PROFESSIONAL LIABILITY
INSURANCE CRISIS

I. Introduction

In response to recent publicity in the Salina community concerning the effect which high medical professional liability insurance premiums is having on physicians within the area, the Salina Area Chamber of Commerce established a task force to study this issue and formulate a statement of position for the Chamber to take. Members of the task force, whose names appear at the conclusion of this report, included representatives of the medical community, industry, insurance business, the legal profession, and other concerned segments. The members of the task force are virtually unanimous in their position that the high quality of medical care provided by medical providers and their employees in this community is among the most important factors in Salina's economic stability. Unless responsible, reasonable and effective solutions are found enabling health care providers to procure an adequate level of liability insurance at a reasonable cost, the economic and medical stability of this community may be in jeopardy.

This report will attempt to: (1) document the importance of the health care industry to the economic vitality of Salina; (2) examine the present "crisis"; (3) briefly discuss the numerous attempts to deal with the problem to date; and (4) explore some of the alternatives being discussed as potential solutions for the crisis. It is hoped that this report will provide sufficient information for the citizens of Salina to intelligently consider the issue. It should be kept in mind that this report has been prepared by concerned volunteers of this community and is not prepared by professional academicians.

The data utilized herein is from sources believed by the Task Force to be reliable.

II. Impact of Health Care Industry on Salina

A. Physicians. At present there are 86 physicians practicing in Salina serving approximately 50,000 people in the community itself and 400,000 people in the surrounding trade area of Western and North Central Kansas. Approximately 67 physicians are specialists representing 21 different medical specialties. Salina physicians typically serve people in a wide geographic area encompassing all of North Central and Northwest Kansas. The Saline

County Medical Society estimates that approximately (40%) of medical revenue comes from outside of Saline County.

B. Health Care Facilities. Salina has two hospitals, each of which provides valuable services to the community. Asbury-Salina Regional Medical Center ("Asbury") provides 212 inpatient beds and outpatient services, including surgery facilities. St. John's Hospital ("St. John's") provides 202 inpatient beds and also has outpatient services, including surgery facilities. Data furnished by the hospitals indicates that approximately (40%) of their revenue comes from outside of Saline County.

There are six nursing homes in Salina providing an additional 426 beds for long term care. A survey of the nursing homes conducted by a member of the task force indicates that in excess of (6%) of nursing home residents move to Salina in order to utilize local facilities.

C. Health Care Employment. Asbury employs 700 people and St. John's employs 550 people. The Saline County Medical Society estimates that approximately 375 people are directly employed in physician offices. Salina nursing homes employ an additional 350 people. The Kansas Department of Human Resources has advised the Chamber that 2114 people are employed in the health care field in Salina in approximately 110 facilities. The Chamber of Commerce conservatively estimates that there are 2000 households which have one or more people directly employed in the health care industry. This represents approximately (11%) of all households in Salina.

D. Economic Impact. The health care industry collectively generates approximately $75,000,000 in revenue for the Salina community each year. Of this amount, statistics furnished by the hospitals and the Saline County Medical Society indicate that approximately (40%) of this, or $30,000,000, comes from outside the City of Salina. This is just health care revenue and does not include revenue from food, lodging and other retail goods and services. In effect, the overall impact of health care business on Salina is enormous.

E. Economic Development. According to information furnished to the Task Force by the Chamber, the quality of health care ranks, along with the quality of education, as one of the primary concerns of businesses considering locating in Salina. The Chamber believes that the high quality which Salina has been able to offer in these areas has been a very positive influence for Salina in attracting industry.

III.
The Medical Professional Liability Insurance Problem

A. Historical Perspective of Malpractice Premiums. During the decade of the 1980s, the medical professional liability insurance premiums for physicians have escalated in Kansas at unprecedented levels. As an example, Salina physicians have provided information indicating that in 1980 a family practice physician delivering babies paid $1,782 annually for professional liability insurance. By 1988 the premium had risen to $14,009 and by 1989 it was $19,879. As a direct result of this, 45.5% of family practitioners who previously delivered babies have quit doing so and another 21.5% are considering quitting. This means that more babies are either going to have to be delivered by specialists or with no physician involvement at all.

The problem for obstetricians is even more astronomical than for family practitioners. In 1980 the annual premium was $4,177 and by 1989 it had risen to $67,748.

According to information furnished to the Task Force by Salina physicians, the premiums for professional liability insurance have escalated as follows:

Physician	1980	1987	1988	1989
Family Practitioner	$ 1,782	7,800	14,009	19,879
OB/GYN	4,177	26,518	43,774	67,748
General Surgeon	3,582	19,342	32,101	39,305
Orthopedist	4,177	26,518	43,774	67,748
Neurosurgeon	4,177	28,078	49,610	85,192
Internist	1,782	7,800	14,009	19,879

Depending on specialty, 40% to 70% of physician income in Salina comes from either Medicare, Medicaid or Blue Shield. As a result, the fees received by physicians for certain procedures are subject to price constraints imposed by these entities. While malpractice premiums have been escalating, the amount of fees received for various procedures has not nearly kept pace. For example, in 1984 an orthopedic surgeon could expect to receive $1,092.50 for repairing and treating a hip fracture. By 1989 the same procedure would result in payment of $1,192.50. The net result is that for physicians to be able to cover the premiums they pay, they either must take care of a larger volume of patients or suffer a loss of net income. Because the payment mechanism for medical services is so complex, the problem cannot be solved by physicians simply raising the prices for services they provide.

B. Malpractice Claims. According to the Kansas Medical Society and based on data furnished to it by the Kansas Insurance Department, the number of medical malpractice claims filed annually in Kansas has risen from 50 claims in 1980 to 360 claims in 1988.

According to the report by the Office of Judicial Administration of the State of Kansas in Fiscal Year 1988, there were 23 medical malpractice cases that went to juries in Kansas. Of these, 16 cases resulted in the physician being completely exonerated and 7 cases resulted in an award being given to the plaintiff. The awards ranged in size from $40,000 to $2,353,100. Two of the verdicts were in excess of $1,000,000.

The number of malpractice cases which go through the judicial process to a jury trial only tell part of the story, however. According to a report issued by the Kansas Insurance Department in September of 1988, the Health Care Stabilization Fund, which provides excess coverage above the $200,000 primary insurance coverage of commercial insurance, settled approximately one in every five claims made. Between 1976 and 1988, its statistics show it paid compensation in 287 cases, 21 of which were by jury verdict and 266 of which were by out-of-court settlement. Thus, based on these statistics, it would appear that for every jury verdict which goes against a health care provider, there are almost 13 settlements made before trial by the Health Care Stabilization Fund. These figures do not include settlements made by the primary carriers within the $200,000 primary insurance coverage limits.

This proliferation of medical malpractice claims has contributed to a decline in the number of commercial insurance carriers offering medical professional liability insurance. In 1976, there were 20 carriers offering coverage, but at the beginning of 1989 there were only two competing across the board. Any competition which previously existed in the marketplace is virtually gone.

C. Loss of or Early Retirement of Salina Physicians. According to information furnished by the Saline County Medical Society, during the previous three years, in large part because of escalating malpractice premiums, Salina has lost 9 physicians who have either moved out of State or taken jobs where they had no individual responsibility for malpractice premiums. In addition, 12 other physicians have significantly reduced the scope of their practices or taken early retirement, in large part due to the costs of malpractice coverage. Presently, the Saline County Medical Society has identified at least 5 other physicians who are actively seeking opportunities outside of Kansas because of the costs of malpractice insurance coverage.

D. Impediments to Physician Recruitment. Several physicians told the Task Force that they have been actively recruiting additional physicians to come to Salina. For physician specialties with high malpractice premiums, it is extremely difficult to get physicians to even consider Kansas, especially in rural Kansas.

E. Comparative Premiums in Other States. It is difficult to compare premiums paid for medical professional liability insurance

in other states because of a number of factors. If, for example, the statutory coverage requirements are less or if "tail" coverage insuring against claims prior to the immediate policy period is not required, the premiums are less. On the other hand, there are also states where malpractice insurance coverage is more expensive than Kansas. The bottom line is that all states which adjoin Kansas have taken steps which put Kansas at a competitive disadvantage.

IV.
History of Tort Reform in Kansas

Legislation directed at the question of medical malpractice insurance coverage for health care providers first came to the forefront in 1976 with the passage of the Health Care Provider Insurance Availability Act by the Kansas Legislature. This measure was passed, largely in response to the fact that a number of insurers which had previously underwritten malpractice insurance coverage in Kansas began to quit writing coverage because of increasing claims and decreasing profits. Health care providers found themselves in a dilemma at that time because they simply could not find sufficient carriers to provide them with coverage. The Act essentially did three things. First, for the first time, it required that the health care provider must carry malpractice insurance as a condition precedent to practicing in Kansas. Second, it provided that the health care provider would be required to carry primary insurance coverage of $100,000 per each occurrence and $300,000 for annual aggregate claims. This was later increased to $200,000 for each occurrence and $600,000 annual aggregate limits in 1984. Third, it created the Health Care Stabilization Fund which is a state-run insurance company designed to provide additional insurance coverage above the primary coverage written in most cases by commercial carriers. Funding for the Health Care Stabilization Fund came from surcharges made against health care providers based on premiums paid by them for their primary coverage.

The Health Care Stabilization Fund guaranteed the availability of insurance for health care providers but because, in effect, it created a state-run monopoly in the highly profitable excess insurance market, it further reduced the incentive for commercial carriers to enter or return to the Kansas market. This, coupled with the rise in the number of claims against health care providers already alluded to in this report, caused the cost of malpractice insurance premiums to steadily rise in Kansas.

Also, in 1976 the Legislature for the first time passed a law giving either party to a medical malpractice lawsuit the right to ask the court to convene a Medical Malpractice Screening Panel, the purpose of which was to provide a voluntary and preliminary forum for the review of the claim before it is actually presented in court. As originally conceived, this panel when convened was to consist of three physicians and a nonvoting attorney who were to

review the case and determine if there was a deviation from the standard of care. If either party is dissatisfied with the findings of the screening panel, he or she may elect to proceed in court. The legislation has been amended several times since that time, but the process remains voluntary. Recent amendments provide a procedure whereby the panel may be convened without the necessity of first filing a malpractice lawsuit.

In direct response to these escalating premiums, the Kansas Legislature in 1985 adopted a series of statutes commonly referred to as the 1985 Medical Malpractice Tort Reforms. These reforms statutorily modified the "Collateral Source Rule" which prohibited defendants in medical malpractice cases from introducing into evidence payments made to or benefits conferred on the plaintiff from other sources. In other words, the collateral source rule prohibited the medical malpractice provider from being able to be given credit for other benefits the injured party was receiving by reason of the injury. The legislative action was designed to overturn the collateral source rule. These reforms also limited the amount of punitive damages recoverable in malpractice actions. In July of 1987, in the case of Farley v. Engelken, the Kansas Supreme Court ruled that the legislation adopted in 1985 abrogating the collateral source rule was unconstitutional.

Again, in response to escalating premiums, in 1986 the Kansas Legislature adopted another battery of "Tort Reforms." This package of legislation limited by law the amount of noneconomic damages recoverable in a medical malpractice action to $250,000. It limited the amount of all damages, economic and noneconomic, in most cases to $1,000,000, and it required that any award of future economic losses be reduced to present value and invested in an annuity contract. In January of 1988, the Kansas Supreme Court in the case of Kansas Malpractice Victims Coalition v. Bell ruled the 1986 reforms unconstitutional as a violation of the Kansas constitutional provisions giving citizens the right to trial by jury and to due process of law.

Legislation in 1987 and 1988 passed by the legislature was again directed at Tort Reform but included a broader range of tort actions than just medical malpractice claims within the scope of coverage. Included were statutes designed to abrogate the collateral source rule in all personal injury actions, statutes limiting punitive damage claims, and statutory caps on noneconomic damages in personal injury actions at $250,000. The constitutionality of these various statutes is yet to be determined. In any event, they do not appear to be having any effect on professional liability insurance premiums which continue to rise.

V.
Proposed Solutions

At present there are many proposed solutions to the problem, some of which are in the form of proposed legislation and some of which are not. The Task Force believes that a combination of several different proposals is needed and urges the consideration of them all. Several of the major options under consideration are discussed below. There are many specific proposed options which have been made, but many of them are simply variations of the major concepts discussed below.

A. Kansas Constitutional Amendment Allowing Caps on Damage Awards. Because the Supreme Court decided in the Bell decision that the caps on noneconomic damages in the 1986 legislation were unconstitutional, one proposed solution is to pass a constitutional amendment which would allow the legislature to impose the caps. Such a proposed amendment is now before the legislature and, if passed, would go to the voters for approval. The amendment itself would not impose caps but would simply permit the legislature to do so. It is anticipated that if the amendment passes, caps similar to those imposed in the 1988 legislation would be forthcoming. This solution, along with legislation lowering the amount of mandatory insurance physicians are required to carry, is expected to have the effect of stabilizing malpractice insurance premiums in the future.

B. Reduction or Elimination of Mandatory Insurance Coverage. Presently, Kansas physicians are required to carry a total of $3,200,000 in coverage per claim. Many physicians feel they are required to overinsure because of this and that they could reduce the amount of their coverage and thereby reduce their premiums. In fact, 81% of physicians surveyed by the Kansas Medical Society felt that they needed $1,000,000 or less of coverage. One proposed solution is to simply lower the amount of mandatory coverage and leave additional coverage optional for the physician. While this might reduce the premiums which physicians are required to pay, it is doubtful that it would help the higher risk specialties where the physicians might not find it financially prudent to reduce their coverage.

C. Eliminate or Phase Out the Health Care Stabilization Fund. The Health Care Stabilization Fund ("the Fund") has been in existence since 1976. As previously mentioned, it provides Kansas physicians with the excess insurance above the $200,000/$600,000 primary coverage provided by commercial carriers. The Fund is financed by premium surcharges on the primary coverage which are assessed annually against physicians based on the primary coverage which the physician carries. For example, if the physician pays $25,000 for his or her primary coverage and the surcharge is 125% as it is in 1989, then the total premium the physician would pay would be $56,250. Although the amount of the surcharge may vary

from year to year, it is a mandatory assessment which all Kansas physicians and hospitals are required to pay. Many feel that the existence of the Fund itself is part of the problem because it creates a golden pot at the end of a litigation rainbow for plaintiffs and their attorneys to seek to collect and because it effectively excludes other commercial insurance carriers from entering what might otherwise be a competitive market. Most physicians feel that the phase-out should be gradually done over a five year period and that the Fund should be actuarily sound at the time of its elimination.

D. Strengthen the Medical Malpractice Screening Panels. As previously mentioned, the Medical Malpractice Screening panels are presently essentially voluntary in nature in that their findings are not binding on either party to the claim. One proposed solution is to have the legislature amend the law so that if a party proceeds to litigation after a screening panel has given him or her a unanimous adverse finding, and if he or she loses in court, he or she would have to pay the other side's attorney fees.

E. Consider Permitting the Arbitration of Medical Malpractice Claims. Under this proposal, if a patient has a claim against his or her physician, the dispute would not be resolved in court, but privately before three knowledgeable arbitrators. Each side would select one arbitrator and the third would be jointly selected by them both. Those physicians who wish to participate in arbitration would advise their patients of their intention at the time the physician-patient relationship is created, and if the patient did not agree to participate, the patient could find another physician. This proposal might have the effect of reducing the costs of resolving claims, and it would certainly allow the private resolution of the dispute.

F. Limitation on Expert Witnesses. As a general rule in Kansas, in order for a physician to lose a medical malpractice case, it is required that another physician testify as an expert witness that the defendant physician deviated from an acceptable standard of care. Presently, the only statutory limitation on expert witnesses is that he or she must have spent 50% or more of his or her professional time in the same profession as the defendant during the two-year period immediately preceding the event giving rise to the claim. One proposal is to put stricter requirements on experts such as requiring that the expert must be board certified in the area in which he or she intends to offer testimony and must spend at least 50% of his or her time in the same clinical discipline in which the incident occurred during the prior two years. It is expected that this would prevent Kansas physicians from being unduly criticized by those who may not practice under similar conditions.

G. Scheduled Benefits Compensation Law. This requires that the legislature adopt legislation similar to the Kansas Worker's

compensation system whereby incidents of medical malpractice would be resolved in an administrative tribunal. This system would set limits on compensation and provide for the quick and effective resolution of the disputes. Unlike worker's compensation, which is for all practical purposes a no fault system, the scheduled benefits compensation system in the medical malpractice area would continue to require a finding that the physician was negligent.

VI.
Conclusion

Salina has an excellent group of physicians and a very sound medical community. The Salina Area Chamber of Commerce believes that effective action must be taken now to resolve the medical professional liability insurance crisis. The Chamber believes that a combination of proposals along the lines of those outlined above should be passed as quickly as possible by the Kansas Legislature. Whatever solution is forthcoming should: (1) have the effect of stemming the tide of increasing malpractice insurance premiums as quickly as possible; (2) provide a mechanism which will encourage and not discourage physicians from practicing in Kansas; and (3) provide for the orderly, economic and efficient resolution of legitimate medical malpractice claims. Above all, Kansans should have public policies which encourage and not discourage physicians from practicing across the State in all of its communities. The Chamber urges all Salinans to get involved in this important issue and support our medical community.

MEDICAL PROFESSIONAL LIABILITY
INSURANCE CRISIS TASK FORCE

W. Reese Baxter, M.D.
Mark Bell, M.D.
Clay Edmands, Asbury-Salina Regional Medical Center
Gary Harbin, M.D.
Merle Hodges, M.D.
Nancy Macy
John Mize, Clark, Mize & Linville, Chartered, Chairman
Jim Moore, Presbyterian Manor
David Moshier, Hampton, Royce, Engleman & Nelson
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Dennis Poer, R.G.B. Schmidt Insurance
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March 20, 1989

TO: Senate Judiciary Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: SCR 1610; Concerning Amending the Constitution to Allow the Legislature to Enact Caps on Non-Economic Damage Awards

The Kansas Medical Society appreciates the opportunity to appear today in support of SCR 1610, which was introduced at the request of the Kansas Coalition for Tort Reform, of which we are a member.

KMS would also like to thank this committee for its efforts over the last few years in the broad area of tort reform and medical malpractice. After four years of extensive study and debate on this subject, you must be weary of it all.

I doubt that any other state legislature in this country has taken a more deliberate and thorough look at the liability problem. You have four years of solid study, recommendations and action on this subject involving issues of physician competence and quality assurance, insurance regulation, and tort reform. Unfortunately, the reforms you've enacted which held the greatest promise for producing results, namely caps on awards and reversal of the collateral source rule, are the only parts of the comprehensive approach which have been invalidated by our Supreme Court.

We believe the record, not only in Kansas, but across this country, has shown that this problem simply can't be solved without some reasonable reform of the tort system. In fact, the record nationwide of tort reform legislation demonstrates that the debate over tort reform has passed well beyond the point of whether the tort liability system needs to be reformed. Rather, the tort reform debate has come to focus largely on what kinds of tort reform should be enacted.

I won't spend a great deal of time rehashing the seriousness of the malpractice crisis in our state. Since 1984 we've produced reams of testimony and statistics which demonstrate the severity of the problem facing Kansas physicians and their patients.

Attachment X
Senate Judiciary Committee
3-20-89

Premiums are continuing to rise at a pace which is clearly unacceptable. Currently the cost of insurance required of Kansas physicians is the highest in our region of the country, and probably in the top third of all states. Most physicians in Kansas absorbed increases in the range of 100-150% during this year. Physicians are asking themselves when this madness will end. Clearly if something is not done soon to alleviate this crisis, the prognosis for rural health care is not good, and our more urban areas will not be far behind.

While we do appreciate everything the Legislature has done in the area of tort reform thus far, as other conferees have pointed out, the Supreme Court has basically put us in a position that requires a constitutional amendment to enact even modest reforms. Believe me, we would prefer that we not have to pursue a constitutional amendment: it is difficult to even get it on the ballot; it then must be approved in what will undoubtedly be an expensive, high-profile media battle; and because it won't be voted on until November 1990, the results are not as rapid as we would like. However, we feel very strongly about the need for tort reform, and we will be persistent on this point until we have exhausted every alternative.

In reality, we shouldn't even be debating whether or not caps are needed. That debate has already taken place in this Legislature, every year since 1984. You have already seen the substantial record of findings, conclusions and legislation which was developed as a result.

However, I know opponents of tort reform will want to debate all over again the question of whether or not there should be caps on awards.

Tomorrow you will hear our opponents say "Caps don't work. There are no guarantees insurance companies will lower premiums if we pass a cap. We've enacted caps and premiums still go up."

Let me answer those questions again, as we have year after year. The KTLA and KBA probably will continue to quote me out of context in their literature to perpetuate their strategy of misdirection and confusion on this issue.

Caps do work. Our opponents understand that a well drafted damage cap - unlike some other tort reforms - has a substantial impact on the tort liability system. A well conceived and tightly drafted cap on non-economic damages will have a greater long term impact on tort liability than all other typical legislative tort reform measures combined, in my view.

There indeed is compelling research and empirical evidence demonstrating the effectiveness of damage caps. Patricia Danzon, one of the nation's foremost economists on the subject of medical malpractice has done long-term, exhaustive research on medical malpractice claims nationwide. Danzon discovered that while only a handful of all paid medical malpractice claims result in a large payout,

when the payout is large it tends to be very large, and it tends to be predominantly for non-economic damages such as pain and suffering, mental anguish, emotional distress, and the like. The conclusion at which one invariably arrives after reviewing Danzon's data is that much of the extraordinary increase of recent years in average damage awards is attributable to immense non-economic damages awards in a relative handful of cases. Non-economic damage awards are inherently speculative and open-ended, while economic damage awards are constrained by relatively objective criteria (primarily involving the evaluation of lost earnings and medical care expenses). Accordingly, as overall inflation - adjusted damage awards have risen sharply - as they have for the relative few, but very expensive high-end cases, the most plausible explanation is that the subjective, open-ended component of those damage awards is at the center of this growth. [Danzon conservatively estimates that caps reduce non-economic damage awards in medical malpractice cases by an average of 23%. She may, however, understate the effect of such caps because her data includes all caps (even those that are too high to be effective), and averages her results across all cases, even those where the non-economic damage award is too low to be affected by the cap. It is quite possible that an effective cap will reduce payouts in high-stakes medical malpractice cases by up to 50%.]

Furthermore, in 1975 California enacted a rigorous medical malpractice reform statute known by the acronym of MICRA. While MICRA contains several provisions, its most important element is the $250,000 cap on non-economic damages. The effectiveness of this cap is most easily demonstrated by comparing the experience of California physicians with that of their colleagues in other states, including Kansas. While in the mid-1970's, California physicians paid substantially more than their counterparts in Kansas, just the reverse is the case today. A Kansas obstetrician this year will pay just under $70,000 for liability insurance, while his or her California colleague pays about $45,000 (even adjusting Kansas' limits to $1 million, the cost would be approximately $62,000, still quite a bit higher than the California cost).

Since MICRA was upheld by the United States Supreme Court in 1985, the number of million-dollar-plus cases in California decreased from 30 in 1985 to 12 in 1987. Total indemnity paid on large cases in California decreased by almost 40% from 1985 to 1987, and was the lowest of any year since 1982.

The second full year of settlements and verdicts reached after the Courts validated the MICRA tort reform provisions confirms the effectiveness of curbs on excessive awards. The result has been a stabilization of California malpractice costs, as evidenced by recent announcements of modest or no rate increases, and dividend returns, by all physician-owned companies based in California.

It is readily apparent that a cap on non-economic damages will produce results over time. We are not so naive as to believe that premiums can be reduced in the near term, especially since all the claims "in the pipeline" will be tried under the old rules. Additionally, we can expect a lengthy court battle after the cap is approved by the voters, which will delay its effectiveness even longer. Certainly, however, a cap will stabilize rates as claims costs are brought under control.

Our opponents still cling to the disingenuous assertion that "we've enacted reforms and premiums still go up." The truth is, the key reforms which would have reduced claim costs, thereby stabilizing premiums, have been either tied up in the litigation process or struck down by the Court, hence they have not been applied to actual claims. That is why premiums continue to go up.

There are no guarantees that premiums will go down because there are so many variables, including how long, and to what extent the courts allow any reforms to be applied. However, there still exists strong data from research, and experience from other states, that limiting non-economic damage awards is an effective, and reasonable response which will produce results.

In summary, we have been down this road many times. The conditions which led the Legislature to enact caps on awards three years in succession still exist, and are more acute in many instances. Recent decisions by the Kansas Supreme Court have brought us back to the Legislature since we have nowhere else to turn.

Our opponents will tell you to oppose this resolution because it will allow the judgment of a jury to be overridden by 63 votes in the House and 21 votes in the Senate. They will assert that a majority of the Legislature should not have any say over what happens in the courtrooms of this state. That is nonsense. The Legislature already has considerable influence over what happens in a courtroom, including placing limits on awards, the evidence which may be presented and when suits may be filed, among others.

What our opponents are saying is that they trust voters when they sit in the jury box, but not at the ballot box.

The constitution of this state belongs to the people. When we have a repeated and fundamental clash between two branches of government, the Legislature and the Judiciary, only the people have the power to resolve the dispute.

The right of the people to have access to quality health care strikes at the very heart of this issue. The right of an individual to receive adequate, but not excessive, compensation for injuries sustained, balanced with the right of all Kansans to have access to quality medical care at reasonable costs, is a fundamental question, and one that is properly the concern of the electorate. The time has come for this issue to be resolved. It's time for the people to speak. Kansans deserve the opportunity to exercise their right to vote. We urge you to report SCR 1610 favorably. Thank you for considering our comments.

JS:nb

KANSAS COALITION FOR TORT REFORM

Testimony on SCR 1610

March 20, 1989

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Attachment XII
Senate Judiciary Committee
3-20-89

KANSAS COALITION FOR TORT REFORM

Kansas Chamber of Commerce and Industry
Kansas Farm Bureau
Kansas Contractors Association
Independent Insurance Agents of Kansas
Kansas Railroad Association
Kansas Motor Carriers Association
Kansas Society of Architects
Kansas Hospital Association
Wichita Area Chamber of Commerce
Kansas Medical Society
Associated General Contactors of Kansas
Kansas Association of Broadcasters
Kansas Grain and Feed Dealers Association
Kansas Consulting Engineers
Kansas Lodging Association
Kansas Life Insurance Companies
Kansas Petroleum Council
Kansas Association of Property and Casualty Insurance Companies
Kansas Independent Oil and Gas Association
Kansas Engineering Society
Kansas Oil Marketers Association
Kansas Motor Car Dealers Association
Kansas League of Savings Institutions
Wichita Independent Business Association
Western Retail Implement and Hardware Association
Kansas Telecommunications Association
National Federation of Independent Business/Kansas
Merrell Dow Pharmaceuticals, Inc., Overland Park
Hutchinson Division, Lear Siegler, Inc., Clay Center
Becker Corporation, El Dorado
The Coleman Company, Wichita
FMC Corporation, Lawrence
Puritan-Bennett Corporation, Overland Park
Seaton Media Group, Manhattan
Boeing Military Airplane Company, Wichita
American Insurance Association
Alliance of American Insurers
National Association of Independent Insurers
National Association of Mutual Insurance Companies
Kansas Fertilizer and Chemical Association
Wes Sowers Management Counsel
Beech Aircraft Corporation
Cooper Industries, Funk Manufacturing Div.
Southwestern Bell Telephone Co.
Allied-Signal, Inc., King Radio

January 1988

Senate Concurrent Resolution No. 1610

By Committee on Judiciary

2-8

15
16 A PROPOSITION to amend article 2 of the constitution of the state
17 of Kansas by adding a new section thereto, authorizing the leg-
18 islature to limit the amount of recovery for noneconomic damages
19 in any claim for personal injury.
20

Be it resolved by the Legislature of the State of Kansas, two-thirds
21 *of the members elected (or appointed) and qualified to the Senate*
22 *and two-thirds of the members elected (or appointed) and qualified*
23 *to the House of Representatives concurring therein:*
24 Section 1. The following proposition to amend the constitution
25 of the state of Kansas shall be submitted to the qualified electors of
26 the state for their approval or rejection: Article 2 of the constitution
27 of the state of Kansas is amended by adding a new section thereto
28 to read as follows:
29 "§31. Limitation on noneconomic damages.(a) The legislature
30 may enact laws limiting the amount of noneconomic damages
31 awarded for any claim for personal injury. No provision of this
32 constitution shall limit the powers of the legislature herein con-
33 ferred, except that the legislature may not limit noneconomic dam-
34 ages awarded against a party causing the injury if such party has
35 been convicted of a crime arising from the conduct causing the
36 injury.
37 "(b) Noneconomic damages are losses for which there is no
38 unit value, mathematical formula or rule of calculation and include
39 but shall not be limited to pain and suffering, disability, disfig-
40 urement, inconvenience, mental anguish, humiliation, loss of ca-
41 pacity to enjoy life, bereavement, loss of society, loss of
42 companionship, loss of consortium, loss of reputation and other
43 losses which are intangible in nature."
44 Sec. 2. The following statement shall be printed on the ballot
45 with the amendment as a whole:
46 "*Explanatory statement*: This amendment would allow the leg-
47 islature to limit the amount of noneconomic damages a person
48 could recover in a personal injury action. Noneconomic damages
49 include pain and suffering, disability, disfigurement, inconveni-
50 ence, mental anguish, loss of capacity to enjoy life, bereavement,
51 loss of reputation, loss of society, loss of companionship, loss of
52 consortium, humiliation, and other losses for which there is no
53 unit value, mathematical formula or known rule for calculation. A
54 "personal injury" includes all actionable injuries to an individual
55 as distinguished from injuries to the individual's property, and
56 includes bodily and emotional injuries as well as injuries to rep-
57 utation and character. The limitation would not apply if the con-
58 duct of a party causing the injury results in a criminal conviction.
59 "A vote for this amendment would allow the legislature to limit
60 the amount of noneconomic damages a person could recover in
61 any claim for personal injury.
62 "A vote against this amendment would continue the present
63 system of assessing and awarding damages for noneconomic losses."
64 Sec. 3. This resolution, if approved by two-thirds of the members
65 elected (or appointed) and qualified to the senate and two-thirds of
66 the members elected (or appointed) and qualified to the house of
67 representatives, shall be entered on the journals, together with the
68 yeas and nays. The secretary of state shall cause this resolution to
69 be published as provided by law and shall cause the proposed amend-
70 ment to be submitted to the electors of the state at the general
71 election in the year 1990 unless a special election is called at a
72 sooner date by concurrent resolution of the legislature, in which
73 case it shall be submitted to the electors of the state at the special
74 election.

KANSAS COALITION FOR TORT REFORM

POSITION STATEMENT

INTRODUCTION

We are the Kansas Coalition for Tort Reform. Our membership includes individuals, private business and public corporations, professionals, and local and statewide associations. We represent Kansans from all walks of life - farmers; businesses, large and small; local and statewide chambers of commerce; health care providers and others concerned about the civil litigation and liability crisis.

BACKGROUND

In Kansas, the costs of personal injury litigation and the corresponding availability and affordability of liability insurance first became a crisis in the health care field. In 1985 and 1986, the Legislature attempted to put much-needed stability into the medical malpractice insurance market by passing laws to reform the way our court system handles medical malpractice claims and suits. These "tort reforms" included limitations on how much money could be awarded in malpractice cases.

The 1987 Legislature recognized that other professions, businesses and consumers have also experienced serious litigation and liability problems. The Kansas Legislature again responded by enacting new laws designed to remedy these problems. These changes included both procedural revisions and a limit on recovery for pain and suffering (non-economic damages), but specifically excluded medical malpractice cases, which already had been covered by the earlier 1985-86 legislation.

In July 1987, the Kansas Supreme Court ruled in a 4-3 decision that the medical malpractice reform legislation was unconstitutional because the 1985-86 tort reform laws applied only to medical malpractice cases, rather than uniformly to all personal injury cases. In response to the Court's ruling, the 1988 Legislature carefully drafted a new set of tort reform laws generally applicable to all personal injury lawsuits. On June 3, 1988, the Kansas Supreme Court struck another blow against the Legislature's tort reform efforts, declaring that our state constitution did not permit the Legislature to place caps on damage awards.

The 1988 Court ruling sent a clear message to the Legislature, consumers, health care providers, and the business community in Kansas that even modest legislative intrusion into the Court's absolute control over tort law would not be allowed. In spite of compelling need for, and the public benefits of, statutory tort reform, it is apparent that the Kansas courts will not allow the Legislature to impose any restraints on the tort system without first amending the state constitution.

THE PROBLEM

During these years of dedicated legislative effort, the liability and insurance situation in Kansas has worsened. Some physicians have left the state or retired early, while others have been forced to reduce basic health care services in order to qualify for lower-risk, less-expensive liability insurance.

Businesses are compelled either to increase their prices or discontinue goods and services offered to consumers. At a time when many other states have passed successful tort reforms (at last count, 18 states had passed limits on non-economic damages), Kansas is seen by the business and professional communities as an unpredictable environment with an unstable tort system and a Legislature that is unable to assert its authority in this vital area of public policy.

Today, the legal system for resolving personal injury disputes remains unrestrained and very costly. Of the total dollars expended by Kansas medical malpractice insurers, less than half are actually paid to plaintiffs as compensation for their injuries. Transaction costs, particularly legal fees, consume the majority of medical malpractice insurance dollars. This unacceptable situation is characteristic of the liability environment in general.

We face a dilemma, indeed. Professionals and businesses in Kansas desire liability insurance for two reasons: (1) to protect against financial disaster, and (2) to make certain that injured persons will be adequately compensated. Yet when the insurance coverage becomes unavailable or unaffordable, neither objective can be met. High insurance rates and uncertain availability of coverage create disincentives for businesses to locate in Kansas and make it difficult to recruit and retain health care providers. This situation is harmful to all Kansans, and particularly to those in small towns and rural areas.

THE SOLUTION

Members of the Kansas Coalition for Tort Reform support the jury system and believe that injured persons should be adequately compensated. However, we do not believe that non-economic damage awards can continue to escalate totally unrestrained. Kansas simply cannot afford increasing costs of litigation which bear no reasonable relationship to actual monetary losses.

Under the Court's interpretations of the state constitution, the Legislature cannot limit the amount of money awarded to plaintiffs in personal injury cases without first amending the state constitution. Thus, the constitutional issue is whether the people of Kansas want the courts to have exclusive authority over tort liability issues or would like that power to be shared with their elected Legislature.

The constitution of Kansas belongs to the people of Kansas. It is the written authority by which the powers of the public are delegated to the three branches of government. The people created the constitution, and only the people can change it. In order for the people to be able to vote on this most critical issue, two-thirds of the Legislature must vote to put the issue on the ballot. If the people approve the amendment, the Legislature would then be authorized to re-enact the same or similar limits on non-economic damages that it has already passed.

The Legislature has tried for years to remedy the tort litigation crisis, only to be thwarted by the courts. In such cases, where ongoing disagreements exist between the legislative and judicial branches of government over establishing public policy, we must turn to the people for guidance and resolution. The Coalition believes that Kansans should be given the right to vote on the critical issue of tort reform.

COMPARISON OF MEDICAL MALPRACTICE INSURANCE PREMIUMS
October, 1988

The following table compares premiums charged by principal insurers of physicians among the respective states. There are two major insurers in Missouri. Premium rates listed are mature rates for the lowest risk class and highest risk class for $1 million per occurrence claims made policies, except the last two. In Oklahoma and New Mexico, occurrence policies are sold rather than claims made. Therefore, those two states are listed separately rather than arrayed. Furthermore, the New Mexico premium is for only $500,000 coverage.

The Kansas premiums listed are not actual. A 105% Health Care Stabilization Fund surcharge rate was used in order to adjust the amounts downward for comparison. That was the surcharge based on $1 million per occurrence coverage before the Supreme Court decision in June required the exposure to be increased to $3 million and the surcharge to be increased accordingly. Actual Kansas premiums range from $8,114 to $85,192.

State	Claims-Made	
	Lowest Risk Class	Highest Risk Class
Kansas[1]	$ 7,392	$77,619
Missouri	$ 7,406	$83,309
Missouri	$ 5,582	$55,804
Texas	$ 3,000	$63,495
Colorado[2]	$ 5,648	$61,912
Montana	$ 4,084	$57,064
N&S Dakota	$ 3,974[3]	$52,404[4]
Minnesota	$ 3,868[3]	$50,770[4]
Iowa	$ 3,492	$50,068
Wyoming	$ 4,296	$48,504
Louisiana[5]	$ 4,025	$43,473
Nebraska	$ 4,186	$37,156
Arkansas	$ 1,414	$15,259
	Occurrence	
New Mexico[6]	$ 2,578	$21,490
Oklahoma	$ 1,839	$11,963

1) Premiums adjusted downward to $1 million coverage for comparison purposes.
2) Premiums are scheduled to be reduced in 1989 because of tort reforms enacted in 1988.
3) Includes $1,755 capitalization fee.
4) Includes $18,088 capitalization fee.
5) First $100,000 is commercial. $400,000 excess coverage by state fund. Additional $500,000 excess is commercial.
6) Premiums reflect only $500,000 coverage because that is maximum available (cap on awards).

SOURCE: Telephone survey conducted by staff of the Kansas Medical Society.

Tort Reform Legislation
1975-1988

1975 Interim Proposal No. 42 directed the Special Committee on Medical Malpractice to conduct a "review and study of the effect of medical malpractice actions on the distribution and provision of medical and hospital care for Kansas residents." After extensive hearings and discussion, the Committee recommended enactment of the following:

1. A shorter statute of limitations applied to medical malpractice actions.

2. Optional periodic payment of damages.

3. Screening panels of physicians to review facts in a case prior to trial.

4. Abolish the common law collateral source rule.

5. A $25,000 limit on pain and suffering awards.

6. Creation of the Health Care Stabilization Fund to provide excess liability insurance to health care providers. The Committee recommended Fund limits of $1 million per claim and $3 million annual aggregate.

1976 The Kansas Legislature passed the following measures:

1. Abolish collateral source rule.

2. Medical malpractice screening panels, but reports inadmissible at trial.

3. Discretionary authority for court to order periodic payment of damages.

4. Shortened statute of limitations for medical malpractice actions.

5. Creation of HCSF and mandatory insurance law. The cap on pain and suffering recommended by the Interim Committee did not pass the Legislature, and recommended Fund liability limit of $1 million per claim is removed to unlimited exposure.

1981 The Kansas Supreme Court upheld as constitutional the provisions of 1976 HB 2726 (statute of limitations).

1985 The Kansas Supreme Court declared 1976 SB 639 unconstitutional (collateral source rule).

1985 The Kansas Legislature passed Substitute for SB 110 which enacted:

1. Procedural changes affecting petitions for punitive damages as well as caps on punitive damages but applicable to medical malpractice actions only.

2. Abolished the collateral source rule in medical malpractice actions.

1985 Interim Proposal No. 47 directed the Special Committee on Medical Malpractice to conduct "a comprehensive study of the medical malpractice issue." After months of hearings and discussions, the Committee recommended the following tort reforms applicable in medical malpractice actions only.

1. A $1 million overall cap on awards.

2. A $250,000 cap on pain and suffering awards.

3. Make findings of screening panels admissible in trial.

4. Require that expert witnesses must have devoted at least 50 percent of previous two years to clinical practice.

The Committee also recommended that the liability of the Health Care Stabilization Fund be reduced.

1986 The "Report of the Kansas Citizens Committee for the Review of the Tort System as it Affects Insurance and Related Matters" was delivered to Commissioner Bell. The report recommended enactment of tort reforms including caps on awards for past damages and periodic payment of future damages.

1986 The Kansas Legislature passed HB 2661 which enacted the medical malpractice tort reforms that had been recommended by the 1985 Interim Committee. The only major difference was that all non-economic damages were limited to $250,000 rather than pain and suffering awards only. The Legislature also reduced the Health Care Stabilization Fund liability to $1 million per occurrence and mandated that health care providers engage in extraordinary peer review and risk management.

1986 Insurance Commissioner Fletcher Bell established the Kansas Citizens Committee to Review Legal Liability Problems in Kansas as they Affect Insurance and Other Matters. The Committee recommended comprehensive reform of Kansas' tort system (not limited to medical malpractice actions) including caps on non-economic damages.

1986 Interim Proposal No. 29 directed the Special Committee on Tort Reform and Liability Insurance to review and make "recommendations concerning the tort and insurance liability systems in Kansas." After lengthy hearings, the Committee recommended a series of procedural tort reform measures.

1987 The Legislature passed several tort reform bills, most of which did not apply in medical malpractice actions because there were already similar laws governing cases alleging medical malpractice. Among those bills were:

1. A $250,000 cap on pain and suffering awards.

2. Procedural changes and caps on punitive damages.

3. Pretrial screening panels for cases alleging professional liability.

1987 In July, the Kansas Supreme Court declared unconstitutional by a 4-3 vote the collateral source rule enacted by 1985 Sub. for SB 110. This decision was based on violation of the Kansas Constitution's equal protection provision because the rule applied in medical malpractice actions only.

1988 The Legislature passed general tort reform measures to replace laws that discriminated between medical malpractice actions and other causes of action. Those bills were:

1. A $250,000 cap on non-economic damages in all personal injury actions.

2. Abolishment of the common law collateral source rule.

3. Procedural changes and caps on punitive damages.

1988 On June 3rd the Kansas Supreme Court declared unconstitutional by a 5-2 vote the caps on medical malpractice awards enacted by 1986 HB 2661. This decision was based largely on violation of the right to trial by jury.

Physician Discipline and Quality Assurance Legislation
1976-1988

1976 As recommended by the Special Interim Committee on Medical Malpractice, the following bills were enacted:

1. Mandatory reporting of malpractice claims to the State Board of Healing Arts.

2. Immunity from liability granted to persons who report incidents of malpractice to the State Board of Healing Arts.

3. "Professional and competency" is made a grounds for revocation or suspension of a physician's license.

4. Mandatory continuing education extended to all health care providers (physician mandatory CME was enacted in 1974).

5. State Board of Healing Arts given authority to suspend or revoke licenses of physicians found to be impaired because of physical or mental illness, or substance abuse.

1984 Statutes enacted designed to encourage peer review by making such proceedings confidential.

1986 The comprehensive Medical Malpractice Reform Act, HB 2661, is enacted which contains unprecedented peer review and quality assurance requirements. Included are: substantial expansion of role and authority of State Board of Healing Arts; mandatory risk management programs for all hospitals; mandatory reporting by health care providers of malpractice incidents and deviations from standard of care; greater involvement of professional associations of health care providers in peer review process; expanded authority to KDH&E to review and approve hospital risk management programs.

Insurance Regulatory Legislation

1984 Senate Bill 560 - Amended the surplus requirements for property and casualty companies by increasing them 50%.

Senate Bill 551 - Required foreign insurance companies to meet additional criteria by which to be judged by the Insurance Department.

House Bill 2753 - Allowed the Insurance Department to examine insurance companies more frequently.

1986 Senate Bill 512 - Placed limits on an insurance company's right to cancel commercial insurance policies and required 60 days notice prior to non-renewal of policies.

Senate Bill 541 - Granted the Kansas Insurance Department authority over risk retention groups.

House Bill 2499 - Extended the power of the Kansas Commissioner of Insurance over potentially insolvent insurance companies.

1987 Senate Bill 24 - Limited the ability of insurance companies to compete as aggressively in commercial lines by disallowing some premium reductions for individual risks.

Senate Bill 247 - Allowed the Kansas Department of Insurance to dictate the types of statistical information insurance companies writing commercial lines must provide the Department. Reporting of specific loss and expense experience was required by the legislation.

1988 Senate Bill 623 - Commonly referred to as the Insurance Reform Act of 1988, drafted and supported by the Kansas Trial Lawyers Association. Required reporting of investment income by insurance companies; shifted the burden of proof in rate filings to the insurance companies; allowed the Insurance Department to disapprove previously approved rates; and required insurance companies to notify the Kansas Department of Insurance when a company is withdrawing from a line of insurance.

States Enacting Caps on Awards

Non-Economic Caps - Medical Malpractice and Generic

State	Cap
Alaska	$ 500,000
California*	250,000
Colorado	250,000
(Florida)	450,000
Hawaii	375,000
Idaho	400,000
(Kansas)	250,000
Maryland	350,000
Massachusetts	500,000
Michigan	225,000
Minnesota	400,000
Missouri	350,000
New Hampshire	875,000
(Ohio)	200,000
Oregon	500,000
Utah	250,000
Washington	177-493,000 (sliding scale)
West Virginia	1,000,000
Wisconsin	1,000,000

Total Caps - Medical Malpractice

State	Cap
(Illinois)	$ 500,000
Indiana*	500,000
Louisiana	500,000
Nebraska*	1,000,000
New Mexico	500,000
(North Dakota)	300,000
(Texas)	500,000
Virginia*	1,000,000

( ) struck down as unconstitutional
* upheld as constitutional

KANSAS COALITION FOR TORT REFORM

Counting Jury Verdicts in Kansas: Seeing Only the Tip of the Iceberg

Kansas is blessed with a wealth of objective, independent data that dramatically demonstrates why liability insurance costs have skyrocketed in recent years. The data can be found in the statistical reports of the Kansas Health Care Stabilization Fund - the state's own medical malpractice insurance company that now collects the majority of all malpractice insurance premiums in Kansas.

The average jury verdict for the Fund's cases in Fiscal Year 1988 rose to nearly $1 million, while the average cost of its cases settled out of court is running over $200,000. The number of new medical malpractice cases reported to the Fund has grown from 84 new cases in 1980 to 284 new cases in 1988. This is just a small sampling of the statistics available to the Legislature from the Fund's experience. The data is reliable because it reflects the growth in all malpractice claims costs over the past 12 years for the state's largest malpractice insurer.

Yet amidst all this factual data comes a brief survey conducted by the Office of Judicial Administration. This survey states - with virtually no discussion - that district court clerks filled out a one-page questionnaire and counted just seven medical malpractice jury awards in favor of the plaintiff. Some observers seemed surprised at this data, as if to ask, "So what's the problem?" Others wondered how the Judicial Administrator's questionnaire could paint a picture so dramatically different from the available facts on insurance losses.

The answer is that the Judicial Administrator's report and the Fund's report are different pictures - because the authors weren't reviewing the same scene. One (the Judicial Administrators survey) is a snapshot of an iceberg's tip; the other (the Fund's data) is a portrait of the whole iceberg. For example, in addition to the $4.7 million in jury verdicts in 1988 medical malpractice cases, $9.4 million was paid out in settlements.

The Judicial Administrator's survey produces statistics about the number of jury verdicts in various types of Kansas personal injury cases. These numbers may tell the Office of Judicial Administration something about court workloads, but they don't tell Kansans a great deal about why liability insurance is so expensive.

The Judicial Administrator's report tallies only jury verdict data. Since only a small number of cases go all the way to a jury verdict, this is like concluding icebergs are small because all you see is the tip jutting out above the water. For a scholarly analysis of trends in state jury verdicts, one should consult a source such as Jury Verdict Research, Inc. Its latest report on Kansas shows that average personal injury awards in the state continue to run well over the national trend (see below).

Counting only jury verdicts doesn't give one a reading on the liability **claims** that drive up the costs of insurance. One must track claims, not jury actions. Much of the cost of providing liability insurance is driven by the scores of claims that never even get to a jury. Many claims are settled out

of court; many are dropped in favor of the defendant. Still, it takes many millions of dollars for insurers to respond to and investigate these claims -- regardless of whether the case ever gets to the courthouse.

The point is that simply counting jury awards doesn't tell you where all the claims dollars and claims expenses are going.

The Judicial Administrator's report clearly acknowledges its own limitations as an analytical tool, warning readers that the verdict survey is only a "one-year snapshot" of jury awards and in no way an analysis of medical malpractice claims costs - or claims costs for any other area of tort law.

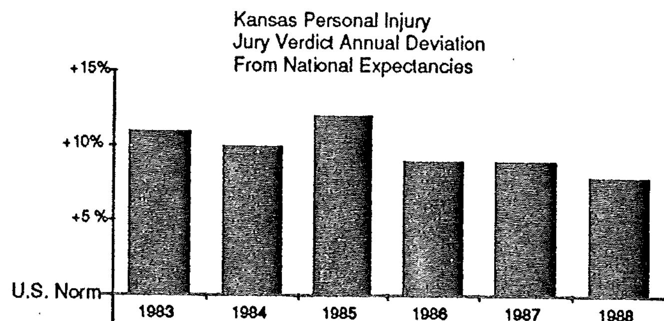
By contrast, the data available in the Fund's statistical report shows all the costs incurred by the state's primary malpractice insurer. Obviously, the tremendous costs of litigation continue to mount regardless of how many cases go to a jury. An insurer can spend millions of dollars on liability cases - even when it wins those cases. And all those costs must be accounted for in rate setting.

The OJA Report also makes a point of focusing on <u>median</u> verdicts, and it concludes that jury awards are "modest." It should be of no surprise that opponents of tort reform tend to quote median jury award data to support arguments that awards have not grown dramatically over time. The truth is that median award data grossly understates jury award growth since they disregard the very cases (the few, but very expensive cases) which account for the most extensive growth in liability costs.

Lastly, the Health Care Stabilization Fund has documented that the Judicial Administrator's survey is flawed by factual error: The survey missed at least one medical malpractice verdict for $248,763.

Deviation of Kansas Personal Injury Verdicts From National Expectancies

The cumulative averaged deviation for Kansas continues to run well above national verdict trends.



source: © 1988, Jury Verdict Research, Inc., Solon, Ohio

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

CRITICALLY UNDERSERVED COUNTIES CONTINUE TO INCREASE

The recent release of the 1988 Kansas Medically Underserved Areas Report by the Office of Institutional Research and Planning at the University of Kansas Medical Center, indicates that although there was somewhat of an increase in the total number of practicing physicians last year, that there are now 58 critically medically underserved counties in Kansas. The number of critically underserved counties has increased almost 100% since 1984, when there were 30 counties designated as critically underserved and 16 counties designated as underserved. The criteria for designation of a county as to its service level is based on the ratio of practicing primary care physicians compared to the population of the county.

The analysis which indicates that over 60% of Kansas counties are now medically underserved or critically underserved comes in spite of the fact that the report indicates an increase in the total number of physicians practicing in Kansas. Of that total number, 546 physicians, that is 16%, are residents. The reported increase of 59 new residents in training during 1988, comprises a significant portion of the total increase reported. The same data analysis indicates that there is an increase of 136 full time equivalent primary care physicians practicing in Kansas, compared to 1987. Of this increase, 25% represents the number of new residents in training in primary care medicine. In addition, 60 of those physicians, that is almost 45%, are practicing in one of the four urban counties. Furthermore, over 70% of the reported increase in primary care physicians are located in the eastern half of the state. Less than 6% of the increase is attributable to the rural western half of Kansas.

Some observers have stated that the reported increase during 1988 represents a reversal in the trend that has existed in prior years. The same analysis by the University of Kansas Medical Center during 1985, 1986 and 1987 indicated a steadily diminishing number of practicing primary care physicians in our state.

However, officials at KUMC who prepared the report indicate that the figures may be misleading if not read in the proper context. Changes were made in the reporting form in 1987 which were confusing to physicians when they responded, thus making the 1987 data incomplete. A subsequent alteration in 1988 (back to the old form) produced an increase in total FTE physicians that may in reality be only half as large as that reported, because of the change in methodology of reporting.

Obviously, one year of observable increase in physician headcount however slight, does not necessarily constitute a new trend. The fact remains that the reported number of full time practicing primary care physicians in 1988 is still less than the number practicing in Kansas in 1984, 1985 and 1986. Clearly, any meaningful analysis of physician supply should be based on trends over time, using consistent reporting instruments.

Perhaps equally important in the course of considering access to medical care is the question of the scope of services offered by those physicians who remain in Kansas for one reason or another. Surveys conducted by the Kansas Academy of Family Physicians indicate that because of the high cost of medical liability insurance coverage, that those family practice physicians who continue to offer medical care in Kansas, no longer offer some of the extremely valuable services that they did in the past. Most notable among those is, of course, obstetrical care. Half of the Kansas family physicians no longer deliver babies, which, of course, causes dislocation in terms of the ability to obtain obstetrical care. This is particularly important to women of child bearing age who reside in rural communities far distant from the location of an OB/GYN specialist or a family practice physician who can afford to continue the very important obstetrical care.

WHY A CONSTITUTIONAL AMENDMENT IS NECESSARY IN 1989

Tort reform has been on the agenda of the Kansas Legislature for the past several sessions. Initially, the focus of reform was centered on providing relief in medical malpractice actions, but the societal implications of our expanding legal system have been reflected in legislative action covering all areas of personal injury claims. The Kansas Supreme Court has not responded favorably to such legislative measures.

In 1987, the Kansas Supreme Court ruled K.S.A. 60-3403 unconstitutional. Farley v. Engelken, 241 Kan. 663 (1987). K.S.A. 60-3403 modified the collateral source rule in medical malpractice actions and allowed the jury to hear evidence of payments made to a claimant from outside sources. The Kansas Supreme Court found that the distinction between medical malpractice actions and other types of personal injury actions violated the equal protection clause of the Kansas Constitution. The Kansas Supreme Court also found that the classifications created by the statute did not further the legislative objectives. Partly in response to the Farley decision, the Kansas Legislature, in 1987 and 1988, expanded the modification of the collateral source rule to all tort actions. This recent legislation has not been subject to review by the Kansas Supreme Court, but would likely be held unconstitutional under the principles articulated in Kansas Medical Malpractice Victims Coalition v. Bell.

In Kansas Medical Malpractice Victims Coalition v. Bell, 243 Kan. 333 (1988), the Kansas Supreme Court determined that a statutory cap on the recovery of damages in medical malpractice actions was unconstitutional. The Court held that the laws violated the right to a jury trial, and the right to a remedy under law, as guaranteed by § 5 and § 18 of the Bill of Rights of the Kansas Constitution. In the Bell case, the Court held that any modification of the right of a jury to determine the amount of damages is unconstitutional. Additionally, the Court found that § 18 of the Kansas Constitution guaranteed a right to a monetary recovery and any modification of that right would also be unconstitutional.

In 1987 and 1988, the Kansas Legislature enacted a limitation on non-economic losses for all personal injury actions along with other tort reform laws. The constitutionality of this limitation is presently before the Supreme Court. It is tempting to wait for this decision and to allow the Supreme Court to decide whether or not further action would be needed by the Legislature. However, this would require reversal of the Court's prior decisions. Legal experts do not anticipate such a reversal. The likelihood therefore of such legislation being upheld by the Kansas Supreme Court absent a constitutional amendment is slim. Delay merely continues the societal problems. Lacking certainty as to future courses of action by the Legislature, insurance rates will continue to rise. Participants in the legal system will again be subject to uncertain administration of the laws.

Given the likelihood that all of the statutory tort reform measures enacted by this Legislature will be declared unconstitutional under the rationale of the Kansas Medical Malpractice Victims Coalition v. Bell or Farley v. Engelken, there is no reason for the Legislature to anticipate that the Court's action will resolve the problem. The only answer is the proposed resolution directed at amending the Kansas Constitution to allow limitations on non-economic loss.

STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612-1590
(913) 296-3232

Mike Hayden *Governor*

March 20, 1989

The Honorable Wint Winter, Jr.
Chairman, Senate Judiciary Committee
State Capitol
Topeka, Kansas 66612

Chairman Winter and Members of the Committee:

Thank you very much for the opportunity to present this statement on the important issue before you in Senate Concurrent Resolution 1610.

Beginning with the Medical Malpractice insurance crisis of the early 1980's, the escalating costs of liability insurance and civil litigation in Kansas have become a widely publicized problem -- one that I feel will not likely disappear by itself.

Since 1985, the Kansas legislature has recognized the severity of the problem and the need for reform. By overwhelming majorities, you and your colleagues in a bi-partisan manner, have enacted moderate tort reform measures designed to hold down excessive liability awards and corresponding insurance costs.

Key provisions of corrective legislation have been declared unconstitutional by the courts, and any further legislation you might enact appears likely to suffer the same fate. As a result, the situation has worsened. Liability insurance premiums have become prohibitive for some. Insurance carriers are refusing coverage or even to do business in this state. Unfortunately, our rural

communities seem to be the hardest hit and appear increasingly unable to provide adequate and affordable health care for our citizens.

I have supported the tort reform measures enacted by the legislature, and I believe the legislature should have a constitutionally recognized role in solving this problem. To this end I strongly urge your favorable consideration for SCR 1610 to allow the people to vote on the important issue of tort reform.

Thank you again for your attention.

MIKE HAYDEN
Governor

MH:jb

HCA Wesley Medical Center

March 14, 1989

The Honorable Wint Winter, Jr.,
Chairman
Senate Judiciary Committee
State Capitol
Topeka, Kansas 66612

Dear Senator,

M. A. B. Davis, Jr., Chairman of the Board and Chief Executive Officer of HCA Wesley Medical Center has asked me to write you in regard to the interest of the institution concerning tort reform. We are extremely concerned by the present climate in Kansas and on a daily basis are becoming progressively more concerned.

As we talk to the residents whom we train and as we try to recruit physicians to replace our aging doctors, we are running into an absolute stone wall. It has never been easy to recruit to Kansas, but in the years past the considerable advantages of life in Kansas have enabled us to overcome the lure of the mountains or the coasts. The standard of practice for physicians in Kansas has been superlative and the advantages of joining in that practice has been appreciated by many physicians.

However, in all the surrounding states the malpractice climate is entirely different. The cost to a new orthopedic graduate for a first year premium in Arkansas is 1/4 that of a premium in Kansas. Even though he/she may owe the State Scholarship Fund a good deal of money if he/she leaves Kansas, it is still cheaper to locate in one of the surrounding states simply because of the malpractice costs.

All of the information available to our physicians indicates that the situation is rapidly deteriorating and because of the findings of the Supreme Court relative to the constitutionality of the legislation you so handily provided us, there is no perception of a governable future.

No one could support a failure to provide reasonable compensation for individuals who are the subject of true malpractice. But in the present system with so little of the premium dollar actually reaching an injured patient, the present tort system is worthless for the purpose for which it was originally designed.

P.O. Box 47930
Wichita, Kansas 67201-7930
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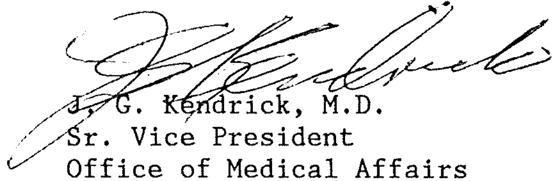
The Honorable Wint Winter, Jr.
March 14, 1989
Page 2

Health care in Kansas stands at the crossroad when our neurosurgeons tell us that they will no longer be able to practice if the present system is not modified. A frightening prospect opens before us--our citizens have to travel out of state for needed care.

The legislature has demonstrated its awareness of the severity of the problem by previously enacted legislation. We trust that you will find support for what appears to be the only salvation possible under the Kansas Constitution.

Thank you for your attention.

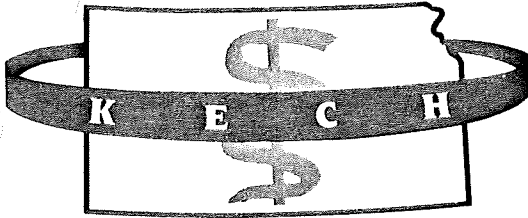
Sincerely,



J. G. Kendrick, M.D.
Sr. Vice President
Office of Medical Affairs

JGK/aep

cc: A. B. Davis, Jr.
Jim Biltz



Kansas Employer Coalition on Health, Inc.

1271 S.W. Harrison • Topeka, Kansas 66612 • (913) 233-0351

Kansas Employer Coalition on Health Position Statement on Tort Reform

by
James P. Schwartz Jr.
Consulting Director

March, 1989

The Kansas Employer Coalition on Health strongly supports efforts to reform the tort system in Kansas.

The 107 employers who constitute the Coalition share a concern about the cost of providing health benefits to our 350,000 employees and dependents in Kansas. We realize that our efforts to cope with the soaring cost of those benefits must include limits on the funds lost through malpractice suits and on the degree of risk experienced by medical providers, insurers and employers.

While the proportion of health care costs attributable to malpractice litigation is still relatively small, that proportion is growing rapidly. Moreover, the indirect costs of such litigation are estimated to be three times the direct costs. In particular, the cost of "defensive medicine" resulting from fear of litigation tends to fuel medical inflation and undermines attempts to create efficiencies in the health care system.

Purchasers of health care now have at their disposal a number of cost-containment techniques, mostly designed to reduce the number of unnecessary tests, procedures and days spent in hospitals. Those cost-containment techniques are severely blunted by pressure on providers to eliminate every conceivable source of risk of being sued. Providers who would like to eliminate wasteful or marginally beneficial care thus feel compelled to continue in an extravagant mode of practice. Such a mode is no longer supportable.

The Coalition believes that patients deserve to be reasonably compensated for negligent medical practice and that risk of litigation serves as a useful deterrent to malpractice. While these principles should be maintained, the Coalition also believes that the tort system must be reformed 1) to maximize the proportion of awards retained by injured patients, 2) to establish reasonable limits for non-economic damages and 3) to establish reasonable safeguards against excessive litigation.

The COLEMAN COMPANY, INC.
General Offices

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March 20, 1989

The Honorable Wint Winter
Senate Judiciary Committee
State Office Building
Topeka, KS 66612

RE: **Senate Concurrent Resolution No. 1610**
Constitutional Amendment Authorizing Legislative Limitation of Non-Economic Damages in Personal Injury Cases

Dear Senator Winter:

We regret a representative of our Legal Department could not be present to express our support for Senate Concurrent Resolution No. 1610 but we appreciate the opportunity to express in writing our continued support for your tort reform efforts.

The "liability crisis" is not simply an insurance company issue. Unbridled jury verdicts and increasing litigation costs continue to place greater financial burdens upon product manufacturers like Coleman, which must rely upon self-funded insurance programs with large retention limits for protection from catastrophic losses. This is a very real problem for self-insured companies, which must bear such costs directly.

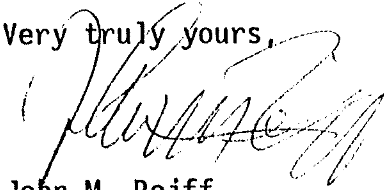
We believe Senate Concurrent Resolution No. 1610 will ultimately allow the Legislature to address one of the primary factors in the continued escalation of jury verdicts -- unrestrained awards of non-economic damages. The current absence of objective standards or guidelines allows juries to award huge amounts for non-economic losses and such awards are often the result of appeals to passion or prejudice and have little logical or rational basis. The continued failure of trial and appellate courts to address this issue makes legislative action imperative.

It is time to realize that enormous cash awards for non-economic damages create a tremendous windfall for a few, but do little to ensure adequate compensation as a general rule. Modern money management systems provide numerous opportunities to provide for the current and future needs of injured victims without the necessity of huge damage awards.

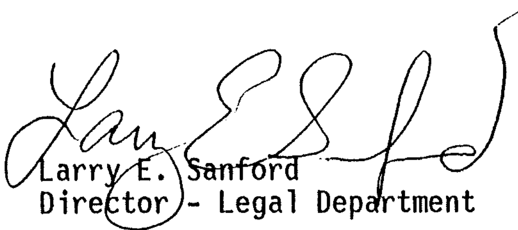
P.O. BOX 1762 250 N. ST. FRANCIS WICHITA, KANSAS 67201 (316) 261-3211

We believe enactment of Senate Concurrent Resolution No. 1610 is an important step toward providing the Legislature an opportunity to reestablish an element of predictability and rationality in the tort system without depriving victims of their right to just compensation. We believe the people of Kansas will agree legislative intervention is long overdue and we strongly urge the passage of Senate Concurrent Resolution No. 1610.

Very truly yours,



John M. Reiff
Senior Vice President - Law and Personnel



Larry E. Sanford
Director - Legal Department

Kenneth R. Bell
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DAVID T. DENNIS, M.D.
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WILLIAM R. ALSOP, M.D.
Gastroenterology
UNITED RADIOLOGY GROUP
Radiology
ROBERT J. BLAIR
Administration

Jeffrey B. Knox, M.D.
Obstetrician/Gynecologist
Salina, Kansas

I am a first year practicing obstetrician/gynecologist in Salina, Kansas. I received my undergraduate degree from the University of Kansas, my medical degree from University of Kansas Medical Center and my residency training at Wesley Medical Center in Wichita. The severity of the malpractice crisis is very evident especially in obstetrics and gynecology. There is one practicing obstetrician between Salina and Denver. At the present time there are five practicing obstetrician/gynecologist in Salina. If this number decreases any further it would be physically very difficult to maintain adequate obstetrical care.

My malpractice insurance was $42,000 last year and will be $70,000 this year. That is $1500 per week. I need to do 90 deliveries in order to pay for my malpractice. For a full-time obstetrician this is approximately four to five months of work. For Medicaid, I would have to do 200 deliveries to pay for my medical malpractice. This is an entire years work. Contrast this with California where the busiest obstetrician in Los Angeles delivers ten to twelve babies per month, yet charges four times what Blue Cross & Blue Shield pays an obstetrician in Kansas. Kansans cannot afford to pay the higher prices that the surrounding states physicians charge for obstetrical care. Yet with increasing costs and low reimbursements the physician is caught in-between.

Physicians will leave due to the uncertainty of their situation. There is skyrocketing malpractice insurance rates. If it is $70,000 this year, then what will it be next year? At some point you will not want to sacrifice your family and personal time to increase your workload just to pay for increasing malpractice rates when you could go to another state and not be faced with that problem. They also will leave if there is removal of the stabilization fund with no cap on awards. The high risk physician (obstetrics, neurosurgery, orthopedic surgery, general surgery and anesthesiology) will be personally libal for any awards above the baseline coverage. One cannot be expected to practice with that risk

present. An obstetrician will be sued on the average of eight times in his or her career. It is not a matter of bad obstetricians being sued, it is a problem for all obstetricians. We need to have affordable insurance available in this state.

Another major problem is that we cannot recruit necessary physicians. We have been trying for several years to recruit an anesthesiologist to Salina and yet have been unsuccessful. This is because of increasing costs and low reimbursements. Because we do not have enough anesthesia personnel, our level of obstetrical anesthesia is very poor in Salina. This is a potential devastating health care risk to our community.

The cap is constitutional in twenty other states. There are other tort changes present in those states yet the backbone of the system is the cap on awards. I feel that an immediate signal is needed or else the majority of Kansas will be without state-of-the-art medical care.

Testimony Submitted to the Senate Judiciary Committee

March 20, 1989

Topic: Urgent action needed to stabilize medical liability climate

Since August 1988 Salina has lost 5 competent, Board-certified physicians to early retirement, relocation of practice in another state or to non-patient care positions in the insurance industry. Additionally, two active obstetricians have discontinued obstetrical care, and within the past month a family practitioner has decided to discontinue obstetrical and surgical care, while a surgical specialist has retired. In all nine cases the overriding factor in each decision was the high and continually escalating cost of medical liability insurance.

The legistlative efforts addressing Tort Reform are well known to the members of the committee. However, because of the Supreme Court's ruling, these efforts were not allowed to impact on the malpractice crisis. In the interim insurance premiums have risen by 30-50% annually and the surcharge to obtain the mandatory coverage from the fund has varied from 90-125%. In effect, mandatory insurance premiums have virtually doubled each year.

An analogy could be drawn between the behavior of a human cancer and the repetitive doubling of insurance premiums. In a human cancer, such as a carcinoma of the breast, a single cell divides to produce 2 cells, which divide to produce 4 cells, etc. It takes thirty

"doublings" or repetitions of the cell cycle to produce a one centimeter tumor which for the first time would be palpable. An additional 10 cell cycles or doublings produce a tumor so massive that it overwhelms its host causing death. Thus, 3/4 of the life span of a cancer has been spent prior to being able to detect it clinically.

I contend that the malpractice crisis as it regards affordability of liability insurance has reached the "palpable" stage. As physicians face this year's renewal of their insurance there will be increasing numbers of predictable events. Primary care physicians will cut back on their services, obstetricians will limit their practice to gynecology, physicians near retirement age will retire early, and high risk specialists will relocated. Many of these changes will occur this year. If individual physicians are financially positioned to absorb one more "doubling" some may be able to hold on one more year. Very few will be able to tolerate 2 successive "doublings".

Personally, I have an active, professionally rewarding surgical practice. When I opened my practice in July, 1981 I paid $3500 for liability insurance. In November, 1988 I renewed by coverage for $34,800. If I were to renew my coverage today, I would pay $39,200. Based on past experience and the pattern of doubling I've come to expect, I project my premiums to be $50-60,000 this year.

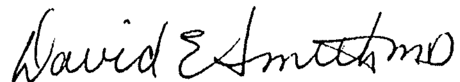
In a practice environment such as mine and faced with the reality of virtually locked-in fees set by third party payers, I

cannot raise my fees to absorb this ever increasing expense. Thus a difficult decision must be made. For me to continue in a profession which required 25 years of formal education, all obtained in Kansas schools and which gives me great personal fulfillment and satisfaction, I must relocate to another state.

In the past 2 weeks I have explored practice opportunities in other states. I have an opportunity available at this time in a very desirable location. My family and I have chosen to postpone the decision to move until we have seen the results of this legislative session. If a substantive, stabilizing solution is not forthcoming during 1989, I will leave my native Kansas this year.

I cannot affort to wait for a solution in 1990 or thereafter. I will choose to decrease my liability expenditure by practicing elsewhere.

Senators, you are in a position to make a difference in the future of health care in Kansas. I implore you to take expedient action and allow Kansans to vote this year to retain accessible high quality health care by voting on the proposed Constitutional Amendment.



David E. Smith, M.D., F.A.C.S.

Salina, Kansas

MLM

Michael L. Milford, D.D.S., Ltd.
Diplomate, American Board of Oral Maxillofacial Surgery

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March 14, 1989

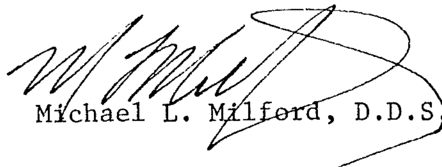
The Honorable Wint Winter, Jr., Chairman
Senate Judiciary Committee
State Capital
Topeka, Kansas 66612

Dear Senator Winter:

I am writing this letter to strongly encourage the favorable consideration of SCR 16110. I have been in private practice for over 15 years; and during this time, I have seen Kansas transformed into a litigious society fueled by the hopes of a large malpractice settlement, and of course, encouraged, if not actually promoted, by the Kansas Trial Lawyers Association. My malpractice insurance has escalated from $200.00 in 1974 to its present $12,000.00 with promises of further exponential increases in the forthcoming years. Hopefully, the passage of this bill restricting or placing limits on noneconomic damages in all personal injury cases will promote some stability in the insurance market, but allow true victims of malpractice to recoup a more actual claim for noneconomic losses.

Thank you for your thoughtful and thorough consideration of this matter. I remain,

Respectfully,



Michael L. Milford, D.D.S.

MM:jw

WICHITA INDEPENDENT BUSINESS ASSOCIATION
Riverview Plaza • Bldg. 200 • Suite 5 • 2604 W. 9th St. at McLean Blvd. • Wichita, Kansas 67203
(316) 943-2565

ROLAND E. SMITH, *Executive Director*

March 13, 1989

Senator Wint Winter, Jr., Chairman
Senate Judiciary Committee
State Capitol
Topeka, KS 66612

Mr. Chairman:

This letter is in support of SCR1610. The Wichita Independent Business Association is an association of over 1450 locally owned businesses in the Wichita trade area. Over 1250 of our members are small businesses with less than five employees. WIBA has joined the Tort Reform Coalition in the belief that tort reform is essential in the State of Kansas for many businesses to survive. Of all the businesses in Kansas, 77% have nine or less employees and they employ 52% of all the employees in the state. This is the area where economic development is of the utmost importance.

Tort reform, we believe, is a part of economic development in that many times the excessive liability exposure to small business owners makes it difficult for them to stay in business.

SCR1610 would allow the public to vote on the issue of authorizing the legislature to do with the non-economic damage issue as they have the past two sessions but struck down by the Kansas Supreme Court.

We urge you and the Judiciary Committee members to recommend passage of SCR1610 to the full Senate this session.

Sincerely,

Roland E. Smith

RES:mp

FMC Corporation

Phosphorus Chemicals Division
Ninth and Maple Street
Lawrence Kansas 66044
913 749 8100

March 15, 1989

The Honorable Wint Winter, Jr, Chairman
Senate Judiciary Committee
State Capitol
Topeka, Kansas 66612

Dear Senator Winter,

I am the Plant Manager at the FMC chemical facility in Lawrence, Kansas. We employ over 200 people and add over $30 million of value to the raw materials which we import to Kansas from out-of-state FMC plants.

I am writing to you in support for the constitutional amendment on Tort Reform. The litigation costs, the awards and settlements are excessive in the State of Kansas because there is no limit on plaintiffs recoveries for non-economic injuries. The courts should not have unlimited power in awarding non-economic damages and the Legislature was correct in enacting reasonable limits. Unlimited exposure creates instability in the insurance markets and it drives up costs for businesses such as ours. The current litigation and liability environment continues to create an extreme hardship for the delivery of health care services especially in our rural areas. It is for these reasons that I support, and my company supports, Tort Reform in Kansas.

FMC, like many other interstate and international companies, compete for funds with sister plants in other states. It is important for the growth of FMC within Kansas, and to attract new business into Kansas from our company, that we have a reasonable economic climate in which to do business. Certainly health care costs and liability potential enter into that formula.

I encourage you Senator, to vote to the passage of SCR 1610, so that we might reach the necessary 27 votes in the Senate, and add this to the next ballot as a Constitutional Amendment.

Respectfully submitted,

Norman L. Marsh

Norman L. Marsh
Plant Manager

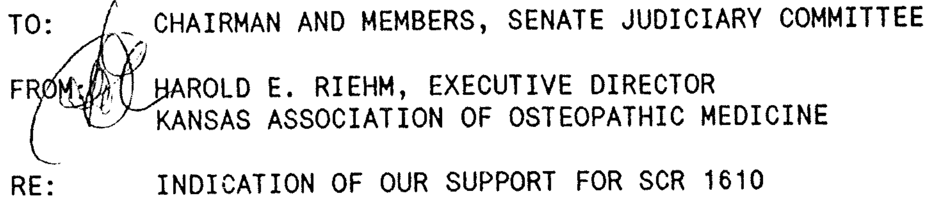
pmc

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka
Topeka, Kansas 66612
(913) 234-5563

March 16, 1989



TO: CHAIRMAN AND MEMBERS, SENATE JUDICIARY COMMITTEE

FROM: HAROLD E. RIEHM, EXECUTIVE DIRECTOR
KANSAS ASSOCIATION OF OSTEOPATHIC MEDICINE

RE: INDICATION OF OUR SUPPORT FOR SCR 1610

For members of the Kansas Association of Osteopathic Medicine may I indicate our strong support for passage of SCR 1610. We think it important that Kansas citizens have the right to express their views on whether or not to allow the Kansas Legislature to establish limits on non-economic losses in medical malpractice and other tort cases.

The doctors I represent appreciate your past efforts in enacting various tort reform measures. Unfortunately, most of those were of no avail. While no panacea to all that is wrong in the medical malpractice milieu, we think SCR 1610 addresses perhaps the most important areas of bringing relief to spiraling and out-of-control medical malpractice insurance premiums.

Certainly, recent figures indicating a rapid and continuing increase in the number of physician underserved counties in Kansas, suggest we try various approaches to resolving this crisis. We think SCR 1610 is one of those, and we urge your support.

Respectfully submitted.

P.S. At the request of the Kansas Association of Osteopathic Medicine, the House Insurance Committee introduced HB 2500, applying principles currently used in the workers' compensation area to medical malpractice compensation. We invite your perusal of this Bill which we think is deserving of study by the Kansas Legislature in its interim session.

THE KANSAS SOCIETY OF ARCHITECTS, AIA

A Chapter of the American Institute of Architects
The Jayhawk Tower 700 Jackson, Suite 209 Topeka, KS 66603 913•357•5308

March 16, 1989

The Honorable Wint Winter, Jr. and
Members of the Senate Judiciary Committee
State Capitol
Topeka, KS 66612

Dear Senator Winter and Members of the Committee:

The Kansas Society of Architects supports Senate Concurrent Resolution 1610 and urges you to support its passage.

The Kansas Society of Architects is part of the Kansas Coalition for Tort Reform. We have been supportive of the changes the legislature has made, to date, to overhaul our outdated tort system.

Although the Kansas Supreme Court ruled that the Legislature could not limit the amount of money awarded to plaintiffs in personal injury cases without first amending the state constitution, we strongly support that constitutional amendment.

We believe that the voters of Kansas want the right to decide if the courts have the exclusive authority over tort liability. We seek your support in a favorable vote for Senate Concurrent Resolution 1610.

The constitution of Kansas belongs to the people. We encourage you to let the people decide.

Sincerely,

Trudy Aron

Trudy Aron
Executive Director

cc: Ks Coalition for Tort Reform

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David L. Hoffman, AIA

EXECUTIVE DIRECTOR
Trudy Aron

March 20, 1989

TO WHOM IT MAY CONCERN:

Thank you for the opportunity to "testify" before the Judiciary Committee. Because of the adverse weather conditions we are experiencing in Western Kansas I am unable to travel to Topeka.

You will notice from the map the Western Kansas Policy Development Board represents 54 counties in Western Kansas. I am the Chairman of the Rural Health Care Task Force which reports back to this Board.

Our position on SB 1610: LET THE PEOPLE HAVE A SAY IN THEIR DESTINY
Give them the right to vote on this issue.

The constitution was placed into being by the people and for the people and it is our position that the people should have a say in how this constitution influences their destiny.

If need be the Western Kansas Policy Development Board is willing and able to secure the grassroots support for this issue, within the 54 counties we represent.

Thank you for your consideration on this very important issue.

Respectfully submitted

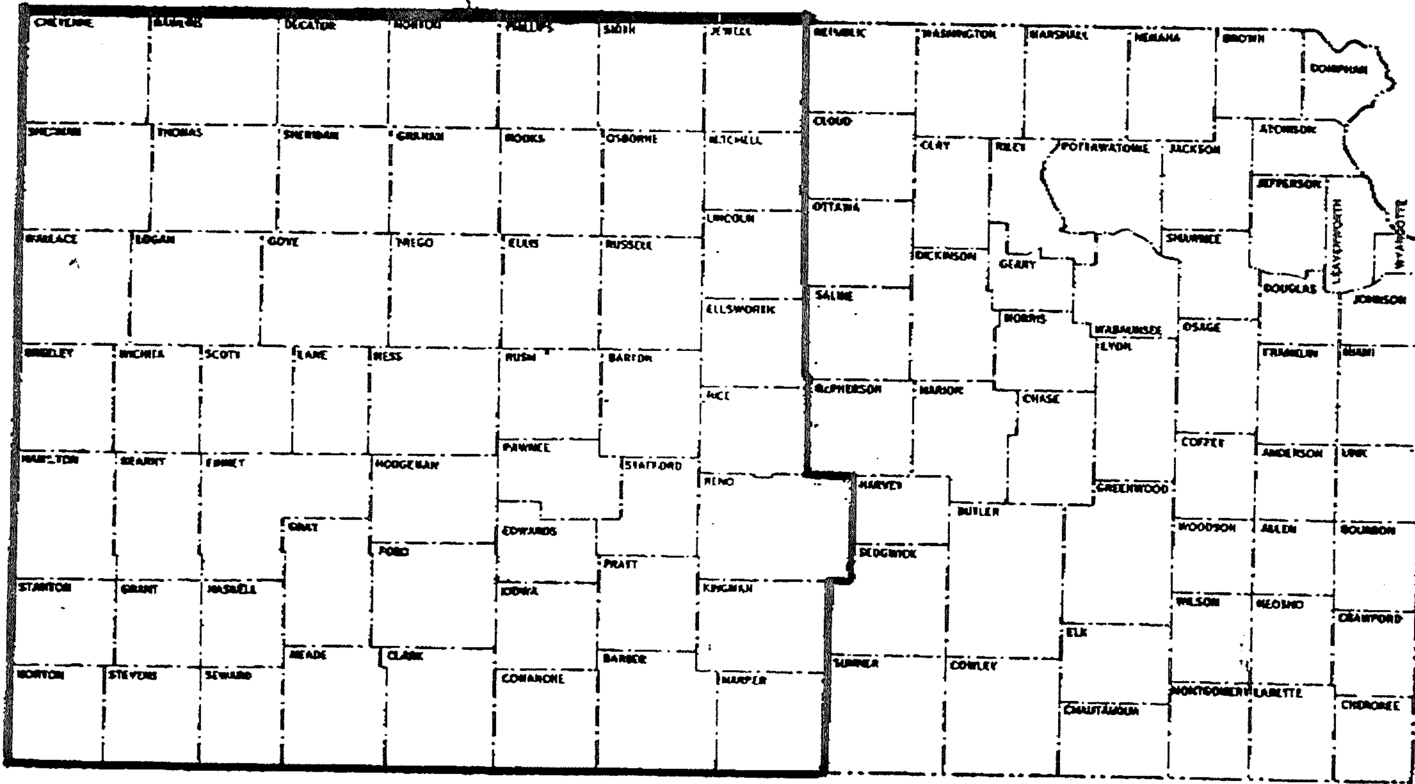
WESTERN KANSAS POLICY DEVELOPMENT BOARD

Jerry Aldridge, Chairman
Rural Health Care Task Force

The Western Kansas Region

Let's T rn **P**EOPLE **R**ESOURCES **O**RGANIZATION

Western Kansans
Working Together



Western Kansa
Policy Developm
Board

"Helping Western Kansas
to a Changing World

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Affiliate of Kansas Press Association
Box 1773, Topeka, Kansas 66601

KANSAS
Iola Register
MAR -3, 1989

67

Amendment needed to allow flexible approach to problem

36

An amendment to the state constitution to allow the Legislature to set limits on damage claims is needed. The Legislature should put the question before the voters as soon as possible.

Lobbyists for the Kansas Trial Lawyers Association oppose such an amendment. They argue that putting caps on damages wouldn't lower insurance premiums for physicians or cause more physicians to practice in Kansas.

They are entitled to their speculations just as are those who assume the opposite. No one, after all, has certain knowledge about the future.

One can only postulate that lowering the cost of medical malpractice by limiting the amount of money a jury can award a plaintiff will eventually result in lower insurance rates. But there can be no absolute guarantee that this would be the case.

Accepting that this course of action cannot be certified infallible, the case for amending the constitution to allow the theory to be tested is still very strong. For the courts have held that the Legislature can't limit jury awards under current law. No flexibility is allowed.

This barrier to reasonable experimentation should be removed so that the people of Kansas, acting through their elected representatives, can at least attempt to solve a vexing problem.

The adoption of an amendment that would let the Legislature act wouldn't lock the state into a course of action. To the contrary, it would permit future legislators to try one legal formula after another until a successful formulation were found.

The people and their lawmakers are handcuffed at present. They should free themselves so that they can act.

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KANSAS
Phillipsburg Phillips
County Review

FEB. -9. 1989

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KANSAS
Scott City News-Chronicle

JAN. 25. 1989

07

Editorial views

36

Medical services

The doc is out

A Salina doctor took out a tiny ad in the local Salina newspaper last week.

He told his patients that malpractice insurance rates had done him in. He was leaving town (and Kansas) shortly. Patients could pick up their records and take them elsewhere, he said.

If he were the only doctor to have encountered a business problem he couldn't handle, his departure would be merely another disappointing event of the day. Unfortunately, he certainly is not the only doctor to have encountered this problem in Kansas, and he isn't going to be the last who will have to abandon the state or the rural area if the problem isn't fixed.

Rural Kansas' medical services are at risk so long as the medical insurance problem is inflicting outrageous costs on doctors and patients. As the Salina doctor has discovered, and as so many other Kansas doctors have discovered in recent years, the high rates imposed in Kansas for malpractice insurance will lead to more departures of doctors, fewer medical services, and, in due course, fewer people.

The Legislature has tried to fix the problem. The Supreme Court has frustrated those efforts in the past.

The Legislature must try again. It should propose a constitutional amendment to the voters in Kansas...before all the doctors move to states where they aren't afflicted with the outrageous Kansas malpractice insurance rates.

The Hutchinson News

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Box 1773, Topeka, Kansas 66601

KANSAS
Great Bend Tribune
FEB. 26. 1989

Opinions

Let legislators know

Communities around Kansas, including one in Barton County, have had to face the problem of trying to coax a physician to town, just to keep everyday medical services available to residents.

One of the major problems, as Gov. Mike Hayden noted when he was here Thursday, is the malpractice law in Kansas.

Unlike other states, including ones adjacent to ours, Kansas does not have a cap on malpractice awards, the governor noted.

While the Legislature has tried to work on that, any moves toward tort reform have met with difficulties from the state Supreme Court.

Hayden asked for grassroots support when he visited Great Bend and this is one area where that sort of support is badly needed.

What is also needed is a constitutional amendment which allows tort reform to pass through the Legislature. But for that to happen, it has to first have a two-thirds vote in both houses and then the amendment must be approved by the voters.

That is why local support, and a lot of it, is going to be necessary before something can be done. The people have to show the Legislature that they are sick and tired of losing doctors to other states — that they want the best possible medical care, even if they don't live in a large community.

The big cities in Kansas don't have as much to worry about. They can spread the cost around.

But small towns are facing serious problems.

It's an issue which strikes at the very heart of our desire to provide an enjoyable lifestyle in our rural communities and the Legislature must realize that. More importantly, the people of Kansas need to realize it. — C.S.

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KANSAS
Salina Journal

MAR. -3. 1989

69

Tort reform again

Kansas doctors are leaving the state, not because they want to but because they see no financial alternative.

High malpractice insurance premiums here have made it unwise at best, and impossible at worst, for doctors to continue practicing in Kansas.

This situation did not develop overnight, but a solution must be found nearly that quickly.

The problem lies with huge damage settlements that have been awarded by Kansas juries and with Kansas Supreme Court rejection of past efforts to set a maximum for damages in personal injury cases.

The most likely solution is a constitutional amendment to allow the Legislature to place a cap on such awards.

Such an amendment has been proposed. It could be placed on a special election in June. That should be done.

The amendment would cap only non-economic damages — pain and suffering, loss of companionship, etc. It would not limit the amount that could be awarded for actual medical expenses, loss of wages, etc.

Such a cap is reasonable.

Yes, it's unfortunate that many people suffer horrible reactions to medical procedures. Occasionally, those are the result of terrible mistakes, callousness or neglect by medical professionals. More often, the problems occur because life is not fair nor just and things don't always work out the way they should.

Huge settlements do not change the unfairness of life; often they merely serve as another example of that unfairness.

Victims of real or alleged medical malpractice, for example, have handy "deep pockets" from which to collect — a doctor's malpractice insurance.

Others who suffer horrible injuries may not have access to much in damages.

Suppose three persons are paralyzed — one from an industrial accident, one from a car wreck and one as a rare reaction to surgery.

Unless the car wreck victim was "lucky" enough to be hit by a car driven by a billionaire or an employee of a "rich" corporation, he or she is unlikely to collect enough to cover lifetime medical expenses, let alone damages for "pain and suffering." That's not because there's a lid on the damages, but because the driver simply won't have enough money or insurance. Even lawyers know you can't squeeze money out of such circumstances.

The victim of an industrial accident would collect only the maximum payable under workers compensation laws — $200,000 plus medical expenses.

But the malpractice subject is likely to collect millions — thanks to state laws that require Kansas doctors to have high malpractice coverage and to the lack of a lid on damages.

The lack of a lid on damages has created a sort of lottery of misfortune in which some who are lucky enough to be able to blame injuries on someone with "deep pockets" — especially a doctor with lots of malpractice insurance — collect handsomely, while others who suffer similar injuries get nothing.

The ill effects of this game of chance are showing up. Doctors are the losers. They are deserting the state for others with caps on damages. Kansas needs an amendment capping damages. And it needs it soon. Stopping the doctors from leaving now will be much easier than trying to recruit replacements later.

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Affiliate of Kansas Press Association
Box 1773, Topeka, Kansas 66601

12-2-1988

KANSAS
Abilene Reflector-Chronicle

DEC -2 1988

Amend Constitution In Malpractice Crisis

The case is building for a constitutional amendment to deal with the medical mal-practice insurance crisis in Kansas. This appears to be the only realistic course leading to legislated limits on malpractice damage awards.

Such a course should be seriously considered by the Kansas Legislature in 1989.

So far, attempts to write laws in this area have failed to pass constitutional muster. Yet other states have enacted such laws, and their courts have accepted them.

California, for instance, has a law that limited damages for pain and suffering in malpractice cases. Malpractice insurance premiums in California are not rising nearly so rapidly as in Kansas, according to Jerry Slaughter, executive director of the Kansas Medical Society, who spoke here Wednesday.

The rate of premium increase in our state is unique, and is driving physicians out of obstetrics and out of practice in rural communities. Hays has lost seven physicians in the past year, Slaughter reported.

Slaughter helped his case for an amendment greatly, in our opinion, when he downed the "bad doctor" argument. A study of malpractice awards in Kansas by the state insurance department shows the impact of awards paid doctors who are repeatedly sued is, in fact, relatively small. It does not explain the extraordinary growth of awards in the state...

Thanks in large part to his group, the Kansas Board of Healing Arts now has adequate budget and staff, and stiff peer review laws are in place.

Yet our state continues to be the disaster area of the nation when it comes to the devastating sociological effects of this crisis. We need to deal with it now.—*Winfield Courier*

Good editorial!!

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KANSAS
Herington Times

FEB. -2 1989

The doc is out

A Salina doctor took out a tiny ad in the local Salina newspaper last week.

He told his patients that malpractice insurance rates had done him in. He was leaving town (and Kansas) shortly. Patients could pick up their records and take them elsewhere, he said.

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Rural Kansas' medical services are at risk so long as the medical insurance problem is inflicting outrageous costs on doctors and patients. As the Salina doctor has discovered, and as so many other Kansas doctors have discovered in recent years, the high rates imposed in Kansas for malpractice insurance will lead to more departures of doctors, fewer medical services, and, in due course, fewer people.

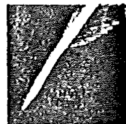
The Legislature has tried to fix the problem. The Supreme Court has frustrated those efforts in the past.

The Legislature must try again. It should propose a constitutional amendment to the voters in Kansas...before all the doctors move to states where they aren't afflicted with the outrageous Kansas malpractice insurance rates.

—*The Hutchinson News*

ESSAY

Litigation thwarts innovation in the U.S.



by Peter Huber

American innovation is in trouble in the courts. Burt Rutan, the pioneering designer of the *Voyager*, used to sell construction plans for novel airplanes to do-it-yourselfers. In 1985, concerned about the lawsuits that would follow if a home-built plane crashed, he took the plans off the market.

The Monsanto Company decided in 1987 not to market a promising new filler and insulator made of calcium sodium metaphosphate. The material is almost certainly safer than asbestos, which it could help to replace in brakes and gaskets. But safer is not good enough in today's climate of infectious litigation.

Liability fears have caused the withdrawal of exotic drugs that the Food and Drug Administration considers safe and effective, including some for which no close substitute is known.

In the past 15 years most companies have halted U.S. research on contraceptives and drugs to combat infertility and morning sickness. "Who in his right mind," the president of one pharmaceutical company asked in 1986, "would work on a product today that would be used by pregnant women?"

Liability is supposed to fall on "defective," unduly dangerous products and services. What has gone wrong?

The old rules of negligence, which lasted until the 1960's in most states, looked closely at the human actors on the scene. Were they careful? Had they been well trained? Thus tested, engineers, surgeons, chemists and pharmacologists at the leading edge of their professions fared well.

The new rules of "strict liability," invented by U.S. courts in the 1960's and 1970's, place technology itself in the dock. After an accident jurors are given a few days to evaluate the design of a mass-vaccination program, a power plant or an advanced military aircraft. Sympathy for the victims clouds the analysis, and if finding a design defect is what it takes to help out the unfortunate claimant, then that is what many juries find.

Moreover, human nature is predisposed to accept the old and familiar risk while rejecting the novel and the exotic. Cigarette makers usually win before the jury, whereas pioneers in gene splicing or laser surgery are at constant peril. By the same token, consulting engineers favor older design options in their specifications, fearing that new ones will carry greater risk—not physical risk but legal.

The various elements of liability in the courts today all join to thwart innovation. Take the duty to warn of hazards, great and small, common and bizarre, in staggering detail. It is a game that sellers master only by playing for a long time. The warnings on birth-control pills have been honed for 30 years and now run on for several pages of dense detail. No equivalent warning can be offered for a next-generation mode of contraception, even if on balance it is safer.

Modern law also demands that risky products come, in effect, with their own insurance contract attached, underwritten by some producer's liability insurer. Insurance, by design, spreads costs broadly and somewhat indiscriminately; when one product comes under intense liability attack, an entire industry may lose its coverage. For the prudent business no insurance usually means no product.

The most regressive effects are felt precisely where fruitful innovation is most urgently needed. Liability today is highly—and often indiscriminately—contagious. Progress is undercut the most in the markets already battered by a hurricane of litigation: contraceptives, vaccines, obstetrical services and light aircraft, for example.

More often than not the best anticipatory defense in the modern legal environment is to sit still. Age, familiarity and ubiquity provide the surest legal protection. When it encourages improvement at all, today's liability system promotes the trivial and marginal change. The drug manufacturer endlessly fine-tunes the warning or microscopically adjusts the dosage in the capsule. The doctor orders more tests and X rays in order to pile up a protective paper trail. Companies hire squadrons of risk managers, industrial hygienists and consumer psychologists. Liability-driven safety management becomes a mirror image of the legal process itself—fussy, cumulative, bureaucratic and preoccupied with paper.

Meanwhile the threat of liability impedes or prevents the sharp break with technological tradition, the pr[illegible] found change in method or material, design or manufacture. Over the long term, however, the bold leap forward is all-important in the quest for safety, and it is precisely in the riskiest areas of life, where the litigation climate is worst, that such change is most urgently needed.

Today's U.S. liability system, unique in the world in its reach and impact, is all too adept at condemning services and technologies deemed unacceptable for one reason or another. What it lacks is a reliable way to say yes.

What is the solution? When we deal with essentially private risks (in transportation or personal consumption, for example), fair warning and conscious choice by the consumer must be made to count for much more than they do today—not because individual choices will always be wise (they surely will not be) but because such a system at least allows positive choice and the acceptance of change.

Informed consent by the individual is not, however, going to take care of such complex or far-reaching safety issues as chemical-waste disposal, mass vaccination or central power generation. Those are, and obviously must continue to be, delegated to expert agencies acting for the collective good. But if they are to be useful at all, agents must be able to buy as well as sell. For safety agencies this means not only rejecting bad safety choices but also embracing good ones. Yet the long-standing rule, vigorously applied by our courts, is that even the most complete conformity to applicable regulations is no shield against liability.

The courts should be strongly encouraged, instead, to respect the risk and safety choices made by expert agencies. It may be politically unrealistic to propose that liability should be entirely foreclosed even in cases where activities are conducted with the express approval of qualified regulatory agencies, but surely it could be firmly curtailed in such circumstances. At the very least, full compliance with a comprehensive licensing order should provide liability protection against punitive, if not compensatory, damages. It has always been true that ignorance of the law is no excuse. Today knowledge of the law is no excuse either. It should be.

PETER HUBER, a senior fellow at the Manhattan Institute for Policy Research, is the author of *Liability: The Legal Revolution and Its Consequences*, published last fall by Basic Books.

Lawyers get blame on health costs

A doctor thinks he has found a good solution

© 1989 Universal Press Syndicate

Wm. F. Buckley

An elderly doctor of great wit, learning and experience thinks he has an idea for the eternal, apparently insoluble, problem of the rising cost of medicine.

Now this rise in cost appears to be heavily related to the advent of the federal government in medical expenses. Professor Milton Friedman has as usual said it succinctly: Not long ago, the United States spent 4 percent of its gross national product on medicine. Today it spends 10 percent. And guess what? The government pays 6 percent of the GNP in medical subsidies.

But Dr. Herbert Berger of Staten Island, N.Y., focuses, for the moment, on malpractice suits and the huge sums that juries, carried away by their sympathy for a plaintiff who alleges medical wrongdoing and (almost inevitably) confident that after all the cost of a judgment will be paid by an insurance company, awards huge, even multimillion-dollar, awards. The results of this are well-known. A physician in Florida needs to spend $180,000 on malpractice insurance and, of course, the fee is passed along to his patients (who, in significant body, pass the bill along to the government).

The result, says Dr. Berger, is not only that the cost of medicine is excessive.

It is one thing to award a patient a substantial sum of money for the loss, say, of a finger. But to add to that sum a million dollars for mental anguish is an invitation to judicial extortion.

There are other, more subtle consequences. One of them is early retirement by qualified physicians. Another consequence is the extraordinary precautions that many physicians feel they need to take, so that when the kid comes in with what appears to be poison ivy and it turns out to be advanced gonorrhea, the doctor, when facing a jury, can point to his having given 16 tests to explore every possibility.

"It has been my lot to testify as a medical expert in many trials. At the conclusion, one frequently hears exclamations such as, 'We'd have won if we had a better lawyer.' " Dr. Berger goes on to suggest what can only strike one as, well, inconceivable. It is that a movement, presumably led by a non-Nader type, should be launched to sue lawyers whose presentation of their client's case is defective.

The suggestion, surely, is difficult to imagine as a likely cure for the problem at hand. A lawyer who fails to convince a jury that his client has been harmed by a negligent doctor is not often guilty of gross negligence. And since many of these lawyers are suing on a contingency basis, charging their clients only a percentage of the award, it would strike one as unlikely that they would proceed with actionable negligence.

Even so, the idea is interesting, to the extent that it encourages harsher treatment by the courts of ambulance-chasing lawyers. I like enormously the example [illegible] Berger gives.

"Perhaps an example of the miscarriage of justice is in order. A lady was awarded $800,000 because she lost her navel after an operation for an umbilical hernia. The navel is always sacrificed after such a procedure. Her result was excellent. The only use for a navel that I had ever heard of was that it was a handy place to keep salt when eating celery in bed."

No doubt there are lawyers who can persuade a jury that the loss of a handy receptacle for one's salt when lying in bed is a serious deprivation. But Dr. Berger is clearly correct in suggesting that laws need to be passed in the states, perhaps patterned after Florida's law that seeks to limit awards for mental anguish.

It is one thing to award a patient a substantial sum of money for the loss, say, of a finger. But to add to that sum a million dollars for mental anguish is an invitation to judicial extortion.

And it is unquestionably true that state legislatures would react more forcefully if the resentment were more palpable. But as the federal government absorbs more and more of the cost of the entire medical enterprise, the question becomes abstract.

If a doctor can pass along his insurance fees to his patient, who in turn passes it along to the federal government, the pressures for reform attenuate; and years go by and nothing happens—except a rise in medical expenses.

The Bush administration is going to have to face the problem of out-of-sight medical costs. The official in charge of recommending sensible reform would do well to call in Joseph Califano, who was head of the Department of Health, Education and Welfare under Jimmy Carter and explored deeply the question of controlling health costs, which findings he incorporated in his book, *America's Health Care Revolution*, published several years ago.

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Kansas Press Service, Inc.
Affiliate of Kansas Press Association
Box 1773, Topeka, Kansas 66601

KANSAS
McPherson Sentinel

FEB. 14. 1989

36

Malpractice limits

Once again malpractice insurance premiums for Kansas doctors are skyrocketing, particularly those charged surgeons and obstetricians. And more and more we are reading news accounts of doctors across the state moving elsewhere simply because they can get malpractice insurance at much cheaper rates.

Certainly those doctors who have spent years developing a patient base don't make that decision lightly or really want to leave with only the prospect of having to do that again. Nor do the communities that end with too few or even no doctors want them to leave.

It's obvious then, that Kansas has a problem that other states don't have, that we can fix it and that we should do so as quickly as possible.

Unfortunately, with the liberals on our state Supreme Court that is more easily said then done.

On two separate occasions the Legislature has passed tort reform measures designed to alleviate the problem and on both occasions the court has declared them unconstitutional.

That leaves only one alternative, a constitutional amendment to allow the Legislature to set malpractice award limits. That will take time but we should at least start the process as soon as we can.

HWH

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Kansas Press Service, Inc.
Affiliate of Kansas Press Association
Box 1773, Topeka, Kansas 66601

KANSAS
Miltonvale Record

FEB. -9. 1989

36

AN OPEN LETTER

An open letter to all concerned with health care in Kansas,

Medical Liability rates for the State of Kansas is such that numerous physicians and specialists are leaving Kansas. As well, many potential physicians who would move to Kansas will not due to the liability rates. (They can go to Nebraska and pay one-fourth of what it costs in Kansas for medical malpractice liability insurance).

This distressing situation must be remedied soon. Kansans should be guaranteed quality health care but not at the expense of those who wish to practice medicine here. This exodus of physicians will result in medical care facilities that are few and far between. Kansans will have to travel even farther than ever to seek medical attention. Many conditions depend on timely attention and intervention for positive results. This would certainly be a regression in medical care for our state.

Please write or call your representative(s) uring that he/she look into all the implications of the legislature concerning medical liability. Favoring tort reform and/or an applicable constitutional amendment is essential to maintain a quality level of medical care for all Kansans.

The issue here is to retain Kansas doctors for Kansans' health care.

Let your legislative representative know your concerns now – before the statement, "Will the last doctor leaving Kansas turn out the lights" becomes a reality – for your health's sake!!

Sincerely,
Marlene Tate

Press Clipping Division
Kansas Press Service, Inc.
Affiliate of Kansas Press Association
Box 1773, Topeka, Kansas 66601

KANSAS
Wamego Times

FEB. -9. 1989

Guest editorial

Malpractice problem

36

We note with interest that more attention is being paid to the malpractice problem and doctors leaving the state now that some of our larger cities are having the problem that has plagued smaller communities for several years.

When it was a problem only in the smaller communities, state leaders seemed to cluck their tongues and lament how bad the problem was, but didn't seem all that interested.

Now that cities like Salina and Wichita are facing the problem, maybe something can be done to solve the situation.

One Salina physician last week was quoted as saying his insurance premium in Nebraska would be $12,000, but it is $70,000 in Kansas!

Come on, something is fishy here somewhere, and if the state leaders can't figure it out, we need some new state leaders. The problem with the doctor situation in Kansas' small towns is that too many doctors won't practice in Kansas,..if they would, then some could be enticed to come to Kansas communities, large or small.

The blame has been placed everywhere you can think of, from a group of Wichita attorneys who have a nationwide reputation of winning malpractice law suits; to the fact the state has a self-insurance fund that doctors have to pay into which thereby creates a pool of money for greedy patients and lawyers to go after; to the fact that we have a state requirement for having such insurance, something that other states don't have!

We know so much about this now that we don't really know anything. The more you delve into the situation, the more confusing it becomes.

Whenever we write something about it, the director of the Kansas Bar Association writes us a letter pointing out in a very nice way that it isn't the attorneys' fault, and we don't know if it is or not.

The only thing we do know is that we observe that Kansas is the only state in the area with the problem, so there is something different and someone needs to find out what it is and fix it!

Otherwise there won't be any health care in Kansas someday in the future, at least the way things are going!---*The Ellsworth Reporter*.

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KANSAS
Russell Daily News
OCT. 25. 1986

Editorial

Tort Reform

Arguments among the executive, legislative and judicial branches make boring reading most of the time. Conflict is supposed to happen, an eventuality that Constitutional founders planned in detail as an automatic system of checks and balances. The program has worked, most of the time, for two centuries.

Chances are Kansas would have gone along for many years, checking and balancing, if it hadn't been for tort reform. Tort is a wrongful act, injury or damage for which civil action can be brought. Reform, of course, is what the dissidents call it when the law can't be bent to their cause. It can be good or it can be bad. But this year in Kansas, tort reform is necessary—even if it means a Constitutional amendment.

The soaring costs of medical malpractice insurance promises to do what the federal government has been unable to do—close rural hospitals so the medics can grind out operations, pills and Cat scans, assembly line style, in big cities. If people don't happen to live in those cities—that's too bad. Bureacrats figure they can get there if they want to be treated.

The jucicial branch has tolerated, even encouraged, multi-million dollar settlements in damage claims. They've even gone further, striking down laws limiting liability and awards in those cases. Administratively, the state has toyed with a form of self-insurance. And doctors are leaving the state as if chased by the plague—and they may be, at that.

The cost of delivering babies has climbed so high and so fast that it can only be continued in high-volume hospitals.

One doesn't have to understand economics to see what the Wal-Marts' do to the Mom and Pop stores. It's a textbook example of high volume, discout bargain operations. Without the volume, the little guys can't compete and either go broke or move away.

One doesn't have to understand economics either, to see what's happening right here in rural Kansas. The courts are telling Kansans that if they want reforms, they'll have to devise a Constitutional amendment so all types of liability cases are treated fairly and evenly. They are also saying reforms must reach across the board and not be selective in nature.

Unfortunately, going the Constitutional route is a slow, awkward process. Many legislators are not yet convinced the courts can tell them what to do, leading to even more foot-dragging.

People, being people, will continue to conceive and deliver—even if they have to move to the city in the process. Insurance companies will continue to set rates on expected risks and attorneys take cases on what they can get—instead of whether they can correct a real or imagined wrong. Those three houses in Topeka, each jockeying for power and prestige, give no sign of surrender.

Tort reform is a vital step in the state's future. The absence of doctors may, in the long run, become the catalyst releasing the necessary elements of reform.—R.T.T.

KANSAS
Emporia Gazette

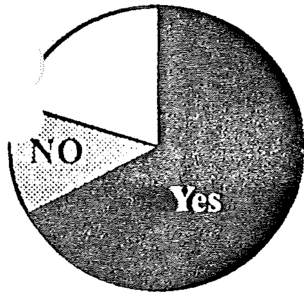
FEB. 22. 1988

Back to Square One (A Tort Report)

THAT grand wrestling match has resumed among doctors, lawyers and insurance folk of Kansas: grunting and groaning, snorting and yelping — each group trying to get sympathy from the public.

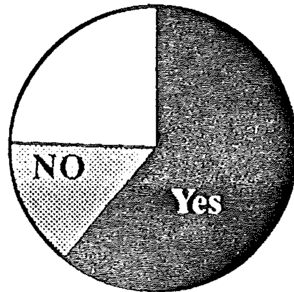
They are fighting again because the Supreme Court of Kansas did not like the outcome of last year's match: Laws passed to control malpractice insurance costs were struck down.

So the struggle has resumed. At this point, the sympathy of most people goes against the lawyers. Who says? That information comes from the Central Research Corporation of Topeka, which did a statewide survey. The results of the survey are being circulated by the insurance folk. Here are the highlights:

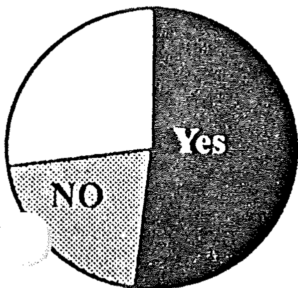


Kansas voters support changing the law so when juries are deciding damage awards, they are informed if the injured person has already received some compensation from other sources.

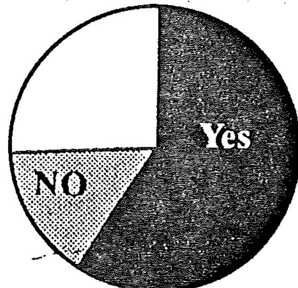
Source: Central Research Corp., December, 1987.



Kansas voters support the recommendation that after compensation for economic losses (like medical expenses and lost wages), a limit of $250,000 should be put on the amount that can be awarded on top of that for pain and suffering.



Kansas voters support changing the law so when very large damage awards are involved, the victims receive periodic payments



Kansas voters support placing a limit of $500,000 on the amount that can be awarded as punitive damages.

These four issues are being debated again in the Kansas Legislature. Last week the state's Insurance Department supported efforts to revise state laws in order to cut malpractice insurance costs. But the department warned against extreme action.

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Some people believe extreme action is needed. Why? Here are the danger signs:

— A new doctor just out of medical school may have to pay $30,000 for first-year malpractice insurance.

— Nearly half of the doctors who have family practices in Kansas no longer deliver babies because of insurance costs.

— Many doctors are leaving Kansas for states that control the cost of malpractice insurance.

— In Kansas, the average claim for malpractice has increased from $30,000 to $108,000 since 1976.

— Patients get only 44 cents of every dollar paid out by malpractice insurance companies. The other 56 cents go to lawyers, expert witnesses, etc.

— The Central Research survey found that 91 percent of the people in this state believe too many petty or frivolous lawsuits are being filed.

—

Even if the laws are reformed again, there is no guarantee that insurance costs will drop. For that reason, the lawyers have asked for a reform of their own. They want the Legislature to set up regulations that would force insurance companies to cut their rates if limits are set on damages in medical lawsuits.

It took the Legislature three years to pass the laws that were struck down last year by the Supreme Court.

Now the Legislature is trying to rewrite those laws to make them constitutional. With luck, the job can be wrapped up in the 1988 session. — R.C.

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March 13, 1989

Hon Jerry Moran, State Senator
37th District 'Senate Chambers
State Capitol Building
Topeka, KS 66612

I've enclosed the newspaper clippings of this very recent case, Eilts vs Bhargava etal, Case #85C321 at Barton County Court at Great Bend, Kansas, which lasted three weeks, from February 13, 1989 through March 3, 1989.

Initially, forty-seven defendents were sued since 1983 but Mr. Caleb Boone, attorney from Hays, has dropped many defendents since. This case illustrates many points which I wish to address:

1. This lawsuit should never have been filed in the first place. It was a frivolous lawsuit, a "gunshot approach" type case where Mr. Boone intended to hit someone or all of them. Where "truth or justice" prevailed but greed and money was the obvious motive. The newspaper clippings will show the details of the case. The plaintiff lied and fabricated the whole case for which perjury charges are in order. The defendents were mentally harassed for five and a half years and underwent three weeks of court trial at Great Bend, lost contact with patients and incurred loss of earnings while away from our patients and duties. Finally, this case illustrates the fact that such cases should not take place at all.

For years the people of Kansas wanted something done about rural hospitals, rural medicine and rural physicians. Come election time, the politicians would stress this to be the number one issue, but unfortunately not much is done.

2. Malpractice crisis: I strongly feel something needs to be done about this fast and decisively. I am in favor of the constitutional amendment limiting awards and putting caps. "Malpractice is like a cancer amongst us." If there are limited payments, the lawyers and plaintiffs would not consider suing or will think hard before taking the case. In England, where I practiced for thirteen years before coming to the United States,

Attachment XIII
Senate Judiciary Committee
3-20-89

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my malpractice insurance until 1978 was £50 which is about $80.00 a year. Malpractice was truly a rare occurrence!!

Malpractice rates keep soaring up every year and we expect this year another 100% increase. My wife and I are the only two physicians in the whole of Rush County. She still delivers babies. Last year she delivered about eighteen babies out of which at least one third of the mothers didn't pay. But she still had to pay $19,000 in insurance premiums which was more than she got from the deliveries. Soon there will be no deliveries in the rural areas and babies will be delivered by midwives or on the roads to larger hospitals. No wonder doctors in the rural areas are leaving to practice in other states.

My wife and I are on duty around the clock, 24 hours/day, 365 days a year serving our County. I even do home visits for the elderly and disabled patients and visit the nursing home regularly, rather than bringing the patients to the clinic. My duties also include County Coroner and Public Health Officer.

Doctors here at LaCrosse in the past did not stay for more than two to three years as they experienced burn out and left. We have stayed here for the past ten years and continue to practice medicine here as we like the people of our community and they, in turn, like us and are appreciative of what we do for them.

3. CME (Continuing Medical Education) hours: We are required to do 150 hours of CME over a period of three years before we get relicensed in the state of Kansas. LaCrosse, which is a small rural town of 1,400 population, does not have any CME. We have to go to larger towns to get these hours. To get "out of town" we need a replacement doctor, called "Locum doctor" which costs $2,700/week plus plane fare, boarding and lodging costs. We also have to pay $1,500 to cover his insurance between 1-54 days which is provided by another insurance company. Our insurance company, Medical Protective, does not provide this. This is another insurance "rip-off". Solution for this: we need better outreach CME programs for rural communities or financial help or support by Federal, State or County Commissioners to cover the costs of the replacement doctor..

Since the decline of agriculture and oil industries in our rural areas,

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the people cannot afford to pay the doctors. Our accounts receivable keeps climbing up. Medicare and Medicaid, of which 85% of our population is, allows a 3% increase per year which gets absorbed into the malpractice insurance rates.

I am sure we are all aware of such problems, but unfortunabely, no action is taken. My wife and I could move into a larger town or group practice but that would be a defeat and escape from the problems facing rural communities.

Almost all our patients are understanding but a few expect perfect results each time they visit a doctor. Any deviation from this results in an interview with the lawyers. Is this "free medicine"? We came to America as immigrants to practice free and good medicine, to devote our knowledge, training and life to the people here in rural communities. But, alas, we feel we are far away from freedom. Each time we see a patient, the threat of malpractice is always lurking in the background. We practice defensive medicine, which means more tests are done to cover in the differential diagnosis, which in turn means more money and an increase to the patients' medical insurance premiums.

Unfortunabely, the doctors in Kansas are not vocal enough regarding these issues. But, I feel very strongly that something needs to be done. As a constituent of your district, if I do not discuss these issues with you and get no response, then I feel there are problems with our system at the Federal and State levels.

I remain your humble constituent.

Ashok Kumar Bhargava MD

Ashok K. Bhargava, M.D.
A Kansas Rural Physician