



Position on Medical Liability Reform

Pediatricians are committed to bringing about the best possible health outcomes for children and their families. Because all medical interventions involve known and unknown risks, pediatricians should work with health care teams to create safe patient care environments and prevent medical errors by focusing on a systems approach which seeks to identify and learn from errors. The Academy believes that when patients are harmed by medical care they should be compensated fairly without waiting years because of legal maneuvering. Unfortunately, the tort system is unfair to the very people it is supposed to help. Only 43 cents of the award dollar are retained by patients as compensation; the remainder goes to administrative costs which includes attorneys fees. The Academy supports the reforms of the Medical Injury Compensation Reform Act (MICRA), California's 1975 legislation with a proven record of making medical liability insurance available and affordable. However, nearly 30 years have passed since MICRA was enacted (including the \$250,000 cap on non-economic damages). Consequently, any new legislation setting limits on non-economic damages should take into account current economic factors in determining a cap that is reasonable and fair to both claimants and defendants.

The Academy believes that the following reforms are needed to make sure that patients receive timely, full and fair awards when a wrongful or neglectful medical event occurs:

- non-economic damages be capped at \$250,000 or,
- at a reasonable amount that is fair to both claimants and defendants;
- periodic payment of future damages of over \$100,000;
- mandatory offsets for collateral sources (with credit for out-of-pocket costs of collateral source);
- limitation of plaintiff lawyer fees through the use of a sliding scale;
- statute of limitation for minors consistent with AAP Model Bill on Medical Liability Statute of Limitations Reform Act⁴ which seeks to establish a child's majority at age six for the purpose of medical liability and to set the statute of limitations at two years with the toll, beginning from occurrence not discovery of the injury;
- grant funding for demonstration projects to test alternate dispute resolution mechanisms;
- a "fair share" rule that allocates damage awards fairly and in proportion to fault; and
- punitive damages should be awarded only if there is "clear and convincing" evidence that the injury meets the standard set by each jurisdiction and for acts for which the defendant is directly responsible. In those cases, punitive damages should be limited to a reasonable amount.

Approved by Executive Committee July 29, 2004

