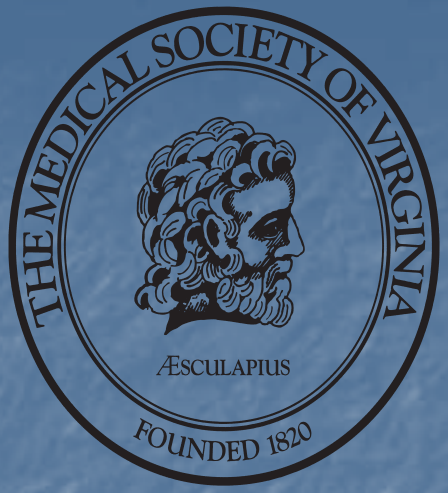
The Medical Society of Virginia



Medical Litigation Crisis – Will Your Doctor Be There?

Presentation to SB 601 Study Task Force

Mitchell B. Miller, MD, President
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Access to Care Threatened

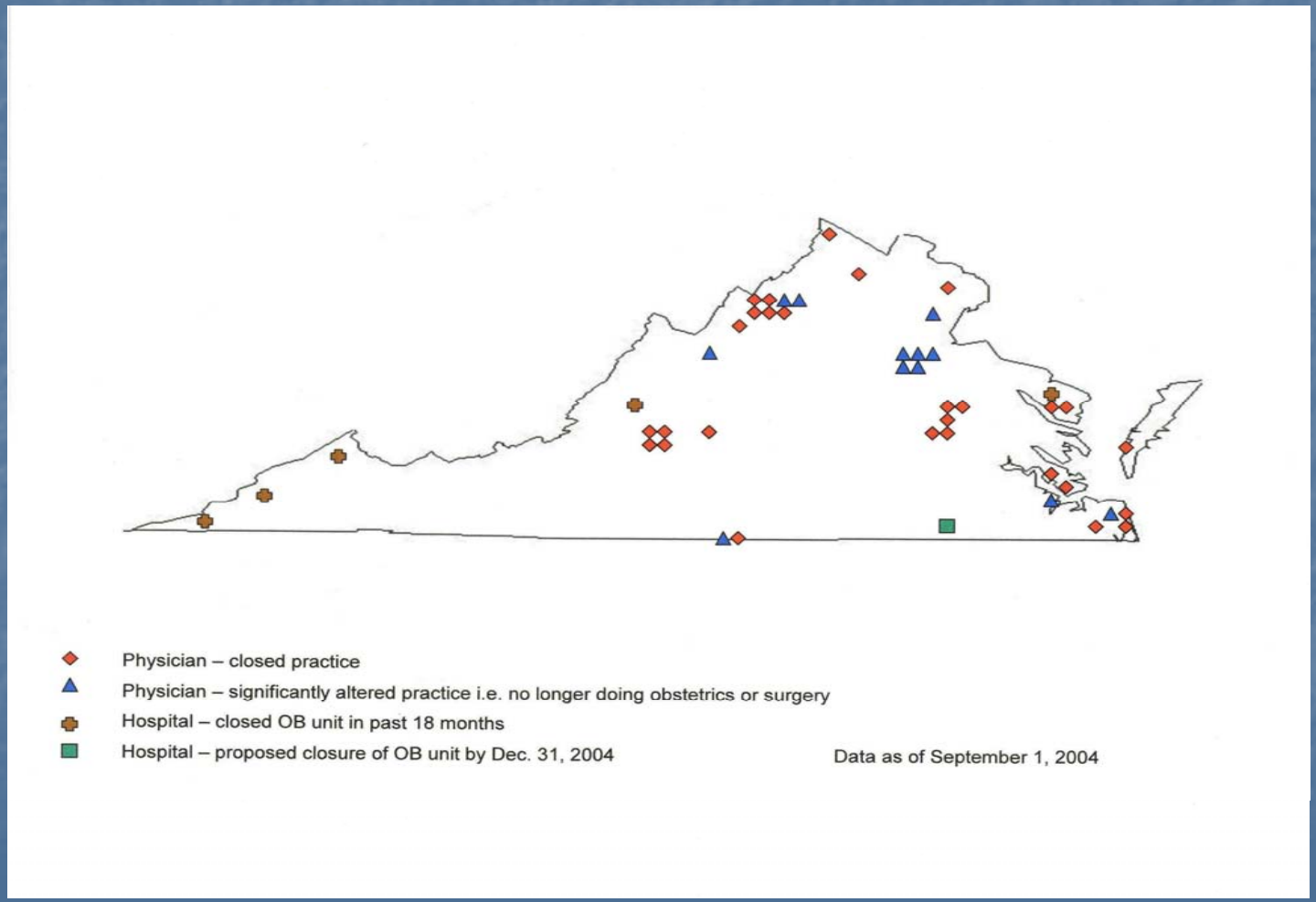
- Harm is occurring to Virginia's medical and health care systems
- Virginia's citizens, particularly those most vulnerable, fragile and greatest in need, bear the brunt of decreased access

Access to Care Threatened

- Trends in other states
- Are those trends seen in Virginia?
- What are the consequences?
- What are the public policy and legislative implications resulting from this crisis?
- What potential solutions are there to better achieve our shared goals?
- Access to high quality and continuously improving health care for Virginia's citizens

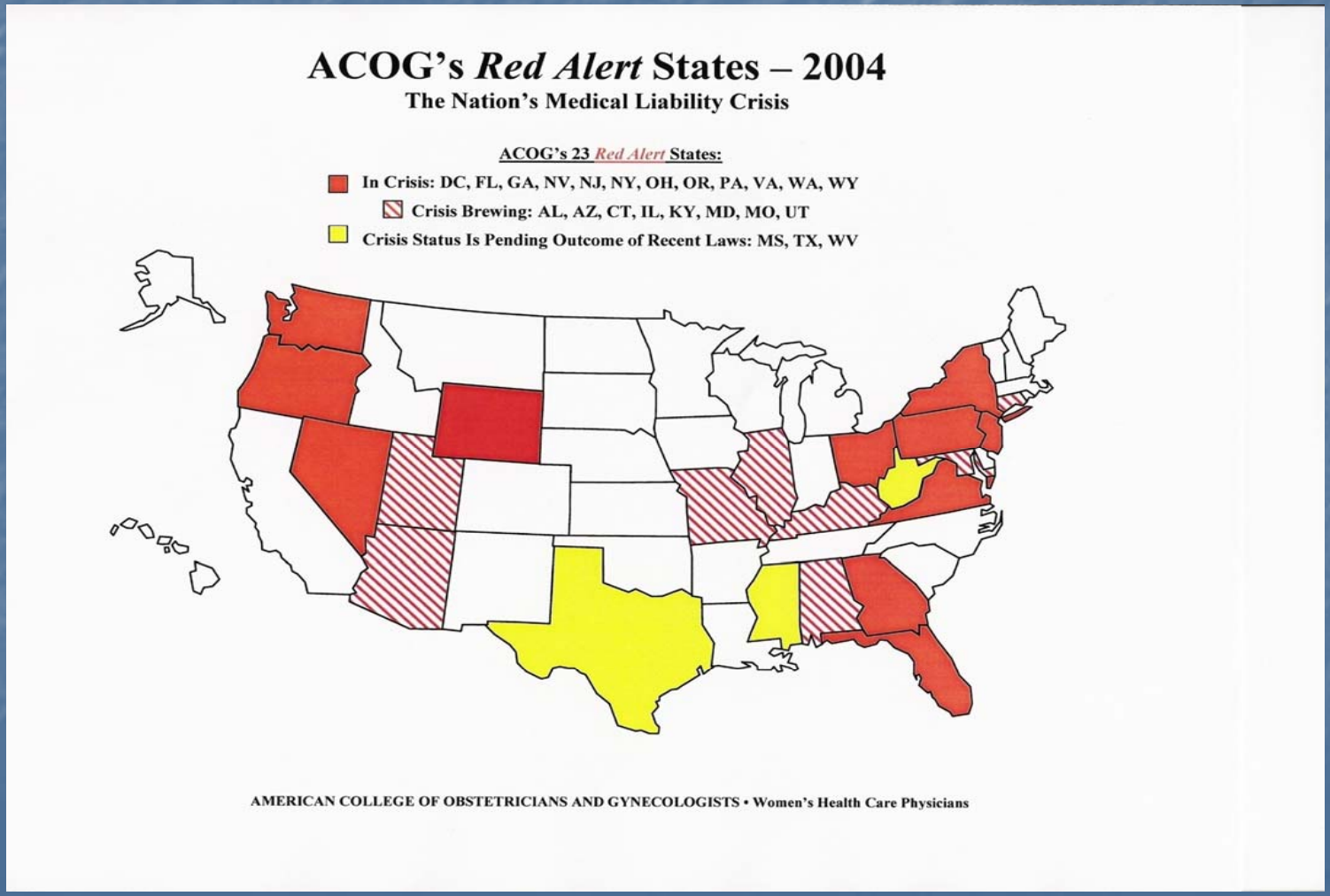
Access to Care Threatened

Virginia Experience



Access to Care Threatened

Virginia Experience



Access to Care Threatened

Virginia Experience

NORTHERN VIRGINIA

- A general surgeon, who was is in the twilight of his career and still practicing until recently, was unable to obtain tail coverage. He subsequently closed his practice rather than expose himself to open-ended future liability.
- A 40-year-old surgeon in Northern Virginia has more than $200,000 in student loans to repay and is unable to meet her obligation. She pays more for her medical malpractice insurance than she pays herself. She loves her profession but cannot believe she is in this type of financial situation after 20 years of education.
- A veteran Alexandria physician was forced to halt the practice when the practice owner declared bankruptcy due in part to huge malpractice insurance increases.

Access to Care Threatened

Virginia Experience

SHENEDOAH VALLEY

- A Harrisonburg OB/GYN is retiring from the practice in October 2004 and the 40% of his practice that are Medicaid patients will have to find a new doctor. The 49 year old physician has been delivering babies for 20 years, but cites soaring malpractice premiums and decreasing or stagnant reimbursement for deliveries as the primary reasons.
- A local OB practice has had to limit new Medicaid referrals by 30% recently in order to "keep the doors open" and is increasing their referrals of high-risk pregnancies (many Medicaid patients among them) out of town due to soaring malpractice premiums. Also, physician visits to the local health department in Page County will cease.
- The 2 largest pediatric practices in Harrisonburg are no longer accepting new Medicaid patients.

Access to Care Threatened

Virginia Experience

SOUTHSIDE

- Community Memorial Hospital in South Hill will turn to a medical management firm to bring in 2 OB/GYNs to replace those who have left the practice of medicine.
- Southern Virginia Regional Medical Center in Emporia, the state's newest hospital, agreed to open its obstetrical unit last year on a trial basis only after $250,000 was raised locally to subsidize operations. Currently, obstetrical services are losing $300,000 - $500,000 a year.
- A decorated MASH Army Veteran & talented trauma surgeon, who essentially brought trauma care to Petersburg, retired after 20 years of practice due to not being able to find affordable coverage.

Access to Care Threatened

Virginia Experience

SOUTHWEST

- Buchanan General Hospital in Grundy closed its three year old, $1.5 million OB unit in late June. The opening had ended a 13 year hiatus for the service.
- Buchanan County's only OB/GYN who had been recruited to the rural locality after months of searching by local leaders, stopped delivering babies the same day the OB wing closed.
- In the four-county health district that includes Buchanan, there are two physicians delivering babies in the mountainous region of nearly 120,000 people. Dickenson County also lacks pre-natal and hospital delivery services in its hospital. This forces expectant mothers to drive an hour to receive care.

Access to Care Threatened

Virginia Experience

- We anticipate the gathering crisis in neurosurgery, trauma care, emergency medicine, orthopedics, general surgery, critical care medicine
- Those medical disciplines with the highest litigation risk, primarily because of occasional poor outcomes despite optimal care

Access to Care Threatened

Virginia Experience

- Consequences of the current environment
  - MDs risk aversion (difficult cases get transferred)
  - Defensive medicine practiced with increased costs for all
  - Older MDs being driven from practice
  - MDs distracted and inhibited from quality improvement efforts

Medical Litigation Crisis

- Insurance premiums are rising rapidly

TABLE 3. Premium Increases in Non-Reform States Between 2000-2001 or 2001-2002	
State	**Premium Increase**
Nevada	30%
Mississippi	30-40%
North Carolina	50%
Pennsylvania	40%
Virginia	75%
Florida	30%
Ohio	30%
Illinois	Over 30%
Source: Survey of PIAA companies, July 2002 and ASPE Review of Articles, 2000-2002.	

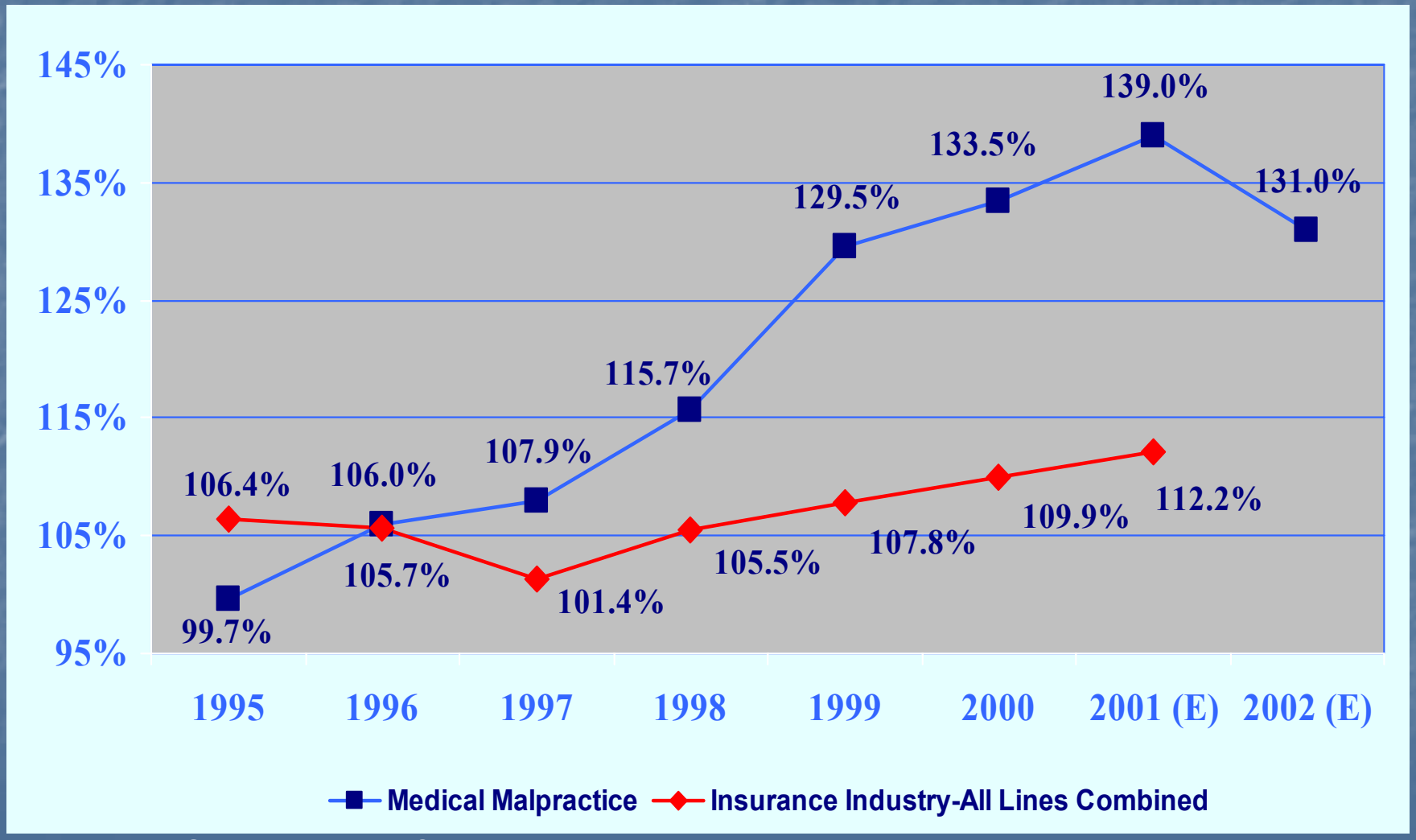
HHS, 2002

Affordability of Insurance

- Average rate increase in 2002 & 2003 was nearly 40%
- The ’02 & ’03 increases together come close to doubling the rates between 2001 & 2003
- Between 1998 & 2003, rates in Virginia nearly tripled

Combined Ratio

Calendar Year



Source: A.M. Best Co.

Crisis of Underwriting

- 2001 – 2nd largest carrier (St. Paul) lost to Virginia
- 2002 – MIIX group and Princeton Ins. Co. leave Virginia
- 2003 – Doctors Insurance Reciprocal (20% of Virginia malpractice market) liquidated
- 7 companies left writing malpractice insurance in Virginia, one of the remaining companies appears to want out
- "Non renewals" threaten ability of MDs to offer services to the public

Medical Litigation Crisis

- **Current System**
  - Adds $97 billion to costs
  - Increases costs of health insurance 12.7%
  - Decreases by 2.7 million those with employer provided health care
  - Caused 6% decline in physicians in U.S. in critical areas
  - Loss of access to 14.4 million people
  - Has low predictive value in identifying whether medical malpractice has occurred
  - Greatest deterrent of the quality movement which depends on transparent, open discussion of all poor outcomes and focuses on systems

Employee Policy Foundation, June 19, 2003

Medical Litigation Crisis

- Current System
  - Very high administrative costs (60 to 70%)
  - Compared to 5-30% for other compensation schemes (Workers' Comp, Soc Sec)
  - Only predictor of outcome of verdict and size of award in med mal cases was degree of disability, not negligence
  - Only deters doctors from providing needed services
  - Keep in mind: 50% of neurosurgeons, 40% of plastic surgeons, 35% of orthopedists, 30% general surgeons, 30 % of OB/GYNs are sued each year

J Health Polit Policy Law 1992;17:463-82.
Ann Int Med 2003;139:269.
www.bradenton.com/mld/bradentonherald

Medical Litigation Crisis

- Current System
  - Unpredictable: emotional response to injured patients and poor outcomes, not whether negligent care occurred or economic compensation for economic losses
  - Largely random: in most cases doctors, nurses, and hospitals did what other well intentioned and competent colleagues do
  - Standardless: what one jury finds has no bearing on what another jury might find
  - Traumatic for all concerned
  - Too slow

HHS, July 2002

Medical Litigation Crisis

- Effect on patient safety

Patient Safety Jeopardized

- Because the litigation system does not accurately judge whether an error was committed in the course of medical care, physicians adjust their behavior to avoid being sued
- 76% concerned that malpractice litigation has hurt their ability to provide quality care to patients
- 79% ordered more tests than they would based solely on professional judgment
- 74% have referred patients more often to specialists
- 51% have recommended invasive procedures
- Culture of fear versus culture of quality and safety

HHS, July 2002

Patient Safety Jeopardized

- True quality and safety derived from a systems approach
- Depends on transparency, reporting of poor outcomes and "near misses", disclosure
- Aviation and NASA model
- IOM Report: "Tort law's overly emotional and individualized approach…has been a tragic failure."

IOM Report, 2000.

Medical Litigation Crisis

- The litigation system does not benefit the injured patient
  - Large administrative/legal fees
  - Few truly injured by negligent care pursue litigation
  - System as a whole rarely if ever made safer by medical litigation
  - Made more unsafe, more costly, and more likely to cause harm (defensive medicine not benign)

Medical Litigation Crisis

- Professional discipline and quality of care

PATIENT SAFETY, PROFESSIONAL DISCIPLINE & QUALITY OF CARE

- Virginians for Improving Patient Care & Safety (VIPCS) includes all major provider groups in the Commonwealth. This is an on-going entity which continues to hold great promise for increasing quality of care in Virginia through continuous review & improvement, transparent review, systems review, self-reporting (aviation industry model), best practices.
- HB 1441 (Sears), which gives the Board of Medicine more tools to discipline providers in a more timely fashion, passed the 2003 General Assembly

PATIENT SAFETY, PROFESSIONAL DISCIPLINE & QUALITY OF CARE

- SB 316 (Stolle), which provides for immunity to patient safety organizations, passed the 2002 General Assembly
- SB 385 (Norment), which provides immunity for in-office peer review/quality assurance activities, passed the 2004 General Assembly
- We need to build on these measures

Potential Solutions

- Short term: incremental solutions that will positively affect premiums as quickly as possible
  - MICRA's Basic Provisions
    - Limits on Non-Economic Damages
    - Evidence of Collateral Source Payments in a medical liability suit
    - Limits on Attorney Contingency Fees
    - Advance Notice of a Claim
    - Shorten Statute of Limitations
    - Periodic Payments of Future Damages

Potential Solutions

- Short term: incremental solutions that will positively affect premiums as quickly as possible
  - Certification of "Meritorious" Suits
  - Certification of Medical Experts
  - Stronger medical malpractice review panels
  - Surcharges/administrative fees to pass some of the cost of malpractice insurance
  - Physician slow down & tail coverage requirements
  - Reevaluate hospital by-laws concerning coverage limits
  - Reevaluate joint and several liability or agency liability and their effect on hospital by-laws on coverage limits

Potential Solutions

- Longer term, structural changes to the medical litigation system
  - Specialized medical courts (ability to set and apply standards, consistent, predictable, timelines, independent experts)
  - Administrative system
  - Greater emphasis on patient safety
  - Support early disclosure, transparency
  - Enterprise liability

Medical Litigation Crisis

- Access to needed medical services is in jeopardy (now OB; tomorrow trauma, neurosurgery, emergency services)
- Act before we lose a large group of physicians in high litigation risk areas and those nearing retirement who would normally slow down but not exit practice altogether
- Act now with common sense to avert the building crisis
- Share our goal of preserving the outstanding features of our health care system while helping to transform it into a culture of patient safety and innovation