MINUTES OF THE MEETING
OF THE
LEGISLATIVE SUBCOMMITTEE TO STUDY
MEDICAL MALPRACTICE
March 21, 2002
Las Vegas, Nevada

The first meeting of the Legislative Subcommittee to Study Medical Malpractice was held on Thursday, March 21, 2002, at 10 a.m., in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and videoconferenced to Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Pages 3 through 5 contain the "Meeting Notice and Agenda" for this meeting.

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblywoman Barbara E. Buckley, Chairwoman
Senator Dina Titus
Assemblyman Bernie Anderson
Assemblyman Lynn C. Hettrick

SUBCOMMITTEE MEMBER PRESENT IN CARSON CITY:

Senator Randolph J. Townsend

SUBCOMMITTEE MEMBER EXCUSED:

Senator Mark A. James

OTHER LEGISLATORS PRESENT IN LAS VEGAS:

Senator Terry Care
Senator Joseph M. Neal Jr.
Assemblyman David F. Brown
Assemblywoman Ellen M. Koivisto
Assemblyman Mark A. Manendo

OTHER LEGISLATORS PRESENT IN CARSON CITY:

Assemblyman David R. Parks

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Allison Combs, Principal Research Analyst
Vance A. Hughey, Principal Research Analyst
Risa B. Lang, Principal Deputy Legislative Counsel
Bradley A. Wilkinson, Principal Deputy Legislative Counsel
Ricka Benum, Senior Research Secretary

MEETING NOTICE AND AGENDA

Name of Organization: Legislative Subcommittee to Study Medical Malpractice

Date and Time of Meeting: Thursday, March 21, 2002
10 a.m.

Place of Meeting: Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the subcommittee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Legislative Building
Room 4100
401 South Carson Street
Carson City, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

A G E N D A

I. Opening Remarks and Introductions

Assemblywoman Barbara E. Buckley, Chairwoman

II. National Perspective: Concerns Involving Medical Malpractice Insurance Coverage and Efforts by Other States to Address the Problem

Cheye Calvo, Program Manager, Employment and Insurance, National Conference of State Legislatures

III. Historical Perspective: Chronology of Legislative Actions to Address Past Increases in Medical Malpractice Premiums

Allison Combs, Principal Research Analyst, Research Division, Nevada Legislative Counsel Bureau

IV. Discussion of the Current Concerns Involving Medical Malpractice in Nevada

A. Testimony from Members of the Medical Community

Dr. Robert W. Shreck, President-Elect, Nevada State Medical Association
Lawrence P. Matheis, Executive Director, Nevada State Medical Association
Dr. Raj Chanderraj, President, Clark County Medical Society
Dr. Florence Jameson, Clark County Obstetrics and Gynecology Society
Dr. John Ellerton, Chief of Staff, University of Nevada Medical Center
Dr. James Tate, West-Crear Medical Society, National Medical Association
Bill Welch, President and Chief Executive Officer, Nevada Hospital Association

B. Testimony from Members of the Legal Community

Bill Bradley, Nevada Trial Lawyers Association
Dean A. Hardy, Nevada Trial Lawyers Association
Kim Williams, Nevada Trial Lawyers Association
John Echeverria, Nevada Trial Lawyers Association

C. Testimony from the Medical Malpractice Insurance Community

Representatives of Medical Malpractice Insurance Companies

V. Summary of the *Survey on the Nevada Medical Malpractice Marketplace Conducted by the Nevada Division of Insurance*

Representative of Nevada's Division of Insurance

VI. Review and Update: Options for Increasing the Availability of Affordable Medical Malpractice Coverage Under Nevada's Current Insurance Laws

A. Types of Insurance Groups or Associations that May be Created to Provide Medical Malpractice Coverage

Representative of Nevada's Division of Insurance
James L. Wadhams, American Insurance Association, Nevada Independent Insurance Agents

B. Discussion of the Creation of the Nevada Essential Insurance Association

The Honorable Kenny C. Guinn, Governor of Nevada (Invited)

C. Discussion of Efforts Within Nevada's Medical Community to Create an Insurance Company

Dr. Raj Chanderraj, President, Clark County Medical Society
Lawrence P. Matheis, Nevada State Medical Association

VII. Requests for the Subcommittee's Examination of New Laws and Changes to Nevada's Existing Laws and Regulations Governing Civil Justice and Insurance to Address Concerns Regarding Medical Malpractice Coverage

Lawrence P. Matheis, Nevada State Medical Association
Bill Bradley, Nevada Trial Lawyers Association

VIII. Public Testimony

*IX. Discussion of Future Meetings and Topics for Review

X. Adjournment

*Denotes items on which the subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Debby Richards at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's Web site at www.leg.state.nv.us.

OPENING REMARKS AND INTRODUCTIONS

Chairwoman Barbara E. Buckley called the meeting to order at 10:09 a.m. and asked the secretary to call roll. All subcommittee members attended the meeting except Senator James who had a legal emergency.

The Chairwoman explained that Nevada is involved in a crisis in which highly valued members of its medical community are facing large increases in their medical malpractice premiums. Many doctors are also facing the added burden of purchasing expensive tail coverage because one of the state's largest insurers has exited its medical malpractice line in Nevada and throughout the rest of the nation. In addition, she noted that the medical community is financially impacted with lower reimbursements for its services. This combined result has left many physicians questioning the benefits of practicing medicine in this state.

Continuing, Ms. Buckley noted that short-term solutions to this crisis are being developed and have been announced during the previous week. The Governor revealed his intention to create a special joint underwriting association (JUA) to assure the availability of insurance for doctors. Additionally, some members of the medical community are working on the development of their own insurance company to provide coverage for doctors.

Chairwoman Buckley stated that the work of this subcommittee will involve a more in-depth examination of this complex crisis and potential long-term solutions for the doctors and for their patients. She then introduced the members and staff of the subcommittee.

Additionally, Ms. Buckley noted that in preparation for this meeting, staff provided each subcommittee member with copies of past legislative studies concerning medical malpractice and information concerning the hearing held by Nevada's Commissioner of Insurance, Division of Insurance, Department of Business and Industry, on March 4, 2002, on the availability of essential insurance coverage. Please see Exhibit A for details.

Finally, the Chairwoman advised that during future meetings, the subcommittee will address items such as:

C Civil justice reforms (e.g., alternative dispute resolution and caps on damages).

C Concerns expressed by obstetrician gynecologists regarding the process involving certain state programs.

C Discipline procedures for doctors.

C Insurance reforms.

C The screening panel which hears claims concerning medical malpractice

NATIONAL PERSPECTIVE: CONCERNS INVOLVING MEDICAL MALPRACTICE INSURANCE COVERAGE AND EFFORTS BY OTHER STATES TO ADDRESS THE PROBLEM

Cheye Calvo

Cheye Calvo, Program Manager, Employment and Insurance Program, National Conference of State Legislatures

(NCSL), explained that NCSL is the national bipartisan organization representing the nation's state legislators and their staff from all 50 states, the commonwealth, and the territories. He noted that NCSL does not take positions on state matters and, therefore, he would not endorse any specific proposal.

Mr. Calvo stated that during his presentation, he would provide: (1) a national perspective of the medical malpractice problems in other states; (2) a framework to assist in addressing this issue; and (3) an overview of the experiences of other states.

C National Perspective

According to Mr. Calvo, there is not yet a national medical malpractice crisis similar to those experienced during the late 1960s to mid-1970s and the mid-1980s. However, he said, there is a definite trend in that direction. Mr. Calvo noted that since 2000, the reporting by insurers of significant rate increases in virtually all states has accelerated, and statistics for 2002 reflect the greatest rate increases since the mid-1980s.

Mr. Calvo advised that in addition to Nevada, the states of Mississippi, Pennsylvania, and West Virginia are experiencing a medical malpractice crisis. Pennsylvania and West Virginia recently passed significant medical malpractice reform packages to address their problems, he said. Mr. Calvo mentioned that states actually in a crisis generally are experiencing rate increases between 40 percent and 80 percent statewide, and the rates for some doctors and hospitals have doubled, tripled, or quadrupled.

Continuing, Mr. Calvo noted that several other states are slowly approaching a medical malpractice crisis. Essentially, he said, a crisis occurs when the availability and affordability of medical malpractice insurance become limited and doctors and health providers in general move out of a state, insurers leave the medical malpractice market, and medical facilities threaten to cease operating.

Mr. Calvo advised that premium increases for medical malpractice seem to be based on actual costs. He then discussed combined ratio—an insurer's losses and expenses—and explained that:

1. A combined ratio of 100 means that for every $1 an insurer receives in premiums he pays $1 in losses and expenses.

2. AM Best, a statistical reporting agency, is projecting a combined ratio of 143 for the nation in 2001. Therefore, for every $1 insurance companies received in premiums, they paid $1.43 in losses.

3. In 1999 and 2000, the nation's loss ratio was 104 and 110, respectively.

Additionally, Mr. Calvo addressed the insurance and noninsurance factors that increase insurance costs. He stated that

1. Insurance drivers include: (a) frequency—the number of claims filed; and (b) severity—the amount of awards and the cost of each claim. Insurance costs appear to be a "severity issue" because the number of claims is not increasing; however, jury awards are becoming more expensive.

2. The noninsurance driver of insurance costs is investment income. The "long tail" in medical malpractice insurance, which references the idea that claims involving medical acts are not paid or even made until several years after an event occurs, makes investment income imperative for this line of coverage. In a strong economy, insurers may spend a lot of time investing money and, therefore, they can accept higher combined ratios because their losses can be recouped in the market. However, the recent downturn in the nation's economy has had a significant effect on medical malpractice insurance.

   Throughout the 1990s, the nation's medical malpractice market for insurers was "good" and to some degree that also was true in Nevada. However, it appears that the profitability of insurers in Nevada broke down a little sooner than in other jurisdictions. According to data for the years 1995 to 1999, Nevada was the third least profitable state in the nation for the insurance industry. In 1998, 1999, and 2000 insurers lost money in the state.

The medical liability monitor has identified Clark County, Nevada, as the sixth most expensive market in the nation. Dade County, Florida, is ranked as the most expensive market and metropolitan areas such as Chicago, Illinois, and New York City, New York, also rank high.

C Framework and Experiences of Other States

Mr. Calvo explained that medical malpractice is difficult to address because it is complex and multifaceted, and involves several significant parties. He further noted that this issue is not one simple problem and stressed the importance of keeping in mind the "big picture."

Continuing, Mr. Calvo stated that the medical malpractice system is a mechanism through which medical negligence is determined and, if found, health providers are required to be financially responsible. He said it is the manner in which medical mistakes are addressed and if it works properly, it also serves as a deterrent to future malpractice. In this system, he noted, the vast public policy interest is to produce a system that is:

1. Equitable—People receive fair compensation for their injury.

2. Efficient—Claims are resolved quickly with reasonable expenses.

3. Predictable—The outcome is consistently applied and situations are treated in like manners.

Mr. Calvo further explained that the medical malpractice system actually is a tort system and defined a tort as a wrongful act or admission. He noted that the tort system is adversarial by nature and is about assigning fault and making people pay for their mistake. Ultimately, a jury decides whether a doctor failed to meet the appropriate standard of care, whether this negligence caused an injury, and if so, the appropriate compensation for the mistake. Mr. Calvo mentioned that the roles of the parties involved in medical malpractice are important and interconnected. Medical malpractice laws affect those relations and the manner in which those parties interact, he said.

According to Mr. Calvo, it is important to note that the nature of health care delivery in the United States has changed a great deal. He noted that under the current managed care system it is difficult for doctors and health providers to pass increased medical malpractice premiums on to consumers. In fact, he said, doctors' salaries actually are being paid by health care organizations and employers largely pay the premiums for those organizations.

Mr. Calvo then presented a framework to address the medical malpractice insurance crisis and discussed four areas of reform:

1. Prevention

   a. Reduction in the incidences of malpractice. Mandate greater risk management on the part of hospitals and individual doctors and actually incorporate risk management classes into licensing for medical providers. The state of Massachusetts has had limited success with a similar program which was introduced in the late 1980s.

   b. Standards of care. In approximately 1990, the state of Maine introduced a program to establish specific standards of care for certain medical specialties and essentially shield providers from liability if those standards were followed. The program attempted to bring clarity into the jury process to identify some objectivity to a difficult and qualified situation. This program was not successful.

   c. Medical error reporting. Approximately one-half of the states in the nation have introduced a system to report medical errors. Although these programs include a degree of confidentiality, they provide for the identification of individuals, institutions, or places that experience greater incidences of medical malpractice. Therefore, authorities have an opportunity to remove from the work force persons who are responsible for a disproportionate amount of harm. Medical error reporting has increased licensing and information sharing, especially among states, and it may be more difficult for a doctor who loses his license to practice medicine in one state to establish a business in another state. The effectiveness of medical error reporting has not yet been determined.

d. Informed consent. The question of medical malpractice is whether an injury results from negligence on the part of a physician. It may be helpful to enact laws that require doctors and institutions to clarify for a patient prior to a given procedure the risks involved and limit injuries to defined cases of negligence.

2. Alternatives to Litigation

a. Mediation and arbitration. All states have mediation and arbitration systems that apply generally in tort situations. From 1975 until the late 1980s, 15 states established arbitration programs specifically for medical malpractice.

In 1975, the state of Michigan established an arbitration program for medical malpractice that provided incentives to patients who agreed, prior to a medical procedure or surgery, that if something went wrong they would pursue their case through arbitration rather than the court system. During a 15-year period, the participation rate for this program was approximately 8 percent. Michigan has a noneconomic damage cap of $250,000. If a patient agreed to binding arbitration, the noneconomic damage cap was waived. Therefore, a patient could receive a greater award through arbitration than in the tort system. This program "broke down" and was sunset in the mid-1990s.

b. No-fault. No-fault is a system in which a person is guaranteed immediate insurance recovery for an injury and are most common in automobile and workers compensation insurance. In the late 1980s, the states of Florida and Virginia implemented programs that establish no-fault for medical malpractice but they are narrowly focused on birth-related neurological injuries. These programs have had some effect on reducing the costs associated with obstetrics in essentially limiting these rare but expensive injuries.

3. Tort Reform and Civil Justice Reform

a. Statute of limitations. There is limited evidence that establishing shorter filing periods may reduce claims.

b. Repealing joint and several liability. Thirty-three states have reformed joint and several liability to a certain degree.

c. Attorney fees. Twenty-four states have placed certain restrictions on the contingency fees that attorneys may collect by establishing a sliding scale, a specific percentage or amount, or some degree of oversight to require that attorney's fees are reasonable as defined by a court.

d. Collateral source rule reform. Twenty-eight states have applied mandatory collateral source offsets or voluntary offsets on the part of a judge or jury.

e. Periodic payments of awards. The state of Pennsylvania recently passed a law to stagger over time the amount of money that is given to a patient. This approach is intended to: (1) provide the insurer an opportunity to invest that money more wisely; and (2) ensure that the money is not spent up front and is available to the patient in the future.

f. Damage caps. There are different types of damage caps (e.g., noneconomic, punitive, total, and wrongful death). Eighteen states have some form of a noneconomic damage cap. There is evidence that noneconomic damage caps similar to those in the states of California, Colorado, and Virginia provide a higher degree of stability to the insurance and medical malpractice markets. Damage caps can serve as a "quick fix" in an instable market; however, they involve corresponding offsets on the part of an injured person and affect both large and small awards. Generally, noneconomic damages are not tied to an economic amount. An economic damage involves a corresponding loss or injury. Often, noneconomic damages are more likely to go to attorneys' contingency fees than economic damages. If there are no noneconomic damages in place, the fees come out of the actual losses experienced by the individual.

4. Insurance Options

a. Rate regulation. The Commissioner of Insurance is responsible for ensuring that rates are fair and grounded in actual losses.

b. Joint underwriting associations, state funds, and other types of insurance pools. West Virginia recently introduced legislation to establish a JUA. Many states have instituted such associations, especially in times of crisis. Although JUAs are expensive and their rates are higher than those in the private market, they are fluid, assure availability of insurance, and bring stability to the market. During a crisis, many health providers may rely on these alternative options for insurance coverage; however, they may return to the private market after conditions improve. Therefore, in the past, some of these groups were purchased by private firms or disbanded because of insufficient membership.

c. Excess funds or patient compensation funds. These funds essentially pay a portion of damage awards over a certain amount. They have been successful in certain states, but they must be paid for and, therefore, some states have encountered problems. Pennsylvania, which is a state in crisis, is experiencing a $2 billion unfunded liability in its patient compensation fund. Although the state recently passed legislation that will phase out this fund, physicians will have to make up the $2 billion fee. These physicians already pay high medical malpractice rates and, therefore, many of them are leaving the state. It is important to realize that state funds can be short-term solutions but they can involve long-term risks. Proper management is important.

The state of New York does not have caps on noneconomic damages and its medical malpractice system is not in crisis. The state's premiums are among the highest in the nation and its insurance market is fairly sound and profitable. New York established an excess fund to offset its high premiums by paying the second million dollars of a damage award. The fund is paid for by benefits, employer-sponsored health care, and insurance plans.

Concluding his presentation, Mr. Calvo stated that NCSL is committed to working with the subcommittee and staff to address the medical malpractice crisis in Nevada.

The Chairwoman then announced that the subcommittee would hear testimony concerning Agenda Item No. VI.B., "Review and Update: Options for Increasing the Availability of Affordable Medical Malpractice coverage Under Nevada's Current Insurance Laws—Discussion of the Creation of the Nevada Essential Insurance Association."

REVIEW AND UPDATE: OPTIONS FOR INCREASING THE AVAILABILITY OF AFFORDABLE MEDICAL MALPRACTICE COVERAGE UNDER NEVADA'S CURRENT INSURANCE LAWS

DISCUSSION OF THE CREATION OF THE NEVADA ESSENTIAL INSURANCE ASSOCIATION

Marybel Batjer, Bruce Heffner, and Janice Moskowitz

Marybel Batjer, Chief of Staff, Office of the Governor, Carson City, then appeared on behalf of Governor Kenny C. Guinn, to discuss recent actions taken by the Governor to address the medical malpractice crisis in Nevada. Ms. Batjer was accompanied by Bruce Heffner, Chief Insurance Assistant, Division of Insurance, Nevada's Department of Business and Industry.

Ms. Batjer reviewed the history of Nevada's current medical malpractice insurance crisis:

C In late January 2002, Governor Guinn met with over 30 physicians from Clark County, Nevada, who represented many disciplines and specialties within the medical profession. Several of these physicians had practiced in Las Vegas for up to 30 or 35 years. They discussed their inability to be insured because carriers were leaving the market and/or greatly changing their underwriting practices. The Governor received "alarming" stories from these physicians.

C Immediately following that meeting, Governor Guinn sent a letter to Alice A. Molasky-Arman, Commissioner of Insurance, Division of Insurance, Nevada's Department of Business and Industry, directing her to hold a public hearing to gather more information on the state's medical malpractice insurance crisis. Following is an excerpt from this letter dated January 28, 2002:

> My information to date indicates that medical malpractice insurance is no longer readily available in the voluntary market. This causes me great concern because the public interest requires the availability of such coverage. Therefore, I am directing you to hold a public hearing in order to gather more information about this problem. At the hearing, I want each and every medical malpractice insurance carrier authorized to do business in the State of Nevada to provide testimony regarding the market intentions, practices in rating and underwriting, and their loss experience in the state. Further, because of the importance of this situation, this hearing is to be scheduled as quickly as possible.

C Following receipt of Governor Guinn's letter, Ms. Molasky-Arman held a hearing on March 4, 2002. On March 13, 2002, after evaluating the testimony from the March 4 meeting and the public comment period, Ms. Molasky-Arman found that medical liability insurance is essential coverage that was not readily available, especially in Clark County in the voluntary market.

C Governor Guinn immediately declared that the unavailability of medical liability insurance threatened the provision of medical care. He was concerned that obstetrical physicians would not be available to assist with the birth of children and trauma doctors would not be available in emergency rooms if action was not immediately taken.

C To address this emergency, the Governor immediately announced that he would establish, through the authority vested in Nevada's Commissioner of Insurance (*Nevada Revised Statutes* [NRS] 686B.210, "Nevada Essential Insurance Association: Establishment; membership; plan of operation"), a program to provide for essential coverage through the Medical Liability Association of Nevada. The association was established by emergency regulation on March 15, 2002.

C A board of directors appointed by the Commissioner of Insurance will govern the association. The board of directors will contract with a professional insurance management service to assist the association in: (1) classifying risk; (2) establishing appropriate rates and rate adjustments; (3) administering a reinsurance program; (4) issuing and marketing policies of insurance; (5) managing and investing funds; (6) managing claims; (7) promulgating loss protection programs; and (8) providing other services to achieve the purposes of the association.

C The Division of Insurance has calculated that the association will require not more than $250,000 to satisfy its initial obligations. Following startup, the association will be completely supported through the collection of premiums, investments, and necessary assessments the Commissioner of Insurance may annually levy.

C The Governor is of the opinion that the establishment of this association is a "bridge" to a long-term solution of the availability of medical liability insurance in Nevada.

Chairwoman Buckley expressed concern about the effect that the high cost of the tail coverage in medical malpractice insurance has on physicians, especially those in high-risk specialties (e.g., emergency room, obstetrical, and trauma services) who appear to pay the highest rates. She inquired if the Division of Insurance has investigated whether the tail assessment involves any profiteering by insurance companies or if an assessment could be made against participating insurers to lower the premium, thereby assisting doctors to pay their tail coverage.

Responding, Ms. Batjer stated that the cost of the tail is a concern. She advised that under the association a physician's first-year premium will not be calculated at a mature rate. Further, one particular company will allow physicians to pay their tail payment over an installment period.

Mr. Heffner explained that the Division of Insurance determined that it had to establish a stable, self-funded program and address the availability rather than the affordability of medical malpractice insurance. He said that during its review of the tail in medical malpractice, the division had to consider the availability of reinsurance for the association. He noted that some reinsurers indicated that establishing a plan in which tail coverage is automatically offered would complicate the issue of obtaining reinsurance. Further, including the tail in this program could pose problems in setting up rates and obtaining appropriate reinsurance coverage to protect the association from any unfunded liability. Mr. Heffner stated that the tail could be considered in the future.

The Chairwoman stressed the importance of the Division of Insurance and the subcommittee working together to determine the availability of options to assist physicians in high-risk specialties because their services are critical and they appear to be paying the highest rates among health providers. She expressed concern about obstetrical physicians because they receive low reimbursements and, therefore, do not have the capacity to pass on these expenses to their patients. Ms. Buckley stated that in seeking assistance for physicians in high-risk specialties, she does not want to jeopardize the effort or complicate reinsurance process for the association.

In response to Ms. Buckley's concerns, Mr. Heffner stated it might be possible to assist physicians in high-risk specialties; however, he is not aware of any options for such assistance. He added that tail coverage is available to physicians from the carrier that is not renewing their medical malpractice insurance.

Mr. Hettrick asked how the assessments and tail related to the association will be addressed in the future and questioned if the state will assume a liability.

According to Ms. Batjer, Governor Guinn's intention in establishing the association is to address the current medical malpractice crisis in Nevada and to immediately provide liability insurance to doctors who are in a "nonrenewed" status. It is anticipated that the association will be a short-term plan and will be converted into a domestic stock insurer. It will operate in a proper and conservative manner and the underwriting will be carried out appropriately, she said.

Mr. Heffner explained that if the association is converted into a stock company, options for addressing the tail situation may include: (1) a loss portfolio transfer wherein the association essentially buys some type of coverage from a provider (i.e., a reinsure); or (2) an offer by the market to provide prior acts coverage so that the association would not have continued exposure.

Mr. Hettrick stated that he agrees with the establishment of the association; however, he stressed the importance of proper management to prevent substantial costs to the State of Nevada in the future.

Responding to Mr. Hettrick's comments, Mr. Heffner stated that the Division of Insurance shares his concerns about the association. He explained that the association will charge progressive rates, which will develop from an immature to mature status from the first through fifth years. The rates were projected for one or two years, but that does not represent a mature rate for a person who is developing experience, he said. Mr. Heffner noted that as a physician gains experience within the association and the group's exposure increases from more procedures being conducted within that period of time, the rate will increase until approximately the fifth year when it matures.

In response to questions by Mr. Anderson concerning the association, Ms. Batjer explained that its board of directors will enter into contracts for insurance services and the underwriting will be conservative. The association will begin collecting premiums on April 15, 2002, she said. Ms. Batjer noted that in the short term, there will not be a need for capitalization because there will not be any loss perceived or accepted by the association for approximately 12 to 18 months. Therefore, she stated, there will not be any claims against the association for a period of time while those premiums are accumulating in the association's fund. She added that the association is perceived to be a short-term solution and eventually will be acquired.

Further responding to Mr. Anderson's questions, Ms. Batjer estimated that more than 100 policies (not individual doctors) will be under nonrenewal status by June 2002. She noted that from April to June 2002, a large number of physicians will be in the category of nonrenewed and the association is their only alternative for medical malpractice insurance coverage.

Janice Moskowitz, Lead Actuary, Property and Casualty Section, Division of Insurance, Nevada's Department of Business and Industry, Carson City, explained that:

C The current proposal involving the association provides that doctors will not carry over a tail to the plan. Therefore, any claims that are made while a doctor is with the plan will be covered.

C Although the plan will have some initial legal expenses to defend a physician, it will be funded so that the premium dollars collected from doctors will cover those costs as well as the ultimate claim payment.

C The $250,000 that has been allocated for the association will cover initial administrative expenses and is not intended to pay claims.

Answering a question by Senator Townsend, Ms. Moskowitz explained that the association's board of directors will establish underwriting guidelines. She noted that a doctor with a loss experience that is significantly higher than is typical for a certain class of business might be uninsurable under this plan.

Senator Townsend asked if it is normal for a new insurance company to not "pick up" the tail.

According to Mr. Heffner, coverage for medical malpractice is based on claims made, and a loss must take place and be reported to the physician's insurance company during that particular policy period. He explained that a typical insurance policy for a business, home, or vehicle is based on occurrence meaning that a loss has to take place during the policy period and reporting is not "as big a deal." An occurrence-based insurance contract does not involve a tail.

Continuing, Senator Townsend stressed that the association should be a temporary measure that does not jeopardize the state in the future. He mentioned that certain doctors have put together plans for their own insurance company, which includes a tail, and asked if the relationship such activity in the marketplace may have with the association has been addressed.

Ms. Batjer replied that Governor Guinn is hopeful that other insurance companies will provide medical malpractice insurance in Nevada.
Chairwoman Buckley thanked Ms. Batjer, Mr. Heffner, and Ms. Moskowitz for their presentation and commended Governor Guinn for promptly addressing the state's medical malpractice crisis with an intermediate solution.

DISCUSSION OF THE CURRENT CONCERNS INVOLVING MEDICAL MALPRACTICE IN NEVADA

TESTIMONY FROM MEMBERS OF THE MEDICAL COMMUNITY

Dr. Robert W. Shreck

Dr. Robert W. Shreck, President-Elect, Nevada State Medical Association (NSMA), advised that he is a family physician and has been in private practice in Las Vegas for 25 years. Dr. Shreck informed the subcommittee that:

C Since the spring of 2001, Nevada has experienced a growing crisis of medical professional liability insurance coverage and availability. While this crisis appears to be part of a national phenomenon and results from the national corporate decisions of various insurers, specifically the St. Paul Fire and Marine Company, it has resulted in the most extensive crisis of coverage and physician availability in Nevada during the last 30 years. This crisis must be addressed effectively or Nevada's health care system, particularly in southern Nevada, is at risk of failing.

C The NSMA appreciates the actions taken by Governor Guinn and Ms. Molasky-Arman, Nevada's Commissioner of Insurance, to address the nonavailability of medical liability insurance in Nevada. These emergency measures were critical but will fall short in the long-term unless explicit legislative action is taken to address the underlying cause of this crisis. The NSMA is grateful to this subcommittee and the legislative leadership of the Nevada State Senate and Assembly for their responsiveness to the medical malpractice issue.

C It is the NSMA's position that Nevada's current medical malpractice crisis began in the year 2000.

C In January 2002, the NSMA surveyed its members to identify their experiences with medical liability insurance between 2000 and 2001. This survey determined that physicians in Nevada experienced major increases in their medical liability insurance costs before the current crisis. Additionally, it found that as a result of medical liability insurance costs in the state some physicians have:

1. Changed their practice patterns (e.g., instituting defensive medicine).

2. Experienced difficulty in recruiting new physicians.
3. Decided to relocate their practice to another state or retire earlier than previously anticipated.

Please see Item No. 1 of Exhibit B, titled "Nevada State Medical Association—Professional Liability Insurance Survey—March 21, 2002," for details of the survey conducted by the NSMA in January 2002. The NSMA intends to survey its members again within the next year to further identify their experiences with medical liability insurance.

Continuing, Dr. Shreck provided the subcommittee with a chronology of the events beginning in September 2000 that led to the current difficulties Nevada's physicians are encountering in securing medical malpractice insurance. Please see Item No. 2 of Exhibit B, titled "Chronology of the Nevada Medical Liability Insurance Crisis (Compiled by the Nevada State Medical Association)," for details.

Dr. Shreck advised that although the medical malpractice crisis primarily has affected southern Nevada, it has an adverse effect on the state's entire health care system. He said the most critical period of the pending crisis likely is to be in July 2002 when most physicians covered by St. Paul face nonrenewal of their policies. Dr. Shreck noted that although the Nevada Essential Insurance Association will ensure availability of coverage, the impending costs for some physicians are so large that they will have to move their practice to another state. He further mentioned that in March 2002, the Nevada Hospital Association reported that 91 physicians on hospital staffs in this state are leaving their practice.

Concluding his remarks, Dr. Shreck stated that the NSMA will work with the subcommittee to resolve Nevada's medical malpractice crisis.

Lawrence P. Matheis

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada, provided the subcommittee with Item Nos. 1 and 2 of Exhibit B, which were reviewed by Dr. Shreck during his testimony, as well as a list, titled "Nevada Medical Liability Insurance Crisis: Newspaper and Internet Stories (Compiled by the Nevada State Medical Association)." Please see Item No. 3 of Exhibit B for details. Mr. Matheis advised that the NSMA will conduct another survey of its members concerning their experience with medical malpractice insurance.

On behalf of the NSMA, Mr. Matheis expressed appreciation to Governor Guinn, Nevada's Commissioner of Insurance, and the legislative leadership of the Nevada State Senate and Assembly for the steps they have taken toward resolving the medical malpractice crisis in this state. Mr. Matheis advised that the level of frustration and sense of hopelessness is high among physicians affected by the current situation. He said this crisis will result in the loss of physicians, the erosion of essential health care services (particularly in Clark County), and an overall decline in the health care system.
Responding to questions by Mr. Anderson, Mr. Matheis explained that certain senior physicians choose to retire because of the liability associated with their profession. In some cases, he said, their insurance costs exceed their expected incomes. Mr. Matheis noted that early retirement by senior physicians is particularly important in Nevada because the state has an older physician cadre than those of many other states. He further advised that there is a demand throughout the country for gynecologists, obstetricians, specialty surgeons, and younger physicians. However, many of these individuals are changing to other areas with lower overhead costs.

The Chairwoman asked Mr. Matheis to provide the subcommittee with the following data regarding the physicians who are leaving their practices in Nevada:

C A list of the doctors who are leaving.

C How long these doctors practiced.

C The specialties of the doctors leaving.

C The claims history of the doctors leaving.

C Any other factors contributing to their decision to leave.

In response to a question by Mr. Anderson, Dr. Shreck advised that defensive medicine relates to informed consent. In cases involving informed consent, a physician must disclose the risks associated with a particular procedure even though the occurrence of such problems is minimal. Dr. Shreck noted that in emergency situations, physicians tend to practice defensive medicine (e.g., performing tests that might not be conducted by a doctor treating a regular patient) because they treat a patient on one occasion and have no continuity of care or follow-up examination. He said emergency physicians know if the treatment they administer is not completely successful, they may be subject to a lawsuit.

Dr. Raj Chanderraj

Dr. Raj Chanderraj, President, Clark County Medical Society (CCMS), Las Vegas, Nevada, advised that he is a specialist in cardiovascular diseases and has been in private practice in Las Vegas for the last 25 years. Dr. Chanderraj also serves as Co-chair of the Nevada State Medical Association's Commission on Governmental Affairs and is a member of NSMA's Council. He noted that he was speaking on behalf of the Clark County Medical Society.

During his opening remarks, Dr. Chanderraj advised that the CCMS does not want to hold Nevada's Governor, Legislature or citizens "hostage" to resolve the current medical malpractice crisis. He said the organization expects a civil process to address these issues.

Dr. Chanderraj attributed the current medical malpractice crisis in Nevada to:

C Insurance Carriers. High dividends from the stock market allowed several competing insurance firms to offer "predatory" prices to physicians and keep their pricing structure low rather than to seek incremental increases.

C Rate Rise Cycles. The 7- to 10-year rate cycle of increasing premiums does not occur in states with noneconomic damage caps.

C Jury Awards. Clark County has witnessed a significant increase in jury awards and there has been a disproportionate increase in the awards for noneconomic damages relative to the economic damages. As a result, some insurance companies set aside significant reserves for each claim filed. There is an "enormous" financial liability for the carrier when the number of cases proceeding to court increases each year.

C Jury Mindset. Juries are becoming increasingly sympathetic toward injured patients.

C Frivolous Cases. Clark County has experienced a significant increase in the number of cases that are being filed after the screening panel has determined that medical malpractice has not occurred. Medical malpractice cases are being filed in district court before the screening panel renders a decision.

C Trial Lawyers' Contentions. Although some trial lawyers have indicated that only a few "bad apple" physicians are contributing to the present medical malpractice crisis, approximately 50 percent of the doctors in Nevada have had claims filed against them in the last few years.

C Physician's Conduct. The federal, state, and local regulations that a physician must follow when providing care to a patient are a "nightmare." They prevent a doctor from administering "complete care" to a patient and addressing the person as a "whole human being." As a result of these restrictions and decreasing reimbursements, 84 percent of the nation's physicians are practicing defensive medicine, which costs $14 billion annually. Physicians seldom want to settle medical malpractice claims because they are confident that they provided proper medical care to their patients. However, it is the opinion of the courts and trial lawyers that appropriate "legal medical care" was not administered.

Dr. Chanderraj stressed the importance of preventing medical malpractice from occurring, perhaps through an educational process for physicians. He further stated that patients who are injured by negligent acts should be allowed to pursue their legal rights and seek adequate compensation for economic damages and health care needs.

Continuing, Dr. Chanderraj provided the following solutions to the current medical malpractice crisis:

C Enact a civil justice reform package that will withstand any legal challenges.

C Place caps on noneconomic damages.

C Require mandatory binding arbitration for all cases adjudged "probable malpractice" by the screening panel. Arbitration should proceed for all cases carrying a verdict of "no malpractice" by the screening panel.

C Require periodic payments for damages that exceed $50,000.

C Provide for a defendant's right to present evidence of collateral damages.

C Establish an eight-year statute of limitation for birth injuries.

C Place limits on the attorney's fees of a plaintiff.

Concluding his presentation, Dr. Chanderraj urged the subcommittee to not compromise the health care of Nevada's citizens for "political expediency." Please see Exhibit C for details of Dr. Chanderraj's remarks.

Responding to questions by Mr. Anderson, Dr. Chanderraj stated that:

C Arbitration should be required for all cases in which the screening panel renders a decision of "probable malpractice" or "no malpractice."

C During the last couple weeks, trial lawyers have attributed high jury awards to physicians who turn down offers in settlement conferences.

C Most medical malpractice claims that are processed through California's arbitration system are settled in less than five years. Injured patients receive care and compensation more quickly than if they proceed to trial.

Chairwoman Buckley noted that at a future meeting the subcommittee will discuss mandatory arbitration as a possible solution to the medical malpractice crisis. She emphasized the importance of finding solutions that do not cause additional problems. Ms. Buckley also stated that at the subcommittee's next meeting perhaps she would ask Dr. Chanderraj to address the situation in which some states with noneconomic caps are experiencing increases of 40 percent to 50 percent in medical malpractice premiums.

Dr. Florence Jameson

Dr. Florence Jameson, Clark County Obstetrics and Gynecology Society, Las Vegas, Nevada, advised that she has been practicing obstetrics and gynecology in Nevada since 1985 and was speaking on behalf of obstetrician gynecologists. Dr. Jameson expressed her opinion that Nevada's health care system is "falling apart" as many of her colleagues and specialists in other medical fields are moving their practices to other states. These physicians cannot afford the medical malpractice insurance premiums being charged in Nevada, she said. Dr. Jameson further noted that the state's prenatal care is rated as one of the "poorest" in the nation and probably will be at the bottom of this list in the near future.

Continuing, Dr. Jameson advised that for several years, obstetricians in Nevada have faced financial, mental, and physical hardships and their situations have become worse since the current medical malpractice crisis evolved. Dr. Jameson stated that in an effort to compensate for decreasing medical reimbursements and meet financial obligations, she has extended her workday and increased from 24 to approximately 40 the number of patients she treats daily. She noted that she also must fulfill her other duties such as delivering babies and performing surgeries and said it is not "humanly possible" for her to continue working at this pace. Further, Dr. Jameson informed the subcommittee that:

C During recent years almost every obstetrician has experienced a decrease in his or her revenue because of

lower reimbursements and increased medical malpractice insurance premiums. They are unable to pass business expenses on to their patients. Most these physicians have not had a paycheck for several months, must borrow money to continue their practices, and are on the brink of bankruptcy. During the last year, nearly a dozen obstetricians have reorganized and filed bankruptcy.

C Some of Nevada's obstetricians who are close to retirement age have chosen to retire early as a result of the current situation. The majority of obstetricians who are closing their practices are "very young" and at the "peak and prime" of their career.

According to Dr. Jameson, it is difficult or impossible for most obstetricians to pay for tail coverage and without it they will not be able to continue their practices. She urged the subcommittee to assist these physicians in obtaining this coverage, to take whatever emergency measures are necessary to "save" Nevada's health care system, and expressed support for tort reform in Nevada.

The Chairwoman noted that the subcommittee is committed to taking action that will result in good public policy and an end to the medical malpractice crisis in Nevada. Ms. Buckley said she will consult with Senator Raymond D. Rawson, Chairman of Nevada's Legislative Committee on Health Care (*Nevada Revised Statutes* [NRS] 439B.200, "Creation; appointment of and restrictions on members; officers; terms of members; vacancies; annual reports"), to determine if he is considering modifications to Medicaid and Nevada Check-Up reimbursements in an effort to assist physicians. She further noted that the subcommittee might review these programs during a future meeting.

Dr. Irwin Glassman

Dr. Irwin Glassman appeared before the subcommittee and noted that he has been practicing obstetrics and gynecology in Las Vegas, Nevada, since 1981. Ms. Buckley advised that Dr. Glassman is her personal physician.

During his testimony, Dr. Glassman discussed the effect the medical malpractice crisis has had on his practice. Among other things, Dr. Glassman stated that:

C At the beginning of October 2001, the members of his practice received a letter from The St. Paul Companies stating that their medical malpractice insurance policy would not be renewed when it ended on November 30, 2001. Therefore, these physicians immediately sought new coverage.

C On November 28, 2001, his practice received a written estimate for a policy that would become effective December 1, 2001. The premium for four doctors would cost $840,000, which included $280,000 in tail coverage and $560,000 for medical malpractice insurance coverage for one year. In previous years, the practice paid a premium of $155,000.

C On December 1, 2001, $420,000 of the $840,000 premium was due. This payment amounted to over one-fifth to one-quarter of the practice's gross net receipts. The physicians in the practice could not attain a bank loan to make this payment and continue their business. Therefore, they had to borrow money from other sources such as family members and forego their salaries for one and one-half to two months.

C The practice will soon be up to date with its office rental expenses. With the exception of one physician, who has medical malpractice coverage for gynecology only, all of the doctors in the practice have coverage for obstetrics and gynecology. The practice will attempt to purchase obstetric coverage for that physician in the near future.

Dr. Glassman noted that insurers are reluctant to fill the void that has occurred in the medical malpractice insurance market since St. Paul's announced that it no longer would provide such coverage. He expressed his opinion that there is not a shortage of money in the insurance industry and said he expected a "feeding frenzy" of insurance companies when St. Paul withdrew from this market. Dr. Glassman stated that only Physicians Insurance Company of Wisconsin expressed interest in providing medical malpractice coverage; however, it wanted to "cherry pick" physicians who did not have claims against them.

Concluding his remarks, Dr. Glassman advised that the salaries of obstetricians in southern Nevada are among the

lowest for that specialty in the United States. He stressed that it is difficult for these physicians to pay increasing medical malpractice premiums with their current incomes.

Dr. James S. Tate Jr.

James S. Tate Jr., M.D., F.I.C.S., F.A.C.S., of Las Vegas, Nevada, advised that he is a trauma surgeon, President of the of the West-Crear Medical Society, and Medical Commander of the Nevada One Disaster Medical Assistance Team. Dr. Tate was appearing on behalf of the West-Crear Medical Society, which is a component of the National Medical Association and represents African American physicians in Nevada.

Dr. Tate stated that the current medical malpractice crisis has been developing for 20 years. He said although certain groups and individuals expressed concern about the effect that increasing malpractice premiums eventually would have on the health care system, this issue was not addressed. Dr. Tate noted that doctors in Nevada cannot afford malpractice insurance and, therefore, are beginning to leave the state. Further, he commented that the State of Nevada "stands at the brink of a healthcare catastrophe unseen in this country."

Among other things, Dr. Tate discussed:

C The unique perspective of African American physicians. Their patients tend to be "sicker," delay care longer, and have less money and fewer resources to treat their medical problems. These factors may be attributed to the distrust within the African American community of the medical profession.

C Certain consequences of Nevada's medical malpractice crisis. In June 2002, six trauma surgeons will be leaving the University Medical Center's (UMC's) Trauma Center in southern Nevada and "there is no way that those six can be replaced." They are general surgeons with special certification. These trauma surgeons also work at other hospitals in the community and, therefore, their departure will affect those facilities. If the Trauma Center is forced to close, the most critically ill or injured patients will have to be treated at hospitals that are not equipped to provide trauma care. It is difficult to recruit trauma surgeons because of the liability, low pay, and working hours related to this specialty.

C The possible causes of increasing medical malpractice insurance premiums and the opposition to tort reform by the Nevada Trial Lawyers Association:

1. "Mega awards" by juries. Such awards in medical malpractice cases do not improve health care. They force physicians to practice defensive medicine, which increases health care costs.

2. Several lawsuits against one physician. It is unlikely that this situation could cause medical malpractice premiums to increase to their current rate in Nevada.

3. The involvement of trial lawyers in frivolous lawsuits.

Continuing, Dr. Tate stated that medical malpractice does occur. He briefly spoke about an incident in which a 24-year-old black male with appendicitis did not receive proper treatment from a physician at a Quick Care center in southern Nevada and ultimately suffered from a ruptured appendix. Dr. Tate said he offered to serve as an expert witness for this patient at no charge. However, the patient could not find a trial lawyer who was willing to represent him because the physician's liability was capped at $50,000.

Concluding his remarks, Dr. Tate stated that it is more important to resolve this issue than it is to determine who is at fault for its existence.

Please see Exhibit D for details of Dr. Tate's remarks.

Bill Welch

Bill Welch, President/Chief Executive Officer, Nevada Hospital Association (NHA), Reno, Nevada, advised that significant increases in medical malpractice insurance costs during the last 10 to 15 years have resulted in most hospitals becoming self-insured. He said although these facilities are self-insured, they still experience rate increase

problems to maintain adequate reserves for potential liability exposure. Further, the cost of "stop loss insurance," which hospitals purchase for protection from losses beyond their own self-funded retention, has been doubling.

Mr. Welch stated that on March 1, 2002, the NHA conducted a survey of its member hospitals to measure the extent of medical malpractice insurance woes. He noted that an overwhelming majority of the 25 hospitals that responded to the survey has experienced a range of rate increases between 6.5 percent and over 100 percent in medical malpractice insurance costs during the last five years. Most of the respondents anticipate rate increases between 11 percent and 222 percent for medical malpractice premiums during the next fiscal year, he said.

Continuing, Mr. Welch discussed the effect of the medical malpractice crisis on Nevada's hospitals and the care they provide. He stated that:

C Hospitals are the "safety net providers" in communities. Some of Nevada's hospital emergency rooms, especially those in Clark County, are experiencing problems with overcrowding. (When an emergency room is full and can no longer safely accept additional patients, the hospital is placed on "divert" status. If a hospital is on divert, ambulances are redirected from the hospital emergency room to another hospital.) This situation could be worsened by the medical malpractice insurance crisis because the number of patients using hospital emergency departments for basic primary care may increase. Therefore, it will become more difficult for persons who actually need emergency care to access an emergency room.

C The responses to the previously-mentioned NHA survey also indicated that:

1. Ninety-one medical staff privileges in Clark County hospitals have been affected by leaves of absence, reductions in the scope of practice, or resignations.

2. In northern Nevada hospitals, six medical staff privileges have been affected by resignations (three physicians) and reductions in the scope of practice (three physicians).

These decreasing medical staff privileges will present challenges to hospitals in ensuring adequate emergency room physician in-house coverage and to specialty physicians who must be available on backup call to in-house emergency physicians. Additionally, patients will have less access to physicians on an outpatient basis where more often than not they should access health care.

C The medical malpractice insurance policies for six trauma surgeons will expire within the next 60 days. The ability of these physicians to obtain coverage may determine whether UMC can offer physician coverage on a 24-hour basis and maintain its designation as a trauma center.

C As physicians who practice obstetrics and gynecology exit the state or reduce the obstetrics portion of their medical practice, already crowded emergency rooms will be the only option for some patients. Emergency rooms could potentially become outpatient birthing centers for individuals who have not had prenatal care. The risk and complexity of the delivery will be unknown until the middle of the process.

Concluding his testimony, Mr. Welch stressed the importance of focusing upon long-term solutions to Nevada's medical malpractice insurance crisis and offered to assist the subcommittee in reaching this goal. He advised that the NHA is surveying other states to determine how they are addressing increases medical malpractice costs and will provide the results of this survey to the subcommittee.

Chairwoman Buckley asked Mr. Welch to determine exactly how many doctors constitute the 91 medical staff privileges that have been affected by a leave of absence, reduction in the scope of practice, or resignation.

Please see Exhibit E for details of Mr. Welch's remarks.

Dr. Robert E. Kessler

Robert E. Kessler, D.O., P.C., advised that he practices family medicine in Boulder City, Nevada. Dr. Kessler noted that in his capacity as a health policy fellow, he recently attended a meeting at which health policy fellows from throughout the United States discussed professional liability insurance.

During his presentation, Dr. Kessler emphasized the importance of taking steps to help patients maintain access to high-quality, affordable health care. He said the fact that medical specialists are leaving Nevada is "just the tip of the iceberg" in this medical malpractice crisis. Among other things, Dr. Kessler stated that:

C Twenty percent of all malpractice lawsuits stem from the type of examinations that family doctors perform every day. States that have not enacted balanced tort reform laws to address increasing medical malpractice insurance costs have had difficulty recruiting physicians in any specialty. Nevada will face a shortage of primary care physicians in the near future.

C Statistics indicate that there will be a national shortage of physicians by 2010.

C The quality of care is suffering because as the availability of specialists diminishes, family doctors who remain in the state will treat more patients and have less time to spend with each one. Delayed care, less time per patient, and fewer specialists will result in more medical errors.

C Professional liability insurance has been identified by one health care industry analyst as the most important driver of medical inflation. It will make up 10 percent of medical inflation in 2002.

C The Congressional Budget Office estimates that national tort reform would save Medicare $1.5 billion. Eight percent of all medical expenses, including Medicaid costs, are "wasted" on defensive medicine, which primarily is practiced to prevent lawsuits and not to promote health.

C A patient who is injured as a result of medical malpractice should be compensated; however, a system that helps a victim and prevents abuse is needed.

C Tort reform must be a major part of a long-term solution to Nevada's medical malpractice insurance crisis. It should include: (1) periodic repayment of future losses or expenses; (2) a $250,000 limit on noneconomic damages; (3) limits on attorney's contingency fees; and (4) a reasonable statute of limitation. Every state that has successfully addressed increasing medical malpractice costs has instituted tort reform.

Dr. Kessler mentioned the importance of preventing medical errors and said some attorneys claim that there are many medical malpractice cases. He briefly discussed the background and results of certain studies concerning the number of medical malpractice incidents and explained that it is difficult to determine if a medical error actually led to an adverse effect. Dr. Kessler also explained that various factors in a particular study affect its conclusions.

Additionally, Dr. Kessler told the subcommittee that:

C The manner in which access to and the costs and quality of care should be considered before information about an adverse effect of a medical procedure is made available to the public. Although this approach would improve public information, physicians would refuse to accept difficult cases and practice more defensive medicine.

C The screening panel has not been effective.

C Tort reform has been a successful factor in controlling medical malpractice insurance costs in the States of California, Illinois, Indiana, and Michigan. In determining if tort reform should be instituted in Nevada, consideration must be given to: (1) a patient's civil rights; (2) access to and quality of care; (3) an individual patient's ability to collect an unlimited amount of money; and (4) the price of medical malpractice insurance.

C In 1984, Indiana initiated its first tort reform system. The University of Indiana performed a three-year review of this program in 1987 and found that in comparison to Michigan, which enacted tort reform in 1994, Indiana had: (1) 30 percent more settlements; (2) twice as many cases that were settled for more than $500,000; and (3) more cases settled for more than $1 million. The median medical malpractice insurance cost in Indiana and Michigan was one-half of Nevada's before this crisis occurred.

Please see Exhibit F for details of Dr. Kessler's remarks. Exhibit F also includes a Nevada Osteopathic Medical Association "Fact Sheet" concerning professional liability insurance.

Dr. Robert McBeath

Dr. Robert McBeath, a urologic surgeon who has been practicing in Las Vegas, Nevada, during the last eight years appeared before the subcommittee on behalf of Concerned Physicians of Nevada.

During his presentation, Dr. McBeath informed the subcommittee that:

C The medical malpractice crisis primarily is centered in southern Nevada. Medical malpractice premiums for physicians in northern Nevada have increased approximately 10 percent during the last year. Many of the current insurers in the state are willing to write new policies for physicians in northern Nevada but will not write these policies for physicians in southern Nevada.

C More than 76 percent of all medical malpractice claims filed in the state from 1995 to 1999 originated in Clark County.

C During the last 15 years, the number of medical malpractice claims closed with indemnity payments has risen dramatically and has outpaced the increase in total claims. From 1985 to 1999, the total number of claims closed increased 33 percent and the total payout for each claim rose 329 percent. This 329 percent increase in the average award or settlement is directly related to the "explosion of the astronomical jury awards" for noneconomic damages.

C It is estimated that a payout for a medical malpractice claim is distributed as follows: (1) trial lawyers (45 percent); (2) injured patient (35 percent); and (3) administrative costs (20 percent).

Dr. McBeath stated that the members of his organization appreciate the assistance that Governor Guinn and Ms. Molasky-Arman have provided to physicians by establishing the Nevada Essential Insurance Association. However, he said, this action addresses the availability of medical malpractice insurance and affordability is a "core problem" in the medical malpractice crisis that also must be addressed.

According to Dr. McBeath, any reform package designed to stabilize malpractice premiums and the medical liability insurance market must have at its core a mechanism to cap unaffordable increases in the size of settlements. He briefly discussed the effectiveness of California's Medical Injury Compensation Reform Act (MICRA), which includes a $250,000 cap on noneconomic damages.

Concluding his remarks, Dr. McBeath suggested that the Nevada Legislature: (1) provide for immediate economic stabilization of physicians' malpractice premium rates; and (2) adopt a comprehensive reform package based on MICRA. He mentioned the possibility of allowing physicians to collectively bargain with payers so they can effectively negotiate and pass along additional costs.

Please see Exhibit G for details of Dr. McBeath's remarks.

In response to a question by Ms. Buckley, Dr. McBeath explained that physicians are regulated under the federal Sherman Antitrust Act, which prevents them from bargaining as a unit. He noted that physicians are treated as independent contractors and if they participate in collective bargaining they are subject to damages for collusion and price fixing. Dr. McBeath added that the State of Texas allows physicians to form collective bargaining units. He also advised that a bill that proposes to allow physicians to collectively bargain was recently introduced in the United States Congress.

The Chairwoman asked Vance A. Hughey, Principal Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, to discuss his recent research concerning physicians' rights as they relate to this subject.

Mr. Hughey reported that in 1986, Congress enacted a law that allows for two methods of insurance: (1) risk retention; and (2) purchasing groups. He explained that the purchasing group concept is being used in some states by doctors, hospitals, and so on. Further, these entities are fairly easy to create and are not directly under the control of a state insurance division.

Chairwoman Buckley suggested that the subcommittee address this topic at a future meeting.

A brief discussion ensued between Mr. Hettrick and Dr. McBeath concerning physicians and collective bargaining. Dr. McBeath advised that there is a sentiment at the national level that a law recognizing collective bargaining by physicians would solve many problems that these professionals experience in the insurance marketplace.

The Chairwoman directed staff to prepare for the subcommittee's next meeting an analysis concerning collective bargaining by physicians on a nationwide basis and any related federal efforts that have been made.

Mr. Anderson commended Dr. McBeath and his colleagues on their presentations and said it is clear that they "care a great deal" about their patients.

Responding to a question by Mr. Anderson, Dr. McBeath explained that "volatility" in noneconomic and punitive damages related to medical malpractice cases is dramatic and can be very high. He further noted that this volatility creates uncertainty in the settlement process and high jury awards tend to increase the cost of cases that are settled. Dr. McBeath said if this volatility were removed from jury awards by instituting a cap on noneconomic and punitive damages, insurance companies could calculate total economic and noneconomic damages and, therefore, costs would be reduced and the market, premiums, and settlement process would be stabilized.

According to Dr. McBeath, most studies have determined that medical malpractice costs may be controlled by instituting:

C Caps on noneconomic damages.

C A collateral source income rule, in which certain information (e.g., a plaintiff is eligible to receive money through a disability policy) is made available to a jury when it is determining a settlement amount.

Chairwoman Buckley stated that this topic will be addressed by the subcommittee during a future meeting.

NATIONAL PERSPECTIVE: CONCERNS INVOLVING MEDICAL MALPRACTICE INSURANCE COVERAGE AND EFFORTS BY OTHER STATES TO ADDRESS THE PROBLEM
(Continued)

The Chairwoman explained that the subcommittee would return to Agenda Item No. II and provide the members an opportunity to ask questions of Mr. Calvo.

In response to an inquiry by Mr. Anderson, Mr. Calvo stated that:

C The nation's experience with medical malpractice was "relatively good" during the 1990s and, therefore, only recently has the effect of managed care and reimbursements on medical malpractice become evident. A comprehensive study concerning this topic is not yet available.

C Volatility in the practices of providers occurs when there are sudden dramatic increases in their premiums and they do not have an opportunity over time to factor that cost into renegotiations of their reimbursements. Medical malpractice premiums in New York State are "very high," but have been relatively stable because they have consistently increased over time.

C The difficulty some insurers have experienced in the medical malpractice market is based upon their business decisions and premiums. Insurance premiums are supposed to reflect future estimated costs and insurers should not try to make up for losses that resulted in past years when they did not accurately price their product.

Answering a question by Ms. Buckley, Mr. Calvo advised that there is a strong possibility that a stopgap measure could be put in place for the purpose of covering the tail relative to medical malpractice insurance. He stressed the importance of including adequate funding, as well as an exit strategy in such a system. Mr. Calvo also noted that:

- Stopgap measures are markets of last resort with inherently high prices. They address the availability, not affordability, of medical malpractice insurance.

- When a state accepts this type of responsibility, it does not have any more certainty than a private insurer that the product it offers will be appropriately priced. Both private and public entities face the same challenges in this role and ultimately, the premium must be paid.

Senator Townsend inquired if there is a correlation throughout the nation between the inability to settle a medical malpractice case and premiums. He asked why a doctor would not agree to a settlement when the outcome of a jury trial is unpredictable.

Ms. Moskowitz (previously identified on page 16 of these minutes) explained that most medical malpractice insurance policies contain a consent to settle clause, which provides a doctor overall veto power in a settlement.

According to Mr. Calvo, insurers tend to be more willing than physicians to settle a medical malpractice case because oftentimes, physicians are of the opinion that they did nothing wrong and that agreeing to a settlement offer is a poor reflection on them.

Responding to further questions by Senator Townsend, Ms. Moskowitz explained that:

- During a review of a company's reserves for medical malpractice insurance, Nevada's Division of Insurance generally focuses upon whether the amount is adequate for the business to maintain solvency. The variability and volatility of malpractice claims make it difficult for insurers to establish appropriate reserves.

- Generally, through classification rate-making by insurance companies, physicians who are a greater risk pay higher premium rates. Experience modification plans, loss free credits, and schedule rating allow insurers to charge higher rates for doctors who are deemed to be worse than average risks.

Mr. Calvo reported that geographic location and medical specialty tend to be more significant than claims history in predicting risk and driving malpractice insurance costs. As a result, he said, a deterrence mechanism is not as effective as it may be in other lines of insurance.

At Senator Townsend's request Mr. Calvo discussed the effect that geography may have on medical malpractice premiums. Among other things, Mr. Calvo explained that:

- Some of the nation's most expensive medical malpractice rates are in its metropolitan areas (e.g., Broward and Dade Counties, Florida; Chicago, Illinois; Detroit, Michigan; Las Vegas, Nevada; and New York City, New York). The state of West Virginia is one of the few states in this category.

- Caps on noneconomic damages seem to assist in controlling costs throughout the State of Michigan. However, physicians in Detroit often pay three times as much for coverage as their colleagues who practice in other areas of the state.

- State and local economic, legal, and social environments influence medical malpractice costs. Providers in certain communities may conduct business under difficult circumstances (e.g., the consumers they serve may be less able to pay for treatment and, therefore, the physicians' ability to purchase new equipment may be limited). The number of errors that occurs in those environments does not necessarily attribute to high premiums. It is, however, the willingness and likelihood that persons who may or may not be injured through negligence will bring a claim against a doctor. Some societies are more litigious than others.
- Society can override a jurisdiction's legal structure. For example, the State of Minnesota does not limit economic damages in medical malpractice cases. Currently, it has favorable combined ratios and low premiums. Massachusetts is a more litigious state than Minnesota and although it has caps on economic damages, it is experiencing problems with malpractice rates.

- The most expensive medical malpractice markets in the United States probably share commonalities that drive costs. However, certain data concerning these factors is not adequately available for decision-making

purposes. Aggregate information on expenses associated with loss adjusted expenses, losses, and premiums is available. There is no uniform collection system in this market and insurers resist the compilation of certain data (e.g., who is paying more and the reason why) because it is expensive.

Senator Titus expressed concern about making decisions that will affect Nevada's medical malpractice insurance system based on information that is not available and data that is extrapolated from aggregate material rather than a comparison of details.

Mr. Calvo responded that aggregate information on expenses associated with trials, loss adjustments, losses, and premiums is available. However, he said it is difficult to make determinations concerning average premiums and settlement information. Mr. Calvo offered to provide as much information as possible and assist the subcommittee in making "sound public policy."

Senator Townsend suggested that the subcommittee consider the possibility of comparing Clark County with common jurisdictions in the United States to determine if the county is being discriminated against in the medical malpractice market.

Chairwoman Buckley advised that the subcommittee will address this subject at its next meeting.

HISTORICAL PERSPECTIVE: CHRONOLOGY OF LEGISLATIVE ACTIONS TO ADDRESS PAST INCREASES IN MEDICAL MALPRACTICE PREMIUMS

Due to the length of this meeting, Chairwoman Buckley asked Allison Combs, Principal Research Analyst, Research Division, Legislative Counsel Bureau, to provide copies of a document, titled "An Historical Perspective: Chronology of Legislative Actions to Address Past Increases in Medical Malpractice Premiums," to each of the subcommittee members in lieu of making her verbal presentation. Please see Exhibit H for details.

DISCUSSION OF THE CURRENT CONCERNS INVOLVING MEDICAL MALPRACTICE IN NEVADA *(Continued)*

TESTIMONY FROM MEMBERS OF THE LEGAL COMMUNITY

Bill Bradley

Bill Bradley, Nevada Trial Lawyers Association (NTLA), Reno, Nevada, thanked the subcommittee for its commitment to address the state's medical malpractice crisis. Mr. Bradley then introduced John Echeverria, a native Nevadan and son of the late Peter Echeverria who was a renowned trial lawyer in this state. He noted that Mr. Echeverria has practiced law in both California and Nevada during the last 25 to 30 years. Mr. Bradley explained that Mr. Echeverria's has a unique perspective concerning the effect that California's medical malpractice legislation has on patients and the litigation process.

Mr. Bradley advised it is the NTLA's opinion that: (1) the civil justice system did not cause or contribute to the current medical malpractice crisis; and (2) insurance companies "malpracticed" Nevada. During his presentation, Mr. Bradley made the following comments to support the NTLA's position:

C Nevada's first medical malpractice crisis occurred in the mid-1970s. As the stock market faltered in 1975, 1985, and 1995, investment income suddenly dropped and a crisis resulted in the state's medical malpractice insurance market. The civil justice system has been an "easy whipping post" in these situations.

C There is a routine cycle that starts with an economic boom, which is accompanied by aggressive insurance practices. Insurers' "life and blood" is premium dollar and investment income. Traditionally, insurers have been willing to accept losses in the medical malpractice line because they "more than make up for those losses" based on their investment income.

C In economically robust times, the insurance industry ignores underwriting requirements in search of premium dollar and provides coverage to some "real bad risks." Therefore, certain physicians in southern Nevada who have multiple claims against them are able to continue buying insurance. When the investment income of insurers plummets, they are not able to recover their investment expense and have "horrible exposure" because they have provided coverage to high-risk physicians.

C The insurance industry had a "voracious appetite" during the early 1990s and now there is a "serious hangover that resulted from poor underwriting and particularly poor claims handling experience."

Continuing, Mr. Bradley referenced a table, titled "Plaintiff Medical Malpractice Verdicts (Clark County: 1996-2001)" (Exhibit I), and briefly discussed a medical malpractice case involving permanent injury to a baby at birth. He noted that this case ultimately resulted in a jury verdict against the doctor for over $5 million. Mr. Bradley said it is important for the subcommittee determine if this physician consented to a settlement and if the same insurance company refused to insure him at a later time as a result of this verdict.

Mr. Bradley stressed that frivolous malpractice cases do not exist in Nevada. He advised that in 1985, the screening panel was instituted to: (1) screen frivolous cases; and (2) resolve meritorious cases. Further, its "mere presence" is an "incredible disincentive" to proceed with a frivolous case and the costs associated with making a presentation to this body usually vary between $5,000 and $15,000. Among other things, Mr. Bradley stated that:

C Many times, local physicians are not willing to sign an affidavit under oath that medical malpractice by another doctor occurred and caused injury to a patient because they do not want to "break the conspiracy of silence." Therefore, often it is necessary for the NTLA to seek the assistance of out-of-state physicians to initiate a claim.

C Each case that is presented to the screening panel is reviewed by three physicians and three attorneys. The NTLA has experienced difficulty in processing cases through the panel because many times physicians misunderstand medical negligence to mean that a person was intended to be injured. (Note: *Nevada Revised Statutes* [NRS] 41A.009, "'Medical malpractice' defined," states that, "'Medical malpractice' means the failure of a physician, hospital or employee of a hospital, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.")

C In 1985, the Legislature implemented the nation's "toughest loser pay system." The NTLA supports this law, which requires a medical malpractice victim who loses at both the screening panel and trial levels to pay the physician's attorney's fees and costs.

Additionally, Mr. Bradley discussed Assembly Bill 520 (Chapter 686, *Statutes of Nevada 1995*) and stated that this measure included "very fair" provisions concerning benefits from collateral sources and periodic payments as they relate to medical malpractice cases. Assembly Bill 520 also required the Nevada Legislature's Interim Finance Committee to conduct a study of claims in actions for medical malpractice filed in this state between January 1, 1985, and December 31, 1995. He said this study concluded that the state's medical malpractice system was functioning properly. Further, from 1995 to 1999, there were no apparent problems with this system. Mr. Bradley advised that other than a downturn in the economy, data is not available to explain if any events in 1999 had an effect in the current crisis.

Mr. Bradley reported that in 2001, 181 claims were filed with the screening panel in Clark County. He stated that when thousands of medical procedures are performed daily in that jurisdiction, 181 claims is not an increase in frequency. Further, the population growth in southern Nevada must be considered when reviewing these statistics.

In reference to concerns expressed earlier in this meeting by Dr. McBeath and Senator Townsend, Mr. Bradley stated that:

C Escalating health care costs are an "incredibly strong driver" in the current medical malpractice crisis. It has become increasingly expensive to care for a catastrophically injured person.

C It is important to determine why premium rates are much higher in Clark County than other jurisdictions in

the nation.

According to Mr. Bradley, St. Paul took profits from this state and the medical malpractice line each year it was in business. He explained that in 1994, St. Paul purchased Nevada Medical Liability Insurance Company, which was a successful doctor-owned company, to enter the medical malpractice insurance market. From 1997 to 2001, he said, St. Paul artificially decreased and held down prices to increase its market share and ignored its underwriting requirements. Nevada was St. Paul's largest market of physicians during this time frame. Mr. Bradley stated that a downturn in the economy, a loss in investment income, and a "disastrous earlier business practice" are among the factors that caused St. Paul to leave the medical malpractice insurance market.

Mr. Bradley said any assertion that excessive damages are a driver of medical malpractice costs in this state cannot be substantiated without communicating with the trial judge or the jurors and obtaining the details of a courtroom hearing and the related damages.

Additionally, Mr. Bradley advised that the NTLA is of the opinion that Nevada's judicial system is one of the best in the nation and its judges are "experienced" and "good." He explained that in every medical malpractice case in this state, the judge instructs the jury that sympathy cannot enter into its verdict. Further, a judge may reduce a verdict if he or she is of the opinion that it is "out of line" with the evidence presented or based on passion, prejudice, or sympathy.

Referring to Dr. Chanderraj's testimony, Mr. Bradley stated that:

- The mentality of juries is not changing to the sympathy of the patient.

- A medical malpractice case must proceed through the screening panel before a suit may be filed in a court.

Mr. Bradley informed the subcommittee that the NTLA "adamantly" opposes tort reform. During the last 20 years, its position has been that tort reform does not lower insurance premiums and guarantees profits for insurers. Mr. Bradley further advised that:

- Twenty years ago, the American Tort Reform Association and other entities reported to the California Legislature that enacting tort reform would reduce medical malpractice premiums. Every state that has enacted tort reform received this advice; however, statistics indicate that premiums have not decreased.

- The status of the nation's economy is the "clearest predictor" of premium rates.

- In reference to a report titled *Premium Deceit: The Failure of Tort Reform to Reduce Insurance Premiums*:

    1. The president of the American Tort Reform Association stated two years ago, "We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance premiums."

    2. Two years ago, the chief lobbyist for the American Tort Reform Association said, "Many tort reform advocates do not contend that restricting litigation will lower insurance rates and I've never said that in 30 years."

    3. A press release from the American Insurance Association eight days ago stated, "Insurers never promised that tort reform would achieve specific savings."

According to Mr. Bradley, methods other than tort reform should be considered to ensure the availability of affordable medical malpractice insurance in Nevada.

Mr. Bradley then discussed caps on noneconomic damages. He prefaced his comments by stating that punitive damages do not exist in medical malpractice cases. Mr. Bradley explained that if there is intent on behalf of a physician, this intent causes punitive damages and removes the physician from the realm of his or her medical malpractice policy. He said that this situation would apply in a medical malpractice case involving sexual assault.

Continuing, Mr. Bradley advised that an award for damages in a tort action against a state, county, or city government employee in Nevada is limited to $50,000, irrespective of economic damages. He noted the importance of this cap as it relates to trauma surgeons who are employed by the University Medical Center in southern Nevada.

Additionally, Mr. Bradley questioned why the State of Nevada continues to pay insurance companies $1 million to cover each University of Nevada School of Medicine resident if their liability is capped at $50,000. He stated that this cap has been challenged in Nevada's Supreme Court; however, the court's decisions have recognized the need to protect the rural counties in the state. He suggested that the savings incurred by reducing this $1 million coverage could be used to help high-risk physicians purchase medical malpractice insurance.

Mr. Bradley stated that instituting caps on noneconomic damages is an "insidious way to limit the rights of the most vulnerable" population. He said elderly persons are "dramatically" affected by caps because as retirees they do not have an income interest and are covered by Medicare. Their quality of life is destroyed when an injured person's worth is determined by a cap. Mr. Bradley noted that housewives and young people also are "victimized" by caps. He explained that awards for economic damages might pay their medical bills and wage loss. However, he said, they do not cover other expenses such as utility bills and automobile and mortgage payments.

Again referring to certain remarks made by previous speakers during this meeting, Mr. Bradley stated that:

C Any assertion that there has been a significant increase in jury awards is not documented by the facts.

C Patients in states that have instituted caps on noneconomic damages lose their right to due process because a jury does not decide their case. In these jurisdictions, the jury is not advised of such limits on damages and after it submits its verdict, the judge actually determines the amount of the award.

C The situation described by Dr. Tate (identified on page 24 of these minutes) in which a gentleman suffered from a ruptured appendicitis is "very difficult." It probably is not a "good" malpractice case considering the $50,000 cap on the liability of the physician and the steps that must be taken to proceed through the screening panel process.

Concluding his testimony, Mr. Bradley said the NTLA recognizes Nevada's current medical malpractice crisis and sympathizes with the physicians who have been affected by it.

The Chairwoman asked Mr. Bradley about economic and noneconomic damages as they relate to a case in which a 20-year-old person who becomes a paraplegic must purchase a van and a wheelchair and renovate his or her home.

Mr. Bradley replied that those types of expenses generally constitute future medical bills. He explained that in this scenario, the attorneys for the defense and plaintiff each would retain a person(s) to determine the patient's needs and the associated costs. The plaintiff's life care planner expert (usually a physiatrist and a person who has a long history of caring for a paraplegic) might propose that the patient remain at home and, therefore, a converted automobile, lifts, occasional in-home nursing care, prescription medication, and wheelchairs would be appropriate for a person whose quality of life has been affected. However, the insurance industry might dispute this proposal and recommend that the person be placed in a facility that would provide the necessary care.

John Echeverria

John Echeverria, Nevada Trial Lawyers Association, San Francisco, California, appeared before the subcommittee to discuss his experience with medical malpractice cases in California. Mr. Echeverria noted that he started practicing law in Nevada in 1972 and in California in 1973. He advised that in 1975, California encountered a medical malpractice crisis similar to Nevada's and by 1976 adopted its Medical Insurance Compensation Reform Act. Mr. Echeverria advised that:

C There is an unrepresented constituency that does not exist when tort reform measures are considered. Trial lawyers are concerned about the adverse effect that tort reform may have on these persons who eventually will become victims of medical malpractice.

C It is important to consider the unintended consequences of tort reform and especially the effect of caps:

1. Caps ultimately create a disincentive for an injured patient to bring a lawsuit and, therefore, foreclose his or her access to the judicial system.

2. Limits on awards in medical negligence cases are insidious and disfranchise the elderly, housewives, and parents whose children have died. For example:

   a. A 66-year-old man who has been retired for a year, has a health care plan, and intends to enjoy his "golden years" with his spouse becomes catastrophically injured during surgery. He has insurance that will pay some medical bills, but does not have any earnings loss because he is retired. The $250,000 cap is the only compensation he is entitled to receive.

   b. The parents of children who have died as a result of medical malpractice do not have an economic loss. There are cases involving children in which physicians have admitted to making medical errors. However, these cases cannot be resolved and some cannot be economically pursued.

3. A lawyer must consider economic consequences when determining whether or not to accept a medical malpractice case. If a cap prevents an attorney from handling the litigation to the client's satisfaction, he or she will reject the case. This disfranchisement of medical malpractice victims is a fundamental error of instituting caps on noneconomic damages.

4. In California, regardless how strong a victim's medical malpractice case may be, the insurance industry never offers the full value of a cap to settle a case. If the victim proceeds to litigation, the jury is not advised that a cap exists and renders what it determines to be a fair verdict. The verdict ultimately is reduced to $250,000. This system promotes litigation because a person must fully exercise his or her legal rights and proceed to trial to receive the full cap.

Concluding his testimony, Mr. Echeverria stated that caps on noneconomic damages in medical malpractice cases have insidious consequences and shift the burden of loss to the victim. Mr. Echeverria offered to assist the subcommittee during its deliberations to resolve this crisis.

Dean A. Hardy

Dean A. Hardy, Nevada Trial Lawyers Association, Las Vegas, Nevada, brought to the subcommittee's attention that Mr. Calvo (identified on page 7 of these minutes) did not suggest during his testimony that the civil justice system is driving Nevada's medical malpractice crisis. Mr. Hardy further stated that:

C "Lawsuit hysteria" is nonexistent in southern Nevada. Based on the number of opportunities for medical errors to occur in Clark County during 2001, the 181 claims filed at the screening panel level does not constitute a significant increase. The 20 plaintiff's verdicts in medical malpractice cases that resulted between 1996 and 2001 in Clark County do not support arguments that juries are "out of control."

C Nevada's civil justice system does not drive malpractice and, therefore, it should not be drastically changed in an effort to resolve the current crisis. A comprehensive review is needed to identify the factors that have caused this crisis.

C The Nevada Legislature has enacted a significant series of tort reforms, including the: (1) collateral source rule; (2) "loser pays" system; and (3) screening panel.

According to Mr. Hardy, it is the NTLA's opinion that a downturn in the economy caused St. Paul to leave the medical malpractice insurance market. He further noted that the company discontinued malpractice coverage in all states, including those that have caps on noneconomic damages. Mr. Hardy said St. Paul's decision to leave this market left a "big void" in southern Nevada and adversely affected many physicians.

Concluding his remarks, Mr. Hardy advised that the NTLA is willing to work with Nevada's physicians and within the framework outlined by Mr. Calvo to resolve the current medical malpractice crisis. He cautioned the subcommittee to not misunderstand this crisis as being driven by the civil justice system. Further, "dramatic"

changes to the civil justice process to address this problem are not needed and a person's access to the justice system should not be associated with the condition of the economy.

Mr. Hettrick questioned how the economy affects medical malpractice premium rates and why other urban areas in the nation do not appear to be experiencing a crisis similar to Clark County's. He stated that there must be factors other than the economy that have contributed to this problem. Mr. Hettrick also asked why a premium for an obstetrician would cost $150,000 in Nevada and $47,000 in California.

In response to Mr. Hettrick, Mr. Bradley advised that:

C Medical malpractice premiums are becoming a nationwide problem.

C St. Paul was the largest provider of medical malpractice insurance in Clark County and, therefore, Nevada was in a vulnerable position when the company left this market. Physicians in Clark County then had difficulty obtaining coverage from other "mainline" insurers. It might be helpful for the subcommittee to determine how a single insurer was able to dominate this marketplace and if one company controlled the market in any other state.

C It would be helpful to know why from 1995 to 1999 insurers did not incrementally increase their premiums. Further, why there were no reported problems or warning signs before this crisis happened.

C The disparity in premium rates for an obstetrician in California and Nevada may be attributed to several factors (e.g., access to the court system, Nevada's 24-hour lifestyle, and the cost of health care in different cities). Medical malpractice premiums in California have not decreased.

Mr. Hettrick stated that insurance costs can be lowered by reducing: (1) the number of incidents; and (2) the cost per incident. He asked what alternatives other than a cap on noneconomic damages are available to control these expenses.

Responding to Mr. Hettrick, Mr. Bradley said doctors are of the opinion that they would be protected by tort reform. However, it is important to realize that the "big factor" in cases involving a catastrophically injured person is the future cost of health care, not noneconomic damages. He further stated that the cost of future health care probably is not more expensive in Nevada than it is in California and a comparison of these figures should be made. Mr. Bradley expressed his opinion that there are "other solutions" that can be implemented.

Continuing, Mr. Hettrick briefly discussed the perception that attorneys have an incentive to pursue litigation in medical malpractice cases because there is an opportunity for them to make money. Therefore, he said, caps often are considered a solution to control increasing medical malpractice insurance premiums. Mr. Hettrick also stated that litigation is a disincentive for doctors who have spent many years in school, truly care about their patients, and did not enter their profession for money-making purposes. He noted that litigation is difficult for these individuals because they are accused of damaging a person they tried to help. Further, it violates the principles by which they became doctors and practice medicine.

Mr. Bradley noted that the insurance industry also has a role in medical malpractice litigation. He explained that there are cases in which a physician who was determined by the screening panel to be negligent consented to pay the settlement amount; however, the insurance company decided that the case should proceed to court. Mr. Bradley further stated that every case involving a verdict is closed if the physician's policy limit is paid based on the finding of the screening panel, despite the future injuries of that patient and the future cost of care.

In response to an additional question by Mr. Hettrick, Mr. Echeverria advised that in California, a portion of a medical malpractice insurance award up to the policy limit is taxable.

Mr. Bradley explained that if an insurer rejects an offer for a policy limit and proceeds to court, there will be a personal judgment against the doctor should the verdict exceed the policy limit. Further, the doctor could give his or her rights against the insurance company to the patient and a lawsuit could be filed for the purpose of "chasing that excess verdict." He said the injured person in such a case could experience financial hardship and difficulty maintaining his or her life while this lawsuit proceeds through the court system. Mr. Bradley advised that he is not

aware of a case in Nevada involving a physician who has been "chased" for an excess verdict.

Answering a question by Mr. Hettrick, Mr. Bradley explained that a cap on noneconomic damages does not provide for an imputed value for economic damages for a minor child or senior citizen who is a victim of medical malpractice. He said their imputed value is not recognized by the insurance industry. Mr. Bradley advised that the three categories of damages in Nevada are: (1) medical bills; (2) physical and mental pain and suffering; and (3) wage loss.

In response to questions by Ms. Buckley, Mr. Bradley stated that:

C If there is a finding of negligence by the screening panel and the case proceeds to court, Nevada law provides that the victim "shall" be assessed damages (e.g., the doctor's attorney's fees) if he or she loses.

C Certain insurers in Nevada created excess costs by not agreeing to settle a case (e.g., additional attorney's fees and costs) and then reported that they were losing money. If they file an appeal, the case is prolonged and the injured person continues to suffer.

C The key to encouraging doctors and insurers to reach an early settlement when the doctor made a mistake is to expose them to a bad faith case and make them responsible for an excess verdict. The plaintiff should not have to go through the "machinations" of assigning rights and initiating another lawsuit. The person(s) who makes "the bad decision" to proceed to court should be immediately responsible for the risk of an excess verdict. Additional costs that result when a case is not settled should not be considered losses or used against a physician in the future to disqualify him or her from obtaining affordable coverage.

Responding to a question by Mr. Anderson, Mr. Bradley explained that after a judge determines the reasonable value of a claim for purposes of settlement, the physician must decide if he or she will consent to this determination. He suggested that the subcommittee consider whether or not consent clauses should be included in physicians' malpractice policies and mentioned that he is not aware of any other profession that has this prerogative. Mr. Bradley stated that in future meetings of the subcommittee, he will discuss cases in which a physician consented to a settlement; however, the insurer decided to proceed to court.

Chairwoman Buckley advised that the subcommittee's next meeting would include a detailed review of the cases that appear in Exhibit I, which contains information regarding plaintiff medical malpractice verdicts in Clark County between 1996 and 2001.

In reference to Exhibit I, Mr. Bradley commented that it is difficult to: (1) distinguish between economic and noneconomic damages; and (2) determine if a case proceeded to court based on a physician's refusal to consent to a settlement or an insurance company's decision to have the case decided by a jury.

The Chairwoman said she would request this information from Mr. Matheis (identified on page 18 of these minutes) and Scott M. Craigie, Alrus Consulting, Reno, Nevada.

Mr. Anderson mentioned that this issue is complicated by the fact that various insurers are involved in these cases which resulted in verdicts.

TESTIMONY FROM THE MEDICAL MALPRACTICE INSURANCE COMMUNITY

Chairwoman Buckley advised that representatives of companies that have provided medical malpractice coverage in Nevada were invited to discuss their views of the state's marketplace for this line of insurance. She noted that they were not in attendance and called upon staff to report on their responses.

Allison Combs, Principal Research Analyst, Research Division, Legislative Counsel Bureau, explained that representatives of the insurance companies that attended the March 4, 2002, hearing conducted by Nevada's Commissioner of Insurance were invited to testify at this meeting. She said responses from the Medical Insurance Exchange of California, Physicians Insurance Company of Wisconsin, The Doctors Company, and The Medical Protective Company indicated that because of scheduling difficulties they could not appear at this meeting but would like to participate in the future. Please see Exhibit J for details of the letters received from The Doctors Company and The Medical Protective Company.

The Chairwoman stated that the appointment of the Legislative Subcommittee to Study Medical Malpractice is scheduled to be ratified by the Legislative Commission at its meeting on April 5, 2002. She noted that at that time she would request subpoena power because the participation of insurance companies in this process is important.

SUMMARY OF THE *SURVEY ON THE NEVADA MEDICAL MALPRACTICE MARKETPLACE CONDUCTED BY THE NEVADA DIVISION OF INSURANCE*

Chairwoman Buckley advised that a survey of insurers, which was conducted by Nevada's Division of Insurance to assess the condition of the state's medical malpractice marketplace, took place prior to the March 4, 2002, hearing of the Commissioner of Insurance. A summary of this survey appears in Item No. 4 (Tab D) of Exhibit A. Ms. Buckley noted that although the subcommittee members did not pose questions concerning this item, Ms. Moskowitz (previously identified on page 16 of these minutes) might be asked to address its contents during a future meeting.

REVIEW AND UPDATE: OPTIONS FOR INCREASING THE AVAILABILITY OF AFFORDABLE MEDICAL MALPRACTICE COVERAGE UNDER NEVADA'S CURRENT INSURANCE LAWS

TYPES OF INSURANCE GROUPS OR ASSOCIATIONS THAT MAY BE CREATED TO PROVIDE MEDICAL MALPRACTICE COVERAGE

James L. Wadhams

James L. Wadhams, American Insurance Association, Nevada Independent Insurance Agents, Las Vegas, Nevada, noted that some physicians in this state are considering the establishment of their own insurance company to provide medical malpractice coverage. He explained that this process involves "extremely detailed" state laws and is "very cumbersome." Among other things, it requires a "substantial" amount of money (e.g., $1.5 million for a "normal" license plus working capital to absorb the cost of writing policies), completion of applications for a solicitation permit and an insurance certificate, and reinsurance treaties.

Mr. Wadhams briefly reviewed the following types of insurance groups or associations that may be created to provide medical malpractice coverage:

C Captive. A captive insurance company may be appropriate in many circumstances. This type of organization is not fully insured and its participants serve as a "fallback" if it fails.

C Mutual. The policyholders of a mutual insurance company are its owners. Most of the physician groups in Nevada that are interested in establishing a private insurance company are considering this type of organization because of its nonprofit nature. A mutual insurance company does not pay dividends to its stockholders and any excess money usually is returned to its policyholders as a rebate or reduction on future premiums.

C Reciprocal.

C Stock. The investors in this type of company own its stock.

Additionally, Mr. Wadhams noted that physicians and allied health care entities in Nevada that are pursuing this endeavor primarily are interested in forming fully licensed commercial insurance companies. Further, this state has a guaranty fund that "stands behind" the insolvency of a fully licensed commercial insurance company should it fail.

Concluding his testimony, Mr. Wadhams stated that creating an insurance company in Nevada is "not easy" and "not quick."

In response to a question by Ms. Buckley, Mr. Wadhams advised that all of these endeavors have contemplated providing tail coverage.

The Chairwoman expressed concern about the success of several companies whereby doctors are dispersed versus one

or two mutual companies in which physicians have an investment and may be able to proceed in a timely manner.

Mr. Wadhams replied that an insurance company must have a proper combination of critical mass, economics of the transaction, and reinsurance to sustain itself.

On behalf of the subcommittee, Ms. Buckley offered to assist in solidifying the groups that are interested in establishing an insurance company for medical malpractice coverage and furthering their efforts.

According to Mr. Wadhams, several stock insurance companies have been formed in Nevada; however, he is not aware of a mutual insurance company that has been created through the state's regulatory process. He advised that he will provide to the appropriate legislative committees recommendations to modernize the laws concerning the creation of insurance companies.

Mr. Heffner (previously identified on page 12 of these minutes) informed the subcommittee that Nevada's Commissioner of Insurance has pledged to expeditiously review any application to create a private insurance company for the purpose of providing medical malpractice coverage.

DISCUSSION OF EFFORTS WITHIN NEVADA'S MEDICAL COMMUNITY TO CREATE AN INSURANCE COMPANY

Lawrence P. Matheis

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada, advised that since early January 2002 analogies have been made concerning Nevada's current medical malpractice crisis and similar problems that occurred in the 1970s. The 1975 Session of the Nevada Legislature authorized the creation of joint underwriting associations to provide essential malpractice insurance when the private insurance market is unable or unwilling to do so. The first JUA established in this state to provide malpractice insurance eventually was converted into Nevada Medical Liability Insurance Company.

Continuing, Mr. Matheis explained that:

- During the early 1970s, Nevada's physicians did not have access to primary insurance because only surplus lines of coverage were available in the state. The Doctors Company moved into Nevada during 1975 or 1976 as a surplus lines market only.

- All physicians in Nevada were covered by the state's JUA. This association did not require a state subsidy because it was "floated" by the premiums paid by these doctors.

- It was reasonably straightforward to convert this JUA into a physician owned-company (Nevada Medical Liability Insurance Company), which for a few years "essentially had the market." As a result of capital needs, the company was converted to a stock insurer. In the mid-1990s, it had significant financial problems primarily because of the difficulty small, single state insurers were experiencing with reinsurance. St. Paul then acquired this company.

Mr. Matheis mentioned the possibility of developing a physician-owned company from the Nevada Essential Insurance Association, which is a temporary solution to the current medical malpractice crisis. He suggested that a medical malpractice insurance company created in this state by Nevadans would be committed and stable, and might influence other insurers to have more confidence in this marketplace.

Concluding his remarks, Mr. Matheis advised that since mid-January 2002, his association has received several proposals concerning the creation of an insurance company by Nevada's medical community. Mr. Matheis stated that the experience of the Nevada Essential Insurance Association, as well as the physicians it covers, must be considered in any plans for a new entity.

Dr. Raj Chanderraj

Dr. Raj Chanderraj, President, Clark County Medical Society, Las Vegas, Nevada, informed the subcommittee that

in July and August 2001, the Clark County Medical Society began to actively pursue alternative sources of medical malpractice insurance coverage because there was a concern about potential increases in reinsurance rates. He further noted that:

C The organization established a committee to explore the possibility of obtaining coverage from other companies; however, there was not much interest in its efforts until January 2002.

C Shortly before the committee selected a company, Governor Guinn asked that its activity be suspended and that the Clark County Medical Society support his effort to address the medical malpractice crisis through the Nevada Essential Insurance Association.

C The Clark County Medical Society plans to resume its negotiation process in December 2002 or January 2003.

C A medical malpractice insurance company cannot survive without some type of civil justice reform in Nevada.

Responding to a question by Ms. Buckley, Mr. Matheis stated his opinion that the Nevada Essential Insurance Association will not adversely affect private efforts to form an insurance company. He explained that the association becomes effective on April 15, 2002, and within a short period of time adequate information should be available to proceed with the development of a long-range permanent structure.

Chairwoman Buckley expressed concern about physicians who cannot afford tail coverage and the unavailability of another plan for several months.

Dr. Chanderraj advised that Nevada's Commissioner of Insurance is forming a committee to address this issue. He said some of the companies involved with the Nevada Essential Insurance Association have "attractive" proposals for tail coverage and certain financial institutions have made a commitment to assist with this matter. Dr. Chanderraj noted that the medical malpractice insurance policies for emergency room physicians at Sunrise Hospital in southern Nevada expire on April 1, 2002, and it is possible that this emergency room will have to close after that date.

The Chairwoman noted that she would consult with the subcommittee members and the Governor's Office to determine if they can assist in ensuring that efforts to create a medical malpractice insurance company "meld well" and are expedited.

According to Dr. Chanderraj, a task force has asked the Governor's Office and Commissioner of Insurance to communicate with the companies that are insuring these physicians and request that they extend this period until another company provides coverage.

REQUESTS FOR THE SUBCOMMITTEE'S EXAMINATION OF NEW LAWS AND CHANGES TO NEVADA'S EXISTING LAWS AND REGULATIONS GOVERNING CIVIL JUSTICE AND INSURANCE TO ADDRESS CONCERNS REGARDING MEDICAL MALPRACTICE COVERAGE

Lawrence P. Matheis

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada, advised that although he does not necessarily advocate all of the proposals he is submitting to the subcommittee, it would be viable for the members to address them:

C Evaluate the failure of NRS 41.505, "Physicians, nurses and emergency medical attendants; licensed medical facilities in which certain emergency obstetrical care is rendered," which relates to the liability of persons who render emergency care. Additionally, revise and expand this law to create a patient compensation fund for emergency obstetrical care and other high-risk obstetrical care. Further, consider establishing a no-fault arrangement for specific procedures related to obstetrics.

C Conduct a comprehensive review of the future of emergency services in the state and consider the emergency

room "divert" issue, liability related to emergency room physicians and surgeons, and nurse and physician staffing.

C Limit the ability of hospitals to set a specific amount of liability coverage that a physician must have to be become part of the medical staff.

C Prohibit insurers from basing premium increases on incidents and require that they use the number of claims for such adjustments in rates.

Mr. Matheis submitted a handout, titled "Nevada State Medical Association Presentation to Legislative Subcommittee to Study Medical Malpractice Regarding Agenda Item VII: Requests for the Subcommittee's Examination of New Laws and Changes to Nevada's Existing Laws and Regulations Governing Civil Justice and Insurance to Address Concerns Regarding Medical Malpractice Coverage." Please see Exhibit K for details. In addition to the first recommendation that appears above in Mr. Matheis' remarks, this document contains the following proposals for the subcommittee's consideration:

C Consider a patient compensation fund or other initiative to address the liability-related aspects of emergency department physician staffing and the availability of staff specialty surgeons.

C Conduct an ongoing review and evaluation of all data regarding the screening panel, including post-panel court filings and case resolutions. Consider amending NRS 41A.069, "Instructions to jury," to revise the court instructions to the jury of the findings of a panel. Consider amending NRS 41A.019, "Creation of tentative screening panels," and NRS 41A.023, "Designation of members," to provide for contracted attorneys and physicians to serve as a permanent panel to assure expeditious panel reviews.

C Amend NRS 42.020, "Actions for damages for medical malpractice: Reduction of damages by amount previously paid or reimbursed; payment of future economic damages," to:

1. Limit noneconomic damages to $250,000.

2. Require that collateral source payment information be provided to a jury prior to the awarding of damages.

3. Provide for structured payments for future economic damages of more than $50,000 if requested by either party.

C Consider compulsory arbitration provisions for certain cases.

C Amend NRS 41A.097, "General rule; tolling of limitation," to revise the statute of limitations to a general standard of two years after the date of injury.

C Limit the total compensation available to attorneys in contingency fee cases to 40 percent of the first $50,000; 33.3 percent of the next $50,000; 25 percent of the next $500,000; and 15 percent of any additional amount over $600,000.

Bill Bradley

Mr. Bradley informed the subcommittee that despite the NTLA's efforts to assist in the evaluation and implementation of an appropriate insurance company to provide medical malpractice coverage, it has not been invited to participate in discussions that have occurred. He then offered the following long-term recommendations for the subcommittee's consideration:

C Provide to Nevada's Division of Insurance additional personnel and funds because of the significant function it performs in this process (e.g., actuarial analysis and staffing of the screening panel).

C Strengthen the screening panel to expedite its decisions.

C Allow for intervention on rate filings. Currently, only a physician is allowed to participate in a rate hearing. Consumer groups and individuals should have intervention rights to question rate filings.

C Underwriting decisions should be disclosed and provided in writing to a physician. A doctor is entitled to know how an insurer determines his or her rating.

C Develop a comprehensive system of reporting medical errors. This program should correlate information, identify trends, establish policies and procedures to eliminate these trends, and be made available to the public.

C Strengthen Nevada's Board of Medical Examiners and prevent "doctor dumping" (i.e., allowing a "bad" doctor to move to another state and set up a practice).

C Review the confidentiality and consent provisions related to medical malpractice, the "claims made" concept, and tail coverage (e.g., the cost and length of tail coverage).

C Define "claim."

C Hold insurance companies accountable for "bad" business practices and "poor" claims decisions.

C Consider regulating surplus lines of insurance.

In conclusion, Mr. Bradley explained that physicians whose policies were not renewed by St. Paul could not obtain coverage from their primary carriers and, therefore, were forced into the excess and surplus lines of insurance. Some of these insurers quoted rates that were 300 percent to 400 percent higher than the doctors' existing premiums, he said. Mr. Bradley noted the excess and surplus lines of insurance currently are unregulated and suggested that in the area of malpractice they receive more scrutiny.

PUBLIC TESTIMONY

Chairwoman Buckley then turned the gavel over to Mr. Anderson. Mr. Anderson briefly explained the public testimony process for anyone who wished to speak during this portion of the meeting.

Chris Ferrari

Chris Ferrari, Issues Manager, The McMullen Strategic Group, Reno, Nevada, stated he was speaking on behalf of the Nevada Association of Nurse Anesthetists. He advised that in addition to medical doctors, other health professionals (e.g., certified registered nurse anesthetists [CRNAs]) are experiencing difficulty renewing their medical malpractice insurance policies. Further, many are seeking coverage from other insurers before April 1, 2002, when their policies expire. Mr. Ferrari said CRNAs provide a critical service and primarily assist underserved rural and urban areas in this state. He asked that CRNAs be eligible to receive coverage from the Nevada Essential Insurance Association.

David Heffner

David Heffner, Certified Registered Nurse Anesthetist, Las Vegas, Nevada, noted that he is President of CMB Anesthesia Associates and Government Relations Chair for the Nevada Association of Nurse Anesthetists. Mr. Heffner advised that:

C Nevada's CRNAs are having difficulty renewing their medical malpractice insurance policies. The availability and affordability of such coverage appears to be a statewide crisis. Groups of CRNAs in Elko and Las Vegas are experiencing situations in which the insurance industry is "dragging its feet" and has not been helpful in providing affordable policies.

C His group was insured by St. Paul for many years. Since January 1, 1999, its policy provided the physician and/or insured the right to decide whether or not to settle a case.

Mr. Heffner said it would be helpful if the Governor's Office or the Commissioner of Insurance would request or compel St. Paul to continue providing medical malpractice coverage for 60 to 90 days.

In response to a question by Mr. Anderson, Mr. Ferrari stated that the Governor's Office and Commissioner of Insurance have been informed of the situation involving Nevada's CRNAs.

Rebecca Duty

Rebecca Duty, Administrative Medical Resource Group, Las Vegas, Nevada, advised that her organization represents approximately 55 specialists in Las Vegas market and has been "heavily involved" in this medical malpractice crisis since its onset.

Chip Wallace

Chip Wallace, Administrative Medical Resource Group, Las Vegas, Nevada, expressed his appreciation to Governor Guinn and Ms. Buckley for the effort they have made to resolve the state's medical malpractice crisis. Mr. Wallace commented that:

C Frivolous lawsuits exist in Nevada.

C Some of the issues related to this malpractice crisis should be negotiated.

C Surplus lines of insurance as they apply to medical malpractice should be regulated.

Mr. Wallace then discussed a plan that is being developed by several interests to establish a nonprofit medical malpractice insurance company in Nevada. Concerning this endeavor, he stated that:

C As a nonprofit organization, net gains would be reinvested into reserves with the goal of maintaining the financial viability of that plan.

C The plan currently has a pledge of $1.5 million and a commitment of $3 million is being pursued. The $1 million and $3 million requisites standard in the industry are intended to be met. Hospitals have made pledges to this program.

C This program should be a co-op universal health care effort and not the burden of physicians.

C Conservative business philosophies should be maintained and a proviso that prohibits the company from being sold should be in place.

C A local attorney and a gentleman who has an extensive background in developing nonprofit mutual entities have been consulted for their expertise.

C The plan contains a nine-member board comprised of businessmen, doctors, insurance executives, and legal professionals.

Additionally, Mr. Wallace advised that:

C His experience with Nevada's Division of Insurance has been favorable and it is important that the agency expeditiously process applications to establish medical malpractice insurance companies.

C The program established by Governor Guinn to address this crisis is appropriate under the present circumstances. The financial constraints of the state preclude larger capitalization and government's inability to aggressively compete with private industry should be considered when scrutinizing this program.

C A long-term solution to the current crisis will require conservative business values and tort reform or some modification to the legal system.

C The medical malpractice crisis has had a negative effect on the health care delivery system in southern Nevada. Certain procedures that benefit patients no longer can be performed because hospitals must scrutinize these services and physicians must carefully examine the risk associated with the care and assistance they render.

Concluding his remarks, Mr. Wallace stated that the formation of a physicians' mutual insurance company will not solve Nevada's medical malpractice crisis. He said this approach only will keep physicians in this state for the following year. Mr. Wallace stressed that legislative action in conjunction with attorneys and doctors is needed to reach a solution.

DISCUSSION OF FUTURE MEETINGS AND TOPICS FOR REVIEW

The subcommittee did not address this agenda item.

ADJOURNMENT

There being no further business, Mr. Anderson adjourned the meeting at 5:25 p.m.

Exhibit L is a memorandum dated March 18, 2002, to Assemblywoman Barbara E. Buckley, Chairwoman, and Members of Legislative Commission's Subcommittee to Study Medical Malpractice, from George Mead Hemmeter, M.D., F.A.C.S., of Las Vegas, Nevada. This document addresses: (1) "Observations on the issue of Malpractice Insurance and its related issues from the perspective of a physician practicing in Clark County Nevada since 1970"; (2) "Multiple Proposals for the rectification of the multifaceted problem are made"; (3) "A plea for urgent action"; and (4) "A request that this document be deemed written testimony for inclusion into the written record of the Legislative Commission's Subcommittee to Study Medical Malpractice, meeting on March 21, 2002."

Exhibit M is the "Attendance Record" for this meeting.

Respectfully submitted,

_____
Debby Richards
Manager of Office Services

_____
Allison Combs
Principal Research Analyst

APPROVED BY:

_____
Assemblywoman Barbara E. Buckley, Chairwoman

Date: _____

LIST OF EXHIBITS

Exhibit A consists of the following documents, which were provided to the subcommittee members by Allison Combs, Principal Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada:

1. Legislative Counsel Bureau Bulletin No. 77-1, "The Problems of Medical Malpractice Insurance."

2. Legislative Counsel Bureau Bulletin No. 87-18, "Study of Insurance Against Medical Malpractice."

3. Legislative Counsel Bureau Bulletin No. 97-2, "Claims for Medical Malpractice."

4. "Legislative Subcommittee to Study Medical Malpractice—March 21, 2002—Background Material—Information Relating to the Hearing Held by Nevada's Commissioner of Insurance to Determine the Availability of Essential Insurance Coverage."

Exhibit B consists of the following documents, which were provided by Lawrence P. Matheis, Executive Director, Nevada State Medical Association (NSMA), Reno, Nevada:

1. "Nevada State Medical Association—Professional Liability Insurance Survey—March 21, 2002." This item was discussed by Dr. Robert Shreck, President-Elect, NSMA, Las Vegas, Nevada.

2. "Chronology of the Nevada Medical Liability Insurance Crisis (Compiled by the Nevada State Medical Association." This item was discussed by Dr. Shreck.

3. "Nevada Medical Liability Insurance Crisis: Newspaper and Internet Stories (Compiled by the Nevada State Medical Association)."

Exhibit C is a typed copy of the testimony of Dr. Raj Chanderraj, President, Clark County Medical Society, Las Vegas, Nevada, concerning the causes of and possible solutions for the current medical malpractice crisis.

Exhibit D is a typed copy of the testimony of James S. Tate Jr., M.D., F.I.C.S., F.A.C.S., President of the West-Crear Medical Society, National Medical Association, Las Vegas, Nevada.

Exhibit E is a typed copy of the testimony of Bill Welch, President/Chief Executive Officer, Nevada Hospital Association, Reno, Nevada.

Exhibit F is a typed copy of the testimony of Robert E. Kessler, D.O., P.C., Boulder City, Nevada. This exhibit also includes a "Fact Sheet" concerning professional liability insurance, which was prepared by the Nevada Osteopathic Medical Association.

Exhibit G is a typed copy of the testimony of Dr. Robert McBeath, a urologic surgeon and representative of Concerned Physicians of Nevada, Las Vegas, Nevada. This exhibit includes a table, titled "Concerned Physicians of Nevada—Claims Closed with Indemnity Payment: State of Nevada."

Exhibit H is a document, titled "An Historical Perspective: Chronology of Legislative Actions to Address Past Increases in Medical Malpractice Premiums," which was prepared by Allison Combs, Principal Research Analyst, Research Division, Legislative Counsel Bureau.

Exhibit I is a table, titled "Plaintiff Medical Malpractice Verdicts (Clark County: 1996-2001)," referenced by Bill Bradley, Nevada Trial Lawyers Association (NTLA), Reno, Nevada, and provided by Dean A. Hardy, NTLA, Las Vegas, Nevada.

Exhibit J consists of the following correspondence, which was received in response to an invitation to attend the subcommittee's March 21, 2002, meeting in Las Vegas, Nevada:

1. A letter dated March 19, 2002, to Ms. Allison Combs, Principal Research Analyst, State of Nevada Legislative Counsel Bureau, from William E. Daley, Senior Vice President, General Counsel, The Medical Protective Company, Fort Wayne Indiana. In this communication, Mr. Daley declines the subcommittee's invitation to participate in its meeting on March 21, 2002, and assures that his company will provide its financial strength

and commitment to Nevada's physicians and surgeons.

2. A fax message dated March 20, 2002, to Allison Combs, Principal Research Analyst, State of Nevada — Legislative Counsel Bureau, from Judy Pridmore, Office of the Board of Governors and Legal Department, The Doctors Company, Napa, California, regarding "Nevada Legislative Commission's MedMal Hearing." The following items were transmitted with this document:

   a. A letter dated March 20, 2002, to Allison Combs, Principal Research Analyst, State of Nevada, Legislative Counsel Bureau, concerning the "Nevada Legislative Commission's Medical Malpractice Hearing," from Bruce L. Crile, Chief Operating Officer, The Doctors Company. In this letter, Mr. Crile declines the subcommittee's invitation to participate in its meeting on March 21, 2002, and expresses his company's willingness to assist the members to resolve the state's medical malpractice crisis.

   b. A letter dated February 27, 2002, to Ms. Alice A. Molaksy-Arman, Commissioner of Insurance, State of Nevada, Division of Insurance, from J. A. Meyer for Bruce L. Crile, Executive Vice President, Operations, The Doctors Company. This letter contains the "pre-filed testimony" of The Doctors Company for the March 4, 2002, hearing conducted by Nevada's Commissioner of Insurance.

Exhibit K is a handout, titled "Nevada State Medical Association Presentation to Legislative Subcommittee to Study Medical Malpractice Regarding Agenda Item VII: Requests for the Subcommittee's Examination of New Laws and Changes to Nevada's Existing Laws and Regulations Governing Civil Justice and Insurance to Address Concerns Regarding Medical Malpractice Coverage" and dated March 21, 2002, which was provided by Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada.

Exhibit L is a memorandum dated March 18, 2002, to Assemblywoman Barbara E. Buckley, Chairwoman, and Members of Legislative Commission's Subcommittee to Study Medical Malpractice, from George Mead Hemmeter, M.D., F.A.C.S., of Las Vegas, Nevada. This document addresses the following subjects:

1. "Observations on the issue of Malpractice Insurance and its related issues from the perspective of a physician practicing in Clark County Nevada since 1970."

2. "Multiple Proposals for the rectification of the multifaceted problem are made."

3. "A plea for urgent action."

4. "A request that this document be deemed written testimony for inclusion into the written record of the Legislative Commission's Subcommittee to Study Medical Malpractice, meeting on March 21, 2002."

Exhibit M is the "Attendance Record" for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City. You may contact the library at 775/684-6827.