

April 10, 2023

Assembly Judiciary Committee
401 South Carson Street
Carson City, NV 89701
AsmJUD@asm.state.nv.us

RE: AB209

Dear Chair Miller and Members of the Committee:

The proposed changes to medical malpractice civil litigation in AB209 are excessive and will create a crisis in our state. Interestingly, approximately every ten to twenty years, Nevada experiences a medical malpractice crisis typically initiated by changes of the type proposed in AB209.¹

In the mid-1970s, medical malpractice insurers pulled out of Nevada because of high litigation costs, and as a result, physicians could not obtain liability insurance. In an effort to fix this, the state created the Nevada Medical Liability Insurance Association to provide doctors with liability coverage. This company was subsequently sold after the medical malpractice insurance market stabilized.

However, in the early 2000s, medical malpractice premiums again increased significantly. As a result, four insurance carriers stopped offering liability coverage to physicians, and for some doctors, premiums leaped from \$40,000 to \$200,000 per year.² This caused 30 OB-GYNs to leave Clark County, and physicians in other specialties, including neurosurgery and emergency medicine, limited their practices. In addition, critical hospital services were in jeopardy, and rising malpractice costs drove almost 70 doctors off the job at University Medical Center for 10 days. Many other physicians were unable to purchase malpractice insurance because insurers had pulled out of Nevada.

In 2004, sixty percent of Nevada voters approved a statewide initiative to limit non-economic malpractice damages to \$350,000, cap attorney fees, and adjust the statute of limitations to one year instead of two.³ Patients who believed they were harmed by healthcare providers could still pursue malpractice lawsuits, and did; however, the number of meritless cases dropped and for the past nineteen years, things have stabilized. AB209 attempts to drastically disrupt this stability and strip away these voter-approved initiatives. The harm that will follow if AB209 is approved will be immediate and severely detrimental to the healthcare access of Nevadans!

As you know, Nevada has a very fragile healthcare delivery system, and because of this, we don't have the luxury of taking a gamble on initiating AB209's changes and waiting to see what happens. Doing so could further jeopardize our healthcare delivery system because we already have a grossly insufficient number of physicians in the state, and this change will result in losing even more physicians.

- Nevada needs more than 1,500 additional physicians to meet the national average of physicians per capita.⁴

- We rank 45th in the nation for active physicians among U.S. states, while having a rapidly growing population.⁴
- Nevada is below the national average in 33 of 39 physician specialties.⁴
- Clark County is below the national average in 34 of 39 specialty areas.⁴
- In 25 of 39 specialty areas, the number of physicians did not keep pace with Nevada's population growth over the last decade.⁴

Access to basic healthcare is too limited in our state. According to *U.S. News and World Report*, the Silver State is ranked 50th in the nation for healthcare access.⁵ Nevada has no room to jeopardize access for our citizens. The statistics are grim:

- 2.2 million Nevadans – 69.7% of the state's population – reside in federally designated Primary Care Health Professional Shortage Areas (HPSA)⁶
- 2.8 million Nevadans – a whopping 86.9% of the state's population – reside in a federally designated Mental Health HPSA⁶
- 2.1 million Nevadans – 65.5% of the state's population – reside in a federally designated Dental Health HPSA⁶

Healthcare facilities are also struggling. Approximately half of Nevada's Hospitals had a negative operating margin in calendar year 2022. Huge increases in medical malpractice premiums could jeopardize the operation of some hospitals.

The proposed changes in AB209 will cause insurance rates to skyrocket, and insurance companies will be forced to raise premiums to cover:

- **Unlimited noneconomic damages.** The cost of every claim will skyrocket. Insurance company actuaries will have difficulty estimating the impact of AB209 so they will estimate high to be conservative. This will cause huge premium increases.
- **The increase in the statute of limitations.** Current law allows a plaintiff to bring a claim 3 years after the date of injury or 1 year after the plaintiff discovers or should have discovered the injury. AB209 repeals these limitations. The extension of the statute of limitations will increase claims, and insurance companies will increase premiums to cover the additional liability exposure.
- **The increased fees trial lawyers can charge.** AB209 removes all limits on the amount that a trial lawyer can charge his or her client. Not only does this adversely affect the amount the injured client receives, but it also encourages lawyers to bring more frivolous claims against healthcare providers. Removing the cap on noneconomic damages will provide trial lawyers with a windfall based on the fees they are currently charging. Removing all caps on fees will only be a boon for the trial lawyers, not for their clients.
- **Healthcare providers who assist patients in an emergency situation.** AB209 completely eliminates the trauma cap. As a result, malpractice premiums for Emergency Departments and practitioners will skyrocket, and more importantly, emergency care in the state may be jeopardized.
- **The cost of paying for negligence their insured did not commit.** Plaintiff lawyers will be incentivized to name as many parties as possible in medical negligence cases. If a jury assigns 1% of the negligence to any defendant, that defendant is liable for the entire verdict, even if another party is found to be 99% at fault.



- **The elimination of collateral source evidence.** Juries should know if a plaintiff's bills have been paid by another source. The plaintiff should not recover monies that he or she did not spend. This is unfair. If AB209 repeals NRS 42.021, a jury will be falsely led to believe it has to award additional damages to the plaintiff, thinking the plaintiff is "out of pocket" those monies, leading to higher damage awards and resulting in increased medical malpractice insurance premiums.
- **Frivolous lawsuits.** AB209 repeals the law permitting a court to dismiss a lawsuit if an affidavit by a medical expert does not accompany the lawsuit. This will open the door to a flood of meritless lawsuits against healthcare providers.

Every provision of AB209 will increase medical malpractice premiums for physicians and healthcare facilities. AB209 will cause a financial windfall for trial lawyers at the expense of their clients. The people who will be hurt the most are Nevadans needing access to healthcare.

Very truly yours,

Patrick D. Kelly
President and CEO
Nevada Hospital Association



Footnotes:

1. *Las Vegas Sun*, "No End in Sight for Medical Malpractice Insurance Dilemma," Friday, June 14, 2002, [No end in sight for medical malpractice insurance dilemma - Las Vegas Sun Newspaper](#)
2. *Emergency Medicine News*, "Liability Premiums Rise, but Theories on Remedies Differ," Volume XXIV, Number 6, June 2002, [Liability Premiums Rise, but Theories on Remedies Differ: Ne... : Emergency Medicine News \(lww.com\)](#)
3. *Las Vegas Review Journal*, "Voters OK Limits on Awards," November 3, 2004
4. Nevada Health Workforce Research Center, "Physician Workforce in Nevada: A Chartbook," 2022 edition, [Reports and Publications | School of Medicine | University of Nevada, Reno \(unr.edu\)](#)
5. *US News & World Report*, *Health Care Rankings*, [Nevada Rankings and Facts | US News Best States](#)
6. UNR School of Medicine, Office of Statewide Initiatives, *Nevada Rural and Frontier Health Data Book*, 11th Edition