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A Proven Prescription for Solving the Malpractice Insurance Crisis

By Richard Anderson, M.D. and Richard Porreco, M.D.

If you're having a baby, be glad you live in Colorado instead of Connecticut or Illinois, where your obstetrician or hospital may no longer be in the delivery business. If you lived in Kentucky, you'd hope that your doctor is not one of the 25 percent of physicians who say they are considering leaving the state. In Texas, North Carolina, Mississippi, Pennsylvania and other states from coast to coast, vital services such as obstetrics and trauma care centers are increasingly unavailable.

The American Medical Association's list of "states in crisis"—those in which skyrocketing malpractice premiums are threatening patient access to care—is now at 18 and growing.

Colorado is not on the AMA's crisis list, although recent court decisions that have undermined the state's malpractice liability reforms could downgrade its condition. One decision allowed attorneys to make an end-run around the state's caps by suing the professional corporations owned by the doctors accused of malpractice, even though state law has clearly stated that people, not corporations, practice medicine. Legislation (HB 1012) to reverse this decision is currently awaiting the governor's signature, while another key bill (HB 1007) on the governor's desk will address a second decision that created a whole new category of damages for disfigurement. HB 1007 will bring these cases back under the cap on non-economic ("pain and suffering") damages that have been in place since 1989.

Colorado and California are often considered role models for states that have enacted market-stabilizing tort reforms. Thanks to The Health Care Availability Act of 1989, Colorado physicians pay only about one-third (in adjusted dollars) of what they paid for premiums in 1986. California's Medical Injury Compensation Reform Act of 1975 (MICRA) has a 28-year record of success that states across the nation view with envy.

The nationwide fight to implement malpractice liability reforms is often seen as a Republican vs. Democrat battle. But contrary to a widely held perception, California's groundbreaking law was the bipartisan result of a Democratic-controlled legislature and the administration of Gov. Jerry Brown, also a Democrat. Both parties realized that access to care should not be a partisan issue, and that solving the crisis was more important than playing politics.

The story in Colorado is similar. The Health Care Availability Act was the result of a bipartisan effort by the Legislature and was signed by Roy Romer, a Democratic governor. Both states placed a \$250,000 cap on non-economic damages, yet

ensured that patients would be adequately compensated by not limiting economic damages such as medical expenses and lost wages. Both Colorado's law and California's MICRA allow awards to be paid over time rather than in a lump sum. Important reforms in both states also addressed a tactic known as "deep pockets" liability—suing the party that has the most money without regard for the percentage of responsibility—by linking defendants' share of any award to their degree of fault.

The conditions in AMA's "crisis states" are very similar to what Colorado and California faced prior to their comprehensive reforms. Connecticut made the AMA's list because the legal climate is making \$1 million-plus awards more common, and premiums for obstetricians and neurosurgeons have climbed to more than \$100,000 annually. Jury awards of \$4.5 million to \$15 million, matched by premium increases of up to 500 percent for rural hospitals, secured North Carolina's spot on the list.

Crisis states show the clear correlation between skyrocketing awards, consequent premium increases and the access to care problems patients face when trauma centers close and physicians stop practicing when they can no longer afford malpractice coverage. Insurance is not magic: If awards are unlimited, so must be the premiums that pay for them. Insurance premiums also ensure doctors can have their day in court: Over 75 percent of malpractice claims that go to a jury are found to be without merit, but insurers spend an average of \$25,000 per case defending these policyholders.

State legislatures fighting over whether a \$250,000 cap and other reforms will really help solve the problem can learn from Colorado and California, where successful reforms have continued to earn support among legislators of both parties. They can listen to constituents, too: Recent bipartisan polls also show nearly two-to-one support among Americans for tort reforms that include a \$250,000 cap on non-economic damages.

Just as in medicine, preventive care is always more effective. Colorado can best protect its citizens by enacting HB 1012 and HB 1007, and it can act as a nationwide model by rising above party politics to preserve the reforms that prevent it from joining the list of states where access to care is in critical condition.

Richard E. Anderson, M.D., is an oncologist and chairman of The Doctors Company, a national medical malpractice insurer. Richard Porreco, M.D., is a perinatologist in Denver.