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From the President on down, January is the month for public officials and others to report on “the state of.” We, at the Pennsylvania Association for Justice, are providing you our first annual state of the state’s civil justice system, with special emphasis on health care. Compared to other states, civil justice in Pennsylvania is robust, efficient and fair to consumers—the courthouse doors remain open. It maintains a vital role in protecting our safety at a time when the government has taken a back seat in regulating against unsafe products, corrupt corporations, and negligent conduct. The failure of the federal government to protect our kids’ safety against tainted toys from China is just one example.

Recently, there have been many positive indications that Pennsylvania’s civil justice system is operating effectively and has not caused doctors to desert the state in droves, as suggested by health care special interests. This is great news for all citizens, including and especially those who may someday need to turn to the courts for help. Unfortunately, many people aren’t aware of these developments because they are bombarded by the misinformation spread by corporate-funded think tanks advocating so called “tort reform.” It is time to tell the true story of Pennsylvania civil justice: a model for the nation.

The following are key points to provide an accurate view of the state of civil justice in Pennsylvania.

GOV. RENDELL: “MED-MAL CRISIS” OVER.

The Governor made this announcement at the Philadelphia College of Physicians. The site he selected for the announcement sent a message almost as important as his words. Among the statistics Rendell cited are as follows:

- ▶ Med-Mal Insurance Rates Going Down. Two of Pennsylvania’s largest private medical malpractice carriers have both filed for rate decreases, and one is paying a dividend back to doctors.
- ▶ Competition and Choice in the Med-Mal Insurance Market. There is a renewed interest by companies wanting to sell medical malpractice insurance in the state, with 57 newly licensed entities writing coverage since April 2002. Competition means choice and cost savings for our doctors.
- ▶ 2007 MCARE payments are 50% less than those paid in 2003. Medical Care Availability and Reduction of Error (MCARE) is the cigarette-tax subsidized program that helps doctors pay for medical malpractice insurance.
- ▶ Filings Way Down. The Administrative Office of Pennsylvania Courts has reported that statewide medical malpractice filings were 38%

lower in 2006 than in the 2000-2002 base period before reforms were implemented. In 2007 in Philadelphia, often cited by civil justice critics as a danger zone for the medical community, the filings continued to remain down by about 50%. ▶ No “Judicial Hellhole.” As the corporate special interest think tank continues to call Philadelphia a “judicial hellhole,” the latest numbers show out of the 37 medical malpractice verdicts entered in 2007, only 1 was for \$10 million or over, 3 were for between \$1 and \$5 million, and 27 were verdicts of \$0. That’s zero. The same trend is true in Delaware County.

DOCTOR: STATE HAS TURNED THE CORNER. A doctor’s editorial in the Harrisburg *Patriot-News* confirms that even those in the healthcare industry understand Pennsylvania has undergone a “successful medical liability turnaround,” that there has been a “drop in the frequency of liability cases being filed and the cost of malpractice payouts, resulting in a decrease in the cost of liability insurance,” and that this progress is a “success story.”¹

¹ Later in the article, the doctor defaulted to special interest propaganda saying doctors in Pennsylvania are aging, and

NUMBER OF DOCTORS SHOWS STEADY RISE. Far from the myth perpetuated by health care special interests, the number of physicians in our state continues a steady rise. That's according to the American Medical Association. Nationally, analysis based on AMA stats show that the number of physicians per 100,000 residents is significantly higher in states without liability caps (311 v. 280).

PATIENT SAFETY MUST COME FIRST. If there ever was a crisis involving medical malpractice litigation, it is inarguably over. Thus, it is time for all of us – civil justice advocates and medical special interests alike – to start concentrating on patient safety. Infections and avoidable error have reached epidemic stages. In 2006, according to the Pennsylvania Health Care Cost Containment Council, 2,500 people died from hospital-acquired infections and the cost to care for patients who got these infections was \$3.5 billion. The number of patients readmitted to hospitals because of infections has also grown steadily over the past few years. If we want to reduce medical malpractice litigation even further, the hospital business sector must make the investment in best practices to reduce avoidable mistakes and infections.

WORKERS' COMPENSATION INSURANCE RATES ARE DROPPING. The Pennsylvania Compensation Rating Bureau has proposed a 10.22% average rate reduction, which will serve as a benchmark for insurance companies to use when setting annual rates. This news is the latest argument against the need for additional workers' compensation reform any time soon.

PROCEDURAL CHANGES CONTRIBUTED TO THE POSITIVE TRENDS. Most believe the reason our courts deal with medical malpractice litigation more efficiently is because reforms were put in place to ensure that only the most serious cases make their way into the courthouse. For example, courts now require attorneys to certify they have had an expert examine a medical malpractice case to see if it is viable before allowing the litigation to proceed.

there are far too few coming here to take their place." Not true, according to the AMA.

LEGISLATION TO MAKE CIVIL JUSTICE STRONGER.

▶ **"Plain language bills":** Legislation is moving in Harrisburg that will make insurance policies clearer for consumers. These bills would change the language of automobile policies from hard-to-understand terminology--"full tort" and "limited tort"--to the more consumer-friendly "full right-to-sue" and "limited right-to-sue." Making insurance policies are easy to understand will allow consumers to best choose the policy right for them and their families.

▶ **Bad Faith Bill:** Another bill would give litigants the option of having a jury—as the "trier of fact" – decide whether an insurer has acted in bad faith in denying a claim. While in the juries in federal courts can make these decisions, current law in state courts allows only the judge to make the decision. This law would return the decision-making to juries, consistent to 7th amendment rights to jury trials.

▶ **Mandatory Arbitration Clauses:** PaAJ is working on legislation to ban mandatory, pre-dispute arbitration clauses in consumer contracts, modeled after federal legislation under consideration in the U.S. Congress. These clauses force consumers placing parents in nursing homes or buying a cell phone to relinquish their constitutional rights.

▶ **Arguing Damages:** This legislation would allow counsel on both sides to suggest a damage amount to the jury, who would still have the final say on the final verdict. Thirty-five states already have this legislation in statute or court rules.

▶ **Dealing with Health Care Shortage:** Finally, most medical special interest groups assert shortages of medical specialists, such as OB/GYNs, and the closure of pre-natal clinics as due to medical malpractice litigation. This is simply not true, as the above facts bear out. The real culprit is that Medicare reimbursement rates are too low. Pending legislation would raise reimbursement rates and the Pennsylvania Association for Justice has joined the health care community to lobby for the bill.

We urge you to pass this information along. It is time we start telling the true story of the state of civil justice in Pennsylvania. If you have any questions, feel free to contact Michael Petitti at 215-546-6451 X104 or michael@pajustice.org.