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From: Senator Pattty Murray
Sent: Thursday, November 10, 2005 12:01 PM
To: Sandra Englund
Subject: Response from Senator Murray

Dear Mrs. Englund:

Thank you for contacting me regarding the rising costs associated with medical malpractice insurance and attempts to reform the malpractice system. It is good to hear from you.

Like you, I understand the dire situation that many of our nation's doctors and hospitals are currently facing. Rest assured, I am fully committed to providing immediate relief to those doctors and hospitals that have been hit hard by skyrocketing insurance premiums. As you may know, during the 108th Congress I joined several of my colleagues in introducing S. 1374, the Better HEALTH Act of 2003. This bipartisan bill would provide health care professionals with immediate relief from increased medical malpractice insurance costs and deal with the root causes of the current medical malpractice insurance crisis.

I believe that the rising cost of medical malpractice insurance is a complex problem that can not be solved with an overly simplified solution. The Better HEALTH Act of 2003 improves upon current proposals to deal with the medical malpractice crisis, most notably, H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2005. The Better HEALTH Act of 2003 would provide immediate assistance to health professionals who experience dramatic increases in their malpractice premiums. As you know, even if current proposals that cap non-economic and punitive damages were passed this year, doctors would not see a decrease in their premium for a minimum of three to four years. In fact, there is no guarantee from insurance companies that such a cap would stabilize premiums. Alternatively, the Better HEALTH Act of 2003 would provide immediate tax relief to health professionals who experience above average increases in their malpractice premiums. This provision would provide much needed relief to doctors in high risk specialties, who would be eligible to receive a tax credit equivalent to 20 percent of their malpractice premium. Doctors in lower risk specialties would be eligible for a tax credit equivalent to 10 percent of their total malpractice premium.

In addition to the immediate tax relief provided by this bill, S.1374 would reduce the number of frivolous lawsuits. Under this bill, all plaintiff attorneys who file a medical malpractice case would be required to include an affidavit by a qualified health care professional verifying that malpractice has occurred. Violators of this affidavit would be subject to strict civil penalties, with first time violators paying costs and attorneys fees, second time violators paying an additional monetary fine, and third time violators paying court imposed monetary penalties and facing disciplinary action by the appropriate State bar association.

Furthermore, this bill would help reduce the number of medical errors by creating a voluntary system for providers and patient safety organizations to share medical error information through a National

Patient Safety Database, as recommended by the Institute of Medicine in its study entitled "To Err is Human." Health providers would be immune from legal repercussions and would be able to help other doctors learn from their mistakes. In addition, this bill would create a new Center for Quality Improvement and Patient Safety in the Agency for Healthcare Research and Quality (AHRQ) to promote safety.

In addition, doctors with a 25 percent caseload consisting of Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) beneficiaries would be protected from punitive damages. Exemptions would only be allowed for those such acts as sexual abuse, assault and battery, and falsification of records.

Moreover, this bill would create a 15 member Commission to explore the causes of drastic increases in medical malpractice premiums, and the extent to which those increases have impacted our country's healthcare professionals. The Commission would examine the correlation between various proposals to reduce medical malpractice premiums, and ultimately make any necessary recommendations to prevent future dramatic increases in medical malpractice premiums. Lastly, this bill would address a critical aspect in the medical malpractice crisis - the market behavior of insurance companies that issue medical malpractice policies. For too long, insurance companies have received virtual immunity from federal anti-trust laws under the McCarran-Ferguson Act.

I believe that by enacting the aforementioned provisions included in this bill, we will be able to comprehensively address the root problems causing the medical malpractice crisis, while at the same time ensuring that the rights of the most severely injured patients are not forsaken. As you know, there was no final action in the Senate on medical malpractice legislation during the 108th Congress. Rest assured, I will continue to work with my colleagues towards effective reform.

Again, thank you for contacting me regarding the rising costs of medical malpractice insurance. Please do not hesitate to contact me again, if I can be of further assistance.

Sincerely,

Patty Murray

Patty Murray
United States Senator

P.S. I'd like to invite you to receive Patty Murray's Washington View, my weekly legislative update by e-mail. If you are interested in receiving my update, please sign up here:
<http://murray.senate.gov/updates>.