

February 24, 2006

The Honorable Michael B. Enzi
Chairman, Committee on Health, Education,
Labor and Pensions
U.S. Senate
Washington, DC 20510

Dear Chairman Enzi:

I write to convey the views of the American Bar Association (ABA) with respect to proposals to divert medical professional liability cases from the regular court system to a system of health care tribunals that proponents call "health courts." At the meeting our House of Delegates held February 13, 2006, the enclosed resolution was adopted on the subject and it is the official policy of the Association.

The ABA firmly supports the integrity of the jury system, the independence of the judiciary and the right of consumers to receive full compensation for their injuries, without any arbitrary caps on damages. It is for these reasons that the ABA opposes the creation of any health court system that undermines these values by requiring injured patients to utilize "health courts" rather than utilizing regular state courts in order to be compensated for medical negligence.

ABA policy has long endorsed the use of alternatives to litigation for resolution of medical malpractice disputes *only* when such alternatives are entered into on a voluntary basis. In the case of medical malpractice, the ABA supports the use of alternatives only when they are entered into after a dispute has arisen. Instead of creating and mandating the use of "health courts," the ABA advocates the use of voluntary arbitrations, mediations, and settlement conferences, all of which are appropriate means of alternative dispute resolution.

Requiring patients to be a part of a Workers' Compensation model for medical malpractice cases as the "health courts" proposals do is inappropriate. Under Workers' Compensation systems, there is a trade-off of the loss of a right to bring an action in court that is counterbalanced by a "guaranteed" award that is no fault-based. With the proposed "health courts," an injured patient loses the right to bring an action in court but receives no guarantee of an award.

In addition, a schedule of awards is not appropriate in medical malpractice cases. Would it be fair to award a pre-determined award for negligence that results in a paralyzed hand for a surgeon, lost or impaired vision for an artist, or lost or impaired hearing for a musician?

We bring the ABA policy to your attention in view of pending legislation, S. 1337, that would provide demonstration grants to the states to develop, implement and evaluate a health court model.

Please advise if you need any further information, have any questions or if we can be of any assistance.

Sincerely,

A handwritten signature in black ink that reads "Michael S. Greco". The signature is written in a cursive style with a large initial "M" and "G".

Michael S. Greco

cc: The Honorable Edward M. Kennedy
Ranking Member, Committee on Health, Education, Labor and Pensions

