

February 24, 2006

The Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Sensenbrenner and Representative Conyers:

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 not 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, H.R. 1546, that would provide grant funding to the states to develop, implement and evaluate health care tribunals.

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

Sincerely,

A handwritten signature in cursive script that reads "Michael S. Greco". The signature is written in dark ink on a white background.

Michael S. Greco

**RESOLUTION ADOPTED BY THE
HOUSE OF DELEGATES OF THE
AMERICAN BAR ASSOCIATION**

FEBRUARY 13, 2006

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RESOLVED, That the American Bar Association reaffirms its opposition to legislation that places a dollar limit on recoverable damages that operates to deny full compensation to a plaintiff in a medical malpractice action.

RESOLVED, That the American Bar Association recognizes that the nature and extent of damages in a medical malpractice case are triable issues of fact (that may be decided by a jury) and should not be subject to formulas or standardized schedules.

FURTHER RESOLVED, That the ABA opposes the creation of health care tribunals that would deny patients injured by medical negligence the right to request a trial by jury or the right to receive full compensation for their injuries.