

RESOLUTION 13 - 2010

Subject: Injured Patients and Families Compensation Fund
Introduced by: Albert Fisher, MD and Robert S. McDonald, MD
Referred to: Health Care Coverage and Access

1 Whereas, The medical profession has paid billions of dollars into the Injured Patients and Families
2 Compensation Fund and has received nothing meaningful in return; and
3
4 Whereas, The assessments paid to the Injured Patients and Families Compensation Fund constitute a
5 tax on physicians; and
6
7 Whereas, The Injured Patients and Families Compensation Fund has been raided by the Governor for
8 the purpose of balancing the state budget; and
9
10 Whereas, Multi-million dollar lawsuits are depleting the Fund at an accelerating rate; and
11
12 Whereas, The assessments are predicted to rise significantly over the coming years threatening
13 financial viability of physician practices and fueling the increase in the cost of medical care; and
14
15 Whereas, AMA policy H-225.995 states that “each physician should be free to determine whether to
16 carry liability coverage as well as the amount of that coverage, although physicians should carry
17 adequate coverage to protect themselves and their patients;” therefore be it
18
19 RESOLVED, That the Wisconsin Medical Society will promote legislation that will allow physicians
20 to go to the free marketplace to purchase liability insurance, and that such legislation would provide
21 for the following: 1) limiting the liability of the Injured Patients and Families Compensation Fund
22 (Fund) to an actuarially sound level; 2) offering physicians participation in the Fund at several levels
23 according to their needs (for example, \$2 million, \$4 million, or \$6 million of excess liability
24 coverage with different premium levels); 3) making the purchase of excess liability coverage via the
25 Injured Patients and Families Compensation Fund voluntary and allow physicians the option of
26 purchasing any needed excess liability coverage through private carriers.

Fiscal note: Within current budget if replaces existing legislative priority.

Relevant Policies

**Society:
TOR-001**

Legislative Action in IPFCF Changes: The Wisconsin Medical Society supports the following positions in regard to the Injured Patients and Family Compensation Fund (IPFCF):

- Only named fund participants are responsible for the base insurance awards in IPFCF settlements of a case;
- Participation in the IPFCF should be mandatory;
- Rate relativity changes which have been determined to be actuarially justified over a period of at least two consecutive years by the consulting actuary and by the IPFCF Board of Governors. (HOD, 0406)

TOR-005

Malpractice Reform: The Wisconsin Medical Society supports the following principles in regard to medical malpractice:

- A reasonable cap on non-economic damages;
- Educating the public of the added cost to health care imposed by medical malpractice costs;
- Maintain the concept of comparative negligence, but replace joint and several liability with a determination of the defendant's obligation to pay based on the proportion of damages his or her negligence is found to bear to the actual injury, not on ability to pay as a 'deep pocket' defendant;
- The elimination of punitive damages except in cases of intentional torts;
- The prohibition of double recovery in compensation for an injury;
- The court in which a civil tort action is conducted shall review and approve the amount of every contingency fee paid as being reasonable to the circumstances;
- Maintaining the IPFCF threshold at a reasonable level;
- Supporting loss prevention measures;
- Support the requirement that claimant attorneys must file certificates of merit;
- Support the establishment of uniform and reasonable statute of limitations,
- Support prohibiting indemnitors from settling claims without the consent of the insured. (HOD 0407)

TOR-006

Wisconsin Injured Patients and Families Compensation Fund (IPFCF): The Wisconsin Medical Society believes in maintaining the existing basic structure of the IPFCF but also has the following recommendations:

1. Tort reform is a key system modification essential to stabilize medical liability premiums and awards and should be strongly supported. Specifically, a cap on noneconomic damages, a statute of limitations shortened to two years and a system of periodic payments should be supported. In addition, the IPFCF Board should re-evaluate the value and acceptability of some form of panel system for resolution of disputes.
2. The IPFCF Board should evaluate inequities and inconsistencies in Fund cost and access to Fund coverage. Specifically, the Board should examine the following areas from a fairness, a social impact and an actuarial perspective:
 - a. The availability and cost of Fund coverage to part time and temporary practitioners.
 - b. The discount provided to certain classes of health care professional (example: Medical College of Wisconsin physicians).
 - c. The applicability of mandatory Fund coverage to currently ineligible classes of health care professionals.
 - d. The availability and cost of Fund coverage for governmental entities or their employees.
 - e. The justification for the number of fee categories.
 - f. The availability and cost of Fund coverage for those health care professionals covered by Fund corporate coverage but who are not individually assessed.
 - g. Coverage of non-physician health care professionals by the Fund.
3. The IPFCF Board should evaluate the benefits and adverse implications of making changes to the current fund structure, specifically
 - a. Change in primary coverage level.
 - b. Caps on Fund coverage.
4. The IPFCF Board should seek regular participant input about the administrative effectiveness and responsiveness of the Fund, including its relationship with other insurers.
5. Sufficient financial and support resources should be provided to enable the Fund to meet and anticipate its needs and expectations including participants and recipients. (HOD, 0403)

TOR-012

IPFCF: The Wisconsin Medical Society supports the idea that the Injured Patients and Families Compensation Fund, including any net worth of the Fund, is held in irrevocable trust for the sole benefit of patients and families who are proper claimants of the Fund and physicians and other health care professionals participating in the Fund. Moneys collected for the Fund should not be used for any other purpose of the state. The Fund is established to curb the rising costs of health care by financing part of the liability incurred by physicians and other health care professionals as a result of medical malpractice claims and to ensure that proper claims are satisfied. The Society opposes any action or legislation, which threatens to destabilize the medical malpractice climate in the State of Wisconsin, as that climate currently benefits our citizens' access to medical care. (HOD, 0405)

LIA-012

Improvements to the Medical Professional Liability System: The Wisconsin Medical Society continues to support efforts to develop improvements to the current medical professional liability insurance system. (HOD, 0404)

LIA-015

Legislative Priorities for Medical Liability Reform: The Wisconsin Medical Society recognizes the following priorities for medical liability reform:

- Alternative approaches to birth-related injuries
- Broader financing mechanisms
- Reduction of physicians’ liability exposure
- Changes to the claims handling process
- Reform of the current tort system (BOD, 0301)

AMA:

H-225.995 Duplication in Hospital Liability and Physicians' Professional Liability Insurance

Our AMA reaffirms existing policy that (1) Each physician should be free to determine whether to carry liability coverage as well as the amount of such coverage. Likewise, it is the responsibility of the hospital governing board to determine the extent to which the hospital should protect its assets by purchasing liability insurance; and (2) Regardless of the type of insurance coverage or protection plan hospitals and physicians on the organized staff have, the AMA encourages medical staffs and hospitals to work toward the establishment of effective risk management programs. (Res. 60, A-80; Reaffirmed: CLRPD Rep. B, I-90; Reaffirmed: Sunset Report, I-00; Modified: Res. 813, I-02; Reaffirmation A-04)

Previous Relevant Resolutions:

RESOLUTION 11 - 2009

Subject: Injured Patients and Families Compensation Fund
 Introduced by: Albert L. Fisher, MD
 Referred to: Health Insurance Coverage and Access

Whereas, The medical profession has paid billions of dollars into the Injured Patients and Families Compensation Fund and has received nothing meaningful in return; and

Whereas, The assessments paid to the Injured Patients and Families Compensation Fund constitute a tax on physicians; and

Whereas, The judiciary has failed to recognize valid arguments put forth by the Wisconsin Medical Society to protect the Injured Patients and Families Compensation Fund; and

Whereas, AMA policy H-225.995 states that “each physician should be free to determine whether to carry liability coverage as well as the amount of that coverage, although physicians should carry adequate coverage to protect themselves and their patients;” therefore be it

RESOLVED, That the Wisconsin Medical Society will promote legislation that will accomplish the following: 1) limit liability of the Injured Patients and Families Compensation Fund to an actuarially sound level; 2) offer physicians participation in the Fund at several levels according to their needs (for example, \$2 million, \$4 million, or \$6 million of excess liability coverage with different premium levels); 3) make the purchase of excess liability coverage via the Injured Patients and Families Compensation Fund voluntary and allow physicians the option of purchasing any needed excess liability coverage through private carriers.

House action: Not adopted.

RESOLUTION 2 - 2008

Subject: Injured Patients and Families Compensation Fund
 Introduced by: Albert Fisher, MD
 Referred to: Health Insurance Coverage and Access

Whereas, The Injured Patients and Families Compensation Fund has been raided to balance the state budget; and

Whereas, The Injured Patients and Families Compensation Fund continues to encourage multimillion dollar lawsuits; and

Whereas, The unlimited payouts promised by the Injured Patients and Families Compensation Fund are actuarially unsound; and

Whereas, Wisconsin physicians are trapped in a liability system over which they have no control; and

Whereas, Current Wisconsin Medical Society policy is at odds with AMA policy H225-995 which states that each physician should be free to choose whether to carry liability coverage as well as the amount of coverage; therefore be it

RESOLVED, That the Wisconsin Medical Society support legislation that will place the Injured Patients and Families Compensation Fund on an actuarially sound footing, including capping payouts from the Fund; and be it further

RESOLVED, That the Wisconsin Medical Society support legislation that would make participation in the Injured Patients and Families Compensation Fund voluntary and would allow physicians to go to the free marketplace to obtain the liability insurance that will best serve their needs.

House Action: Not Adopted

RESOLUTION 6 - 2007

Subject: Injured Patients and Families Compensation Fund
Introduced by: Albert Fisher, MD; Robert Mc Queeney, MD; Ronald Stark, MD; Christopher Magiera, MD
Referred to: Health Insurance Coverage and Access

Whereas, The Injured Patients and Families Compensation Fund has been targeted by the Governor for uses other than its original intent; and

Whereas, The Injured Patients and Families Compensation Fund continues to encourage multimillion dollar lawsuits; and

Whereas, The unlimited payouts promised by the Injured Patients and Families Compensation Fund are actuarially unsound; and

Whereas, Wisconsin physicians are trapped in a liability system over which they have no control; and

Whereas, Current Wisconsin Medical Society policy is at odds with AMA policy H225-995 which states that each physician should be free to choose whether to carry liability coverage as well as the amount of coverage; therefore be it

RESOLVED, That the Wisconsin Medical Society support legislation that will place the Injured Patients and Families Compensation Fund on an actuarially sound footing; including capping payouts from the Fund; and be it further

RESOLVED, That the Wisconsin Medical Society support legislation that would separate a physician's licensure requirements from the physician's liability insurance coverage.

House Action: Not Adopted

RESOLUTION 3 - 2005

Subject: Injured Patients and Families Compensation Fund
Introduced by: Albert L. Fisher, MD
Referred to: State and National Issues

Whereas, The Injured Patients and Families Compensation Fund has been targeted by the Governor for uses other than its original intent; and

Whereas, The Injured Patients and Families Compensation Fund continues to encourage multimillion dollar lawsuits; and

Whereas, The unlimited payouts promised by the Injured Patients and Families Compensation Fund are actuarially unsound; and

Whereas, Wisconsin physicians are trapped in a liability system over which they have no control; therefore be it

RESOLVED, That the Wisconsin Medical Society will support new legislation that will place the Injured Patients and Families Compensation Fund on a more actuarially sound footing, including enacting cap on total damages for medical liability at \$1.5 million per occurrence.

House Action: Not Adopted

RESOLUTION 12 - 2004

Subject: Injured Patients and Families Compensation Fund Liability Cap
Introduced by: Waukesha County Medical Society
Referred to: Socioeconomic and Scientific Activities

Whereas, The Governor's attempt at "stealing" \$200 million from the Patients Compensation Fund (renamed the Injured Patients and Families Compensation Fund) was blocked; and

Whereas, The above was thwarted by our intelligent legislators (and our thanks to them on subsequent legislation); and

Whereas, Every actuarial report states that we need a liability cap in the Injured Patients and Families Compensation Fund in order to know when "enough is enough;" therefore be it

RESOLVED, That the Wisconsin Medical Society request that the legislature pass a "liability cap" within the Injured Patients and Families Compensation Fund to make it actuarially accountable.

House Action: Not Adopted

RESOLUTION 2 – 2004 (Revised 3/2/04)

Subject: Liability Insurance for Physicians
Introduced by: Albert L. Fisher, MD
Referred to: State and National Issues

Whereas, Physicians have the right to go to the free marketplace to purchase goods and services, as do other citizens; and

Whereas, Forcing physicians, but no other occupation or profession, to purchase unlimited liability insurance is unfair and discriminatory; and

Whereas, The current system creates an economic requirement for licensure under which only the wealthy are allowed to practice medicine; therefore be it

RESOLVED, That the Wisconsin Medical Society support legislation that would restore the rights of individual physicians to go to the free marketplace to purchase liability insurance, including: 1) making the Injured Patients and Families Compensation Fund voluntary; 2) allowing physicians to obtain varying levels of insurance entirely through commercial insurers; and 3) allowing physicians to self-insure, provided patients are fully informed.

House Action: Not Adopted