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The Need for Medical Liability Reform

Overzealous Trial Lawyers Are Denying Medical Care to Expectant Mothers

Mothers and children are being denied medical care because physicians' liability premiums are soaring and forcing many to move to more doctor-friendly states, curtail their practices, or close up shop entirely:

“The malpractice crisis has been building for years but culminated last December when the country's largest medical malpractice insurer, the St. Paul Companies, dropped tens of thousands of physicians. Other insurers have also cut back on clients or jacked up premiums. A major reason is the increasing number of personal injury lawsuits – and high-priced damage awards. Last week, the American Medical Association announced that because of astronomical malpractice increases, 12 states are in a healthcare crisis mode, with 30 others on the brink of crisis.” [Mary Brophy Marcus, “[Healthcare's Perfect Storm](#),” *U.S. News & World Report*, 7/1/02]

The states identified by the [American Medical Association](#) as facing a medical liability crisis are:

Florida	Nevada	Ohio	Texas
Georgia	New Jersey	Oregon	Washington
Mississippi	New York	Pennsylvania	West Virginia

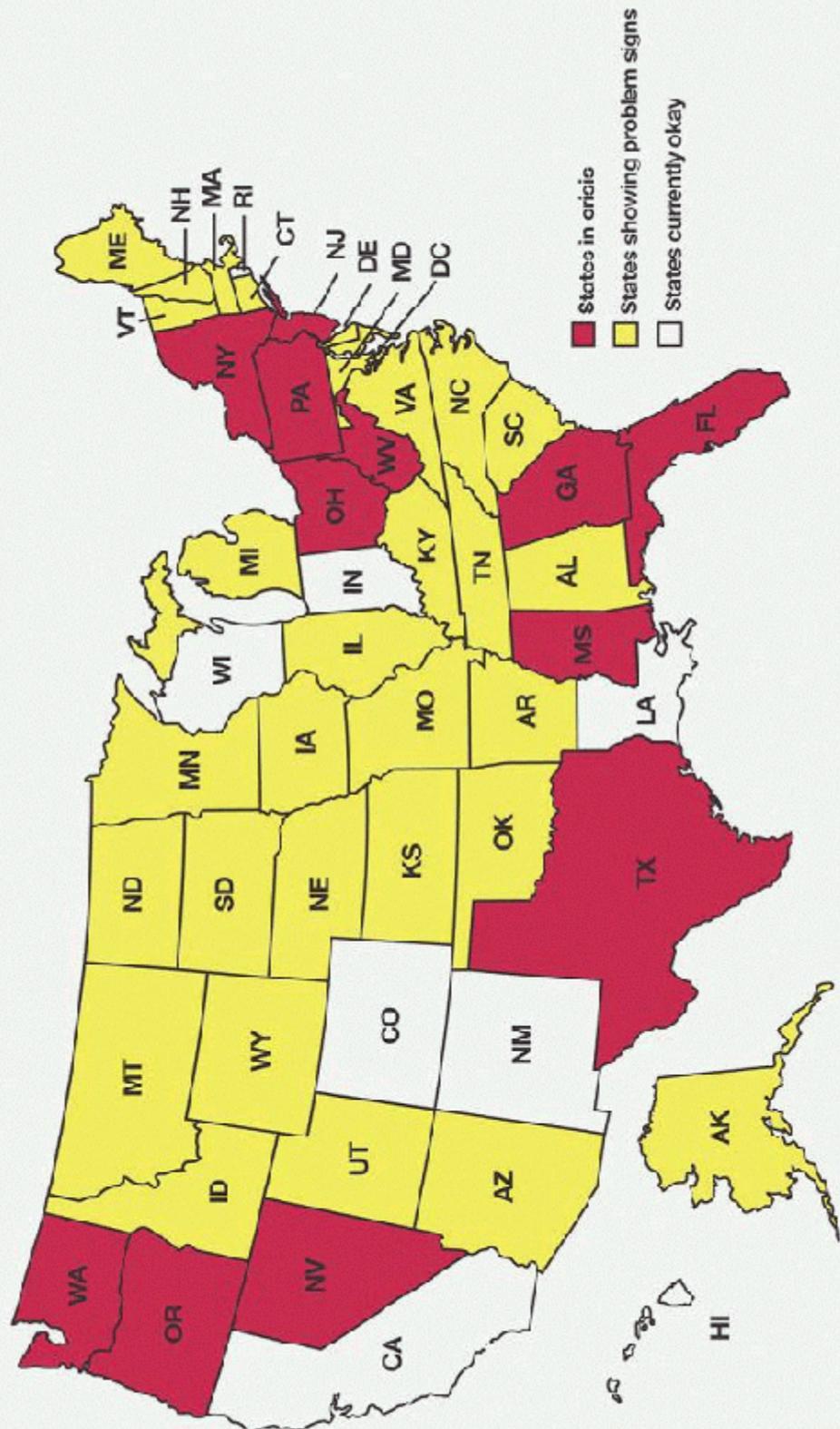
Recent media accounts demonstrate how this crisis is denying people medical care – particularly expectant mothers. Without medical liability reform, the situation is likely to get worse.

Arizona

- “In the border town of Bisbee, Ariz., hospital administrators recently closed the maternity ward because its family practitioners were seeing insurance rate increases of up to 500 percent, to \$88,000 a year. The hospital services 4,000 square miles. Now, hundreds of women must travel at least 60 miles to the closest hospitals, in Sierra Vista or Tucson. Since the ward's

closure, four women have delivered babies en route.” [Michael Freedman, “[The Tort Mess](#),” Forbes.com, 5/13/02]

Medical Liability Crisis: A National View



Source: American Medical Association

Mississippi

- **“Mississippi . . . is expected to lose 400 doctors this year** Last year Bolivar County in western Mississippi had six doctors providing obstetrical care; today it has three. . . . In neighboring Sunflower County, all four doctors who delivered babies have quit private practice. In the northern half of the state last year there were nine practicing neurosurgeons; now there are three on emergency call. . . . There used to be 14 companies underwriting liability in Mississippi; now there’s one willing to write new policies.” [Editorial, [“Lawyers vs. Patients,”](#) *The Wall Street Journal*, 5/1/02]
- **“The North Mississippi Medical Center, a hospital that serves 22 counties and 600,000 people, is now finding it all but impossible to recruit new doctors. They’re scared away by the state’s tort-friendly medical malpractice environment, soaring insurance premiums and word of the \$5 million award. The hospital . . . may have to cut back on emergency services. There is now no neurosurgeon on call one out of every four days. **If there’s a wreck on the highway that bisects town, or on any of the winding roads in northern Mississippi or Alabama, it will take at least one hour for the victim to be transported to the nearest neurosurgeon in Memphis or Jackson.** That hour is crucial; it could cost a life.”** [Michael Freedman, [“The Tort Mess,”](#) Forbes.com, 5/13/02]
- **“Maternity care used to make up about 30 percent of family practitioner Scott Nelson’s practice in his hometown of Cleveland, Miss. But Nelson got out of that business Oct. 1, when his annual malpractice premium would have jumped from \$30,000 to \$105,000 had he continued to deliver babies. ‘The malpractice insurance environment has literally forced me out of doing it,’ Nelson says.”** [Rita Rubin, [“You Might Feel a Bit of a Pinch,”](#) *USA Today*, 12/4/01]

Nevada

- **“Kimberly Maugaotega of Las Vegas is 13 weeks pregnant and hasn’t seen an obstetrician. When she learned she was expecting, the 33-year-old mother of two called the doctor who delivered her second child but was told he wasn’t taking any new pregnant patients. Dr. Shelby Wilbourn plans to leave Nevada because of soaring medical-malpractice insurance rates there. **Ms. Maugaotega says she called 28 obstetricians but couldn’t find one who would take her.**”** [Rachel Zimmerman and Christopher Oster, [“Insurers’ Price Wars Contributed To Doctors Facing Soaring Costs,”](#) *The Wall Street Journal*, 6/24/02]
- **“Half of the 93 OB-GYNs who deliver babies in Las Vegas’s Clark County are no longer accepting new obstetrical patients.”** [Mary Brophy Marcus, [“Healthcare’s ‘Perfect Storm,’”](#) *U.S. News & World Report*, 7/1/02]

- “Twice last month, Las Vegas obstetrician/gynecologist Shelby Wilbourn saw patients who’d made an appointment under a false pretense. They said they were having irregular menstrual periods. But when they met Wilbourn face-to-face, they fessed up. The reason they hadn’t had a period in a couple of months was because they were pregnant, not because their cycle was out of whack. ‘I had to close the chart and say, ‘Ma’am, I can’t help you, because I’m not doing OB anymore,’ Wilbourn says. ‘They just started sobbing in the office.’ . . . Last month, Wilbourn announced to tearful patients and office staff that he had accepted an offer in Belfast, a small town on the coast of Maine. . . [T]he decision to close his practice July 31 was not easy. ‘I’ve got a lot of pregnant women I’m not going to be here for,’ he says. ‘I’m going to be turning them loose halfway through a pregnancy, and I can’t find them a doctor.’ One of them is Deanna Rood, who is due in October. Wilbourn cared for Rood when she was pregnant with her firstborn, a son who will turn 2 in August. **‘I’m in a scary position right now,’ Rood says. ‘I’m six months pregnant, and I don’t have a doctor.’**” [Rita Rubin, [“Fed-Up Obstetricians Look for a Way Out,”](#) *USA Today*, 6/30/02]
- “[Las Vegas OB-GYN Shelby] Wilbourn accepted a new job in Maine last week. He wonders who will deliver the 500 babies born each week in Las Vegas and if there will be any OBs to take emergency calls like the one he recently answered. The patient was 34 weeks pregnant, in premature labor and hemorrhaging, and her baby’s heartbeat was frighteningly low. Wilbourn arrived in minutes, and both mother and child made it successfully through childbirth. **‘If this were next year,’ he contends, ‘that baby would have died.’**” [Mary Brophy Marcus, [“Healthcare’s ‘Perfect Storm,’”](#) *U.S. News & World Report*, 7/1/02]
- “John Nowins, president of the Clark County (Las Vegas) OB-GYN Society, says that 80 percent of his members are phasing out obstetrics because of the jump in malpractice insurance premiums. . . . Nowins, a Chicago native, says he’s considering moving to Indiana. ‘At least they have good tort reform,’ he says.” [Rita Rubin, [“Fed-Up Obstetricians Look for a Way Out,”](#) *USA Today*, 6/30/02]
- “In March, doctors at Nellis Air Force Base in Las Vegas sent a 34-year-old woman with colon cancer to Joseph Thornton, a highly experienced colon and rectal surgeon in the area. Because of the war in Afghanistan, most of Nellis’s specialized surgeons are now deployed, and **the remaining military doctors said they couldn’t remove the cancer unless they cut out the woman’s entire colon, leaving her with a colostomy bag to drag around and empty the rest of her life. They hoped that Thornton’s expertise might offer a better outcome. Just one problem. Thornton, at age 56, retired on March 31 because his malpractice insurance company was closing, and he couldn’t afford what the other insurers were charging.** . . . The woman showed up in Thornton’s office just before his retirement, but she needed chemotherapy and radiation first, and the surgery couldn’t be performed before Thornton’s policy expired. ‘It broke my heart,’ he said. ‘I felt like I was planning my own funeral. . . . My broker got quotes for me and told me I should quit. And he

makes a commission on insurance purchases.” [Marilyn Werber Serafini, [“Risky Business,”](#) *National Journal*, 5/18/02]

- **“In Nevada, 123 physicians have either closed their practices or are planning to do so soon.”** [Mary Brophy Marcus, [“Healthcare’s ‘Perfect Storm,’](#)” *U.S. News & World Report*, 7/1/02]
- “A study by a University of Nevada medical school professor says 42 percent of obstetricians are making plans to move their practices out of southern Nevada. If that happens, only 78 obstetricians would be left in an area that includes Las Vegas, a city of 1.5 million with 23,000 births last year. The same study notes that **76 percent of the city’s obstetricians have been sued, and 40 percent have been sued three or more times.**” [Michael Freedman, [“The Tort Mess,”](#) *Forbes.com*, 5/13/02]

New Jersey

- “Last week the Garden State’s largest malpractice insurer, the MIIX Group, announced it has essentially decided to fold up shop. The decision is notable because MIIX isn’t just another insurance company out to make a profit. It began as an association of doctors that got into the business of insuring themselves and other doctors. The company has lost more than \$200 million in the past 15 months, and its decision means that **about 9,000 New Jersey doctors, 37 percent of the state total, may soon lose their insurance.** . . . In 2001, three malpractice insurers stopped doing business in the state.” [Editorial, [“Born to Sue,”](#) *The Wall Street Journal*, 5/17/02]

Pennsylvania

- **“Kelly Biesecker, 35, spent many extra hours on the highway this spring, driving from her home in Villanova, Pa., to Delran, N.J., so she could continue to use her obstetrician.** Dr. Richard Krauss says he moved the obstetrics part of his practice from Philadelphia because malpractice rates had skyrocketed in Pennsylvania. Ms. Biesecker, who gave birth to a healthy boy on June 5, says Dr. Krauss was the doctor she trusted to guard her health and the health of her baby: ‘You stick with that guy no matter what the distance.’ New Jersey hasn’t been a panacea, however. His policy there expires July 1, and the carrier refuses to renew it.” [Rachel Zimmerman and Christopher Oster, [“Insurers’ Price Wars Contributed To Doctors Facing Soaring Costs,”](#) *The Wall Street Journal*, 6/24/02]
- **“Lauren Kline, 6½ months pregnant, changed obstetricians when her long-time Philadelphia doctor moved out of state because of rate increases. Now, her new doctor, Robert Friedman, may have to give up delivering babies** at his suburban Philadelphia practice. His insurance expires at the end of the month, and he says he is having difficulty finding a carrier that will sell him a policy at any price.” [Rachel Zimmerman and

Christopher Oster, "[Insurers' Price Wars Contributed To Doctors Facing Soaring Costs](#)," *The Wall Street Journal*, 6/24/02]

- "High insurance rates are also plaguing hospitals, some of which are closing their riskiest services. Grand View Hospital, located in Sellersville, Pa., between Philadelphia and Allentown, is having trouble securing insurance at any price." [Marilyn Werber Serafini, "[Risky Business](#)," *National Journal*, 5/18/02]
- **"In Philadelphia, the Methodist Hospital Division of Thomas Jefferson University Hospital will cease to deliver babies effective June 30** More than 90 full- and part-time staff positions at Methodist will disappear." [Marilyn Werber Serafini, "[Risky Business](#)," *National Journal*, 5/18/02]
- "Dr. John Angstadt, 44, started looking to move out of suburban Philadelphia when his insurance increased from \$14,000 in 1994 to \$66,000 last November. In December he joined a large practice in Savannah, Ga., where he pays just \$16,000 for insurance. Now, instead of worrying about rising costs and lawsuits, he can practice medicine. 'That was missing in Philadelphia,' he says. 'I got up in the morning and the idea of facing another day was onerous.'" [Michael Freedman, "[The Tort Mess](#)," *Forbes.com*, 5/13/02]

Texas

- "C. Dale Eubank practices in Texas. . . . 'I have been named in suits, and none of them ever went anywhere,' says Eubank, who has delivered 3,000 babies since 1983. Disgusted with what he calls the 'litigious environment' in Corpus Christi, **Eubank this year decided to stop delivering babies.**" [Rita Rubin, "[Fed-Up Obstetricians Look for a Way Out](#)," *USA Today*, 6/30/02]
- "Texas used to have 17 [medical liability insurance] carriers; now it has four." [Editorial, "[Lawyers vs. Patients](#)," *The Wall Street Journal*, 5/1/02]

Washington

- **"Jen Fleming of Friday Harbor says she keeps hoping she can persuade Robert and Barbara Pringle, a husband-wife OB-GYN team, to care for her during her next pregnancy.** In January 1999, Fleming delivered a stillborn daughter. A few months later, she became pregnant with her son, who is now 2. 'Now they'll have to refer me to someone else' when she gets pregnant, Fleming says. 'It's a shame, because they're the ones who got us through our second pregnancy.' The Pringles, who practice in Mount Vernon, Wash., stopped taking new OB patients a few weeks ago." [Rita Rubin, "[Fed-Up Obstetricians Look for a Way Out](#)," *USA Today*, 6/30/02]

West Virginia

- “The state of West Virginia, no stranger to problems, has a severe one on its hands now: a ‘doctors crisis.’ That’s what many are calling it, and with good reason. West Virginia is losing doctors every day; communities are going without care; no doctors are coming in – it is almost impossible to recruit. The problem is the legal atmosphere: The state has earned the designation ‘Tort Hell,’ or, if you are a plaintiff’s attorney, ‘Tort Heaven.’ In probably no other state is it as hard to be a doctor, or to remain one. Doctors are becoming desperate; the public, slowly – and in some areas, not so slowly – is waking up. The need for reform is crying. Of course, this need is felt all across the country; but nowhere is it felt more acutely than in West Virginia.” [Jay Nordlinger, “Welcome to ‘Tort Hell,’” *National Review*, 8/20/01]
- “Jane Kurucz, a general surgeon who specializes in breast diseases . . . is a typical case, but with an unusual twist: **On Sunday afternoon, July 29, a rally was staged in support of her, in a downtown park. The event was organized by a patient, unhappy at losing her doctor, and, more than unhappy, angry.** Dr. Kurucz has been practicing for 13 years. In that time, she has had one lawsuit against her (amazingly low for West Virginia), now pending. On May 1, she received a letter informing her that her insurance would not be renewed. . . . Jane Kurucz had to close up shop on August 1.” [Jay Nordlinger, “Welcome to ‘Tort Hell,’” *National Review*, 8/20/01]
- “**Huntington is now essentially without breast surgery.** It may soon be without neurosurgery. The local neurosurgeons pay over \$160,000 a year in insurance, if they manage to qualify for it. And as they leave, a chain reaction occurs: The city’s residency program collapses; the medical school is in jeopardy. ‘The cascade effect is tremendous,’ as Dr. Kurucz says.” [Jay Nordlinger, “Welcome to ‘Tort Hell,’” *National Review*, 8/20/01]
- “**Wheeling, W.Va.’s last emergency-room neurosurgeon recently left the state, which means that people with severed hands and other traumatic injuries must be helicoptered out of state for treatment.**” [Mary Brophy Marcus, “[Healthcare’s ‘Perfect Storm,’](#)” *U.S. News & World Report*, 7/1/02]
- “In Wheeling, one of West Virginia’s largest cities, all of the neurosurgeons have left. **Corder says it’s common for trauma patients who need a neurosurgeon to be airlifted to Pittsburgh. On one such occasion, he said, a patient was flown to Pittsburgh only to be examined and discharged 15 minutes after being seen. The cost for the helicopter ride was \$4,000.**” [Marilyn Werber Serafini, “[Risky Business,](#)” *National Journal*, 5/18/02]
- “**In West Virginia, the sole community hospitals in Putnam and Jackson counties have closed their obstetrics units because obstetricians are facing enormous premium increases and are choosing to leave the area,** according to Thomas J. Corder, chairman of

the West Virginia Hospital Association and president of Camden-Clark Memorial Hospital in Parkersburg.” [Marilyn Werber Serafini, [“Risky Business,”](#) *National Journal*, 5/18/02]

- “West Virginia was good for Joe Prud’homme. The Texas native never expected to put down roots in Beckley, W.Va., where he got a temporary job after touring the world for a year. In the ensuing 61/2 years, though, Prud’homme set up his own orthopedic surgery practice and married a local woman with a large extended family nearby. But last week, Prud’homme and his wife, who are expecting their first baby any day, packed up and left the state. If Prud’homme had continued practicing in Beckley, his annual premium would have doubled Nov. 1, to more than \$80,000. In Blacksburg, Va., 80 miles to the southeast, he’s paying \$18,000. . . . **Despite the inconvenience, Fran Pemberton, 50, and her mother-in-law, Betty Pemberton, 70, will make the three-hour round trip to see Prud’homme in Blacksburg. ‘I have to miss a shift’s work every time we go down there,’ says Fran Pemberton, a high school cook.** Prud’homme performed carpal-tunnel surgery on her wrists. Her mother-in-law needs knee-replacement surgery. ‘We have a lot of general practitioners who are pretty good doctors,’ Fran Pemberton says. ‘But to have a specialist anymore, you have to go somewhere.’” [Rita Rubin, [“You Might Feel a Bit of a Pinch,”](#) *USA Today*, 12/4/01]
- “Ronn Grandia, M.D., [Bruce Hoak, M.D.], and Michael Hall, M.D., saw no option but to close after liability insurance priced their three-man surgical practice out of existence. ‘We just don’t have the resources to pay the premium,’ Dr. Hall said. . . . After practicing in Ohio for five years, Ronn Grandia, M.D., returned to West Virginia in 1996 But this month he starts to practice across the state line at Holzer Clinic in Gallipolis, Ohio. He’ll be able to live in the same house in West Virginia and even treat some of the same patients. But by practicing in Ohio, he can afford his professional liability insurance. . . . Bruce Hoak, M.D., the third physician at Southern Surgical Associates, is headed to his native Texas and also will pay about half the rate he would have paid in West Virginia. . . . **With these three general surgeons leaving Charleston, Thomas Memorial Hospital will be left with just four general surgeons. That’s down from eight. Another surgeon left earlier, also citing high insurance rates.** ‘Nobody has been willing to consider it a crisis until thousands of patients started losing their physicians,’ Dr. Hall said. ‘We are only the first wave.’” [Tanya Albert, [“Soaring Premiums Force Doctors to Close Practice,”](#) *American Medical News*, 9/10/01]
- “Dr. R. Todd De Pond misses the howling new infants but not the costly insurance protection required for presiding at their births. ‘I’ve decided not to do obstetrics at all,’ Dr. De Pond said of his retreat to the gynecology half of his practice in what West Virginia medical officials warn is a statewide crisis in skyrocketing malpractice insurance rates. Scores of doctors are curtailing services by dropping high-risk obstetrical and neurosurgical procedures rather than pay premium increases of 30 percent and more, the State Medical Association says. **At the same time, about 100 doctors, one in 20, have in the last two years retired early or moved from West Virginia, one of the costliest areas in the nation for malpractice**

coverage. . . . ‘It has gotten worse every year,’ said Dr. De Pond, who used to handle 15 maternity cases a month.” [Francis X. Clines, “Insurance-Squeezed Doctors Fold Their Tents,” *The New York Times*, 6/13/02]

- **“Bluefield Regional Center, a major hospital in the state’s hardscrabble south, lost 12 doctors in the last two years and has been able to replace only 2.”** [Francis X. Clines, “Insurance-Squeezed Doctors Fold Their Tents,” *The New York Times*, 6/13/02]

An Untenable Situation

How bad has the medical liability environment become? As one article states [Michael Freedman, “[The Tort Mess](#),” Forbes.com, 5/13/02]:

“In some parts of the country, doctors say, it is almost better to let a patient die than to attempt heroic surgery, fail and risk a lawsuit.”

If the medical liability system is making doctors think twice about saving lives, that system needs to be reformed.

RPC staff contact: Michael F. Cannon, 224-2946

[Emphasis added by RPC in all quoted material; all underlined text refer to hyperlinks in the online version of this paper.]