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Medical Malpractice Nevada

- What Is Fair For Patients?
- What Is Fair For Doctors?
- What Is Fair For Nevada?

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ASSEMBLY JUDICIARY

DATE: 5/8/03 ROOM: 3138 EXHIBIT F

SUBMITTED BY: BILL BRADLEY

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Five Areas of Civil Justice Reform

- Caps on Damages
- Joint and Several Liability
- Periodic Payments
- Collateral Source (Evidence of Insurance)
- Attorney's Fees

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Initiative/SB 97 Changes The Definition of Medical Malpractice.

- Currently, medical malpractice means the failure “to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.” NRS 41A.009.
- Under Initiative/SB 97, it means “a negligent act or omission to act by a provider of health care in the rendering of professional services which act or omission is the proximate cause of a personal injury or wrongful death.” (Section 4).

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Differences Between AB 1 and Initiative/SB 97 – Caps on Non-Economic Damages.

AB 1

Initiative/SB 97

- \$350,000 per Plaintiff per Defendant
- \$350,000 per event
- Exception for gross negligence which is defined as (1) a conscious indifference to consequences resulting from malpractice; and (2) a disregard or indifference to the safety and welfare of the patient.
- Exception for exceptional circumstances by “clear and convincing evidence.”

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Does AB 1 Bring Stability and Predictability (ie. Hard Cap)?

- \$1,000,000 policy limit.
- AB 1 Section 5(3),
 - The provider must maintain \$1,000,000 in coverage
 - "...the non-economic damages awarded to each plaintiff from each defendant must not exceed the amount of money remaining under the professional liability insurance policy limit covering the defendant after subtracting the economic damages awarded to that plaintiff. Irrespective of the number of plaintiffs in the action, in no event, may any single defendant be liable to the plaintiffs in the aggregate in excess of professional liability insurance policy covering that defendant."

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How The Caps Under Initiative/SB 97 Hurt Those It Purports to Help?

- Senior citizens
- Stay at home parents
- Children
- Any other non-wage earners

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Joint and Several Liability

AB 1

Initiative/SB 97

- All providers severally liable for non-economic damages but jointly liable for economic damages. (MICRA)
- Different and more restrictive than MICRA
- All providers severally liable for economic and non-economic damages.

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Periodic Payments

AB 1

- Injured Plaintiff may select periodic payment based on verdict.

Initiative/SB 97

- Guilty party gets to require periodic payment.
- No way to meet emergency needs of injured patient.
- Insurance company holds the money.

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Evidence of Insurance (Collateral Source)

AB 1

Initiative/SB 97

- Insurer is reimbursed for medical bills.
- Insurer is not reimbursed for medical bills.
- Medicaid, EICON, private insurance companies recoup losses.
- EICON and private insurance companies lose millions of dollars a year.
- Treats victim fairly and avoids double recovery.
- Medicaid recovers at expense of victim.

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Limits on Attorney's Fees

AB 1

- Individual freedom to contract preserved.

Initiative/SB 97

- Contract created by the State.

What Does SB 97 Really Accomplish?

- Eliminates legitimate malpractice cases.
- Mandates that juries no longer determine the facts of each case.
- Denies recovery to those most severely injured by medical malpractice.

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AB 1 Will Reduce Insurance

Rates.

- Civil justice reform to purportedly stabilize insurance rates.
- “I said without qualification, ‘This is meaningful tort reform.’” Robert Byrd, President MLAN. (July 30, 2002)
- “I can only say that my personal opinion is that the bill has a positive impact.” James Wadhams, former Nevada Insurance Commissioner. (July 30, 2002)
- “We have no intention at this point of increasing rates. We have nothing on the table to increase rates...I believe the relief given us in AB 1, if it holds up, instead rates will start going in the other direction.” Robert Byrd, President of MLAN. (March 5, 2003)

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AB 1 Has Constitutional Safeguards Not Contained in SB 97

- “These exceptions insure that juries will still have input when people are grievously injured in Nevada.” Assemblyman Bernie Anderson
- “The reason I am suggesting [the exceptions] is that we have heard enough evidence that it is a safety valve. That type of language would be a defense to a constitutional challenge...If we just pass a generic cap of \$350,000, with the chances likely that it would be ruled unconstitutional, we will have achieved nothing.” Senator William Raggio, July 30, 2002.
- “My organization does believe there are cases in which awards higher than \$350,000 are appropriate.” (Scott Craigie, insurance industry lobbyist, Las Vegas Review Journal, February 21, 2003.)
- “Any law limiting damages should have exceptions for particularly egregious acts of malpractice.” (“Med mal reform is bad medicine,” Business Insurance, February 24, 2003.)

Medical Malpractice Nevada

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Clark County Verdicts 95-02

<i>Ross v. Sparkhul</i>	Penis erroneously injected with acid rather than Lidocaine; required reconstructive surgery	\$545,000
<i>Schmitz v. Ebert</i>		\$500,000
<i>Burney v. Kramer</i>	Permanent injury to baby at birth	\$5,350,000
<i>Cleveland v. Capanna</i>	Spine surgery at wrong level	\$450,000
<i>Schrader v. Swain</i>	Failure to recognize internal bleeding leading to death of 61 year old woman	\$3,406,355

Clark County Verdicts 95-02

<i>Pucket v. Valley Hosp</i>	Death of 70 year old man when negligently inserted breathing tube	\$983,000
<i>Marquez v. Southwest Medical</i>	Failure to timely diagnose facial fractures resulting in permanent nerve damage and complex surgical repair	\$1,200,000
<i>Gainey v. Valley Hosp</i>		\$55,000
<i>Ruppert v. Buzzard</i>	Total blindness in one eye with significant medical consequences.	\$2,000,000
<i>Makuch v. Fremont Medical Center</i>	Lost biopsy with potential diagnosis for malignancy in foot	\$130,000

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Clark County Verdicts 95-01

<i>Rice v. Torres</i>	Botched C-Section on 32 year old woman, first child, with postop bleeding resulting in hysterectomy	\$205,000
<i>Fowler v. Egtedar</i>	Failure to timely diagnose femur fracture resulting in ischemia to lower leg with resulting nerve damage	\$1,237,220
<i>Suprien v. Poon</i>	Adult circumcision with removal of 1 inch from center of penis	\$515,000
<i>Watts v. Reliable Medical Care</i>	Baby injured at birth with permanent brain damage leaving boy 9 months old mentally with need for lifelong care	\$6,000,000

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Clark County Verdicts 95-02

<i>Spradlin v. Hito</i>	Failure to rule out cauda equina syndrome resulting in decompression of disc and permanent nerve damage	\$1,500,000 (49% cont. negligence reduced verdict to \$765,000)
<i>Irving v. Sunrise</i>	Retained sponge requiring 4 follow-up needle aspirations	\$78,000
<i>Banks v. Sunrise</i>	51 year old now in persistent vegetative state; \$14,000/per month life care	\$5,412,031
<i>Conn v. Schiff</i>	Failure to diagnose myocardial infraction; sent home and died of cardiac rupture	\$2,000,000

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Clark County Verdicts 95-02

<i>Kay v. Eftaha</i>	Sphincter damaged resulting in permanent incontinence; now wears diapers	\$1,520,000
<i>Debourg v. Southwest Medical</i>	Failure of nurse practitioner to diagnose cervical cord compression causing permanent damage to nerves in upper and lower extremities	\$4,564,128
<i>Jane Doe v. Gold</i>	Injury to sexual function	\$4,200,000

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Nevada Trial Lawyers Association

- Background leading up to AB 1.
- Initiative/SB 97 fails to help Nevadans.
- Insurance reform that Nevada needs.

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How Did the Problem Begin?

St. Paul corners the market.

NSMA agreement.

Promises tail coverage.

No underwriting.

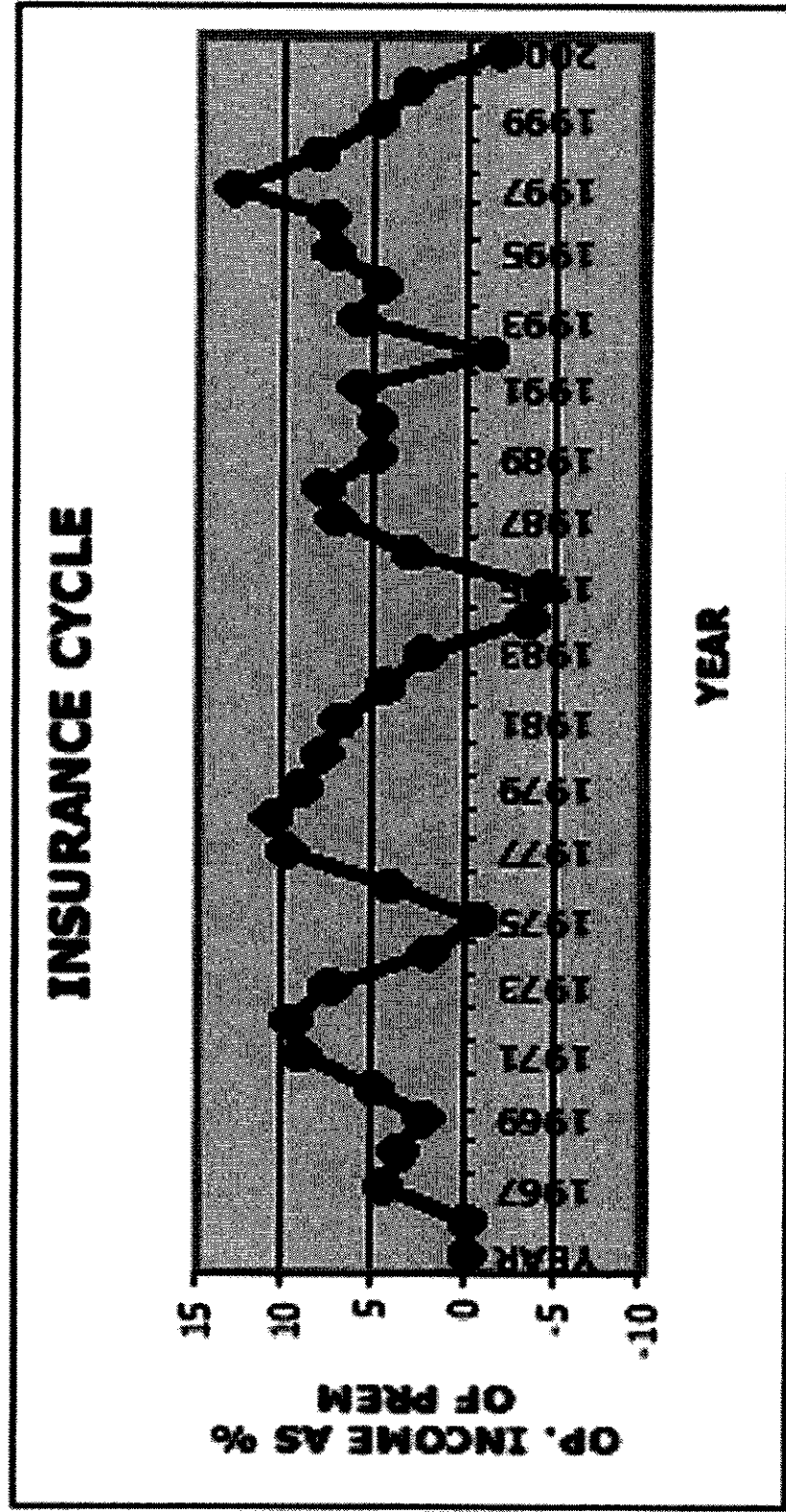
Guarantees insurance for repeat offenders.

St. Paul tells Commissioner it will not withdraw.

Stock market drops.

St. Paul pulls out.

Cyclical Nature of Insurance



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What Didn't AB 1 Accomplish?

- Insurance reform.
- Reduce instances of medical malpractice.
- Ensure patient safety.

Is the Purpose of Initiative/SB 97 Misleading- Exodus of Doctors?

- Between 1999 to 2002, the number of active in-state licensees increased by approximately 450 physicians (3,113 to 3,565). (Legislative Counsel Bureau Memorandum February 12, 2003.)
- 335 new licenses were issued to physicians to practice medicine in calendar year 2002. (Legislative Counsel Bureau Memorandum February 12, 2003.)

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Is the Purpose of Initiative/SB 97 Misleading – Denial of Access?

- The numbers of obstetricians “remain more than adequate to serve our populations in Clark County.” (Chuck Duarte, Chief of the State Division of Health Care Financing and Policy, February 19, 2003 Las Vegas Sun.)
- Health Plan of Nevada has 56 Obstetricians taking new patients.
- Nevada Health Solutions has 68 obstetricians taking new patients.
- “Of 100 women contacted, 92 said they had ‘easy or very easy’ access to an obstetrician.” (Chuck Duarte, Chief of the State Division of Health Care Financing and Policy, February 19, 2003 Las Vegas Sun.)

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Why Is There A Malpractice Problem?

- If doctors did not commit malpractice, there would not be malpractice lawsuits.
 - 44,000 to 98,000 deaths each year due to medical malpractice. (Business Insurance, February 24, 2003.)
 - Two Nevada doctors account for \$14 of \$22 million of claims paid in one year. (Business Week, March 3, 2003.)
 - “Physician negligence causes the equivalent of one jumbo jet crash every three days.” (Business Insurance, February 24, 2003.)
- Insurance companies need to be accountable.
 - Most responsible for the crisis. (Luntz Poll.)
 - No evidence Initiative/SB 97 will decrease insurance rates.

There Is No Increase in Southern Nevada Filings.

- Insurers and Physicians demand elimination of Medical Legal Screening Panel. (Nevada Insurance Division Hearing, March 4, 2002.)
- Panel eliminated October 2002.
 - 234 cases opt out of the screening panel.
 - 292 cases filed from August 2002 through February 2003.

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What Happened In California?

- From 1972 – 1988, medical malpractice premiums increase.
- Proposition 103 passes in 1988.
 - Rate roll backs of 20% for all consumers
 - Ends insurance industry exemption from state anti-trust laws.
 - \$135 million dollars returned to doctors in California.

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What Insurance Reforms Can Address the Problems?

- Require adequate rates.
- Require sound underwriting practices.
 - “And insurers should really underwrite the risk, charging higher premiums or even denying coverage to repeat offenders just as they do to drivers with poor driving records. According to the NPDB, just 5 % of all U.S. doctors are responsible for 54% of all malpractice claims. If a doctor can no longer buy insurance because he has been sued for malpractice numerous times, he or she shouldn't be treating patients.” (“Med mal reform is bad medicine,” Business Insurance, February 24, 2003.)
- Stop and hold insurers accountable for abusive trade practices .
 - The Attorney General Complaint.
 - Third party bad faith allowing victims to hold insurer's accountable.

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