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## ACOG NEWS RELEASE

For Release: February 11, 2003



## ACOG Fellow Testifies in Senate On Need for Medical Liability Reform

### ACOG Statement by Shelby L. Wilbourn, MD, FACOG

*[Today Dr. Shelby L. Wilbourn of Maine, formerly of Nevada, delivered the following oral testimony on "Who Will Deliver America's Babies? The Impact of Excessive Litigation," before the Senate Judiciary Committee and Senate HELP Committee of the United States Senate.]*

**WASHINGTON, DC** -- On behalf of the American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 45,000 physicians dedicated to improving the health care of women, I thank Chairman Hatch and Chairman Gregg for holding this important hearing to examine the medical liability crisis facing this nation. **Women across America are asking, "Who will deliver my baby?"** ACOG deeply appreciates your leadership and commitment to ending this crisis.

We urge Congress to pass meaningful medical liability reform, patterned on California's MICRA law, and bring an end to the excessive litigation restricting women's access to health care.

#### I. Doctors Help Every Day

My name is Dr. Shelby L. Wilbourn and I am an ob-gyn who recently relocated to Belfast, Maine, after 12 years of practice in Las Vegas, Nevada.

Every day in America, doctors help millions of mothers, children, grandfathers, and sisters live another day, see another birthday, play another game. Every day, beautiful healthy newborns go home with their mothers. Every day, there is another cancer survivor, or a life saved by a highly trained physician.

Doctors help make miracles happen every day in America. This is what makes our American health care system the envy of the entire world. And this is what's at stake in this debate about medical liability reform.

#### II. Personal Effects of The Medical Liability Crisis on My Practice

Liability isn't about fault or bad practice anymore. It's about hitting a jackpot. Even the very best ob-gyns have been sued, many more than once. Even doctors who have never been sued are seeing their liability premiums double and triple -- not because they're bad docs, but because they practice in a litigation-happy field where everyone is fair

game.

Let me cite a perfect example which demonstrates the imbalance of the current tort system. I just recently relocated to Maine after 12 years of practice in Nevada because of the skyrocketing liability insurance premiums in that state. I had a vibrant ob-gyn practice, taught at the University of Nevada, and served as a member of the board of the directors of the Clark County Ob-Gyn Society. The Society worked in conjunction with Governor's Task Force on the medical liability crisis.

I left Nevada because the litigation climate had driven the medical liability premiums to astronomical heights. In 2002, Las Vegas ob-gyns paid as much as \$141,760, a 49.5% increase from 2001. In Clark County, there are only 106 ob-gyns, private, public, and resident practitioners, left to deliver an estimated 23,000 babies in 2003 -- an average of 216 babies per ob-gyn. Of these, 80% no longer accept Medicaid patients because of the threat of litigation coupled with low reimbursement.

Last July, I was privileged to meet with President Bush in North Carolina to discuss the medical liability crisis on a national level. At that time, I had never been named in a lawsuit, a fact which was made known during the roundtable discussion. Within days of my meeting with President Bush, a lawsuit was filed against me. In addition, all but one of the doctors Governor Guinn named to the Task Force in Nevada had lawsuits filed against them within a short period, as well.

When I left Nevada, my patients, many of whom were with me for 12 years, were forced to find another ob-gyn amongst a dwindling population of ob-gyns in Las Vegas. This is the real issue. Patients around the country are losing access to good doctors and quality health care. The end game of the current system is a society without enough doctors to care for its citizens. We just cannot let this happen.

The medical liability crisis affects every aspect of our nation's ability to deliver health care services and is crippling our ability to deliver babies. As a result of this crisis, we have seen:

- **Expectant mothers who are unable to find obstetricians to deliver their babies**
- **Women's access to gynecologic care threatened by excessive litigation**
- **A rural health crisis caused by medical liability**
- **Community clinics cutting back services**
- **Fewer medical students choosing ob-gyn as a specialty**
- **Less investment in new technology**

### **III. Excessive Litigation Compromises the Delivery of Obstetric Care**

Obstetrics-gynecology is among the top three specialties in the cost of professional liability insurance premiums. Insurance premiums increased 167% between 1982 and 1998, with increases as high as 69% recently.

The average ob-gyn is sued 2.5 times in his/her career. But, ob-gyns win most of the claims filed against them. Over one-half (53.9%) of claims against ob-gyns are dropped by plaintiff's attorneys, dismissed or settled without a payment. In addition, ob-gyns win more than 65% of the cases that go to court verdict, arbitration, or mediation, meaning only 10% of all cases filed against ob-gyns are found in favor of the plaintiff. Enormous resources are spent to deal with these claims, only 10% of which are found to have merit. The average claim takes 4 years to resolve and the costs of defending these claims are staggering.

Jury awards can be exorbitant, particularly in states with no upper limit on awards. The average jury award in cases of neurologically impaired infants, which account for 30% of all claims against obstetricians, is nearly \$1 million, but can soar much higher. One recent award in Philadelphia reached \$100 million. This in spite of the fact that fewer than 10% of these cases are found to result from intrapartum hypoxia.

The typical ob-gyn is 47 years old, has been in practice for over 15 years, and can expect to be sued 2.5 times over his/her career. In 1999, 76.5% of ACOG Fellows reported they had been sued at least once so far in their career. This high rate of suits cannot be equated with malpractice. It shows a lawsuit-happy culture where doctors are held responsible for less than perfect outcomes. And in ob-gyn, there is no guarantee of a perfect outcome, no matter how perfect the prenatal care and delivery.

#### **IV. There Is A Solution**

Today, we have heard, or will hear, anecdotes from both sides of this debate, all of which support each side's position. However, **the fact remains clear - there is a medical liability crisis in this nation. Who loses in this environment? Women, good doctors, patients, communities, businesses, and America.**

On February 5, 2003, the House of Representatives took an important first step in ending this crisis when Representatives Greenwood, Cox, Delay, and Sensenbrenner introduced HR 5, the HEALTH Act of 2003, with ACOG's full support.

HR 5 is fair for everyone. HR 5 will restore the balance in the health care system that has been hijacked by trial lawyers and merit-less lawsuits.

#### **V. Conclusion**

Thank you Senators Hatch and Gregg for your leadership on this important issue and for the Committees' attention to this crisis. The College looks forward to working with you as we push for federal liability reform.

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*The American College of Obstetricians and Gynecologists is the national medical organization representing over 40,000 physicians who provide health care for women.*

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