

QUESTION NO. 3

Amendment to Titles 1 and 3 of the Nevada Revised Statutes

CONDENSATION (ballot question)

Shall Title 1 of the Nevada Revised Statutes governing attorneys, and Title 3 of the Nevada Revised Statutes governing actions for medical or dental malpractice and damage awards, be amended to limit the fees an attorney could charge a person seeking damages against a negligent provider of health care in medical malpractice actions, limit the amount of noneconomic damages a person may recover from a negligent provider of health care in medical malpractice actions, eliminate joint liability of providers of health care in medical malpractice actions, shorten the statute of limitations in medical malpractice actions, prohibit third parties who provided benefits as a result of medical malpractice from recovering such benefits from a negligent provider of health care, and allow negligent providers of health care to make periodic payments of future damages?

EXPLANATION

If passed, the proposal would limit the fees an attorney could charge a person seeking damages against a negligent provider of health care in a medical malpractice action. Professional negligence means a negligent act, or omission to act, by a provider of health care that is the proximate cause of a personal injury or wrongful death. A provider of health care means a physician licensed under Chapters 630 and 633 of the Nevada Revised Statutes, a dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

The law currently provides that a person seeking damages in a medical malpractice action is limited to recovering \$350,000 in noneconomic damages from each defendant, with two exceptions. Noneconomic damages is money paid to the injured person to compensate for pain, suffering, inconvenience, physical impairment, and disfigurement, while economic damages is money paid to compensate for the injured person's medical treatment, care or custody, loss of earning and loss of earning capacity. The two current exceptions to the \$350,000 cap on noneconomic damages allow an injured person to receive more than \$350,000 if: (1) the wrongdoer committed gross malpractice, or (2) exceptional circumstances justify an award in excess of the cap. The proposal, if passed, would remove the two statutory exceptions to the existing \$350,000 cap, and limit the recovery of noneconomic damages to \$350,000 per action.

Currently, damages that an injured person is allowed to recover in a medical malpractice action may be reduced by benefits the person received from a third party, such as Medicaid, private insurance, or workers' compensation. If passed, the proposal would not change the reduction of the injured person's damages, but the third parties would no

longer be permitted to recover from the wrongdoer the expenses they have paid on behalf of a medical malpractice victim. One effect of this provision could be an increased burden on the state Medicaid fund, which consists of taxpayer dollars.

Current law provides that each one of multiple defendants in medical malpractice actions is severally, but not jointly liable for noneconomic damages. This means that a single defendant among multiple defendants in a medical malpractice action is required to pay the injured person only the share of noneconomic damages attributable to that defendant's wrongful conduct and would not have to pay the share attributable to the wrongful conduct of another defendant. However, the current law treats economic damages differently, and provides that each defendant is not only severally liable, but also jointly liable for payment of economic damages; a defendant that is jointly liable could be required to pay the injured person for not only his wrongful conduct, but also for the wrongful conduct of all other defendants. The proposal, if passed, would change the current law by repealing joint and several liability for economic damages and treat liability for recovery of economic damages in medical malpractice cases the same as for noneconomic damages, such that defendants are only severally, but not jointly liable. This imposes the risk of nonpayment to the injured party if a defendant is not able to pay his percentage of damages, such as when that defendant has insufficient insurance or assets to pay his share.

The proposal also revises the statute of limitations for the filing of actions. The current law that requires an injured person to file a medical malpractice lawsuit within 3 years of the date of injury remains unchanged. The current law also provides that if the injury was not immediately apparent, the injured person has 2 years from the time the person discovers or should have discovered the injury to file the lawsuit. The proposal would reduce this time from 2 years to 1 year.

Finally, the proposal would make changes to how certain damages are paid by health care providers who have been found negligent, and provides for other matters properly related thereto. It requires that when an award equals or exceeds \$50,000 in future damages, the court must allow the same to be paid in periodic payments instead of a lump sum, if requested by either party.

The following arguments for and against and rebuttals for Question No. 3 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 3

Physicians continue to leave Nevada, and medical malpractice insurers continue to pull out of the Nevada market, at an alarming rate despite the medical malpractice litigation reforms passed by the Nevada legislature in 2002. Why? Because the 2002 legislation does not provide enough specific protection for doctors and their insurers from astronomical jury verdicts, making it impossible to plan for the challenges associated with practicing medicine. As a result, some Nevada doctors pay more than double for

liability insurance compared to doctors in Los Angeles. (AMA press release, March 17, 2004). What does this mean to your doctors? They are having difficulty keeping their practices open. What does this mean to you? When you need a doctor, you may have difficulty finding one.

The Keep Our Doctors In Nevada (KODIN) initiative provides several protections to doctors, patients, and their insurers, while still allowing people who have genuinely been injured as a result of physician negligence to recover economic losses. First, KODIN ensures that a higher percentage of an award in a medical malpractice case goes to the injured person, not to attorneys. Second, KODIN provides that, if multiple health care providers are found at fault in a malpractice case, each provider is only responsible for payment of her own share of liability and can't be forced to pay anyone else's share. Third, KODIN stops "double-dipping" by informing juries if plaintiffs are receiving money from other sources for the same injury. Fourth, KODIN allows a health care provider who has been found negligent to make payments to the injured plaintiff over a scheduled period of time instead of all at once. Finally, KODIN sets a \$350,000 limit on the amount a medical malpractice plaintiff can recover for noneconomic damages, like "pain and suffering." KODIN will help stabilize medical malpractice premiums—and help your doctor stay in Nevada.

According to the AMA, Nevada is among a dozen states facing a "full-blown medical liability crisis." KODIN will stabilize Nevada's health care crisis and provide protection for both doctors and patients.

If passed, this initiative will have no impact on the environment. The committee has not identified any fiscal impact on the state budget. The health, safety, and welfare of the public will be improved because physicians of all specialties will be more likely to stay in Nevada to practice medicine.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 3

The Truth:

1. Doctors are not leaving Nevada. In the last 3 years, the State of Nevada has licensed 1,112 new doctors and 355 of those were licensed in the last 8 months! The number of doctors actively practicing in Nevada actually *increased* each year, including the number of OB/GYNs.
2. Reform of insurance laws is the only way to reduce doctors' insurance rates.
3. The initiative is unfair to patients and victims of malpractice:
 - \$350,000 is not fair compensation for being paralyzed, brain damaged, or killed by medical negligence.
 - It is not fair to make the patient, or taxpayers through Medicaid, pay the cost of medical care for injuries caused by medical malpractice.

- It is not fair for insurance companies and negligent healthcare providers to make a patient wait years for money they are owed.
- It is not fair to tell the jury about the patient's insurance coverage, but not about the doctor's malpractice insurance. Current law already prevents "double-dipping."
- It is not fair to limit the fees for lawyers representing patients/victims of malpractice while allowing unlimited fees for lawyers representing doctors and insurance companies.

Protect your rights from being sacrificed for insurance companies and negligent doctors!
Vote NO!!

ARGUMENT AGAINST QUESTION NO. 3

If you or a family member are injured by medical malpractice, are you ready to limit your legal rights and access to the courts?

Are you ready to give insurance companies and negligent healthcare providers broad, new and unfair legal protections that would allow them to escape responsibility for injuries to you and your family?

As a taxpayer, are you ready to pay the costs of treating patients who are the victims of medical malpractice, while letting negligent healthcare providers and their insurance companies walk away from their responsibilities?

If your answer to these questions is NO, then you should vote NO on Question 3 – because Question 3 substantially limits your current rights if you or a family member are injured by medical malpractice.

It's time to look at the facts:

Question 3 does nothing to solve the problem of high insurance rates.

Insurance rate reduction and reform of insurance laws are the only way to control the cost of insurance to doctors and patients.

Two years ago, the Nevada Legislature passed tort reform laws to put limitations on medical malpractice lawsuits, including a cap of \$350,000 for pain and suffering awards, yet insurance companies have still not reduced doctors' insurance rates.

The insurance industry admits that tort reform measures have not resulted in lower premiums. While doctors have threatened to leave the state in order to persuade consumers to give up their legal rights, there are actually more doctors in Nevada than ever before. There were 335 new doctors licensed in Nevada between 1999 and 2002. A 2004 report by the U.S. Congressional Budget Office found that many reported reductions in the supply of doctors around the country could not be proven.

This initiative shifts the costs of treating injuries caused by medical malpractice to the taxpayers and away from insurance companies and negligent healthcare providers. Healthcare consumers who suffer serious injuries and cannot work or afford to pay their medical bills will have to resort to Medicaid to pay for their care which is funded by taxpayer dollars.

Negligent healthcare providers and their insurance companies should pay for their mistakes, not taxpayers.

Don't give away your legal rights! Vote NO on Question 3.

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 3

KODIN's opponents are incorrect in arguing that KODIN "shifts the cost of treating injuries caused by medical malpractice to the taxpayers." You don't give up the legal right to be compensated for your injuries if you vote YES on KODIN. Nothing in KODIN changes the rights of injured people to be compensated by negligent healthcare providers for their *economic* damages—their past and future medical bills, their time off work, their expected reduction in future income. KODIN only limits *noneconomic* damages, like those for "pain and suffering," to \$350,000. KODIN also provides that, if a malpractice plaintiff has already undergone medical treatment paid for by a third party (like a health insurer), the jury can be told about those payments and use that information in deciding what to award to the plaintiff. Currently, Nevada law forbids attorneys from mentioning this information to the jury. This is unfair to defendants when a jury uses the plaintiff's medical expenses as a factor in determining the damages it awards, but the plaintiff may not have paid some or all of the bills. In conclusion, KODIN is a common-sense measure that protects injured people and their doctors, too.

FISCAL NOTE

Financial Impact – Cannot be determined.

Although the portion of the proposal that would eliminate joint and several liability for providers of health care could potentially impact the State of Nevada's ability to recoup Medicaid costs, the amount of the reduction in recouped costs cannot be determined. Although the amount of the reduction cannot be determined with any level of certainty, it would appear that the reduction would not be a significant portion of the State's Medicaid budget, which is approximately \$1.1 billion annually.