

STRENGTHEN MEDICAL LIABILITY REFORM

Background: Trial lawyers regularly attempt to increase the “cap” on damages in medical malpractice cases and to make other changes to the legal environment, including abolishing the defense of contributory negligence. This issue has heightened visibility at this time because of recent activity in Maryland’s courts. The Maryland Court of Appeals (our Supreme Court) recently considered a case that could have led to a repeal of the contributory negligence law. In a split decision, the Court declined to repeal contributory negligence but in doing so have positioned the issue for legislative action. In addition, several high profile obstetric cases that resulted in multi-million dollar verdicts against hospitals have caused a number of hospitals to consider closure of obstetrics units.

The Problem: While Maryland has a “cap” on non-economic damages in medical malpractice cases, it is one of the most liberal in the nation and increases each year by \$15,000. The Trial Lawyers Association has previously proposed legislation to restrict a doctor’s use of expert witnesses in a malpractice case even where that witness’ testimony would be crucial to a defense. As noted, the defense of contributory negligence could also be challenged given the recent Court of Appeals ruling. The malpractice verdicts in obstetric cases and related closure of services could result in significant access to care challenges for pregnant women and their babies.

The Solution: Oppose legislation which would eliminate the defense the contributory negligence defense as well as legislation which would abolish the present rules relating to expert witnesses or increase the “cap” in malpractice cases. Support legislation that would establish a “Birth Injury Fund” for obstetrics cases.

What to Do: Call/write/e-mail members of the Senate Judicial Proceedings Committee and the House Judiciary Committee and ask them to pay particular attention to bills which will aggravate the present medical malpractice environment as well as those that will improve access to care by creating alternative approaches to addressing certain malpractice issues such as obstetrics currently handled through the tort system.