MedChi
The Maryland State Medical Society

Your Advocate.
Your Resource.
Your Profession.

IMPACT UPDATE

MedChi's mission is to serve as Maryland's foremost advocate and resource for physicians, patients, and the public health.

From President Eric Wargotz, M.D.

The Vexing Complexities of US Medical Malpractice: The Path Forward

The United States medical malpractice system functions as a paradox: intended to compensate injured patients and deter negligence, it often operates as an inefficient, adversarial gauntlet that fails both victims and physicians. This complex legal framework drives up healthcare costs through "defensive medicine" such as unnecessary tests and procedures estimated to cost the system between $46 billion and $162 billion annually, while inflicting professional and psychological trauma on clinicians, known as the "second victim" phenomenon. In 2021 alone, malpractice payouts exceeded $3.1 billion, yet only a fraction of patients harmed by

From CEO Gene Ransom, III

MedChi Files Amicus Brief to Uphold Law Preventing Excessive Physician Lawsuits

The Litigation Center of the American Medical Association and State Medical Societies and the Maryland State Medical Society (MedChi), filed an amicus brief in the U.S. Supreme Court urging the Court to uphold case law that stops plaintiffs from filing parallel medical liability lawsuits in state and federal courts.

The high court heard oral arguments on April 20 in a case that aims to change how the Rooker-Feldman doctrine is applied. For years, that doctrine has allowed only the U.S. Supreme Court—not lower federal courts—to review state court decisions after the state's highest court has issued a judgment or decree, and only in

actual negligence receive compensation due to the high costs and difficulty of proving a deviation from the "standard of care."

Common Allegations and Accountability Mechanisms
Malpractice claims typically center on misdiagnosis or delayed diagnosis, surgical errors, medication mistakes, and failure to treat. While the court system is the most visible form of accountability, the healthcare landscape relies on non-litigation mechanisms to maintain standards. These include oversight by State Medical Boards, hospital peer review committees, and the National Practitioner Data Bank (NPDB), which tracks adverse actions to prevent negligent providers from moving between jurisdictions undetected.

The Path Toward Reform: ADR and Transparency
To mitigate the adversarial nature of the system, many advocates propose Alternative Dispute Resolution (ADR) methods, such as mediation and arbitration. These are often integrated into Communication and Resolution Programs (CRPs), like the University of Michigan's "Michigan Model", which encourage institutions to offer honest explanations, apologies, and fair compensation immediately following an error. The success of these programs often depends on "apology laws." However, a critical legal distinction exists: "sympathy-only" laws (like those in Maryland) protect expressions of regret but allow admissions of fault to be used as evidence, whereas "admission-of-fault" laws (as seen in Colorado) provide total protection for honest disclosure, better incentivizing transparency.

Maryland's Legal Landscape and the Role of MedChi
In Maryland, the malpractice environment is heavily shaped by Maryland Code § 10-920 and the advocacy of MedChi (The Maryland State Medical Society). MedChi has successfully championed several key protections, including a non-economic damage cap set at $905,000 for 2025, and the "25% Rule." A cornerstone of Maryland's malpractice defense, heavily championed by MedChi is this strict regulation of expert testimony. Under the Maryland Health Care Malpractice Claims Act, plaintiffs must file a Certificate of Qualified Expert within 90 days of a claim, attesting to a breach in the standard of care. This distinctive hurdle, the "25% Rule" is as follows: an expert witness is disqualified if they spend more than 25% of their professional time on activities directly related to testimony in personal injury claims. This rule is designed to prevent "hired gun" witnesses and ensure that defendants are judged by active clinicians. A violation of this rule can lead to the immediate dismissal of a case. Additionally, Maryland has transitioned to the Daubert standard, allowing judges to act as gatekeepers who exclude expert testimony that lacks a reliable scientific methodology. Of note is that Maryland is one of the few states adhering to contributory negligence, a strict standard where any proof that a patient was even 1% at fault for their injury can legally bar them from any recovery.

Economic Realities and Defense Strategies
While non-economic damages are capped, economic damages for medical bills and lost wages are unlimited. Plaintiffs utilize a Life Care Plan (LCP) to quantify these lifetime costs, which often reach millions of dollars. To counter these high-value claims, Maryland physicians are encouraged to document "informed refusal" and non-adherence to treatment meticulously to support a contributory negligence defense. Regionally, Maryland's standards are more rigorous than neighbors like Virginia which focuses on "active clinical practice" recency, or Pennsylvania, which enforces strict "same-specialty" requirements for experts.

Conclusion
True reform requires moving from a culture of blame to a culture of safety. By strengthening apology laws, adopting the Daubert standard for scientific evidence, and utilizing ADR, the system can

situations where plaintiffs complain of injuries caused by state court judgments before the federal court proceedings began.

The plaintiff in the case before the Supreme Court, *T.M. v. University of Maryland Medical System Corp. et al.*, filed a federal lawsuit at the same time she was appealing a consent decree to a state appellate court. She claims the Rooker-Feldman doctrine only applies after state-court proceedings have ended, so federal court challenges to ongoing state malpractice litigation shouldn't be barred.

T.M. has a rare condition that can cause temporary psychosis. After an episode in 2023, she was involuntarily committed to a state hospital and was then forcibly medicated. She alleged that the state consent order that dictated her treatment plan going forward violated her constitutional rights. The federal district court dismissed T.M.'s federal claim, citing the Rooker-Feldman doctrine. The 4th U.S. Circuit Court of Appeals affirmed that decision, and now T.M. has appealed that decision to the U.S. Supreme Court.

In their amicus brief, the AMA Litigation Center and MedChi urge the Supreme Court to uphold the court of appeals decision dismissing the federal lawsuit under the Rooker-Feldman doctrine. They say that nowhere in the case law "did the Court mandate a 'stealth fifth requirement' that for Rooker-Feldman to apply, the state court judgment at issue cannot be subject to further state-court review." In fact, the brief says, the U.S. Supreme Court and circuit courts have previously said the doctrine applies to state court judgments that aren't final yet.

Overturning the 4th Circuit's opinion and allowing the federal claim to move forward while a state claim was pending "would encourage plaintiffs with baseless medical malpractice claims to pursue parallel litigation in state and federal courts to run up legal fees and extract nuisance settlements. It would also invite frivolous state court appeals for the purpose of keeping federal cases that would otherwise be dead-on-arrival alive, if only temporarily," the AMA Litigation Center and MedChi tell the court in their amicus brief, saying that "the court should eschew such a result."

If plaintiffs can file a federal lawsuit after a state court judgement isn't one that they like, the secondary lawsuit will be duplicative except for the constitutional claims that are added to the federal lawsuit, even if there is no reason why the constitutional claims could not have been included in the original state court claim.

"As this court has long recognized, state courts are no less duty-bound, or adept at, protecting federal constitutional rights than federal courts," the brief says. "Nevertheless, the transparent motivation behind filing a second lawsuit in federal court is to attempt to get the district court to reverse the adverse state court ruling. Rooker-Feldman forbids this result."

These extra lawsuits would just add to the burden of frivolous lawsuits that physicians face, lawsuits that take money away from patient care and add to physician burnout. The AMA Litigation Center and MedChi tell the court of a study that looked at all medical malpractice claims closed between 2002 and 2005, and that involved some defense cost. This study showed that more than 54% of litigated claims were dismissed. Among the cases that went to trial, 80% were decided in the physician's favor.

And those numbers have only gone up. A study published in 2019 found that 65% of claims resolved between 2016 and 2018 were dropped, dismissed or withdrawn and defendants won 89% of cases decided after a trial.

Even if lawsuits are decided in physicians' favor, it is costly to defend claims. The average defense cost for settled claims that

balance fair compensation with professional accountability. The efforts of MedChi remain central to this balance, ensuring that the legal protections for Maryland providers evolve alongside new risks in telemedicine and AI.

closed between 2016 and 2018 was $77,117 according to the Medical Professional Liability Association's Data Sharing Project. Meanwhile, for tried claims, it was $158,843 when there was a defendant victory and $236,519 for a plaintiff victory. When claims were dropped, dismissed or withdrawn, the average defense cost was $30,439.

The AMA Litigation Center and MedChi tell the court that "Rooker-Feldman thus remains an important safeguard against what empirical research suggests is an increasing percentage of meritless medical malpractice claims."

The Supreme Court heard oral arguments on April 20th, and we expect to have a decision in the coming months. To learn more about this case, **click here.**

Not a MedChi Member? Join Now!

Center for Value Based Care | **Center for the Private Practice of Medicine** | **Center for the Employed Physician** | **www.medchi.org**