

FEBRUARY 10, 2003

**SCHAKOWSKY: "MEDICAL MALPRACTICE  
INSURANCE CRISIS IS NOT CREATED  
BY THE VICTIMS"**

WASHINGTON, D.C. - [LANGHORNE, PA - U.S. Representative Jan Schakowsky (D-IL) today warned that Republican so-called "reform" of the medical malpractice system is an attack on the civil justice system. Schakowsky said that H.R. 5 will take away victims' rights and *"unnecessarily punish people who have truly suffered"* without either lowering health care costs for consumers or insurance rates for doctors.

During a field hearing of the Oversight and Investigations Energy and Commerce Subcommittee, Schakowsky said, *"I share the belief that physicians and other health care professionals should not be burdened with unreasonable insurance rates. However, to the extent that attacks on the civil justice system are offered as solutions, I would strongly argue that those solutions stem from a misdiagnosis of the problem. The medical malpractice insurance crisis is not created by the victims."*

[ Below is Schakowsky's opening statement:

I feel very privileged to be here to discuss an issue that is my top priority: the quality and accessibility of health care.

I share the belief that physicians and other health care professionals should not be burdened with unreasonable insurance rates and I would like to work with you and the committee to find solutions. However, that to the extent that attacks on the civil justice system are offered as solutions, I would strongly argue that those solutions stem from a misdiagnosis of the problem. The medical malpractice insurance crisis is not created by the victims.

For this opening statement, I want to briefly enumerate some of the findings of a January 2003 Public Citizen report called "Medical Misdiagnosis: Challenging the Malpractice Claims of the Doctor's Lobby," and ask that the entire report be entered into the record.

- 1) There is an epidemic of medical errors and unsafe practices. Between 44,000 and 98,000 Americans die in hospitals each year due to preventable medical errors, according to the Institute of Medicine. By comparison, the annual death toll is 43,000 from automobile accidents, 42,000 from breast cancer, and 15,000 from AIDS.
- 2) There is no growth in the number of new medical malpractice claims. According to the National Association of Insurance Commissioners, the number of new medical malpractice claims declined by about 4% between 1995 and 2000.

3) The spike in medical liability premiums was caused by the insurance cycle, not by new claims or "skyrocketing" jury verdicts. Premiums charged do not track losses paid, but instead rise and fall in concert with the state of the economy. In any case, malpractice insurance costs have risen at half the rate of medical inflation, and at a slower pace than health insurance premiums.

4) 5% of doctors are responsible for 54% of malpractice in the U.S. Of these, only 7.6% have ever been disciplined by state medical boards.

5) Few, if any malpractice lawsuits are "frivolous." Plaintiffs drop ten times more claims than they pursue. Data reported in this study shows that only one in eight medical errors committed in hospitals results in a malpractice claim.

I am concerned, Mr. Chairman, that the sweeping legislation that you introduced this past week would unnecessarily punish people who have truly suffered. I am especially concerned about the effects of the caps on compensatory non-economic damages and punitive damages on women, children, people of color and the elderly. Under the bill, a drug company or HMO will almost certainly pay less if they injure and working woman than a working man, since women earn 76 cents on the dollar that men earn. They will pay less if they injure a working African-American woman, who earns 69 cents on the dollar, or a Latina who earns 56 cents on the dollar. They will pay less if they injure or kill a senior citizen. Under caps, we tell a stay-at-home mom that the loss of her fetus because an HMO refused the proper care is worth no more than \$250,000, or a poor woman who can no longer have children, that her loss is worth little more than \$250,000. The anguish of a frail elderly person who suffers due to a nursing home's neglect - a situation all too common in our country - should not be limited to \$250,000.

I fear that the effect of this bill is to say that we value the wages of the millionaires more than the pain of a senior citizen or the death of a child. I believe these caps are unfair and discriminatory and I think the legislation puts severe limits on victim's abilities to seek damages for preventable injuries and deaths caused by negligent HMOs, providers, nursing homes, pharmaceutical companies and medical device manufacturers.

I strongly support doctors and other front line health care providers, but this bill goes way beyond them. Our medical practice insurance system needs to be reformed. We need to have experience rating for doctors, just as we do for drivers, so that the few bad apples can be weeded out. Doctors who practice medicine in a safe and responsible manner should not have to shoulder the burden for those who don't.

Finally, a few words about insurance reform: There is no compelling evidence that caps on damages will lower premiums. In California, as we will hear today, it was not MICRA that lowered medical malpractice rates but Prop 103. We need to open up insurance company books to find out why rates fluctuate so wildly. We should wait for the results of the GAO studies on the relationships among medical malpractice rates, lawsuits, and insurance industry practices. We should proceed carefully to make sure that victims of medical malpractice are not forced to pay for our mistakes.