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Joan Claybrook, President

## Study by U.S. General Accounting Office Reveals Rising Malpractice Premiums Have Not Affected Consumers' Access to Health Care

Claims by state medical associations led the U.S. General Accounting Office (GAO), the non-partisan congressional watchdog, to perform a detailed examination of five of the AMA's "crisis" states to determine whether evidence supported the claim of state medical associations and other provider groups that rising malpractice premiums affected consumers' access to health care. Below is a summary of the GAO's findings.

- The GAO study of August 2003 examined in depth five states on the AMA's crisis list: Florida, Mississippi, Nevada, Pennsylvania and West Virginia. The study failed to reveal convincing evidence that increased malpractice insurance premium costs had caused a significant number of physicians to move, retire or reduce high-risk services.<sup>1</sup>
- The GAO report said: "In the five states with reported problems ... *we determined that many of the reported provider actions taken in response to malpractice pressures were not substantiated or did not widely affect access to health care.* For example, some reports of physicians relocating to other states, retiring, or closing practices were not accurate or involved relatively few physicians."<sup>2</sup> (emphasis supplied)
- The volume of medical care delivered to patients in the five crisis states had *increased* during the so-called crisis period.<sup>3</sup>
- GAO's analysis of utilization rates among Medicare beneficiaries for three of the specific services frequently cited as being reduced – spinal surgery, joint revisions and repairs and mammography – did not identify recent reductions.<sup>4</sup>
- Job actions by the AMA, its state affiliates, and member doctors to protest rising insurance rates limited the access of their patients to certain medical services. Specifically, the GAO found that in Nevada, "To draw attention to their concerns about rising medical malpractice premiums, over 60 orthopedic surgeons in [Clark] County withdrew their contracts with the University of Nevada Medical Center, causing the state's only Level I trauma center to close for 11 days in July 2002." And, in Florida, "at least 19 general surgeons who serve [Jacksonville's] hospitals took leaves of absence beginning in May 2003 when state legislation capping non-economic damages for malpractice cases at \$250,000 was not passed."<sup>5</sup>

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- AMA “surveys” of doctors were not reliable. “Survey data used [by AMA] to identify service cutbacks in response to physician concerns about malpractice pressures are not likely representative of the actions taken by all physicians. ... AMA recently reported that about 24 percent of physicians in high-risk specialties responding to a national survey have stopped providing certain services; however, the response rate for this survey was low (10 percent overall), and AMA did not identify the number of responses associated with any particular service.”<sup>6</sup>
- In response to questions by the AMA regarding the application of its findings to states other than the five crisis states studied, the GAO said: “While we did not attempt to generalize our findings beyond these five states, we believe that – because they are among the most visible and often-cited examples of ‘crisis’ states – the experiences of these five states provide important insight into the overall problem.”<sup>7</sup>

Regarding three of the specific states covered in its study, the GAO reported:

- In Florida, where doctors’ successfully lobbied for the passage of a cap on damages, “[r]eports of physician departures ... were anecdotal, not extensive, and in some cases ... inaccurate. For example, state medical society officials told us that Collier and Lee counties lost all of their neurosurgeons due to malpractice concerns; however, we found at least five neurosurgeons currently practicing in each county as of April 2003. ... [O]ver the past two years the number of new medical licenses issued has increased and physicians per capita has remained unchanged.”<sup>8</sup>
- “In Nevada, 34 OB/GYNs reported leaving, closing practices, or retiring due to malpractice concerns; however, confirmatory surveys conducted by the Nevada State Board of Medical Examiners found nearly one-third of these reports were inaccurate. ... Random calls [GAO] made to 30 OB/GYN practices in Clark County found that 28 were accepting new patients. ... Similarly, of the 11 surgeons reported to have moved or discontinued practicing, the board found four were still practicing.”<sup>9</sup>
- “In Pennsylvania, despite reports of physician departures, the number of physicians per capita in the state has increased slightly during the past six years. The Pennsylvania Medical Society reported that between 2002 and 2003, 24 OB/GYNs left the state due to malpractice concerns; however, the state’s population of women age 18 to 40 fell by 18,000 during the same time period.”<sup>10</sup>

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<sup>1</sup> United States General Accounting Office, “Medical Malpractice: Implications of Rising Premiums on Access to Health Care,” GAO-03-836, August 2003. Available at <http://www.gao.gov/new.items/d03836.pdf>.

<sup>2</sup> GAO Study at p. 5.

<sup>3</sup> GAO Study at p. 20.

<sup>4</sup> GAO Study at p. 20.

<sup>5</sup> GAO Study at p. 13-14.

<sup>6</sup> GAO Study at p. 20.

<sup>7</sup> GAO Study at p. 7.

<sup>8</sup> GAO Study at p. 17.

<sup>9</sup> GAO Study at p. 18.

<sup>10</sup> GAO Study at p. 18.