
WMA STATEMENT ON MEDICAL LIABILITY REFORM

Adopted by the 56th WMA General Assembly, Santiago, Chile, October 2005
and reaffirmed by the 200th WMA Council Session, Oslo, Norway, April 2015

1. A culture of litigation is growing around the world that is adversely affecting the practice of medicine and eroding the availability and quality of health care services. Some National Medical Associations report a medical liability crisis whereby the lawsuit culture is increasing health care costs, restraining access to health care services, and hindering efforts to improve patient safety and quality. In other countries, medical liability claims are less rampant, but National Medical Associations in those countries should be alert to the issues and circumstances that could result in an increase in the frequency and severity of medical liability claims brought against physicians.
2. Medical liability claims have greatly increased health care costs, diverting scarce health care resources to the legal system and away from direct patient care, research, and physician training. The lawsuit culture has also blurred the distinction between negligence and unavoidable adverse outcomes, often resulting in a random determination of the standard of care. This has led to the broad perception that anyone can sue for almost anything, betting on a chance to win a big award. Such a culture breeds cynicism and distrust in both the medical and legal systems with damaging consequences to the patient-physician relationship.
3. In adopting this Statement, the World Medical Association makes an urgent call to all National Medical Associations to demand the establishment of a reliable system of medical justice in their respective countries. Legal systems should ensure that patients are protected against harmful practices, physicians are protected against unmeritorious lawsuits, and standard of care determinations are consistent and reliable so that all parties know where they stand.
4. In this Statement the World Medical Association wishes to inform National Medical Associations of some of the facts and issues related to medical liability claims. The laws and legal systems in each country, as well as the social traditions and the economic conditions of the country, will affect the relevance of some portions of this Statement to each National Medical Association but do not detract from the fundamental importance of such a Statement.
5. An increase in the frequency and severity of medical liability claims may result, in part, from one or more of the following circumstances:
 - a. Increases in medical knowledge and medical technology that have enabled physicians to accomplish medical feats that were not possible in the past, but that involve considerable risks in many instances.

- b. Pressures on physicians by private managed care organizations or government-managed health care systems to limit the costs of medical care.
 - c. Confusing the right to access to health care, which is attainable, with the right to achieve and maintain health, which cannot be guaranteed.
 - d. The role of the media in fostering mistrust of physicians by questioning their ability, knowledge, behaviour, and management of patients, and by prompting patients to submit complaints against physicians.
6. A distinction must be made between harm caused by medical negligence and an untoward result occurring in the course of medical care and treatment that is not the fault of the physician.
 - a. Injury caused by negligence is the direct result of the physician's failure to conform to the standard of care for treatment of the patient's condition, or the physician's lack of skill in providing care to the patient.
 - b. An untoward result is an injury occurring in the course of medical treatment that was not the result of any lack of skill or knowledge on the part of the treating physician, and for which the physician should not bear any liability.
7. Compensation for patients suffering a medical injury should be determined differently for medical liability claims than for the untoward results that occur during medical care and treatment, unless there is an alternative system in place such as a no-fault system or alternate resolution system.
 - a. Where an untoward result occurs without fault on the part of the physician, each country must determine if the patient should be compensated for the injuries suffered, and if so, the source from which the funds will be paid. The economic conditions of the country will determine if such solidarity funds are available to compensate the patient without being at the expense of the physician.
 - b. The laws of each jurisdiction should provide the procedures for deciding liability for medical liability claims and for determining the amount of compensation owed to the patient in those cases where negligence is proven.
8. National Medical Associations should consider some or all of the following activities in an effort to provide fair and equitable treatment for both physicians and patients:
 - a. Establish public education programs on the risks inherent in some of the new advances in treatment modalities and surgery, and professional education programs on the need for obtaining the patient's informed consent to such treatment and surgery.
 - b. Implement public advocacy programs to demonstrate the problems in medicine and health care delivery resulting from strict cost containment limitations.

- c. Enhance the level and quality of medical education for all physicians, including improved clinical training experiences.
- d. Develop and participate in programs for physicians to improve the quality of medical care and treatment.
- e. Develop appropriate policy positions on remedial training for physicians found to be deficient in knowledge or skills, including policy positions on limiting the physician's medical practice until the deficiencies are corrected.
- f. Inform the public and government of the dangers that various manifestations of defensive medicine may pose (the multiplication of medical acts or, on the contrary, the abstention of the physicians, the disaffection of young physicians for certain higher risk specialties or the reluctance by physicians or hospitals to treat higher-risk patients).
- g. Educate the public on the possible occurrence of injuries during medical treatment that are not the result of physician negligence, and establish simple procedures to allow patients to receive explanations in the case of adverse events and to be informed of the steps that must be taken to obtain compensation, if available.
- h. Advocate for legal protection for physicians when patients are injured by untoward results not caused by any negligence, and participate in decisions relating to the advisability of providing compensation for patients injured during medical treatment without any negligence.
- i. Participate in the development of the laws and procedures applicable to medical liability claims.
- j. Develop active opposition to meritless or frivolous claims and to contingency billing by lawyers.
- k. Explore innovative alternative dispute resolution procedures for handling medical liability claims, such as arbitration, rather than court proceedings.
- l. Encourage self-insurance by physicians against medical liability claims, paid by the practitioners themselves or by the employer if the physician is employed.
- m. Encourage the development of voluntary, confidential, and legally protected systems for reporting untoward outcomes or medical errors for the purpose of analysis and for making recommendations on reducing untoward outcomes and improving patient safety and health care quality.
- n. Advocate against the increasing criminalization or penal liability of medical acts by the courts.