AMERICAN COLLEGE OF RHEUMATOLOGY
POSITION STATEMENT

SUBJECT:	**Medical Liability Reform**
PRESENTED BY:	**Committee on Rheumatologic Care**
FOR DISTRIBUTION TO:	**Members of the American College of Rheumatology** **United States Congress** **The White House** **Governors** **State Legislators** **Medical Societies**

POSITIONS:

The ACR believes that emphasizing patient safety and access to healthcare should be prioritized in considering medical liability reform, and that meaningful reform is necessary to lower the costs of healthcare. This includes promoting quality improvement, coordinating care, and reducing costs associated with practicing defensive medicine. The ACR also believes that patients who are harmed by medical negligence should be fairly compensated. The ACR supports medical liability reform that would include:

1. Evidence-Based Standards of Practice: The ACR recommends that providers following evidence-based medicine, including guidelines, should not be held liable for adverse patient outcomes, which inevitably do occur even when no error in care has been committed. In addition, given ongoing innovation and advances in rheumatologic care, failure to follow particular guidelines does not *a priori* indicate that substandard or negligent care was rendered.

2. Early Disclosure and Compensation: The ACR recommends that health care providers including hospitals and physicians should voluntarily disclose medical errors to patients, next of kin, their respective health systems and patient safety organizations as soon as they occur.

3. Arbitration and Medical Liability Courts: The ACR supports development of alternatives to traditional litigation, and encourages states to develop innovative pilot programs, such as arbitration and specialized medical liability courts, to make claim settlements more efficient and cost effective. The ACR recommends that prior to any litigation, parties should have an opportunity to arbitrate a grievance. If the arbitration process does not lead to resolution, then the claim can be adjudicated.

4. Contingency Fees: Contingency fees are a form of billing in which attorneys are paid a percentage of damages awarded at the end of a case. The ACR supports limiting contingency fees to reduce frivolous litigation and ensure patients are protected from predatory legal fees.

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5. Standards for Experts Witnesses: The ACR supports establishing standards for expert

witnesses with guidance from medical professional societies in each area of specialization. The expert witness's testimony should be limited to their area of expertise. Expert witnesses in medical liability cases should be:

a. Board certified by the appropriate organization;
b. Actively practicing or have sufficient experience as an educator at an accredited medical school in the relevant subject matter and specialty; and
c. Licensed in the state of jurisdiction. If an expert is not available in the state of jurisdiction, then an expert from another state with similar licensing standards can be used.

6. Non-Economic damages: Limits on non-economic damages are essential to control erratic and excessive awards that increase total healthcare costs and reduce access to care. The ACR supports capping non-economic damages as recommended by AMA model legislation (1, 2) and adjusted for inflation. Non-economic damages should not be available for emergency lifesaving care and procedures.

7. Future Damages: Future damages are awarded to cover expenses yet to be incurred. Defendants should be allowed to pay future damages incrementally as approved by the court. Incremental future damages should be discontinued if the plaintiff no longer needs additional medical services.

8. Statute of Limitations: The ACR recommends that states establish a statute of limitations on medical liability not to exceed three years after the injury or one year after the discovery of an injury that the patient finds through reasonable diligence. In instances where a patient cannot use reasonable diligence to discover an injury, reasonable and limited exceptions to the statute of limitations should be made.

9. Several Liability: Several liability should be used in medical liability cases, with each party responsible for no more than their own proportionate share of the damages. The ACR recommends medical malpractice suits should no longer be filed with joint and several liability.

The ACR believes that adoption of these reforms would improve the delivery of and access to healthcare in the United States.

BACKGROUND:

Any meaningful changes to the US healthcare system should address our problematic medical liability system. The ever-escalating costs of medical malpractice insurance premiums add to the costs of practicing medicine and have forced some specialists to avoid providing service in certain states, denying patients access to medical care. The threat of lawsuits has forced physicians into the costly practice of "defensive medicine," sometimes performing unnecessary tests to "defend" diagnoses and to pursue greater certainty in evaluation or diagnosis, whether truly clinically warranted or not. The American College of Rheumatology (ACR) recognizes that medical errors do occur and that those who are injured should be fairly compensated. Recognizing the utmost importance of patient safety and excellence in patient care as a core value, the ACR supports medical liability reform at both the national and state levels.

Approved by Board of Directors 5/2010 8/2013 11/2017 8/2021

References:

1.“Limitation on noneconomic damages in medical liability cases,” American Medical Association Model Legislation (https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/specialty%20group/arc/noneconomic.pdf), 1985

2. AMA Policy “Federal Medical Liability Reform”. H435.978, reaffirmed 2018.

3. Medical Liability Reform: Innovative Solutions for a New Health Care System Policy Paper. (www.acponline.org/acp_policy/policies/medical_liability_reform_2014.pdf), 2014