



**SENATE JUDICIARY COMMITTEE
February 3, 2004**

**SB 452
Relative to qualifications of expert witnesses in medical injury actions**

Testimony

Good morning, Mr. Chairman and members of the Committee. My name is William Schuler and I'm the President and Chief Executive Officer of Portsmouth Regional Hospital in Portsmouth, New Hampshire. I am also here on behalf of the New Hampshire Hospital Association representing the state's 32 acute care and specialty hospitals. In addition, I would like to note that many physicians are here today from the Portsmouth Regional Hospital Medical Staff because of their great concern about this issue.

I appear before you today in support of Senate Bill 452 and any other tort reform measures which will rein in medical liability costs so that health care providers can continue to provide care to our patients.

Portsmouth Regional Hospital and every other hospital in New Hampshire are experiencing skyrocketing medical liability costs. The malpractice premium increases for physicians' practices have grown exponentially. The days of finding affordable malpractice insurance are long gone, and this is particularly disturbing to physician specialists. Would you believe that the current annual premium for neurosurgeons in New Hampshire is over \$84,000?

What are the consequences down the road? Let's begin with physicians giving up their practices because they can no longer afford to practice in our state. West Virginia has already lost all of its neurosurgeons. Nationwide, ten per cent of obstetricians have stopped delivering babies because of high malpractice costs. As New Hampshire becomes a less attractive state for medical practices, good physicians will leave and our ability to recruit new physicians will be severely hampered. Imagine what that means in terms of patients' access to medical care.

In the old days, providers faced with increasing costs were able to pass such costs on to the payers. But cost shifting is not the answer – nor is it even possible these days, given the limitations of third party reimbursement, and managed care contracts don't increase reimbursement to accommodate malpractice premiums. Ultimately, physicians are forced to absorb the continuously rising cost of malpractice premiums. Already,

declining reimbursement has resulted in physicians seeking early retirement or opting out of the health insurance system as was highlighted in one case on the front page of the Boston Globe last Friday. Physicians not accepting insurance or leaving the profession completely will result in your constituents suffering from lack of access to both primary and specialty care. In cases where cost shifting can and does occur, the costs of rising malpractice premiums will ultimately be borne by your constituents – local businesses and their employees.

Most hospitals are doing the best they can to meet the health care needs of our communities. In addition to traditional hospital services, we provide treatment free of charge to many eligible patients. We provide community benefits – from education to health screenings to disaster preparedness – for the community at large. Government payors – Medicare and Medicaid – pay us substantially less than our cost to provide care to more than 1/3 of our patients (at my hospital, it's closer to half). Formulas for payment will not provide the additional dollars to offset the cost of increased malpractice premiums. Hospitals, like physicians, cannot withstand the impact of ever increasing liability costs.

SB 452, as introduced, would stipulate the qualifications of an expert witness to ensure the competence of the expert testimony. SB 452, as amended, would streamline the discovery process thus reducing discovery costs. It provides for early and detailed exchange of expert reports, which would encourage earlier settlements of cases.

I'll leave the details of this and the other bills your committee is hearing today to other experts who are here to testify.

But I want you to know that I'm here today because the time has come to make changes to the New Hampshire statutes, which will contain these skyrocketing malpractice costs. We are on the brink of a catastrophe. As a state we must act before we face the full-blown crisis and disruption of medical services that we are already seeing in states like West Virginia and Florida.

I urge you to pass Senate Bill 452, and I thank you for the opportunity to appear before you today. I'd be happy to answer any questions you may have.

Thank you.