



Jeff S. Korek, President

**MEDICAL MALPRACTICE LIABILITY TASK FORCE
OPENING STATEMENT
September 4, 2007**

Good afternoon, my name is Joseph Awad, Immediate Past President of the New York State Trial Lawyers Association. On behalf of President Jeff Korek, the New York State Trial Lawyers Association and its nearly 4,000 members, I appreciate the opportunity to participate on the Medical Malpractice Liability Task Force and applaud Superintendent Dinallo and Commissioner Daines for recognizing the value of the trial bar's experience and expertise in medical malpractice issues.

First, I would like to share our strong agreement with one of the stated goals of the Task Force – "...to collect data that can be used to clearly identify the major cost drivers" for medical malpractice insurance premiums. We believe that identifying the root causes of medical malpractice insurance premiums based upon hard evidence and data - and not rhetoric or politics - is the only logical way the discussions of this Task Force can be meaningful and productive. Identifying root causes must be the first step of the Task Force.

For our part, we have carefully reviewed numerous studies, reports, articles, and data and share the belief of many that three leading causes of the high cost of medical malpractice insurance are the impairment of health care management by HMOs, losses experienced by the insurance industry's market investments *and* avoidable medical error. As one report¹ found, during years of high interest rates and/or excellent insurer profits, insurance companies fiercely compete for premium dollars – severely under pricing their policies and insuring poor risks. However, when the stock market is performing poorly or other market forces reduce profits, the insurance industry sharply increases premiums and reduces coverage, leading to a so-called "liability insurance crisis." This over-reliance on investment income by medical malpractice insurers to reap profits bears a direct relationship to increased premium rates and should be carefully explored.

Also, there are systemic failures within the medical profession that should be closely examined including: the impediments to identifying and removing or disciplining recidivist bad doctors by the medical community and regulators; the chronic shortage of nurses and mandatory overtime requirements for overworked nurses; the slow progress in utilizing available technology such as electronic laboratory test result reporting systems, "tracking and tickler systems" to ensure necessary follow up care, bar codes for prescription medicines and electronic prescriptions to minimize instances of patients receiving wrong drugs or dosages; and the need for routine physical exams for physicians.

Fortunately, initiatives to reduce the number of medical errors are already available and time-tested, and based on their extensive use and success in other states and countries, and with the appropriate incentives – whether through actuarial-justified premium reductions for providers or State grants for technology and equipment – such solutions can and should be adopted in New York. For example, we know that CRICO, which insures Harvard-affiliated hospitals and practices, offers discounts on malpractice insurance

¹ *Medical Malpractice Insurance: Stable Losses/Unstable Rates 2003*. Americans for Insurance Reform (November 2003).

premiums to anesthesiologists who go through a program of operating room team management, and is expanding those discounts to other specialties which institute similar programs such as obstetrics.

Some of the so-called “solutions” to the cost of insurance are going to recommend significant changes to the civil justice system. Consistent with the Task Force’s charge to spend considerable time examining the causes of the cost of premiums, we strongly believe that the data and evidence made available to this body will show that attacking the civil justice system is misguided and will not benefit medical providers in the short- or long-terms. We are committed to participating in the Task Force’s deliberations with good faith and openness, and appreciate the other participants’ willingness to do so as well.

I look forward to working with all of you and again thank the Chairs for their leadership and commitment to this important issue.

Thank you.

Joseph P. Awad, Immediate Past President