

**TESTIMONY OF**

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**REGARDING MEDICAL MALPRACTICE REFORM**

**BEFORE THE PENNSYLVANIA SENATE**

**JUDICIARY COMMITTEE**

**SEPTEMBER 22, 2003**

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Thank you for the opportunity to appear today before the Senate Judiciary Committee on the subject of Medical Malpractice. My name is Ray Landis, and I am the Acting State Director and Advocacy Representative for AARP in Pennsylvania. AARP is a membership organization for individuals aged 50 and over, and we currently have 1.8 million members in Pennsylvania.

Much of the debate surrounding medical malpractice has involved attorneys, physicians, and insurance company representatives asserting they know how the system should be changed so it will make things better for consumers. AARP would like to weigh in on this debate because we are an organization that directly represents consumers. And the consumers we represent, those over the age of 50, use the health care system to a greater extent than other segments of the population.

AARP wants medical malpractice reform that focuses on consumers. In our view this means a number of things.

First, we must ensure that nursing homes are kept out of the medical malpractice debate. The abuse and neglect of nursing home residents are not "medical errors," and proposals to cap non-economic damages for these situations are discriminatory

to nursing home residents, who tend to have low, or oftentimes no, economic damages.

The problems that nursing homes may be experiencing with insurance costs are an insurance problem, not a medical malpractice problem. Insurers are charging higher premiums or choosing not to insure nursing homes for reasons not related to tort reform, such as lowered return on investments. AARP advocates ensuring that good nursing homes, those that have not been cited for poor quality, can get liability insurance at reasonable rates.

Second, we must move this debate beyond the simplistic argument about caps on damages. Real medical malpractice reform should result in two things: fair compensation for people injured by medical errors and a reduction in medical errors.

AARP's public policy states that AARP is opposed to unreasonable limits on pain and suffering awards. We feel strongly that a \$250,000 blanket cap is indeed unreasonable. We feel a reasonable limit could only be determined by starting at a level based on current conditions, providing flexibility for different types of cases,

including exceptions for egregious cases, and most importantly, being tied to mandatory error reporting and prompt payment requirements.

But even under these conditions, a limit on pain and suffering awards will not solve the concerns of consumers about the medical malpractice situation.

Consumers want a system where good physicians are available to provide health care, protections are in place if something goes wrong, and corrections are made to make sure it doesn't happen again. Today we have a situation where insurers, attorneys, and physicians all point to the other guy to explain why we might be losing doctors, errors aren't reported, and fair compensation is rarely achieved. If we're really going to address medical malpractice in a way which helps consumers, which is what everyone claims to want, all parties must realize they must contribute to making the system work. And in the end, the system must be reformed in a way that doesn't penalize consumers in lieu of forcing other interested parties to make changes in the way they do business. Pennsylvania has taken steps in this direction over the past few years, and the initial evidence shows there is improvement.

If further improvements to the system are necessary, there are alternatives to simply capping non-economic damages. AARP has held discussions with the

Institute of Medicine, which has proposed testing alternatives to the current tort system for medical errors, but not for other types of harm to patients, including nursing home neglect and abuse. Their proposals involve focusing on the avoidability of medical errors, instead of negligence, as the basis for compensation. But in order to make this kind of a system work, providers would be required to report errors and make prompt payments.

There are a number of trade-offs involved in this type of change, and AARP is not prepared to endorse this proposal as a solution for Pennsylvania at this time. But it does represent the type of innovative thinking that could produce a result that would take the next steps toward stabilizing malpractice premiums, ensuring fair compensation, promoting patient safety, and reducing total costs.

In the end, AARP urges the Senate Judiciary Committee to carefully explore this issue to ensure that the concerns of consumers are the focus of any changes made in our current system.

Thank you for the opportunity to be here today, and I would be happy to answer any questions you may have.