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FROM THE DESK OF THE PRESIDENT

Professional Liability Reform: Another Big Challenge

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As NASS President, I received an invitation to AMA's annual "President's Forum" meeting held July in Washington, DC. The theme of the meeting was professional liability reform and the keynote speaker was President George W. Bush. In his address, he outlined his agenda for tort reform legislation and the reasons for supporting a federal approach. Unfortunately, none of this has yet come to pass.

Interestingly, an important message was also conveyed throughout the meeting: that professional medical associations, boards of medical examiners and hospital credentialing committees must take more responsibility for reviewing the behavior of physicians and educating members to avoid factors that lead to lawsuits.

The matter of professional conduct was also echoed at a symposium I attended as the NASS representative to the Council of Musculoskeletal Specialty Societies (COMSS). This conference was sponsored by the American Academy of Orthopedic Surgeons (AAOS) and featured talks by representatives of the medical liability insurance companies and the executive director of the American Trial Lawyers Association. An open microphone question and answer period followed the presentations and, as you might imagine, it was quite a lively session. The challenge thrown back at the physicians was again "what are you doing to reduce malpractice suits?"

The same question arose on my numerous visits to senators and members of congress in the last couple of years. I am convinced that the issue was brought up to place physicians on the defensive as, until this last year, there was not a lot of substance to any reply. It was

thus very easy to argue that the legislators, insurance companies and attorneys should not be called on to make any significant efforts in the area of professional liability until they saw a like commitment from the medical profession.

At this point in time, however, the tables are reversed. Now, it is NASS who is able to force the question of action on the legislators and other outside parties. The turnabout has occurred as NASS and other professional medical organizations have taken up the banner and committed to action in the professional liability arena. Somewhat to my surprise, the most effective argument has been NASS' implementation of a Professional Conduct Committee. This was a major initiative of Stan Herring's NASS Presidency and was modeled after the program that has been in place at the American Academy of Neurosurgeons (AANS) for a number of years. The Neurosurgeons were the pioneers in the professional conduct area. They have carried issues as far as the United States Supreme Court and successfully upheld their position. Because of this existing case law, the path for any of us following in their footsteps has been made infinitely easier. The AANS has filled in many a dark chasm of risk and uncertainty along the road.

The purview of the NASS Professional Conduct Committee is not limited to review of experts' testimony in medical malpractice cases. To be sure, one of their charges is to make sure that physicians testifying on either side of a case do so in a professional manner and accurately state a reasonable standard of care. However, most issues that have come to the attention of the committee to date have not involved legal testimony. Questions about

a colleague's conduct, accurate coding, appropriate billing and authorship of research have been submitted for review by the committee.

NASS also has a Legal Committee that has been reviewing questions such as appropriate consent and "jousting." I have always found the term jousting a noteworthy one and unfortunately, all too often, an appropriate expression for the situation it describes. In the professional liability world, jousting commonly refers to a situation in which a physician is inappropriately judgmental, usually offhandedly. This often occurs when he or she is ignorant of the full facts and records of the case. Comments such as: "I can't believe they didn't take an x-ray" or offhand remarks overheard by a patient who may be led to assume that he or she has been inappropriately treated are not proof of malpractice, but can set a physician up for a lawsuit.

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The "Big Challenge" in professional liability is upon us. A coalition of specialty medical societies whose members are profoundly affected by skyrocketing professional liability premiums, the Alliance of Medical Specialists (of which NASS is a member), has decided to make tort reform the cornerstone of its efforts in the upcoming federal legislative session and elections. A call for extra funding has gone out to all NASS members. NASS has committed to raising \$100,000 to aid in a public

awareness campaign, lobbying efforts and financial contributions to election efforts of legislators. I urge you to contribute through NASS or via the funds that have been set up by other coalition member organizations such as the AANS or AAOS. Professional liability is an issue that affects each of us individually, directly threatens the financial viability of medical practice and most importantly, affects our ability to evaluate and treat our patients.