

Testimony of the Medical Professional Liability Association

presented by *Michael C. Stinson, JM, Vice President, Public Policy and Legal Affairs*

before the Nevada Assembly Judiciary Committee

May 9, 2023

A.B. 404

Madam Chair and distinguished members of the Committee, on behalf of the Medical Professional Liability (MPL) Association, I thank you for this opportunity to testify in regard to Assembly Bill No. 404.

The MPL Association is the leading trade association representing insurance companies, risk retention groups, captives, trusts, and other entities owned and/or operated by their policy holders, as well as other insurance carriers with a substantial commitment to the MPL line. MPL Association members insure more than 2.5 million healthcare professionals around the world—doctors, dentists, oral surgeons, nurses and nurse practitioners, podiatrists, and other healthcare providers. MPL Association members also insure more than 3,000 hospitals and 50,000 medical facilities and group practices globally.

The MPL Association strongly opposes Assembly Bill No. 404, which would effectively gut numerous medical liability reforms put in place by the voters of Nevada in 2004. At the time, the ballot initiative was a direct response to a medical liability crisis stemming from skyrocketing damages awards which led to medical liability insurance becoming less affordable and more difficult to obtain. The result was a serious threat to access to care for Nevada patients. Since that time, Nevada’s reforms have resulted in a stabilized market and increased access to care. Undoing these reforms will certainly result in backsliding on both accounts, jeopardizing the health of all Nevadans.

Damage Caps

A.B. 404 would raise the current cap on subjective noneconomic damages from \$350,000 per incident to \$2.5 million. This dramatic escalation would make Nevada not simply an outlier among states with noneconomic damage caps, but would create a “limit” that is nearly three times higher than the next closest cap. Add to that the fact that the new Nevada cap could be applied many times over because it applies to each defendant in a claim, and allows for multiple plaintiffs in a claim to receive the same limit, and it is clear that the bill could result in an explosion of costs of healthcare professionals.

Under current law, Nevadans have seen a substantive increase in the number of health professionals available to serve the population. While the state still suffers from a severe shortage of physicians, ranking 45th among states in the number of physicians available per 100,000 residents, it has been able to maintain at that level of stability thanks to the improved liability environment resulting from the 2004 legal reforms. As Nevada’s population has grown, its physician population has grown accordingly, preventing a worsening of its healthcare shortages. Between 2010 and 2022 the number of active physicians per 100,000 residents has grown 18%. It is highly unlikely such a growth rate can be maintained if the legislature acts to create a medical liability environment that is as hostile to health professionals as that proposed by A.B. 404.

In addition, the current cap on damages has helped health professionals by reducing liability insurance premiums, making it more affordable for them to practice in the state. Since 2006, after the benefits of Nevada's reforms began to become apparent, premiums for Nevada physicians declined significantly. In nominal dollars, premiums from one company alone fell more than 20% across the board, with internists seeing a reduction of nearly 22%, general surgeons a reduction in excess of 24% and Ob/Gyns a reduction of more than 27%. Compare that to the premiums increases in Seattle (a city roughly the size of Las Vegas), where no cap on noneconomic damages exists. Over the same time frame internists were hit with a nearly 26% increase in premiums, general surgeons with a 62% increase, and Ob/Gyns with a 3% increase.

In addition, A.B. 404 proposes to increase the \$2.5 million cap annually for inflation, further increasing the harm the bill will cause Nevada's healthcare community. As noted above, current reforms have reduced premiums substantially in terms of the actual dollar amount charged, but those savings become more dramatic when one factors in inflation. Had 2006-era premiums simply grown with the general cost of living over the intervening 17 years, one would have expected to see a nearly 50% increase in premiums, rather than the aforementioned decrease of more than 20%. The result for Ob/Gyns, as an example, would have meant premiums in excess of \$200,000 annually, more than twice what we now see.

Dramatically raising the current, reasonable limits on the most highly subjective aspect of a medical liability award will quickly nullify all the gains made since the 2004 reforms were enacted, raising the specter of yet another medical liability crisis which will be detrimental for healthcare professionals and patients alike.

Other Reforms

Current law places a fair limit on the percentage of a damage award that an attorney may take as part of a contingent fee arrangement, a limit that would be completely repealed by A.B. 404. Such limits amount to a protection for injured patients from unscrupulous personal injury lawyers who may take advantage of an injured party's dire situation to claim a disproportionate share of a medical liability award. Given that awards in medical liability cases are intended to compensate the plaintiff for injuries they have actually suffered, not to enrich their attorneys, such protections are vitally important. The current limits provide more than adequate compensation for personal injury attorneys, while ensuring that enough is left over for the victim's needs to be addressed. Eliminating this reasonable limit will result in only one outcome—injured patients being denied the full benefit of the compensation provided by a jury for that purpose.

Nevada law also ensures fairness for defendants by guaranteeing that they will not have to pay for injuries they did not cause, something A.B. 404 seeks to undo. Basic fairness dictates that no party should be found liable for someone else's fault, yet the repeal of duly enacted joint and several liability reforms proposed by the legislation before you today would turn that concept on its head, leaving defendants who had minimal responsibility for a patient's injuries on the hook for the full responsibility of compensating the patient. One's degree of financial responsibility for someone else's injury should be

proportional to their role in causing the injury, just as under current law. It should never be based primarily on their ability to pay.

A.B. 404 also seeks to repeal collateral source rule reforms which empower a jury and aid it in its decision-making responsibilities. Under current law, a jury can be informed about payments made by third parties to address the plaintiff's injuries. It is then up to the jury to decide if those payments should in any way alter a subsequent damage award. The bill that has been proposed, however, would strip that power from the jury, nullifying their ability to make a fully informed decision.

Conclusion

As written, A.B. 404 would undermine nearly two decades of legal reforms that have proven tremendously successful in originally stemming a growing medical liability crisis and then providing a stable environment in which access to healthcare professionals has been improved and access to justice for those injured by medical errors has been preserved. If enacted, this legislation would be highly disruptive to the healthcare system and detrimental to both medical professionals and the patients they serve. For these reasons, the MPL Association strongly urges the Assembly Judiciary Committee to vote against A.B. 404.