AAOS
American Association of Orthopaedic Surgeons

Medical Liability Reform Action Guide

Issue Introduction:

Medical liability reform is needed to end a broken liability system currently serving as a barrier between physicians and patients**, creating uncertainty in critical care situations**. Where physicians should be practicing medicine without fear of reproach, the current system instead forces **physicians to evaluate care under the lens of liability and risk instead of care**.

The AAOS believes broad reforms are necessary to compensate negligently injured patients promptly and equitably, enhance patient-physician communication, facilitate improvement of patient safety and quality of care, reduce defensive medicine and wasteful spending, decrease liability costs, and improve patient access to care.

Efforts for comprehensive medical liability reform should include the **following core principles**: **compensation, communication, dispute resolution, a culture of safety and quality, reduced defensive medicine, and improved access to care.**

The Facts: Malpractice claims are routinely unawarded yet still carry a heavy weight of anxiety and stress for medical practitioners. This weight can be outsized compared to the actual number of claims awarded, leading physicians to practice defensive medicine.

- General surgeons, OB/GYNs, emergency medicine physicians, **surgical subspecialists** and, to a lesser extent, radiologists **hada higherincidenceof claimsthaninternists.** [1]
- Between 2009-2014, **74.9% of liability claims within the specialty field of orthopedics were unpaid.**[3]
- 55% of physicians in the United States have been part of a malpractice suit, either alone or with others. Additionally, **orthopaedicsranked asone ofthe highestsuedsub-specialtiesas recently as 2023**[2]
- In this same period, **annual medical liability system costs,** including defensive medicine, **were estimated to be $55.6 billion in 2008 dollars.**[4]

[1]Guardado J, PhD Policy Research Perspectives Medical Liability Claim Frequency Among U.S. Physicians, American Medical Association
[2]McKenna J, Infographic: The Frequency and Costs of Medical Malpractice Lawsuits, Medical Mal- practice report 2023, Medscape.
[3]Schaffer, Adam C et al. "Rates and Characteristics of Paid Malpractice Claims Among US Physicians by Specialty, 1992-2014." JAMA internal medicine vol. 177,5 (2017): 710-718. doi:10.1001/jamainternmed.2017.0311
[4]Mello MM, Chandra A, Gawande AA, Studdert DM. National costs of the medical liability system. Health Aff (Millwood). 2010;29(9):1569-1577. doi:10.1377/hlthaff.2009.0807

What we have done:

To address the urgent need for medical liability reform, AAOS has created a sub-committee comprised of orthopedic surgeons, the Medical Liability Committee (MLC), to lead their reform efforts. The MLC's Committee's mission includes developing and prioritizing AAOS activities related to the medical malpractice crisis.

In addition, AAOS is also an executive member and secretary of the Health Coalition on Liability and Access (HCLA), a coalition of other similarly minded institutions and organizations based out of Washington, DC.

Medical Liability Committee Overview:

The committee charge includes monitoring trends, developing strategies, educating the fellowship, and overseeing the AAOS medical liability reform campaign. The full committee's responsibilities are as follows:

- Align all activities to support execution and achievement of the mission, vision, goals, strategic objectives and metrics of the Strategic Plan and conduct all business in accordance with the Core Values as adopted by the Board of Directors.
- Monitor trends regarding professional liability and tort reform.
- Develop strategy and prioritize activities in response to the medical liability crisis.
- Develop appropriate organizational statements to serve the Fellowship in the arena of professional liability.
- Work with the appropriate Council(s) or Committee(s) to develop programs, publications, and products that educate the Fellowship on liability risks and methods to decrease the Orthopaedic surgeon's exposure to liability.
- Oversee the operations and spending of the AAOS Medical Liability Reform campaign.

Health Coalition on Liability and Access Overview:

HCLA is a national advocacy coalition working to enact medical liability reform at the federal level to help reduce health care costs for all Americans and to ensure patient access to quality medical care. HCLA accomplishes its goals through the following avenues:

- Analyzing legislative policy initiatives at both the state and federal level
- Testifying before the US Congress
- Sponsoring congressional staff briefings
- Conducting public opinion polling and candidate surveys,
- Additionally, the HCLA sponsors Protect Patients Now (PPN), a grassroots advocacy organization comprised of physicians, patients and concerned citizens dedicated to reforming our nation's broken liability system.

Policy Position and History:

The AAOS Office of Government Relations(OGR) leads advocacy efforts for this issue, based on the position that the current medical liability system limits the ability of physicians to provide the highest quality patient care. Systemic medical liability reform is necessary to improve the overall health care system. Additionally, the current structure fails to fairly compensate injured patients in a timely manner, prevents open analysis of medical errors, promotes defensive medicine, and restricts access to care.

In spring 2023, the **American Orthopaedic Society for Sports Medicine (AOSSM) published**, and **29 organizations signed**, an **Open Letter** addressing medical liability and expert testimony. From there, the AAOS Board of Directors has moved **medical liability reform to be a high priority for the Academy moving forward.**

Background of High legal Toll Demands Urgency and Priority for Orthopaedic Surgeons

In the years since AAOS' Board of Directors moved to codify medical liability reform as one of the top issues for the Office Government Affairs, new research has only solidified the unfair burden that othropaedic surgeons face as well as the nee proactive action to protect surgeons. Published in 2025, the article Medical Malpractice Litigation in Orthopaedic Surgery in the United States Risk Factors; Outcomes, and Strategies for Navigating Lawsuits, Prevention, and Reform highlighted that Orthopaedics remain one of the most litigated specialties. Providing physicians with tools and strategies to lower ris surgeons, as well as covering the general impact of liability suits on providers, the article serves as a valuable tool, resou and reminder for providers on Medical Liability Reform.

Read it here: https://pubmed.ncbi.nlm.nih.gov/41405574/

Emerging Federal Issues:

Inthe emerging federal issue section, we cover past legislation that AAOS and the MLR Committee have supported in the past and continue to support, should they be reintroduced. While these pieces of legislation have not been passed in Congress in previous sessions, the framework and models serve as the basis for future legislation and advocacy.

Good Samaritan Health Professionals Act:

This bill generally extends liability protection for harm caused by acts or omissions by volunteer health care professionals while providing certain health care services during specified public-health or national emergencies or major disasters.

Notes: However, the liability protection shall not apply if (1) the harm was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed; or (2) the health care professional provided services under the influence of alcohol or an intoxicating drug.

Good Samaritan Health Professionals Act Insider Prospective:

- This legislation will more than likely be re-introduced. This faced challenges getting re-introduced in the Senate because Senate HELP Republicans wanted more explicit protections for those physicians refusing abortion care.
- Senators Roger Marshall, MD (R-KS) and Angus King (I-ME) were working on it together but we're not sure what their appetite would be with it moving forward. Rep. Raul Ruiz, MD (D-CA) and former Rep. Larry Bucshon, MD(R-IN) in the House

Accessible Care by Curbing Excessive Lawsuits (ACCESS) Act (HR. 9584 in the 117th)
This bill establishes rules for health care lawsuits where some amount of coverage or care was provided or paid for by a federal program, regardless of the number of other parties to the claim.

Notes: The bill sets a three-year maximum statute of limitations from the date of the injury, subject to specific exceptions. Further, noneconomic damages (e.g., damages for pain and suffering) are limited to a maximum of $250,000. The bill permits courts to supervise and limit contingent fees paid to attorneys and sets a maximum contingent fee percentage based on a downward sliding scale as damages increase. This bill generally does not preempt state laws that impose additional limits on health care liability claims

Insider Prospective:

- HCLA did try to work with Representative Richard Hudson (R-NC) in getting this re-introduced for the 118th but ran out of time on the legislative calendar.
- AAOS has supported this in the past, even just nominally sending a letter of
- support.
- HCLA will push for re-introduction again, however this does not have the same kind of velocity behind it as the Good Samaritan bill.

Student Athlete Opioid Misuse Protection Act (H.R.7246 in the 117th) This legislation will help educate students and train athletic directors, youth sports coaches, school administrators, and other members of the athletic community on the signs and dangers of opioid and substance misuse, as well as strategies for prevention.

Notes: The bill will create a federal grant program through the U.S. Department of Health and Human Services, to invest in educational and training programs at the youth, high school, and collegiate levels on the misuse of opioids and other substances commonly used in pain management or injury recovery by students and student athletes.

Insider Prospective:

- This legislation was introduced to the 117th Congress last year by Congressman Josh Gottheimer (NJ).

Notes: As in previous, related legislation, Congressman Pete Sessions (R-TX) also sponsored the bill. The bill passed the U.S. House of Representatives in 2017 with Rep. Sessions but did not pass the U.S. Senate; following the bills resubmission in the 117th congress, AAOS submitted a support letter for this legislation on April 25, 2022.

Insider Prospective:

- Normally our next steps would include re-engaging with Mr. Sessions in office to collect co-sponsors, including identifying a potential Democratic co-lead, and advocating for the legislation's approval.
- However, given that there is a high-profile DEA investigation with the NFL currently, we are cautiously monitoring the situation to see how things land in the NFL. We can adjust and move forward with Mr. Sessions office accordingly.
- This could still be an action item in the 2025 calendar year.

Medical Controlled Substances Transportation Act (117th Congress) this legislation aims to amend the Controlled

Substances Act to allow practitioners to transport controlled substances to states where they are not registered, facilitating the administration of these substances at.

Continued Congressional Engagement in Name, Image, Likeness (NIL) With the rapid change in the collegiate sports environment due to NIL deals Congress is increasingly looking to ensure appropriate regulations and safety measures are in place for college athletes. The AAOS is monitoring an increasing number of bills to address the evolving landscape. On Tuesday, March 4, 2025, Congressman Brett Guthrie (R-KY), Chairman of the House Committee on Energy and Commerce, and Congressman Gus Bilirakis (R-FL), Chairman of the Subcommittee on Commerce, Manufacturing, and Trade, announced a hearing titled "Moving the Goalposts: How NIL is Reshaping College Athletics." Rep. Bilirakis previously played a role in the introduction of The Fairness, Accountability, and Integrity in Representation of College Sports Act (FAIR College Sports Act) in 2023.

In 119th Congress, . we saw legislative activity from the House, including:

House Republican Conference Chairwoman Lisa McClain (R-MI.) and Rep. Janelle Bynum (D-OR.) introduced the *College Student-athlete Protections andOpportunitiesthroughRights, Transparency, and Safety (College SPORTS)*

- Rep. Michael Baumgartner (R-WA) introduced H.R.2663 - Restore College Sports Act and H.R. 9137 – Protect College Sports Act of 2026

Notes: These bills attempt to provide student athletes with fair treatment, improved educational outcomes, and financial support by creating a national framework to govern how student athletes receive compensation for NIL deals. The frameworks have the potential to reshape the earning potential of amateur and collegiate athletes found under the care of a team physician, either paid or volunteer, opening up uncertainties related to potential liability.

Insider Prospective: The rapid evolution of NIL has created a chaotic and unpredictable system. The 2025 hearing was intended to discuss ways to stabilize the NIL environment and ensure the well-being of the student-athletes while preserving the integrity of college sports. The *Protect College Sports Act* is a bipartisan proposal to establish a federal framework for NIL and collegiate athletics, though it will be challenging to pass as it does not have a referral to the Judiciary committee.

Reform as a Policy Solution: MLR Reform continues to be considered as a solution for issues related to physician retention and to address budget shortfalls. A recent op-ed in the San Diego Tribune argued that MLR reform could be a vital lifeline for the state as Medi-Cal funding continues to be cut by the federal government. State lawmakers face the prospect of a multibillion-dollar shortfall, one that will only worsen year after year as health care spending costs increase. Arguing for no-fault medical malpractice, conditioned on participation on Medi-Cal, the op-ed showcases how states may use MLR reform efforts to address federal policy effects on state budgets.

To read the opinion piece, please refer to the link here:
https://www.sandiegoun i o ntr ib u ne. com/ 2 02 6/ 0 1/ 23 / opi n i o n-med ica l-malpract ic e-r ef orm-ca n- impr access-to-care-cut-costs/

Recent State Policy Issues

In Rhode Island, legislation (SR3063) was enacted May 21, 2026, and establishes a special legislative commission to conduct a comprehensive study examining the impact of medical malpractice on healthcare providers and healthcare costs across the state. The commission has 13 members including legislators, representatives from physician and insurance groups, risk management specialists, one patient advocate, and members of the public.

In Louisiana, a bill (SR160) was officially passed and enacted on June 1, 2026. This legislation establishes a Louisiana Medical Malpractice Task Force intended to study and recommend improvements to the state's medical review panel process. Legislators hope that this effort will help identify practices from other states to ensure the fair and quick resolution of medical malpractice lawsuits. The task force is slated to bring together stakeholder organizations, including legislators, patient advocates, and physician groups, with the option to add additional members.

In Virginia, Orthopaedic Surgeons and other physicians successfully opposed harmful medical malpractice reform legislation when they removed harmful provisions from SB 536 that would have raised the damages cap for medical malpractice cases from $3 million to $6 million by 2027. As a result of input from physicians across the state, the legislature rewrote the bill at the last minute—removing the increased cap and instead opting to require hospitals and insurers to disclose more information on malpractice cases. Additionally, advocates successfully defeated SB 99, which would have removed the damage cap in medical malpractice cases involving patients under 10 years of age.

Grass Roots Action: Amid new legislation and policy solutions, it's important to recognize the grassroots advocacy groups driving forward many of these laws. States like New Mexico show how new, patient focused non-profits can help with issues like Medical Liability Reform.

Patient Led NM has been showcasing the reality of physician shortage in Nex Mexico and the impact that it has on patients' health and welfare. Hosting healthcare summits, producing resources, and more, this group is an example of grass roots action. Learn more at www.patientlednm.org

The Judicial Forefront

Litigation with medical liability implications heard by U.S. Supreme Court

Ahead of oral arguments heard earlier this month, several physician groups have urged the Court to uphold longstanding precedent that prevents plaintiffs from pursuing the same medical liability case in both state and federal courts simultaneously. The concern is straightforward: allowing parallel lawsuits would open the door to more litigation, higher legal costs, and increased pressure to settle, even in cases with no evidence of medical negligence.

The Litigation Center of the American Medical Association and State Medical Societies and the Maryland State Medical Society (MedChi) filed an amicus brief with the nation's highest court. As the brief explains, permitting these duplicative claims "would encourage plaintiffs with baseless medical malpractice claims to pursue parallel litigation… to run up legal fees and extract nuisance settlements."

Cost of care rising faster than inflation:Data from medical liability insurers show that costs are rising fast, and the ripple effects are likely to hit patients directly.New analysis from*S&P Global Market Intelligence*highlights how liability insurance costs are rising faster than inflation because of litigation and high payouts.

The AMA hosted a webinar examining current trends in medical liability. The presenters emphasized the importance of clinical judgment amidst rising Artificial Intelligence use across medicine, as well as the continued impact of venue shopping.

General Perspective: Broad reforms are necessary to compensate negligently injured patients promptly and equitably, enhance patient-physician communication, facilitate improvement of patient safety and quality of care, reduce defensive medicine and wasteful spending, decrease liability costs, and improve patient access to care**AAOS supports both federal andstate-levellegislativeand advocacysolutionsto reform the system and ensure orthopedic surgeons can continue to safely provide patient care.**

Further, AAOS believes that no federal legislation pertaining to liability reform should include provisions that would undermine effective state tort reform provisions or the ability of states to enact tort reform tailored to local needs.

Model Legislation Included are model legislation from our partners at the American Medical Association:

- Limitation on noneconomic damages in medical liability cases (PDF)
- Regulation of contingency fees paid by medical injury claimants (PDF)
- Collateral source payments in medical liability cases (PDF)
- Limitations in medical injury cases (PDF)
- Periodic payments of awards for future damages (PDF)
- Regulation of expert witnesses in medical injury actions (PDF)
- To Foster Open Communication Between Health Care Providers and Patients After Unanticipated Health Care Outcomes (PDF)
- To Require an Affidavit of Merit in Actions Against Health Care Providers for Damages When Rendering or Failing to Render Health Care Services (PDF)
- Model bill: Civil liability during disasters (PDF)
- Model bill: To provide coverage for volunteer physicians

Sports Medicine Research Tackles the Era of NIL

Anew journalarticle, **Navigating the New Frontier:Recommendations for Sports Medicine Physicians in the Era of NIL and Direct Athlete Compensation**, does a deep dive on the challenges facing sports medicine physicians caring for collegiate athletes. The increased financial stakes can expose physicians to heightened legal risks and additional pressure on clinical decisions that can impact an athlete's earning potential or scholarship status.

https://pmc.ncbi.nlm.nih.gov/articles/PMC12768959/

[This pivotal change, brought forth by legal rulings such as O'Bannon vs NCAA (2015), NCAA vs Alston (2021), and, most recently, the House vs NCAA (July 2025), has produced a new reality where financial rewards are playing a greater role in both athlete behavior and medical management.

- **Factors Impacting Physicians:** Return-to-play (RTP) pressure, the financial stakes and influence of financially dependent family members and brand sponsors, and the involvement of sports agents, the use of the transfer portal and its lack of medical record sharing, and NIL-related social media exposure all contribute to a high-pressure environment with significant implications for the care determinations that sports medicine physicians face.

- **Recommendations:** Sports medicine physicians should prioritize athlete health and wellbeing above all other compounding interests. Establishing boundaries with an athlete's stakeholders is essential to maintaining independent clinical judgment. Key principles are outlined for delivering care within the following areas: clinical practice and decision-making, legal documentation, care continuity, mental health, and institutional policy.

- **The recommendations are intended to help sports medicine physicians translate guiding principles into actionable steps for day-to-day patient management in the NIL era.**

New Research Examines Medical Liability Exposure for Sports Team Physicians

New research, **Medical Liability Exposure and the Sports Medicine Team Physician: Caring for Professional Athletes in the National Football League, Major League Baseball, and National Hockey League,** highlights the potential risks to personal assets that sports medicine specialists face when caring for elite athletes due to insufficient medicolegal coverage.
https://journals.sagepub.com/doi/10.1177/03635465241306742

Background and Study Period: 2,447 NFL, 992 MLB, and 980 NHL player contracts from the 2022-2023 season were aggregated from a publicly available online database. Risk ratios of annual occurrence-based malpractice liability awards were calculated and used to generate a "cover-to-treat" analysis.

- **Study Breakdown:** Position, team, total contract value, and mean yearly salary were noted. Risk ratios were calculated with respect to 1 million US dollars (USD) and 3 million USD of annual occurrence-based malpractice liability awards and used to generate a "covered-to-treat" analysis. Supplemental malpractice liability insurance was quantified.

- **Conclusion of Study:** Assuming 1 million and 3 million USD occurrence-based awards covered by malpractice liability insurance, team physicians can fully treat 17.3% and 50.0% of NFL players, 43.2% and 59.7% of MLB players, and 13.6% and 41.0% of NHL players, without incurring additional personal financial risk, from a risk-based medicolegal model. Liability policies of 52.6 million, 108.1 million, and 64.1 million USD are required to treat 95% of NFL, MLB, and NHL players, respectively. Positions carrying the greatest risk ratios are quarterback (QB) (9.9) in the NFL, right field (15.1) in the MLB, and center (5.7) in the NHL.

- **The study notes that while coverage may vary among practice settings, malpractice risk coverage is essential to successful partnerships among sports franchises, hospitals, players, agents, and physicians to protect physicians and offer the highest-quality care.**

2025 State Wins

State	Bill Number	Descriptor	Notes
Georgia	SB 68 and ~~69~~	Broad Tort Reform	Comprehensive tort reform bills revising civil practice laws, reducing excessive litigation in the state and outsized payments. Signed into law by the governor. Healthcare Professional Advocacy Fund (HPAF) supported. **Signed into law April 21st, 2025.**
Arkansas	HB 1204	Phantom Damages	Tort reform bill, including reform addressing phantom damages. **Signed into law, February 6th, 2025.**
Kansas	SB 54	Third-Party Litigation Financing	Third Party Litigation Financing Disclosure Bill limiting discovery and disclosure of third-party litigation funding agreements and requiring reporting of such agreements to courts. **Signed into law April 7th, 2025.**
Utah	HB 503	Malpractice reform	Repeals requirements related to affidavits of merit; prohibits prejudicing a defendant in an adjudication of a claimant's claims; prohibits pursuing or collecting on a judgment against a health care provider's personal income or assets. **Signed into law March 27th, 2025.**
Montana	HB 195	Damage Caps and Liability	Establishes caps for noneconomic damage awards, setting a cap that starts at $300,000 and gradually increases to $500,000 by 2029, with annual adjustments thereafter. Also makes it so single incident of malpractice affects multiple patients; the damage cap applies individually to each claimant. **Signed into law March 27th, 2025**
Virginia	HB 1730	Vicarious Employer Liability	Legislation would have made it so that that an employer may be vicariously liable for personal injury or wrongful death of a vulnerable victim; **Vetoed bytheGovernor**