The results in Mississippi are encouraging

By John K. Drake, MD

Does state advocacy for tort reform work?

In the not-too-distant past, my home state of Mississippi had the repeat distinction of being ranked “worst in the nation” in the annual State Liability Systems Ranking Study produced by the U. S. Chamber of Commerce. The American Tort Reform Association included several Mississippi counties and judicial districts in its annual “Judicial Hell Holes” report. Even the news program “60 Minutes” reported on the widespread abuses of the tort system in Mississippi.

Although physicians were disproportionately affected by this problematic judicial environment, the problem spread beyond the medical community. Out-of-state businesses were dragged into the “judicial hell holes” of Copiah, Jefferson, and Claiborne counties as plaintiffs’ lawyers began to recognize the potential for large monetary awards based on jury verdicts. As businesses fled the state, Mississippi led the nation in percentage of jobs lost from 1999 to 2001. The Mississippi Insurance Commissioner reported that 71 insurance companies stopped doing business in the state. Medical liability insurance became prohibitively expensive and essentially unavailable.

Was change even possible?
The situation developed, in part, because physicians were “asleep at the political wheel” during the early 1990s. The plaintiffs’ bar association took control and steered any conversation on liability away from reform. Finally, the legal climate became so one-sided that the medical and business communities developed a coalition to work for tort reform. Both groups recognized the need for reform—not only to protect patient access to health care but also to ensure the economic growth of our state.

As a result of these efforts, pro-business, pro-tort reform judges were elected to the state Supreme Court in 2002. In the 2003 governor’s race, a strong physician advocacy coalition battled plaintiffs’ lawyers, newly rich from victories in tobacco lawsuits and willing to spend millions of dollars on behalf of anti-tort reform candidates. Despite the deep pockets of the opposition, the coalition was successful in electing Haley Barbour, a pro-business, pro-tort reform candidate.

The election of a new governor marked the beginning of the difficult battle to enact meaningful, sustainable tort reform. With support from the American Association of Orthopaedic Surgeons (AAOS), the Mississippi Orthopaedic Society entered the fray. Through its Health Policy Action Fund, the AAOS provided resources to states at the “tipping point” of passing tort reform. Mississippi qualified for a $35,000 grant and used this money to alert voters to the impending loss of healthcare access if the liability crisis continued to drive physicians from the state. After a hard-fought battle, a comprehensive tort reform bill was passed, signed into law by Gov. Barbour, and went into effect in September 2004.

The impact of reform

The governor’s tort reform legislation had a tremendous impact in Mississippi—for both business owners and physicians. By any economic measures, business in Mississippi has benefited from tort reform. Many new businesses are moving to the state, including a $1.3 billion Toyota plant. Applications from insurance companies to resume writing policies in the state have increased, and insurance rates have decreased markedly for liability-related coverage. We are also seeing new providers of professional liability insurance enter the Mississippi market.

The number of lawsuits against physicians has greatly decreased (Fig. 1), and premiums for medical liability insurance have dropped. With passage of the tort reform law, insurers held 2005 premiums at 2004 levels. In 2006, premiums were reduced 5 percent, and we saw an additional 10 percent reduction in premiums this year (2007).

Tort reform has been so successful that insurers have issued two premium rebates: a 15 percent rebate in 2005 and a 20 percent rebate in 2006 (Fig. 2). The savings for physicians are significant; an orthopaedic surgeon with coverage from the Medical Assurance Company of Mississippi would have total savings of nearly $25,000 (premium reductions and rebates) since the tort reform measures went into effect. As the cost of delivering health care continues to rise and Medicare payments continue to decrease, these savings are both needed and appreciated.

The most important result of tort reform, however, is the impact it has had on patients’ access to care. Access to health care in Mississippi was in serious jeopardy before these reforms were implemented. Physicians were leaving the state and it was nearly impossible to recruit new physicians due in part to the decreased availability and excessive cost of professional liability insurance.

See REFORM, page 49