AMERICAN COLLEGE OF RHEUMATOLOGY
POSITION STATEMENT

SUBJECT: Medical Liability Reform

PRESENTED BY: Committee on Rheumatologic Care

FOR DISTRIBUTION TO: Members of the American College of Rheumatology
United States Congress
The White House
Medical Societies

BACKGROUND:

Any meaningful changes to the US health care system should address our problematic medical liability system. The ever escalating costs of medical malpractice insurance premiums add to the costs of practicing medicine and have forced some specialists to avoid providing service in certain states, denying patients access to medical care. The threat of lawsuits has forced physicians into the costly practice of “defensive medicine,” sometimes performing unnecessary tests to “defend” diagnoses and to pursue greater certainty in evaluation or diagnosis, whether truly clinically warranted or not. The American College of Rheumatology (ACR) recognizes that medical errors do occur and that those who are injured should be fairly compensated. Recognizing the upmost importance of patient safety and excellence in patient care as a core value, the ACR supports medical liability reform at both the national and state levels.

POSITIONS:

* Evidence-Based Standards of Practice:
The ACR recommends that providers following evidence based guidelines should not be held liable for adverse patient outcomes, which inevitably do occur even when no error in care has been committed. In addition, failure to follow particular guidelines does not a priori indicate that substandard or negligent care was rendered.

* Early Disclosure and Compensation:
The ACR recommends that health care providers including hospitals and physicians should voluntarily disclose medical errors to patients, next of kin, their respective health systems and patient safety organizations as soon as they occur. Alternative "no-fault" models for compensation of injured patients should be considered whereby payment schedules are developed to assure fair awards for medical injury and avoid the “lottery” system of medical compensation. Providers offering disclosure and compensation should be held harmless from subsequent liability claims. Such offers cannot be used as an admission of guilt in any subsequent legal claim.
Arbitration and Medical Liability Courts:
The ACR recommends that prior to any litigation, parties should have an opportunity to arbitrate a grievance. If the arbitration process does not lead to resolution, then the claim can be adjudicated in special Health Courts. These courts should be established in each state to determine medical liability. These courts, overseen by judges with expertise in healthcare matters (similar to specialized bankruptcy courts), can adjudicate cases and award damages. The court can also establish compensation limits for fees charged in preparation and defense of cases. Arbitration by these courts would be final and preclude additional liability claims.

Development of Standards for Experts Witnesses:
The ACR recommends that national standards for expert witnesses should be established with guidance from medical professional societies in each area of specialization. The expert witness’s testimony should be limited to the area of expertise.

Economic and Non-Economic damages:
The ACR recommends that there should not be a limit on economic damages. However, limits on non-economic damages are essential to control erratic and excessive awards that accelerate total health care costs and reduce access to treatment in many locations. For economic damages, an administrative body should be established to set compensation schedules and to determine the net economic loss due to injuries with offsets for payments made by insurance and other entities.

Joint & Several Liability:
The ACR recommends medical malpractice suits should no longer be filed with joint and several liability.
The ACR believes that adoption of these reforms would improve the delivery of and access to health care in the US.

Approved by Board of Directors 5/2010 8/2013 11/2017

References: