the pain of knowing that a doctor has had to close his or her practice because they have been shocked, shocked or shot, or hit with a premium increase of $10,000, $50,000, $100,000.

□ 1915

What this legislation does, H.R. 5, and I am glad the gentleman from New Jersey (Mr. PALLONE) has gathered us for this Special Order to be able to say, it does not hit the point of the premiums. It hits at the time of the decision. So what you are doing is undermining juries when victims have been adjudged to have been a victim. This does not have anything to do with frivolous lawsuits; 61 percent of the cases are dismissed. This says when children like Nathaniel come into the courthouse, Nathaniel is blind and paralyzed because physicians that he went to and a nurse that he went to noticed that he was not eating and that he was jaundiced, he was yellow, and failed to diagnose what Nathaniel had. Did not tell his parents, You needed to hospitalize him, after seeing a number of pediatricians.

So we now have a little boy who has no income, no way to discern what his income might have been. He has no income to be able to have you assess what he needs to care for him for the rest of his life because he has never worked. And you are going to suggest that if he went to a court and got a judgment that he should have a cap on noneconomic damages and, likewise, he should have a cap on punitive damages?

Madam Speaker, this does not make any sense. And so I have offered amendments that would induce the insurance companies to take their profits, put them back into the physicians and reduce the premiums by 50 percent. Fifty percent of the savings go to the doctor. And I would move to strike the noneconomic damages, move to strike the limits on the cap on punitive damages, and I also asked that 2 percent of the savings would go to help our doctors who are alcohol and drug dependent only, a few just like there were only a few percentage of our doctors who, in fact, perpetrate these acts that would warrant such severe litigation.

We want good health care in rural and urban America, suburban America. H.R. 5 does nothing but blow up HMOs and insurance companies. It does not do anything. I encourage my insurance companies, my friends, the pharmaceuticals, physicians, doctors, let us sit down and get at the core of the problem, the small percentage of these doctors that need help, the American Medical Association can do with us and work with us to do that. The national association can do that. Let us work together to ensure that we have good patient care, a good Patients' Bill of Rights, good strong Medicare and Medicaid, and good strong resources for our doctors to do the job that they need.

I am delighted the gentleman from New Jersey (Mr. PALLONE) gave me this opportunity. I just want to hold this sheet of California up to make sure that everyone really knows that their medical malpractice legislation did nothing. They had to actually do insurance reform much later to actually get the doctors' premiums down. My understanding is the California Medical Association is not supporting this legislation because they saw what happened in their State.

So I would hope that tomorrow we would be of good sense and good mind and defeat this legislation on the floor on behalf of our doctors and our hospitals and our patients.

Mr. PALLONE. Madam Speaker, I appreciate the gentlewoman for coming down. I know she was up in the Committee on Rules trying to get one of her amendments that she described passed. I doubt they will pass it because they are doing everything on a partisan basis.

We only have maybe a minute or two left. I just wanted to thank the gentlewoman for bringing up the fact that traditionally when you are dealing with insurance regulation it is done by the States. It is tremendously unprecedented to take an issue that has primarily been dealt with by the States where there are State laws on medical malpractice and tort reform and all of the sudden put it under this huge Federal rubric and think we are going to solve all these problems. Particularly when something is so complex like this, the States are traditionally the laboratories where we see what can be done to make things work and maybe the Federal Government copies it later if it works.

That I think is just another indication that this is just being for special interests. This is just being done by the Republicans tomorrow for politics because they want to take this one-size-fits-all solution, knowing it is never going to pass the Senate, knowing it is never going to become law, just so they can say to the drug companies and to the HMOs and to the doctors, we have done something to try to deal with your problem. Not even caring whether or not it is actually going to accomplish the goal because otherwise they would wait and see what is working in the States or they would wait and they would take a more comprehensive view before we moved ahead with Federal legislation.

I think that was a very good point the gentlewoman made, and it is one of the points that we need to continue to make.

We are not going to win this one tomorrow, but we have to bring up the debate. If what happens is that it does go over to the Senate and then we are allowed to sit down as Democrats and Republicans and come up with a solution that goes beyond just a cap on damages, then so be it. I welcome that opportunity. I do not understand why we have to wait for it to pass the House to do that. But hopefully that opportunity will be there, and we will be up front making sure we can come up with a solution.

Ms. JACKSON-LEE of Texas. Just for a moment, I know our time is ending. I think the statement we are making on the floor tonight, and I will be an eternal optimist, one, that we get 2 hours of debate and an open rule and the gentleman's amendments are allowed in and mine are allowed in, because this is such a historic and important decision that the Congress will be making in the backdrop of the number of young men and women who are now on the frontlines fighting for our freedom. It could be one of their relatives that would be subjected to this; but the point should be made, as I close, that we are not against doctors. We are not against hospitals, my friends. We are trying to help you make this legislation right.

MEDICAL LIABILITY REFORM

The SPEAKER pro tempore (Mrs. MUSGRAVE). Under the Speaker's announced policy of January 7, 2003, the gentleman from Georgia (Mr. GINGREY) is recognized for 60 minutes as the designee of the majority leader.

Mr. GINGREY. Madam Speaker, I rise tonight and will take my time to describe the crisis that we face in this country regarding access to health care; and make no mistake about it, this is truly a crisis. When you have doctors unable to go to emergency rooms to provide emergency care, particularly for patients who have sustained automobile accident and head injuries; when you have OB-GYN physicians, as I am, stopping their programs at the most experienced states of their career because of the fear of litigation, you have patients who are in most need of those skills being the least likely to get them.

This crisis also extends to the facts that fewer and fewer of our best and brightest are choosing medicine as a career. The application rates to our medical schools are down significantly over the last several years. What is causing this? We hear from the other side and a lot of things are mentioned, insurance companies, of course, are being blamed for gouging physicians and for gouging the public. But I suggest to you, Madam Speaker, that that clearly is not the case.

Let me just give you a few statistics and share with you what has happened in my State, not just my own district, the 11th, but in the entire State of Georgia. MAG Mutual, Medical Association of Georgia Mutual Insurance Company, a doctor-owned insurance provider states that premiums for malpractice insurance are rising at rates of 30 to 40 percent a year. The Georgia Medical Association reports 20 percent of State doctors are curtailing the scope of their practices with some 11 percent actually refusing to performing emergency surgery.

Recently, the Georgia Board for Physicians Workforce released an access-

to-care study regarding physicians and the medical liability crisis. And let me share some of these statistics, and this is really frightening. In the State of Georgia, some 2,800 physicians are expected to stop providing high-risk procedures just to limit liability; 1,750 physicians in Georgia have stopped or are planning to stop providing ER coverage; 630 physicians plan to retire or in fact even leave the State. One in five family physicians and one in three OB-GYNs have reported plans to stop providing high-risk procedures including the high risk of delivering a baby. One-third of radiologists reported plans to stop providing high-risk procedures including, Madam Speaker, reading mammograms.

Now, Georgia is certainly not the only State in crisis. In fact, there are a total of 13 States that are in crisis: Georgia, Florida, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, and certainly West Virginia. And there are 30 other States that are in a near crisis. In fact, Madam Speaker, there are only about seven States in this country that are not in crisis or near crisis.

So the issue that we are presenting and the issue that H.R. 5 is trying to address is the fact that we are losing access to care and this is affecting every citizen in these United States, in all 50 States.

It is causing physicians to stop practice in many instances at the most critical time of their career, when they are the most experienced, they are the most compassionate, they have the best judgment and the highest level of skills. They are actually walking away. They are trading their white coats, literally, for fishing gear, which is a shame, which is a shame. And this is happening all across the country.

When physicians stop their practices, it is not just losing one doctor; it is really losing a business. We are in a time of economic crisis in this country. We probably have 8 million people who are unemployed. As I point out, we are not just talking about the loss of one job when a physician decides to retire early or move to another State. We are talking about 5, 10, 15, 25 employees who have worked diligently in that medical practice in support of that physician. And you are putting every one of these people out of work, and adding to this crisis that we face right now of this economic downturn.

So, Madam Speaker, it is not about the physicians and their bottom line or how much money they are making in practice. It is not that at all. What our concerns are is the fact that runaway jury awards which have almost created a lottery-like mentality are resulting in no patient access. And the stories of people going to the emergency room, needing to see that neurosurgeon to treat that potential closed head injury. We heard some testimony today in a press conference. It was awfully sad to see the wife whose husband is now severely brain damaged. She came to Washington today, all the way from California with her two teenage children to describe how she went to the emergency room, her husband was taken to the emergency room after the automobile accident that he was in and there was no neurosurgeon on duty. And he had to literally be air-lifted 60 miles away, and it was a 6-hour delay before he could get the care that he needed and the result was he sustained permanent brain injury.

Madam Speaker, I see some of my colleagues have joined me in the Chamber, and I want to at this point yield to them. I know they have worked very diligently on this issue. They are co-sponsors of H.R. 5, and they have got a lot of expertise that I know they would like to share with the Chamber and with the Members and, of course, with the American public. I would first like to recognize the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Madam Speaker, I would like to thank my colleague from Georgia (Mr. GINGREY) for putting this together in anticipation of what I think will be a great day for this Chamber and a great day for America and that is going to be the passage of H.R. 5, the HEALTH Act.

I am a co-sponsor of the HEALTH Act, as I was last year when it passed through this Chamber. I was pushing for medical liability reform at every level, on the Federal level most certainly, but in our own State of West Virginia.

Everybody has a story to tell, and certainly in West Virginia last year we had quite a story to tell. I just want to talk about two incidents that happened in our State of West Virginia.

I live in Charleston, West Virginia, the capital of our State. And the largest medical center there lost its trauma-1 status, which means that if I were to be in a car accident and my family were to suffer like the woman that we talked with earlier today whose husband was in a car accident, they too would have to be transported to find a neurosurgeon to be treated in a trauma-1 center outside of our State.

□ 1930

To me, to live in a capital city and say you cannot provide that kind of care in our capital city does not speak very well for our State or our capital city. I am happy to say that that hospital has since retained its Trauma 1 status through great efforts by our governor, and we now do have our full emergency care, but in that point in time it was a devastating event.

We also had an event in September where a young boy had something lodged in his windpipe, went to the hospital, could not find a pediatric surgeon, had to be taken to Cincinnati, 4 hours away, before he could have that removed from his windpipe. Luckily, everything turned out all right, but if it had been a true emergency to the point where he was obstructed and could not breathe, it could have had a different ending.

I likened a lot of what was happening in West Virginia to the Perfect Storm. Our doctors were leaving in droves, our Trauma 1 center was closing, our doctors in Wheeling actually took a month long leave of absence in January to illustrate the devastation that they have felt in their emergency room with the skyrocketing costs of medical malpractice insurance.

According to the Chamber of Commerce, West Virginia has one of the largest problems. Let me just say, 65 percent of our physicians have said they would consider moving to another State to practice medicine; 41 percent said retiring early; 30 percent said leaving the practice of medicine altogether. And what does that say? To me, that says when a doctor who is in the prime of their lives and practicing medicine, not only do we lose access to quality care, but we lose that physician's expertise to train doctors that are coming through in medical school and the doctors to come, and it is a very discouraging fact.

Doctors are practicing defensive medicine all across this country, and they are ordering test after test because they are afraid of the consequences if they were to miss something or if they were to not order a test that could be in some form or fashion thought to have been not in the patient's best interests or in the patient's best interest to have. So they are ordering test after test. They are referring to specialist after specialist to get more judgments. They have prescribed more medicine.

This is what defensive medicine is about, and every physician or most every physician in my State and across the Nation knows exactly what it is to have somebody looking over their shoulder. These professionals train for years and decades, many of them, to provide good, safe, quality health care to our citizens, to provide access to our citizens.

I am particularly interested in rural health care because if our doctors leave, they are going to leave the rural areas first, and it is going to be a devastating situation for our country.

So I am extremely pleased that we are going to have H.R. 5 in front of us tomorrow. I am going to be voting yea very proudly. I think it is going to help in our States for our recruitment of our young physicians, retention of our physicians, and provide that quality health care and success that is extremely important.

I would like to tell the rest of the Nation that my State, because we were in the Perfect Storm last year, because we were in this devastating situation, our State legislature stepped up to the bat, and yesterday our governor signed a bill, a medical liability reform bill, a medical justice bill, that goes to a lot to lawsuits abuse and lawsuit reform and tries to get a handle on the lottery system of medical liability court cases. I am proud of our State. I am proud of

our legislature for stepping up and answering the call and answering the question.

We need to pass this reform at the Federal level and vote for this HEALTH Act. Our court system is overwhelmed with these frivolous cases. Everyone in this body and everyone across America wants to see when an error has been made, when something unfortunate has happened, wants to see that person get what is rightfully due to them and to see that they are made whole because of an error that might have inadvertently been caused or intentionally been caused in a medical situation, and if we allow our court system to proceed the way it has with these frivolous suits and clogged up, the folks that are really due and that are really hurting are not going to have the access that they need.

This is also an economic development issue. If our health system is failing, we cannot develop our communities and a State like mine, if our health system is not standing, all the businesses are not going to come and bring employees into a State or a city that does not have good quality health care and good quality access to health care.

I think a lot of us across the Nation have a personal relationship with our physicians, and I think what happened in my State is what is happening across the country. With the personal relationships that we have with our physicians, that I might have with my OB/GYN or my mother might have with her physician, when those physicians leave in an untimely way because they are forced out of practicing medicine because of the high cost of medical liability, because of the fear of lawsuits, when those physicians leave, it breaks a serious bond in all of our lives. We have lost one of our friends, our advocates and somebody that we trust, and that is our physician.

I want to see our physicians be able to practice the way they have been trained, the way that they in their hearts know that we want to be treated, with good quality health care, and I believe that this health reform bill that we are going to pass tomorrow, modeled after the California bill, will go a long way to seeing that happen.

Mr. GINGREY. Mr. Speaker, I thank the gentlewoman from West Virginia for her comments, and I am really appreciative of her pointing out some things that needed to be mentioned.

I talked about the fact that when a doctor closes his or her door that it affects more than one employee and it could affect five or 10 or so, and the West Virginia crisis was as serious as any in the Nation, and I commend West Virginia General Assembly and the governor for passing this reform, the Medical Justice Act as the gentlewoman from West Virginia described it, and that is really what it is. It is a Medical Justice Act, and what is important for people in this country to understand is that nobody, no physician certainly, is trying to deny a patient the access to a redress of grievances in a situation where they have been injured or a family member has lost their life because of practice below the standard of care, either on part of the physician or the hospital in which that care was provided.

I have unfortunately, over a 30-year career in OB/GYN with 5,200 deliveries, been involved in a couple or three lawsuits where myself, along with six or eight or 10 other people, were named, and in at least one of those cases I was pulling for the plaintiff. I felt that they deserved just compensation and was glad when they received it.

Nor are we trying to, in trying to address this problem with H.R. 5, to say and paint with a broad brush that all attorneys are guilty of being egregious in their behavior in regard to filing frivolous lawsuits and gouging the system. In fact, I think the opposite is true. Most attorneys are very professional. Those who are involved professionally in personal injury law do a good job, and they represent their clients well. Unfortunately, there are too many of those situations where the lawsuit is frivolous, and because of the ridiculous contingency fee structure it sort of promotes the filing of frivolous lawsuits and hoping for that one in a million lottery payoff, and that is really, it is not only putting physicians out of business. As the gentlewoman from West Virginia said, it is causing rural hospitals that provide some of the most important high risk care, a preponderance of Medicare and Medicaid patients, and they are closing the doors, and as she pointed out, in many instances that is the only employee base in the whole county or region of the State, and so it does not justify situations, but it is hospitals, too, that are dealing with this, and many of them, of course, are self-insured.

I see that the author of this bill, Madam Speaker, the distinguished gentleman from Pennsylvania is here, and I would like to yield as much time as he needs to let him talk about the bill.

Mr. GREENWOOD. Madam Speaker, I thank the gentleman for yielding and I thank all of my colleagues for this special order. It is very important and I did not hear the special order given by opponents of the bill earlier, but I am told that there are some corrections to the RECORD that might need to be made, and I would like to do that.

There is no one who is debating that there is a crisis in this country. The worst opponents, the most fervent of the opponents of the bill, the trial lawyers, are not arguing we are having a crisis in the States, including my State of Pennsylvania and many others. That is accepted. The question is what is the solution.

The key point that the opponents seem to make is that the insurance companies, the problem here is the insurance companies. It is not the legal system. It is not what goes on in the courtroom. It is that the insurance companies are overcharging for these liability premiums. If I thought that were the case and that the evidence substantiated that and if we had testimony to that effect, then I am not the least bit shy about going after the insurance companies. I know my colleagues are not. We would do what is necessary there.

The fact of the matter is that the National Association of Insurance Commissioners asked point blank, testified, not once but repeatedly, to the fact that there is no evidence that the insurance companies are colluding; that they are price gouging; that they are doing a market sharing plot; that they are scheming in some ways to overcharge for these premiums.

We do not have to take anyone's word for it. What we have to simply take a look at is the fact that 60 percent of the physicians in this country acquire their medical liability insurance from physician-owned companies. Think about that. These physician-owned companies are basically mutual companies. They are set up by doctors for the sole purpose of trying to enable doctors to get affordable medical liability. So they do everything in their power to get that premium as low as possible. They are certainly not colluding. They are certainly not price gouging. They are certainly not ripping off the doctors because they work for the doctors. They are owned by the doctors. They are the doctors.

The fact is that they have not been able to provide premiums at lower costs than the commercial insurers. So what does that tell us? That tells us that if, in fact, the commercial insurers were guilty of price gouging, were guilty of colluding, were guilty of overcharging, that their prices would be here and the physician-owned companies would be here. That is not the case.

What is the case is that they are at right about the same place and that leads us I think to the inescapable conclusion that the problem is with the judicial system and not with the insurance system.

Another argument that we have heard throughout this debate and we have heard at the hearings, we will hear certainly tomorrow a lot, is that $250,000 is just too low, how can we have such a low cap when noneconomic damages should be higher than that. So why did we pick $250,000? Picked it, first off, because that is what California did in 1975 and it has worked. While the rest of the country has seen medical liability rates go up by 505 percent since then, in California only 167 percent. So it has worked.

Secondly, the California Congressional delegation did not want us to set a cap that is higher than theirs because they are happy with theirs. They do not want that to change. So what we said, being respectful of other States and being respectful of the concept of States rights, we said, well, we will have a flexible cap, which means we set

it at 250 as a floor and then any State that wants to can raise that cap to $500,000, to $750,000, to $1 million. They can put inflaters in there, they can revisit it from time to time, and I think that is fair, and that is reasonable, and that is contained in this legislation. So the fixation on the $250,000 I think is a bit of a red herring.

I have heard opponents of this bill say this bill does not do anything to stop frivolous suits. That is the problem. The problem is frivolous suits. What this bill does is stop frivolous suits. What it does is this. When we have no cap on the noneconomic damages, and we said we do not put any cap on economic damages, we think if we have the case of a child that has been terribly injured and is going to require round-the-clock care for the rest of its life, we are talking about judgments on the order of magnitude of $50 million, $75 million for the health care and for the lost wages, a lifetime of lost wages, and we are for that. This bill allows that.

When we have no cap on the noneconomic damages, the sky is the limit. So what happens when the sky is the limit? A frivolous suit is filed, a relatively weak suit is filed without much merit. The insurance company that is insuring the doctor or the hospital looks at the facts and says, well, this plaintiff is particularly pitiful, this plaintiff is an especially pathetic plaintiff, we have got a very strong attorney here on this case. We better not fight this because we go out into the courtroom and fight this and try to defend against this case, the jury could decide to give one of these jackpot awards and it is not worth the risk.

So, given the fact that we have got this huge risk, what we are going to do is we will just settle, and every time they settle one of these cases, that gets built into the premium, and it increases the incentive for more cases to be filed.

Finally, what we have heard over and over again and what we are certainly going to hear tomorrow is what about these tragic cases, what about the poor 17-year-old girl in North Carolina, the Mexican girl who died from the organ transplant error. In North Carolina, where that occurred, they have a law that allows for wrongful death suits. They will go into the court under that suit, as they would even if our bill becomes law, and they will be able to sue for and they can do it either pursuant to other State laws or pursuant to our law, get a claim and receive awards equal to a lifetime of lost wages.

□ 1945

The California Plaintiff's Bar has been extremely successful in figuring out how to raise those economic damages, as they should be. If somebody is paralyzed, they go in and they get not only all of their lost wages, all of their medical costs covered, but they say now he is going to have to pay for someone to do household chores, and he is going to have to have his car altered, get a special automobile, and he will have to have ramps in his house. All that gets covered, and it gets covered well, and we think that is the case in the most egregious examples.

I think, and I think a majority of the Members of Congress will vote that way tomorrow, that the crisis is real, the crisis is upon us, and the crisis is severe. We have the best health care system in the world, but people will and have already died because they could not get to a trauma center, because the trauma center did not have the docs there because the docs did not have the insurance. And those people who are injured because they cannot get access to health care are just as hurt and just as damaged and just as dead, unfortunately, because the system is not working.

We can solve this problem with this legislation. It is fair, it is balanced, and I thank my colleagues again for this excellent opportunity to tell America about this.

Mr. GINGREY. Madam Speaker, I thank the gentleman, the author of this bill, the distinguished gentleman from Pennsylvania (Mr. GREENWOOD) and the work that he has done on H.R. 5 trying to address this problem.

Madam Speaker, I notice that a couple of our colleagues who are doctors have joined us in the Chamber, and I would like to call on them to talk about this crisis and the medical justice bill, the Greenwood legislation, H.R. 5, which we are going to pass tomorrow and hopefully get that passed in the Senate and solve this problem.

First of all I will yield to the gentleman from Pennsylvania (Mr. MURPHY). Dr. MURPHY.

Mr. MURPHY. Madam Speaker, I thank the gentleman from Georgia (Mr. GINGREY), Dr. GINGREY, for yielding to me, and I appreciate the gentleman from Pennsylvania (Mr. GREENWOOD) taking the lead on H.R. 5 because it is an important bill.

Madam Speaker, I want to focus some of my comments on some explanations of what else is happening in Pennsylvania, because I think it is very valuable. Liability rates are skyrocketing, and many doctors are finding it difficult or impossible to afford to practice medicine in Pennsylvania. During the first 8 months of 2002 alone, more than 110 Pennsylvania obstetricians stopped practicing in the State. Entire graduating classes of prestigious medical residents in institutions moved out of the State to practice.

Furthermore, about 70 percent of Pennsylvania doctors cannot even afford to buy new equipment or hire new staff because they are strapped by the rising rates, according to a recent survey by the Pennsylvania Medical Society. Doctors are overworked, understaffed, working on aging equipment, and patients' access to quality health care has never been more threatened. For example, as a consequence of fewer obstetricians, many pregnant women now have to drive over an hour on the hilly roads of southwestern Pennsylvania just to see their doctor.

In my career I have worked in neonatal intensive care units, and I know the consequences of a mother who is in premature labor, especially those traveling long distances because there are no obstetricians nearby. In fact, there are increased risks for a child to have a variety of potential problems.

I wonder if I might ask the gentleman from Georgia a question on this. I know I have seen children whose mothers go into premature labor, and I think my colleague will agree that oftentimes time is of the essence. If that child is perhaps born at 24, 27 weeks, 3 or 4 months premature, there are a number of complications that can occur. As an obstetrician, what kind of time frame are we looking at under those circumstances where one has to get that baby to a hospital where there are specialists there?

Mr. GINGREY. I appreciate that question from the gentleman from Pennsylvania because it is so critical, and my colleague has worked so closely in that area dealing with those type patients after the fact and trying to work through their unfortunately permanent problems that they sustain as a result of that lack of access to care.

I can just anecdotally tell of a situation in my own family, Madam Speaker. My grandchildren, my twin granddaughters, who are precious, of course, as all grandparents talk about their grandchildren, but mine are now 5½ years old, but they were born at 26½ weeks. Now, very fortunately, we were in a community where we had excellent care. We had access to OB/GYN care; in fact, my own group. And we had a wonderful hospital and a wonderful intensive Neonatal Intensive Care Unit that the gentleman from Pennsylvania (Mr. MURPHY) is talking about. But had that occurred in a rural community, had that occurred in a community like West Virginia or Pennsylvania, where we are in a crisis mode, and physicians because of the inability to pay for these outlandish, outrageous malpractice fees caused by this crisis, then our little grandchildren would have not had that care and, without question, they would have become a statistic, as the gentleman from Pennsylvania is talking about.

That is the tragic situation that we would have experienced, and that others have experienced because of this crisis, not to mention the cost to society in trying to take care of children that sustain brain injury because of a lack of access to adequate obstetrical care. So I am so grateful the gentleman from Pennsylvania brought that up.

Mr. MURPHY. Madam Speaker, I appreciate what the gentleman has said, because it is so important in many children I have seen and I have followed where we have seen the mental retardation and cerebral palsy and brain damage. Luckily, many of these

children do survive and do well, but sometimes the results are tragic so often because it requires more time for that baby to get to the hospital. It breaks our heart to think more of these cases may occur because there are not obstetricians delivering them in regions of the State.

I have also been told by a parent whose young child suffers from seizures that they have to wait 6 to 8 weeks just to see a pediatric neurologist because of a shortage of doctors in that specialty in the region. Our distinguished colleague from West Virginia mentioned a hospital in Wheeling, West Virginia. I know some of the physicians who actually live in my area staff that hospital, and they have told me of the deep concerns they have that a neurosurgeon is not available. So if someone suffers from a stroke, a helicopter has to be called and they have to transport that person to a hospital somewhere else. That hour can mean the difference between life and death or between a functional and dysfunctional life.

The opponents to reform blame soaring interest rates and also the sagging investment revenue of insurance companies due to the stock market decline. But if that were true, all States would be hit equally by the crisis, which is simply not the case. From 1998 to 2002, average liability for Pennsylvania obstetricians jumped from $25,000 to over $64,000. This is compared to States like Wisconsin and California that have seen average premiums hold steady at $35,000 to $45,000.

The truth is malpractice awards in Pennsylvania continue to be unusually large. During the year 2000, combined judgments and settlements in the State amounted to $352 million, nearly 10 percent of the national total, and juries in Philadelphia have awarded more in malpractice damages than the entire State of California did over the last 3 years.

To fix this problem we need balanced medical liability reform that ensures patients who are truly hurt by malpractice are fully and fairly compensated for as long as they need but that does not jeopardize the access of all patients to quality care.

I might also add that we faced many of these problems in Pennsylvania while I served as a State Senator, and we worked to pass a number of reforms in the medical liability system. These included strengthening the State Medical Board's power by granting an enforcement authority to investigate physicians with patterns of error, allowing malpractice judgments for future medical costs to be spread over time, requiring claims to be filed within 7 years from date of injury, eliminating the duplication of recovery for past medical expenses, and allowing doctors and hospitals to have verdicts lowered by a judge if it would force the closure of a medical practice or force a hospital to cut services, thereby damaging the ability to service the community.

Now, some of these are actually in H.R. 5, but I might add this. While these Pennsylvania State reforms were a step in the right direction, they have not had the full positive effects, and there are three majors reasons why.

First and foremost, these reforms do not provide a cap on noneconomic damages, because in Pennsylvania the State Supreme Court has ruled such caps to be unconstitutional and it would require an amendment to the Constitution, taking 3 to 4 years to change that.

Secondly, a large percentage of the malpractice cases currently making their way through the system were filed before this legislation in Pennsylvania was passed and they cannot be affected retroactively.

Three, insurance companies are expecting court challenges to be filed against the legislation and are waiting to see if the reforms are upheld in court before taking any action. As such, it will probably take several years to see the full effect of the legislation, and it is for this reason we need to pass reforms at the Federal level. That is why we need to pass the HEALTH Act, which will provide full and fair compensation.

The bill would also change the current contingency fee system in which attorneys are encouraged to pursue larger settlements in order to receive bigger paychecks. It would use a sliding scale for that.

The HEALTH Act would also permit defendants to be held liable for no more than their share of responsibility for plaintiff's injuries, requiring insurance payments are deducted from damage awards and creating a statute of limitations for filing new lawsuits.

As someone who has spent his career in both health care and public policy, I have seen firsthand the need for comprehensive medical liability reform. We need solutions that address the problems at their root and not just stopgap Band-Aids that temporarily cover up the crisis. Above all, we need to ensure we fully protect patients who are genuinely damaged by medical malpractice while protecting the access of all patients to the best health care our State and our country has to offer.

That is why I believe we need to pass H.R. 5 and make sure that, above all, we protect patients' lives.

Mr. GINGREY. Madam Speaker, I thank the distinguished doctor, the gentleman from Pennsylvania, for his testimony.

I want to just share some statistics with the Chamber and then yield to the distinguished OB/GYN physician, the gentleman colleague from Texas (Mr. BURGESS), to tell us a little bit about, through his eyes, what the State of Texas is faced with.

Indeed, Madam Speaker, Texas, just as Pennsylvania, just as West Virginia, just as Georgia, is one of those crisis States. According to a Texas Medical Association poll of Panhandle doctors, 61 percent, 61 percent, have plans to retire early, and 83 percent say they use defensive tactics in practicing medicine for fear of being sued.

Another story from south Texas. A pregnant woman was forced to drive 80 miles to a San Antonio doctor and hospital because her family doctor in her more rural hometown had recently stopped delivering babies, citing malpractice concerns.

Madam Speaker, at this time I yield to a distinguished physician, the gentleman from Texas (Mr. BURGESS).

Mr. BURGESS. Madam Speaker, I thank the gentleman from Georgia for yielding to me, and tonight I rise to share stories from the State of Texas that represent where we are in this current medical liability crisis. And I would stress, because we did hear from some of our colleagues from Texas from the other side of the aisle, that this is indeed a national crisis and it affects all of us on a national scale. It is not a local crisis.

Back in my district, just this past week, on Friday, a young man, a doctor named Kevin Magee, came to my attention. Dr. Magee is what is called a perinatologist practicing in Plano, Texas. Perinatologists are obstetricians, just as myself and the gentleman from Georgia (Mr. GINGREY) are, but they are kind of like an obstetrician plus. That is, they spend an additional 2 years in training, in fellowship, and they take care of the sickest mothers. They deliver the smallest babies. They are truly, truly an asset and a blessing to any community that has the services of a perinatologist.

Unfortunately, just by virtue of what they do for a living they become lawsuit magnets. This year, Dr. Magee received his bill for his medical liability insurance coverage and found it came to over $125,000. Now, this young doctor graduated from medical school in 1988 at the University of Texas Medical School in San Antonio. He went to a State supported school. That means that as a taxpayer, the State of Texas, I, and other citizens of Texas partially subsidized his education. We are not getting our money's worth out of his medical career because now, 10 years after going into practice, he has had to close his doors. He is unable to continue caring for his patients because his practice could not earn enough money to pay his liability insurance costs. The community lost a young man in the prime of his career.

I was talking to Dr. Magee back in the district last Friday, and the conversation was overheard by another individual who, somewhat cynically, suggested that, well, Dr. Magee, being an OB doctor is a hard job and maybe you are better off now in business. He had to close his practice last October, and now he is working in an allied field but no longer in direct patient care.

□ 2000

This person suggested to Dr. Magee, maybe you are better off not having to deliver those premature babies in the

middle of the night. Dr. Magee stopped, and I could see the tears well up in his eyes. This was the job that he had trained for, 4 years of college, 4 years of medical school, 4 years of residency, and 2 years of fellowship. He said, ''I would be back in the delivery room this afternoon if I only could.''

Madam Speaker, with stories like that, we have to ask ourselves if this current litigious environment is good for patient care and patient access. I submit the answer to that question is, no.

In fact, a 1996 study done in Stanford, California, published in the 1996 ''Quarterly Journal of Economics'' demonstrated how broken the system is by clearly showing that the current medical liability environment does not improve patient access or patient care and has a negative impact on health care costs. The report, written by Daniel Kessler and Mark McClellan shows that States that had reformed their liability systems with laws that cap noneconomic damage awards and abolished mandatory prejudgment interest and place limits on attorney contingency fees, reduce hospital expenditures by 5 to 9 percent within 3 to 5 years of adoption of these laws.

The costs brought about by the current environment are borne by our entire system, from the family purchasing their own health insurance, to the business person, the entrepreneur trying to provide coverage to their employees, to the American taxpayer that supports medical services through Medicare, SCHIP and Medicaid programs. What does this 5 to 9 percent translate to in dollar terms? McClellan and Kessler's model shows that in States with effective tort reform, Medicare costs were 5.3 percent less for a new diagnosis of acute myocardial infarction and 9 percent less for ischemic heart disease.

If we applied this nationally across the country, this would mean that direct liability reforms would save $600 million a year in the Medicare program. And further extrapolating these costs across America's health system, this amount would come to a savings of $50 billion a year. Why are costs higher in States that have not enacted reforms such as those contained in H.R. 5? Because doctors have become accustomed to practicing defensive medicine, ordering tests they know their patients do not need, but could save their practice should a trial lawyer file suit against them. This wasteful health care spending drives up the cost for everyone, even the trial lawyers, so average Americans are saddled with additional costs when they go to the doctor.

Now, some will argue that additional medical services are a good thing. As a doctor in private practice, charge it up. They may say a doctor performing more tests may save more lives. However, this Stanford study shows that between the reform States and the nonreform States, mortality rates remain constant, indicating that a highly litigious environment does not improve patient health outcomes. The current environment is not conducive to low-cost, high-quality health care; and it must be changed.

The Congressional Budget Office has concluded that H.R. 5 would lead to an increase in the number of employers offering insurance to their employees and to the number of employees enrolling in employer-sponsored insurance and changes in the types of health plans that are offered and increasing the scope or generosity of the health benefits offered. In part, this development would be a result of lower health care costs.

As we have already seen in California, health care costs in that State are an estimated 6 percent lower than other States, saving California patients $6 billion every year on health care, all because California in 1975 had the foresight to adopt meaningful medical liability reform. H.R. 5 was molded after this successful approach.

I know my colleagues from Texas were here on the other side of the aisle earlier tonight and said that the California Medical Association did not like the Medical Injury Compensation Reform Act of 1975; but let me quote for a moment from a press release from January 16, 2003, which said that the California Medical Association applauds the call for a national medical liability law. President Bush and Senator DIANNE Feinstein cite the California law as a national model:

''This has been a success in California for decades, and many States are looking to our State as a model,'' John Whitelaw, president, California Medical Association, and an OB–GYN physician.

We have a plan to reform the medical liability system, and ensure that doctors will be there when they are needed, doctors such as Dr. Kevin Magee in Plano, Texas. The HEALTH Act contains much-needed reforms to provide this security beginning with a provision ensuring a speedy resolution to claims. This means that the statute of limitations is clearly defined.

There are some exceptions to this, but this component ensures that claims are brought before evidence is destroyed and while memories are still fresh. The bill also weighs the degree of fault in a claim so a person with only 1 percent of the blame is not forced to pay 100 percent of the damages, as is the case now. This component eliminates the incentive to look for deep pockets, making one party unfairly responsible for another's negligence.

With this legislation, patients would also receive full compensation for their actual damages. Patients are able to recover maximum economic damages. These are items that have a quantifiable amount attached to them, such as medical expenses and loss of future earnings.

Lastly, this bill gives flexibility to States that have already enacted damage caps, and we have heard over and over again from the other side of the aisle from some of my colleagues in Texas that this law took away from States the right to do what they thought was the right thing. But in fact, as the gentleman from Pennsylvania (Mr. GREENWOOD) pointed out, it does no such thing. We have respected States' rights and their ability to enact and enforce other damage caps other than those provided in this plan. The $250,000 cap on noneconomic damages serves as a floor on noneconomic damages for States that have no plans in place. States with higher limits, whether higher or lower, can continue to enforce those limits.

The U.S. Congress has an opportunity to positively impact the cost and improve the access of health care in the United States. In fact, the United States Congress has the responsibility to pass this bill and pass much-needed medical liability reform.

The United States Congress must act, not only for the well-being of patients, but access to doctors, caring doctors, good doctors like Dr. Kevin Magee in my district, who have dedicated their lives to the business of healing.

In America, where it is easier to sue a doctor than to see a doctor, something has got to be done. I urge my colleagues to make a commitment to the health care of American families and vote for H.R. 5.

Mr. GINGREY. Madam Speaker, I want to share some examples of excessive costs for liability concerns. Consider this: an April 2002 survey of physicians showed that nearly 80 percent have ordered more tests than medically needed because the doctors feared being sued, and nearly 75 percent referred patients to specialists more often than necessary. Doctors spent $6.3 billion last year on medical liability coverage. Hospitals and nursing homes spent billions more. The Federal Government, through its funding of Medicare, Medicaid and other programs, pays an additional $28 to $47 billion a year for health care due to the cost of medical liability coverage and defensive medicine.

Madam Speaker, I would like to yield to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Madam Speaker, I thank the gentleman from Georgia (Mr. GINGREY) for yielding, and it is a privilege for me to be here this evening to address this subject matter with my physician colleagues, of which we have many in the Congress.

Madam Speaker, I rise in strong support of H.R. 5, the HEALTH Act. The rising cost of health care has become an unrelenting problem. As I have said before, it has become easier to sue a doctor than see one. When access to health care is jeopardized, patients suffer. Doctors are leaving practice, and emergency rooms are closing their doors because of the astronomical increase in malpractice insurance premiums.

Health care costs are rising faster than they have in a decade, largely because the medical liability system is broken. Americans spend more per person in the cost of litigation than any other country in the world.

Unrestrained escalation in jury awards is the primary cause of the emerging medical liability crisis. The median medical liability award jumped from $700,000 in 1999 to $1 million in the year 2000. That is a 43 percent increase. Today the average award is $3.5 million. Members can do the math on what that does to medical liability premiums.

As a member of the Committee on the Judiciary, I have had an opportunity to mark up this legislation, which will grant better access to health care by fixing some of the broken medical liability systems that are driving doctors out of business. H.R. 5 is an effective bipartisan bill. It allows for unlimited economic damages such as medical expenses and loss of earnings. But it establishes a reasonable limit on noneconomic damages, commonly referred to as ''pain and suffering.'' It also factors in degree of fault, eliminating the incentive to look for the deep pockets that makes one party unfairly responsible for another's negligence.

It is modeled after California's liability reform law passed in the early 1970s, which stabilized the State's medical liability insurance market and increased patient access to care and saves more than $1 billion a year in liability premiums.

The MICRA Act was passed nearly 30 years ago; and in all that time Congress has sat back and watched its success, while at the same time watching the health care crisis grow across the Nation.

Last year the House passed legislation identical to H.R. 5, but the Senate refused to act. With 18 States facing severe patient access crises, and my own State of Iowa showing problem signs, it is time that we take some action. In Iowa's case, we do not have room to spare. We sit last in Medicare reimbursement rates, and we are 50th out of the 50 States. It is a long ways up to 49. Our margin is very, very slim. Additionally, though, we have been able to improve the quality of our care, but access is a critical issue. Many of our health care services have gone out of State because of our low Medicare reimbursement rate; and with the additional cost of premium and the distance between people, it is critical that we pass H.R. 5.

This measure will help our struggling rural hospitals increase availability of medical services and lower health care costs. We need to do more to lift the burden of rampant, frivolous litigation off the backs of the American people; and this is a good start.

My daughter-in-law, Heather, is in medical school now and plans to build a future in the profession that many of my colleagues have chosen. The decision for her is can she withstand the rising cost of malpractice premiums.

Last weekend, I caught a ride on a plane back to Iowa. I happened to sit across the aisle from an OB-GYN with her baby on her lap. And in the 3 years she has practiced in this region, her premiums have gone from $10,000 to $60,000 per year. We hear higher numbers, but I do not know if I have heard a higher percentage increase, and that is with no claims against her practice.

Madam Speaker, I will vote for this bill with great faith that it will be a significant first step for this Congress to address the impending health care crisis.

Mr. GINGREY. Madam Speaker, I thank the gentleman for sharing his experience in his State.

□ 2015

Madam Speaker, I see that the gentleman from Florida, the distinguished doctor of internal medicine, has joined us in the Chamber. I yield to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. I want to thank my colleague from Georgia, a former practicing physician in the practice of OB/GYN for his leadership on this very, very important issue. This is obviously a national crisis. It has regional features to it. California is not in the throes. They passed their malpractice reform.

We have got a real problem in Florida. Indeed, the Level 1 trauma center at Orlando Regional Medical Center is about to close down. The principal reason for that is they cannot get enough neurosurgeons to support the trauma center. One of the principal reasons they cannot get enough neurosurgeons to support it is that they cannot recruit physicians into the State of Florida and one of the biggest reasons for that is the astronomical cost of medical malpractice in the State of Florida. This is becoming an access issue. In the central Florida area of Orlando and the east central coast, Brevard County, where I live, you have upwards of 2, 3 million people in this region and we are going to lose one of the principal trauma centers. So people are going to suffer. People are going to die because of the medical malpractice crisis that we are facing in this Nation today.

I just want to address one very, very important issue about this whole matter. This is an incredible cost to our economy. It is an incredible drag on our whole health care system. There was an outstanding study. It was published in the Journal of Economics in 1995 out of California. They looked at the costs for two diagnostic codes, unstable angina and myocardial infarction, pre-California MICRA reforms, and then post-California MICRA reforms and showed a dramatic reduction, $500 million in the State of California for just those two diagnostic codes just because of those reforms. It clearly shows that defensive medicine is real. I know defensive medicine is real, you know defensive medicine is real, the other OB/GYN in the room knows defensive medicine is real. We practice defensive medicine every day. These researchers out of Stanford University were able to show the incredible cost. This is in 1995 dollars. They extrapolated that it costs health care in our Nation $50 billion a year, and I assume it is now $100 billion a year.

Madam Speaker, the Medicare program could save billions of dollars a year nationwide if we can pass medical malpractice reform. Those are dollars that can best be used to provide prescription drug benefits for seniors and other enhanced benefits, or extend the solvency of the Medicare program. This is a horrible, horrible crisis that we have today that is hurting the taxpayer. It is hurting all Americans. Indeed, this high cost of medical malpractice ends up costing us more money to just provide health care, and that in effect is a drag on our whole economy and it affects our ability to be competitive in the world marketplace.

We must pass this bill. The other body needs to pass this bill. It is good for America, it is good for health care in America, and certainly it would help us in the area I live to be able to keep our trauma center open and operating. I want to thank my good friend from Georgia and my good friend from Texas for their leadership on this very, very important issue.

Mr. GINGREY. I thank the gentleman from Florida, the distinguished doctor, for sharing those remarks with us. As one of the original cosponsors of this bill, of H.R. 5, he deserves a lot of credit for bringing it to this point.

Madam Speaker, in closing, as I said at the outset of the hour, this bill is not about denying access to a redress of grievances, if you will, for a patient who has been injured by a physician or a facility who is practicing below the standard of care for that community. Nothing in this bill does that, and it is not a bill to take away the right of a profession, an attorney who is engaged in personal injury work, to do their work and do it well. It is not about that at all. It really is about two things. It is about saving a great profession for my doctor colleagues, yes, but that is not the most important thing. The most important thing is to try to save a health care system, arguably the best in the civilized world, from the destruction of a legal system that has run amuck. That is what H.R. 5 is about, the HEALTH Act of 2003, the Medical Justice Act, if you will. I am a very proud cosponsor of this legislation. Tomorrow, when I vote for H.R. 5, it will be a very important moment in my young political life. I predict that this bill will pass this House of Representatives and we will move it on to the Senate. It is time for the Senate to act. Patients demand it. Our constituents demand it. It is too important to miss this opportunity.