

be given a few minutes before we close down tonight to speak on my situation and put some material into the RECORD. Is there objection to that—less than 5 minutes before we close tonight?

Mr. McCONNELL. Mr. President, Senator WARNER is requesting some time to explain.

Mr. WARNER. I will need less than 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. McCONNELL. Mr. President, tomorrow the Senate will resume consideration of S. 1805, the gun liability bill. Senator McCain will then be recognized to offer an amendment relating to the gun show loophole, which will immediately be laid aside for Senator FEINSTEIN to offer her assault weapons ban amendment. Senator FRIST will then be recognized to offer his D.C. gun ban amendment. Following the offering of these amendments, the time until 11:35 a.m. will be equally divided for debate on these three amendments. At 11:35 a.m., the Senate will proceed to a stacked series of votes culminating in the passage of the bill. Therefore, I inform our colleagues that the first vote of tomorrow's session will occur at 11:35 a.m.

ORDER FOR ADJOURNMENT

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks of Senator WARNER for 5 minutes; Senator SCHUMER for 15 minutes; Senator DEWINE for 30 minutes; Senator DAYTON for 15 minutes; and Senator LEVIN for 5 minutes.

The PRESIDING OFFICER. Is there objection?

The Democratic leader.

The Senator from Minnesota.

Mr. DAYTON. I ask unanimous consent that the time be switched and I go after Senator LEVIN.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. I know the distinguished Senator from Virginia and the Senator from Michigan have just a couple of minutes they wish to speak—actually Senator LEVIN had only asked for 3 minutes—so I ask unanimous consent that Senator LEVIN and Senator WARNER be recognized prior to Senator SCHUMER, Senator DEWINE, and Senator DAYTON.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Virginia.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

Mr. WARNER. I rise to speak to an amendment to address the issue of tort

reform. While today, the Senate is debating tort reform for the gun industry, I wish to take a few moments to raise the issue of tort reform with regard to another industry—the health care profession.

My father dedicated his life's work to medicine as a surgeon gynecologist. As a youngster, I watched first-hand how he caringly watched over his patients. As a result of my father, I have always had a great deal of respect for the medical profession.

For one reason or another, though, I did not follow in my father's footsteps. Rather than become a doctor, I became a lawyer.

Upon graduation from law school, I served as a law clerk for Judge E. Barrett Prettyman of the United States Court of Appeals for the DC Circuit. Subsequently, I worked as a Federal prosecutor and then moved to private practice with a major law firm.

I have direct experience with two professions—the medical profession and the legal profession. I admire both professions and believe the overwhelming majority of doctors and lawyers are dedicated people who work hard to serve their patients and clients.

Soon, the Senate will vote on S. 1805, legislation that provides certain legal protections to the gun industry. Legal protections which are denied almost across the board to every other industry in the private sector, including the medical profession.

Proponents have argued that this legislation is necessary because lawsuits are driving gun dealers and gun manufacturers out of business. Well, the same is happening to our doctors.

Doctors, nurses, and other health professionals are leaving the practice of medicine due to the astronomical costs of malpractice insurance and due to the constant battle against frivolous lawsuits and runaway jury verdicts. In my view, if we are going to protect the gun industry from lawsuits, we at least ought to provide some measure of protection for doctors and nurses as well.

We have all heard the real stories from doctors about the rapidly increasing cost of medical malpractice insurance. In some States, malpractice insurance premiums have increased as much as 75 percent in 1 year. As a result, the fact is that those doctors, unable to afford ever-increasing premiums, are leaving the profession altogether and patients are losing access to quality health care.

I have received numerous letters from medical professionals in the Commonwealth of Virginia that share with me the very real difficulties they are encountering with malpractice insurance and the consequences of this problem. Let me read part of one those letters that was sent to me by a doctor in Virginia. The doctor writes:

I am writing you to elicit your support and advice for the acute malpractice crisis going on in Virginia. . . . I am a 48-year-old single parent of a 14 and 17 year old. After all the

time and money spent training to practice Ob-Gyn, I find myself on the verge of almost certain unemployment and unemployability because of the malpractice crisis. I have been employed by a small Ob-Gyn Group for the last 7 years. . . . Our malpractice premiums were increased by 60% in May 2003. . . . The prediction from our malpractice carrier is that our rates will probably double at our next renewal date in May 2004. The reality is that we will not be able to keep the practice open and cover the malpractice insurance along with other expenses of practice.

Out of respect for this doctor's privacy, I will not share the doctor's name, but I do keep her letter in my files. Unfortunately, though, this doctor's experience is not unique.

Both Time Magazine and Newsweek have thoroughly detailed the crisis doctors are facing across America.

In June of 2003, Time Magazine had a cover story on the affects of rising malpractice insurance rates. The story, entitled "The Doctor is Out" discusses several doctors, all across America, who have had to either stop practicing medicine or have had to take other action due to increased insurance premiums.

One example cited in Time's article is the case of Dr. Mary-Emma Beres. Time reports:

Dr. Mary-Emma Beres, a family practitioner in Sparta, N.C., has always loved delivering babies. But last year Beres, 35, concluded that she couldn't afford the tripling of her \$17,000 malpractice premium and had to stop. With just one obstetrician left in town for high risk cases, some women who need C-sections now must take a 40-minute ambulance ride.

Dr. Beres case makes clear that not only doctors are being affected by the medical malpractice insurance crisis, patients are as well. With increased frequency, due to rising malpractice rates, more and more patients are not able to find the medical specialists they need.

Newsweek also recently had a cover story on the medical liability crisis. That cover story was entitled, "Lawsuit Hell." I was particularly struck by the feature in this magazine about a doctor from Ohio who saw his malpractice premiums rise in one year from \$12,000 to \$57,000 a year. As a result, this doctor, and I quote from the article, "decided to lower his bill by cutting out higher-risk procedures like vasectomies, setting broken bones and delivering babies even though obstetrics was his favorite part of the practice. Now he glances wistfully at the cluster of baby photos still tacked to a wall in his office, 'I miss that terribly,' he says."

While these stories are compelling on their own, the consequences of this malpractice crisis can even be more profound.

On February 11, 2003, Ms. Leanne Dyess of Gulfport, MS, shared with both the HELP Committee and the Judiciary Committee her very personal story about how this crisis has affected her.

Ms. Dyess told us how on July 5, 2002, her husband, Tony, was involved in a

single car accident. He was rushed to the hospital in Gulfport where he had head injuries and received medical attention. Tony could not be treated at the Gulfport hospital because they did not have the specialist necessary to take care of him. After a 6 hour wait, he was airlifted to the University Medical Center. Today, Tony is permanently brain damaged.

According to Mrs. Dyess, no specialist was on staff that night in Gulfport because rising medical liability costs had forced almost all of the brain specialists in that community to abandon their practices. As a result, Tony had to wait 6 hours before the only specialist left in Gulfport could treat Tony to reduce the swelling in his brain.

Without a doubt, the astronomical increases in medical malpractice insurance premiums are having wide-ranging effects. It is a national problem, and it is time for a national solution.

The President has indicated that the medical liability system in America is largely responsible for the rising costs of malpractice insurance. The American Medical Association and the American College of Surgeons agree with him as does almost every doctor in Virginia who I have discussed the issue with.

The President of the AMA, Dr. John Nelson, has publicly stated, "We cannot afford the luxury of waiting until the liability crisis gets worse to take action. Too many patients will be hurt."

The American College of Surgeons concurs by stating, "More and more Americans aren't getting the care they need when they need it. . . . The 'disappearing doctor' phenomenon is getting progressively and rapidly worse. It is an increasingly serious threat to everyone's ability to get the care they need."

Let me state unequivocally that I agree with our President, with the AMA, with the American College of Surgeons, and with the vast majority of doctors all across Virginia. That is why I am offering my amendment today.

My amendment is simple, like other measures that have come before the Senate, my amendment provides a nationwide cap on damages in medical malpractice lawsuits.

My amendment differs from other measures that have been voted on in the Senate in one key aspect—whereas these other bills would have applied to doctors, nurses, insurance companies, drug companies, and others, my amendment is solely limited to the caring medical professionals who take care of each and every one of us when we need medical care.

It is a common sense solution to a serious problem.

Now that I have laid out the amendment, I would like to reiterate one important point. The gun immunity bill provides broad protection to gun manufacturers and gun dealers in both fed-

eral and state court. The bill is aimed at protecting the manufacturers and dealers from lawsuits that result from the criminal or unlawful use of a firearm. The basic idea is that if a manufacturer or dealer follows the statutory law in the manufacturing and sale of a legal product, they should not be held responsible for the actions of a third party.

While some may claim that this gun immunity bill might be an important component of tort reform, in my opinion, health care liability reform is even more important. We must protect the medical profession and the patients it serves.

How can we give near absolute protection from litigation for one industry, the gun industry, and do absolutely nothing for another industry that is solely dedicated to saving lives?

Let's ask ourselves, in the event that a bullet from a firearm is shot into an innocent victim, is our healthcare system prepared to help that victim? Without healthcare liability reform, it may not be, as there might not be the appropriate doctor in the area to tend to the patient. That is why my amendment goes hand-in-hand with the gun immunity bill.

So now it is up to my colleagues in the Congress. It is their choice. If we are going to give legal protections to the gun industry, all I say is let's give it to the doctors as well.

If this choice is given to the American people, there is no doubt that the doctors would win by a 100-1 margin.

Now, I clearly recognize my situation. I want to compliment the leadership of both the majority and the minority. They were eminently fair. They explained to me the situation, and I am not able to obtain a vote on my amendment tonight. It comes as a matter of considerable disappointment to me. Nevertheless, I think there are times when frankness and honesty have to be shared. Under the current parliamentary situation on this bill, it is not possible for me to achieve the vote.

I ask unanimous consent that the magnificent communications I have received from a number of groups, physicians and their organizations, that have strongly supported the initiative the Senator from Virginia has taken on their behalf, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COLLEGE OF AMERICAN PATHOLOGISTS,
Northfield, IL, March 1, 2004.

Hon. JOHN WARNER,
U.S. Senate,
Washington, DC.

DEAR SENATOR WARNER: The College of American Pathologists, a medical specialty serving 16,000 pathologists and the laboratory community, supports your amendment, the Protecting the Practice of Medicine Act. This amendment would ensure that patients have continued access to quality, affordable health care by addressing excessive medical liability costs that are threatening pathologist and other physician practices.

Physicians are finding that liability insurance is no longer available or affordable.

Double digit rate increases coupled with withdrawals of liability insurance providers from the market have forced nearly thirty percent of pathologists to look for new coverage. Your amendment includes key elements of effective reform, such as caps on non-economic and punitive damages, expert witness standards, and preventing excessive attorney contingent fees to maximize the recovery for patients. No limits would be imposed on economic damages and states would be able to maintain their own laws limiting damage awards.

Again the College supports your amendment and applauds your leadership on this important issue. We look forward to working with you to enact meaningful medical liability reform that will strengthen our health care system and benefit patients.

Sincerely,
E. RANDY ECKERT, MD, FCAP,
Chair, Council on Government
and Professional Affairs.

THE AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS,
March 1, 2004.

Hon. JOHN WARNER,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR WARNER: The American College of Obstetricians and Gynecologists (ACOG), an organization representing nearly 46,000 physicians, thanks you for introducing S. Amdt. 2624, the Protecting the Practice of Medicine Act, an amendment to S. 1805, the Protection of Lawful Commerce in Arms Act. We appreciate your commitment to resolve the medical liability crisis facing this nation and protect access to needed health care for our nation's women and children.

ACOG is deeply committed to resolving the medical liability crisis—our number one legislative priority. The crisis is severely jeopardizing women's access to ob-gyn care and worsens with each passing day. Many obstetricians no longer deliver babies, while many others are driven out of the practice completely. And future generations of moms and babies are at risk as fewer and fewer medical students choose to become ob-gyns.

We are pleased that your amendment contains proven and effective reforms, including a cap on non-economic damages, limits on the number of years a plaintiff has to file a lawsuit, and fair allocation of damages in proportion to a party's degree of fault, as well as important expert witness qualifications.

It is clear that the Senate presents unique challenges to passing comprehensive legislation. It is important that every effort to focus the Nation's attention on this important issue is taken. Congress must pass, and the President must sign, legislation that will resolve this crisis for all physicians.

ACOG will do everything to end the medical liability crisis, which is destroying this nation's health care system. We look forward to continuing to work with you in the future on this top priority.

Sincerely,
RALPH W. HALE, MD, FACOG,
Executive Vice President.

AMERICAN COLLEGE OF SURGEONS,
Washington, DC, February 27, 2004.

Hon. JOHN WARNER,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR WARNER: On behalf of the 66,000 Fellows of the American College of Surgeons, I am pleased to offer our support for amendment titled Protecting the Practice of Medicine Act. Outrageous medical liability premiums are driving more surgeons from practice and making access for patients more difficult than ever before.

We are grateful that you have taken the lead in sponsoring this necessary medical liability reform amendment that promises protections for both patients and physicians. Not only does it assure injured parties full compensation for medical expenses and lost wages, but it also promotes a speedy resolution of claims and directs monetary awards to the patient.

Surgeons, in particular, have been targeted by skyrocketing medical liability premiums, with some increasing by as much as 300 percent. Many surgeons are being forced to retire earlier, stop providing high-risk procedures, or move to states where strong medical liability reforms are in place.

While we are offering our support for this amendment, we do have some concerns with the subrogation language. We hope this issue can be resolved as we work with you to move medical liability reform legislation closer to becoming law.

We appreciate your effort to advance medical liability reform through the United States Senate. If we can be of assistance, please do not hesitate to contact us.

Sincerely,

THOMAS R. RUSSELL, MD, FACS,
Executive Director.

AMERICAN OSTEOPATHIC ASSOCIATION,
Washington, DC, February 27, 2004.

Hon. JOHN W. WARNER,
*U.S. Senate, Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR WARNER: As President of the American Osteopathic Association (AOA), I write to thank you for introducing the "Protecting the Practice of Medicine Act" (S. Amdt. 2624). The AOA, which represents the nation's 52,000 osteopathic physicians, support the provisions contained in your amendment and applaud your continued efforts to reform the nation's medical liability system.

The nation's health care delivery system and patient access to quality and timely health care are damaged greatly by the out-of-control medical liability system. As a result of this crisis, patients in Virginia and numerous other states, face the stark reality that their physician may not be available to them at their time of need.

Osteopathic physicians are dedicated to providing quality care to their patients. However, many of our members find it difficult to secure professional liability insurance. Those fortunate enough to secure a policy face premiums that are largely unaffordable. As a result, our members are forced to limit the services they offer their patients, move their practices to states with meaningful medical liability reforms, or simply retire from the practice of medicine. Regardless of the decision made, patients are the ones who suffer. They lose access to physician services, they lose access to trauma centers, they lose access to hospitals—plain and simple, patients lose.

It is our opinion that the medical liability crisis is the greatest danger facing the health care delivery system. For this reason, professional liability insurance reform remains the top legislative priority for the AOA. Beyond access problems, the liability crisis is a leading contributor to the escalating costs of health care in this country.

The AOA and the American public support the enactment of meaningful and comprehensive medical liability reforms in the United States Senate. Please do not hesitate to call upon the AOA and our members for assistance in your efforts on this issue.

Sincerely,

DARRYL A. BEEHLER, D.O.,
President.

AMERICAN MEDICAL ASSOCIATION,
February 27, 2004.

Hon. JOHN W. WARNER,
*U.S. Senate, Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR WARNER: On behalf of the physicians and medical students of the American Medical Association (AMA), I am writing to support your proposed medical liability reform amendment to S. 1805, the "Protection of Lawful Commerce in Arms Act."

We are particularly pleased to see that your amendment would establish a \$250,000 Federal cap of non-economic damages in medical liability suits against physicians, hospitals, and other health care professionals and entities. The legislation would provide states the flexibility to set equal or lower caps on non-economic damages. It would also protect those states that limit the amount of total damages (including economic and non-economic damages) that may be awarded in a lawsuit.

We deeply appreciate that your bill includes many of the medical liability reforms that are part of the comprehensive reforms that have proven effective in California and are found in H.R. 5.

We are concerned, however, that language in the amendment that relates to the collateral source/subrogation provision and the ERISA cause of action/scope of preemption provision could disadvantage patients and physicians. We would value the opportunity to continue to discuss these concerns with you.

The AMA applauds you for your leadership in offering this amendment and for highlighting the continued and urgent need for medical liability reform at the Federal level. We look forward to working with you toward our mutual goal of enacting comprehensive Federal reforms, including a \$250,000 cap on non-economic damages.

Sincerely,

MICHAEL D. MAVES, MD, MBA.

Mr. WARNER. I feel very strongly that we have to recognize, as a nation, that the medical profession must, at some point in time, be given protections not dissimilar to those protections sought in this particular legislation. In this humble Senator's view, I feel it is far more important that the medical profession be cared for now, and it should be the top priority. The situation is, though, that I cannot get a vote on my amendment. I feel this vote would be a very strong one, if I could get a vote, because I have stripped out all other beneficiaries that were included in previous efforts, such as insurance companies and drug manufacturers. I have limited it purely to physicians and nurses. I think they need help now because they are not able to deliver that quality of medical care they want to give to Americans throughout the fifty states.

With a great sense of disappointment I say that tonight I will not withdraw the amendment, it will remain, but under the standing order it will, unfortunately, expire automatically. I say to my colleagues, though, that I will continue this fight another day.

I ask unanimous consent to place in the RECORD the full text of the statement I made Friday on the Senate floor in support of my amendment.

I yield the floor.

EXEMPTION TO S. 1805

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Before the Senator from Virginia leaves the floor, I express to him my gratitude for his willingness to do what he has just done, which is to accept the facts that exist tonight, not because he likes them but because he realistically has understood there is no alternative. I have always admired my friend from Virginia. He has spoken out in support of the principle which is also included in my amendment. Although he did not say this to me personally, I know he will not mind me sharing this with the body. He also wanted to make it possible for me to have an opportunity for a vote tomorrow, if not an up-or-down vote, at least on a motion to table. I thank him for his expression of support to me personally and his willingness to help make it possible for me to have a vote tomorrow.

Mr. WARNER. Mr. President, I thank my colleague for those remarks. We have been together in the Senate for 25 years. We have a responsibility together on the Armed Services Committee and so we know how to work together. I intend to support the distinguished Senator from Michigan in his efforts. The fact is, it is a good amendment and I urge all Members to take a look at the amendment of the Senator from Michigan. I thank the Senator from Michigan for his personal comments. No one works harder for people than the Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Senator from Virginia and all those in leadership who made it possible for this amendment to be voted on tomorrow afternoon and before final passage. This is a very significant amendment we will be voting on tomorrow.

It has been stated by the manager of the bill—and now I am reading his words—that we must insist the law be clear, unambiguous. That the officer—here an officer who was injured by a weapon—have a day in court if he is harmed—here I am skipping over a few words to get to the point—by someone who through negligence has caused a firearm to get into the hand of a criminal.

The amendment we will be voting on tomorrow afternoon makes it very clear lawsuits will be permitted if the defendant's own gross negligence and own recklessness was a proximate cause of somebody's death or injury. The Senator from Idaho has said on a number of occasions people should not be held liable for somebody else's criminal act. I do not disagree with that. What my amendment says is someone can be liable for their own recklessness and their own negligence. I make it clear in my amendment we are talking about gross negligence.

A number of cases have been referred to during the debate on this bill. One of the cases involves the so-called Bull's Eye Shooter Supply Company. We had a situation where a gun dealer was allegedly reckless in terms of failing to