

SOLIS today in calling for the reauthorization of the Ryan White CARE Act and cosponsoring her bill to support the observance of National Latino AIDS Awareness Day.

Mr. Speaker, we need to recognize the disproportionate affect AIDS has on our communities of color, and I join my fellow Members of the Congressional Hispanic Caucus tonight to call on Congress to work swiftly to reauthorize and strengthen the Ryan White CARE Act and to make sure these programs are fully funded.

#### GENERAL LEAVE

Ms. SOLIS. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the subject of my Special Order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

(Mr. EMANUEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GEORGE MILLER) is recognized for 5 minutes.

(Mr. GEORGE MILLER of California addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. HOLT) is recognized for 5 minutes.

(Mr. HOLT addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. GRIJALVA) is recognized for 5 minutes.

(Mr. GRIJALVA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. BARROW) is recognized for 5 minutes.

(Mr. BARROW addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

#### A CRISIS IN THE COURTS OF AMERICA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Texas (Mr. CARTER) is recognized for 60 minutes as the designee of the majority leader.

Mr. CARTER. Madam Speaker, I rise this evening to talk about an ongoing crisis that is in this country, a crisis in the courts of America. People are using the third branch of this government as an abusive form of receiving money from the court system, in many instances just because they file a lawsuit. People are using the courts of America to intimidate others out of their constitutional rights because of the expense of litigation. Most importantly, and what I rise today for, they are driving the medical profession into the ground.

Madam Speaker, I have spent 21 years of my life working with fine lawyers in a courtroom. I have seen the courtroom and how things work in the courtroom change substantially in that 21 years on the bench as a trial judge in Texas.

□ 2145

The courts were designed for people to seek recourse when they were damaged. The courts were designed to grant fairness to all parties involved. The courts were not designed to use the economic expense of litigation to force people to settle lawsuits or to force people to pay money. They were designed for a fair presentation of the evidence and a fair decision to be rendered by the trier of facts and the trier of the law.

Yet, today, in modern society, we see in every area courts being used to try to force someone to do something contrary to their best interests, to pay when, in reality, the only reason they are paying is because, quite frankly, it is cheaper than fighting the litigation, cheaper for insurance claims to be settled, because it is easier to settle an accident than actually stand up for what is right. We see this, and if the spotlight is placed upon this, we see what it is doing to our medical profession.

Madam Speaker, we love to all sit around and reminisce about the old country doctor who would actually make house calls. The doctor that would make a house call with a little black bag today probably ought to be seriously examined for being crazy, because if all he brings is the resources of that bag to make that house call, surely there is a lawyer some place that is going to sue him for something because

he said he did not do the right thing. So what is happening to our legal profession?

In many instances, doctors will tell us, unnecessary tests are being required of our patients. The cost of our medical care in this country is skyrocketing not because maybe that doctor thinks he may know what is wrong with that patient, but he also wants to make sure that he has that MRI and that CAT scan on record to confirm what his diagnosis is. Why? Because of the trial lawyers standing outside the door, ready to sue him for the slightest thing because he thinks he can prove that that test was not right.

Madam Speaker, we have women in south Texas that cannot find a baby doctor to deliver their baby and cannot find a pediatrician to care for their baby when it is born. Patients in south Texas cannot find a neurologist or a neurosurgeon when someone has been in a car wreck and has a brain injury and desperately needs someone that can treat them, either a neurologist or a neurosurgeon. There are people that are being hauled all the way from the Rio Grande Valley, Brownsville, and McAllen, all the way to San Antonio to try to find a neurologist that will take care of a serious, serious case.

Madam Speaker, this is a crisis in America. I am just looking at Texas. But this is not just new to Texas; this is all over the country. There are multiple States that are in crisis when it comes to medical liability. Tonight, I am up here and I am joined by many of my colleagues to talk about H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Health Care Act of 2005 entitled HEALTH. This is sponsored by my colleague, the gentleman from Georgia (Mr. GINGREY), a medical doctor and a good friend from the State of Georgia, and I am sure that he will join us here in just a little while. Right now, he is with the Committee on Rules, and that is why he is not the first one to talk, because he is the doctor.

But he will tell us, as I will tell my colleagues and my colleagues will tell us, this crisis in America is causing skyrocketing medical costs, unfair jury verdicts and judgments against the doctors of this country and causing doctors to say, I am not doing this anymore.

Madam Speaker, when we drive out the people who are there to protect our lives, when we drive them away with these frivolous and sometimes onerous, most of the time onerous lawsuits, we are driving away people that are there to save our lives. Nobody asks when they are dragged into the emergency room after a terrible car wreck where the jaws of life have pried them out of the car, they do not ask, where is my lawyer, they are looking for a doctor. Yet, I have talked personally with emergency room surgeons, and they tell me that their profession is getting thinner and thinner and thinner every day. In fact, most of the people that still are willing to go and be emergency

room surgeons are the guys who love to live on the edge with that adrenaline rush, because they certainly are not doing it because they feel safe. They deal constantly with the fear of a lawsuit because they did the right thing to save a life.

Doctors deliver babies. That is what we all expect. We want a doctor to be there with our wonderful spouse when they give us the gift of a child. Why do we want that doctor there? We want that doctor there to make sure that child is healthy and to make sure that birth is as successful as possible and make sure mama comes home with the baby. Yet, with the amount of lawsuits that are attacking our OBGYNs in America, more and more of our outstanding doctors are finding something else to do.

Madam Speaker, this is a crisis in America. The gentleman from Georgia (Mr. GINGREY), the sponsor of H.R. 5, I believe offers us the solution to that crisis. I see that he has joined us, and I am going to yield to him to talk to us about this issue.

Mr. GINGREY. Madam Speaker, I thank the gentleman from Texas (Judge CARTER), my good friend, for yielding. This is a hugely important issue in this Lawsuit Abuse Prevention Week when we are focusing on not just medical malpractice suits but a number of other things like frivolous lawsuits, class action abuse. This Republican majority has dealt with these issues time and time again. This House of Representatives actually, in a bipartisan fashion, Madam Speaker, I am pleased to say, has passed this particular bill, H.R. 5, about four times since myself and my colleagues. And we are all in the same class of the 108th Congress; I think we passed it twice. It was passed in the 107th and now once again in the 109th. I think that totals five times, this issue of tort reform.

As a physician Member, Madam Speaker, I am often I guess considered someone who is anti-attorney, who has a bias against attorneys. Nothing could be further from the truth. In fact, in my immediate family, I have two attorneys; my daughter, who is a prosecutor in State court in Cobb County; and my brother, who spent his lifetime as a practicing attorney doing real estate law; and my good friend, the gentleman from Texas (Judge CARTER) who was a good lawyer and an even better judge as a superior court judge in Texas. I have great respect for the legal profession. Rather, Madam Speaker, this is about leveling the playing field and making sure that every voice on each side of the issue is fair and balanced. That is all it is, pure and simple. I think my colleagues would agree with me on that.

I am joined by some of my doctor friends here tonight along with the gentleman from Texas (Judge CARTER), and we have all experienced situations where maybe one of our colleagues in the health care profession is being sued for practicing below the standard of

care, and in those situations where we know that they practiced below the standard of care or the hospital, through negligence, has resulted in an injury to a patient, we are right in there pulling for the plaintiffs. There is no question about that. I think it is very important, as we discuss this during this hour, for our colleagues, Madam Speaker, to understand that. We are trying to bring balance to a situation that right now is way out of kilter, totally unbalanced, and it is to the detriment, not so much to the health care providers, but to the patients who need, who desperately need the access, as Judge CARTER was talking about at the outset. And physicians who are involved in high-risk specialties, emergency room doctors, orthopedic surgeons like my colleague, the gentleman from Cobb County, Georgia, (Dr. PRICE) who we will hear from in just a few minutes, and the gentleman from Pennsylvania (Dr. MURPHY) who deals with mental health, which is such a vital issue, so important to the health care of individuals, you are in a situation where if you do not have these doctors available, particularly in emergency situations, people suffer, people get injured and people die. So that is really what it is all about.

I appreciate so much being with my colleagues. At this point, I yield back to the gentleman from Texas (Judge CARTER) and hope to participate later in the hour as we discuss this critically important issue during this time this evening.

Mr. CARTER. Madam Speaker, I yield to the gentleman from Pennsylvania (Dr. MURPHY).

Mr. MURPHY. Madam Speaker, I thank the gentleman for yielding, and I thank the gentleman from Georgia (Dr. GINGREY) as well.

We are talking about medical liability reform tonight, and my background as a psychologist is one that I think it is incredibly important to support these issues, because in my career, I have so often dealt with the problems that have stemmed from difficulty with accessing medical care. Let me tell my colleagues two stories.

One is a story of a place in rural Pennsylvania where a woman went into premature labor. Now, because of the dearth of OBGYNs in her town, they drove in their car about an hour and a half to a nearby hospital, taking considerable risk to get up there. The baby was born premature. It would have been best if she would have had the care in a local hospital, but she did not have that. And children who are born premature oftentimes are at higher risk for several developmental disabilities. It is a sad thing to think that children sometimes cannot get that immediate access to care, because those first few minutes of care for a newborn baby are so critically important when they are premature, high-risk, low birth weight, maybe the mother was eclamptic, pre-eclamptic, and those first few minutes can mean

the difference between a child who has some severe problems, a child who has mild problems or a child who has no problems at all. As I would do developmental follow-up with so many of these infants, it is of increasing concern to me that when there is not sufficient medical care there nearby with OBGYNs, or anyone else for that matter, you cannot get the patient the care they need then, and that baby cannot be treated by a lawsuit. That does not make up for what occurred because a physician was not around and the physician is not around because in Pennsylvania, like so many other States, about 20 other States listed at risk for this, has seen such a decrease in physicians.

Another story: A hospital where several cases have occurred where people have gone into that hospital suffering from a stroke, but there were no neurosurgeons on call at that hospital because of the high medical liability costs for these neurosurgeons in that State. So patients had a certain kind of clotting that needed to be broken with a line through the femoral artery or a catheter, as it were, into the carotid, and these patients then had to be life lifted to another hospital. Again, those minutes when someone is having a stroke are critical and can mean the difference between life and death.

In a number of those cases, sadly, those patients died. It was not from lack of good health care that was available; it just was not available at that hospital because the doctors were no longer able to practice in that State or in that region.

Bills like H.R. 5 are extremely important, and we have passed it a couple of times in the House, and we have to continue that. But what happens is that, in so many States, we are far from being able to do that on our own. Pennsylvania, for example, has a constitutional provision there that would query that State even if it started moving forward a number of years to take care of that.

□ 2200

But ultimately our concern has to be for better patient care. And some look upon this and say are we looking at caps on punitive damages or changes of venue and other sorts of legal issues here that somehow are going to protect the physician who is not practicing well. As one trial attorney I heard say, the trouble with medical malpractice is medical malpractice.

Certainly, none of us want to see situations taking place where we are protecting problems that occur. All of us, whatever branch of health care we are in, are dedicated to making sure patients have the best care. But when you cannot get a doctor, you cannot get the care, good, bad or otherwise. And so the issue is how we make sure we have the availability of that health care.

Listen to a couple of these points: one in three medical residents in my home State of Pennsylvania stated in a

survey they would leave the State after completing their medical residency because of the lack of affordable malpractice or medical liability insurance. In addition, 71 percent of residency program directors reported a decrease in retention of medical residents in Pennsylvania. As a result, more and more doctors are practicing defensive medicine. And only about 4 percent of our physicians in key areas, such as obstetrics, gynecology, orthopedic surgery, neurosurgery, only about 4 percent of physicians in Pennsylvania are under age 35. As others doctors retire, we are going to continue to have this; and that is why we have a crisis, no longer just brewing, but really some significant shortages.

Let me mention one or two things that we are working on as part of this, because all of us in the health care field and all of us in the House have to be focused also on patient safety. Some of the issues before us are also what Secretary Leavitt and the President are pushing and that is for reform for how we keep track of medical records.

Electronic medical records is a system whereby patients' charts are kept in secure and confidential electronic records and computer systems so physicians can access them. And at the moment they are reviewing these charts, it is no longer a matter of trying to find the pages in the charts which may be scattered in different places, no longer a situation where lab results never quite made it, no longer a situation where the doctor has to call for repeat tests because he cannot find the x-ray or the CT scan or the MRI.

It is accessible to him or her, and thereby not only does it save money because tests do not have to be repeated, but it can call to the attention of the physician significant findings. One study that was published last year found about 14 percent of medical records are missing some data. For example, a physician may have called for lab tests, never got in the chart, perhaps the patient did not follow up and have it done. And a physician said in many of those cases it would change their diagnosis and what they would call for for treatment of those patients.

Does it save money? You bet. A Rand study report published a couple of weeks ago said if we move toward electronic medical records and electronic prescribing, we could save health care in America about \$160 billion a year. And with the improved efficiency and with the reduction in absenteeism in the workplace, those numbers could go up to over \$300 billion a year.

Now, while we are facing an era of looking at ever-increasing health care costs, where small businesses cannot afford them, or individuals and families are wondering if they are going to be able to cover those health care costs, by doing such things as electric medical records and prescribing, we can actually provide the venue whereby physicians, everybody in the health care field, could keep better track of what is happening.

One of the troubles is with the fear of liability, strange as it is, many times hospitals are concerned if they start gathering more of this data to show them where the problems are, what they should begin to review, how they should change, for example, infection rates, et cetera, they are concerned that someone is going to come in and grab those records and start suing everybody before the hospital can start to make some changes.

We have got to present a situation here where physicians and nurses and hospitals and administrators and patients are all working together towards patient safety. But to that end we not only need the patient safety issues; we also need the physicians practicing.

And I am joined tonight by another one of our colleagues, the gentleman from Georgia (Mr. PRICE), who is also going to be able to speak from his own experience on these issues and how it is critically important. So I would now like to yield as much time as he may consume, if I may, to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Madam Speaker, I appreciate the opportunity to join my colleagues tonight on an issue that is very important. And I found many of your comments so apt and so very pertinent.

I am an orthopedic surgeon, at least I was before I came to Congress; and I have a number of friends in the orthopedic surgery field who practice in Pennsylvania. They are clamoring for young orthopedic surgeons to come to Pennsylvania. My understanding is that there are no orthopedic surgeons under the age of 35 in Pennsylvania. None. And if that is the case, as it is, I think, in that specialty and in others, this is a crisis that we have that will take a generation or more to solve, unless we act now. So I thank the gentleman for the information that he gave.

As I mentioned, I am an orthopedic surgeon, and I am also a third-generation physician. So as the gentleman from Texas (Mr. CARTER) mentioned, the old time country doctor, well, that old time country doctor was my grandfather. Some of my earliest memories are of going with my grandfather on his rounds on the weekend. And rounds for him did not mean going to the hospital and seeing patients. They meant going to patients' homes. And I will never forget the wonder and the faith and really the love that was communicated to him as he visited so many of those patients' homes. My grandfather never thought about malpractice insurance or liability insurance. They never dreamed of it. Never had to.

My father practiced for a number of years and saw so many changes, and I saw him lament those changes over a period of time. And I guess now the question is not as physicians across our Nation, it really is not whether they will be sued, it is when. It is when they will be sued. And when you think about that as a matter of policy in our soci-

ety now, when will physicians be sued, a physician being sued, and you think about that man or that woman who is doing their doggonedest just to take care of people, and you think about what they have to deal with every single day, when they are thinking about the next time that they will be sued, or if they will be sued or when they will be sued, it changes how they relate to patients. It changes how they relate to their job. It changes how they relate to their commitment to the work that they do.

And so we have a situation that must be addressed. And it is imperative. The citizens of our country know that it has got to be addressed. Here is some polling that was done by Harris earlier this year. It says 78 percent of Americans express concern that the skyrocketing medical liability costs could limit their ability to get the care when they need it. And I think, as my colleagues have said, the question really is not the cost of malpractice or the cost of liability insurance to the doctors. The question is the access to quality care for patients. That is the consequence of all this. It is not that there is more money, although it is important that there is more money going into something that really is not resulting in any better care for anybody.

But the real question is we are limiting the access of quality care for patients across this Nation. You say, well how does that happen? Well, I want to share with you a couple of examples, as we all have. My good friend from Georgia was an OB-GYN doctor for years and years, and delivered, I think, 5,000 or more babies. And right now we have more counties in the State of Georgia and more counties, frankly, in the Nation that have no coverage by an OB doctor, no coverage to deliver babies, greater in more counties now than we had 10 years ago.

So we are going in the wrong direction. And you say well, now why is that? Did they forget how to deliver babies? Well, certainly not. That is not the answer. The answer is that OB doctors, in the field of OB, delivering a baby is defined as a high-risk procedure. Delivering a normal baby is defined, for insurance purposes, as a high-risk procedure. And there are more and more, because of the liability crisis, there are more and more OB doctors who no longer do high-risk procedures. Therefore, they no longer deliver babies, which is something that those men and women trained to do. That was their craft. That was their calling, to deliver and care for women during their pregnancy and to deliver those babies. So those women who live in those counties now where there are no OB doctors to deliver babies do not have the access to care that they need or that they had just a few short years ago.

In the field of radiology, there are some things that we do not even know as patients that we are missing or that

we are losing. In the field of radiology, there are a number of instances, the issue of mammograms is important because there are about 40 percent of the radiologists in this Nation who no longer read mammograms, no longer read them.

And so you ask the question, well, did they forget how to read them? No, they did not forget how to read them. They were taught in their training, certainly, how to read mammograms and do as well as anybody could do, given the limits of the test, given the limits the mammogram, which is about, in the best of hands, 90 percent. The best radiologist reads a mammogram correctly 90 percent of the time. That is not because he or she does not know how to read them. That is because that is the limit of the test. That is the limit of technology that we have. And so if a radiologist reads 40 mammograms in a given day, 40 mammograms in a given day, it is likely that he or she will not have the right interpretation on four of them.

Well, I do not know anybody that you can ask to expose themselves to liability on 10 percent of the occasions of the work that they do and expect them to continue to do that work. So the only answer for the radiologists and the only answer for the radiologist and his or her family is to not perform that procedure, not read that or interpret that test. That means that women across this Nation no longer have the kind of access to interpretation of mammograms as they did 10 years ago. The same is true for pathologists and Pap smears. Same kind of numbers.

I want to just give one more example and then yield back because many of my colleagues have talked about it being a matter of life and death, and it truly is. And I want to relate a story that highlights, I think, the imperative for us solving this crisis and this challenge before us because it is a matter of life and death.

People are dying because we have, as a national policy, a court system, a legal system that does not allow individuals appropriate access to quality patient care. And the example goes to the issue that the gentleman from Pennsylvania (Mr. MURPHY) and the gentleman from Texas (Mr. CARTER) talked about, and that is the issue of neurosurgery. And it happens with other specialties, but with neurosurgeons, individuals who take care of problems with the brain, that they are on the front lines for some of those incredible crises in individual's lives, when action is needed immediately. And if action does not occur immediately, then there are severe consequences; and oftentimes the consequence is loss of life.

There was an individual that came to a hospital in the metropolitan Atlanta area, a young man in his young 40s and he had fallen and he had hit his head and he knew that something was not just right and so he drove himself to the hospital. And he arrived at the hos-

pital, and because of the liability crisis, there were no neurosurgeons on call, which means that there are no neurosurgeons that the emergency room physician could call in the event of an emergency or a crisis. They would have to transfer those patients elsewhere.

Well, this patient, this gentleman came to the emergency room, was seen by the emergency room physician, was appropriately diagnosed as having what is called a subdural hematoma, which is a bleed within the brain. It is a blood clot within the brain, and it can put pressure on the brain and it can kill you. The treatment for it is relatively simple. It is relatively simple to relieve that pressure, but it is done by a neurosurgeon. In this hospital there were no neurosurgeons on call, no neurosurgeons available; and so this individual, the patient, had a relatively rapid decrease in his clinical status. He got very, very sick and very ill and his life was threatened, and the emergency room physician recognized that, but his only option was to put him in an ambulance and get him to another hospital. And that patient died on the way to the next hospital. That patient died because of our liability crisis in this Nation, and that death will not show up in any statistic anywhere as being a result of our current tort reform crisis, our system of liability problems right now. Will not show up anywhere.

So access to care is being compromised. Quality of care is being compromised. We have a real crisis. Seventy-eight percent of Americans understand that. And what do they want done? Seventy-three percent of Americans want their elected representatives in Washington to support comprehensive medical liability reform. That is the take-home message, that is the take-home message for our colleagues who have acted responsibly here in the House over and over. It is the take-home message for our friends on the Senate side to make certain that they act on H.R. 5 and act soon, quickly, as rapidly as they can in order to save lives and in order to ensure quality care.

With that, I thank the gentleman from Pennsylvania (Mr. MURPHY) so very much, the gentleman from Texas (Mr. CARTER), the gentleman from Georgia (Mr. GINGREY) for allowing me to participate in this discussion tonight. We ought to stand up here every night and give this message until this work gets done. Thank you so much.

Mr. MURPHY. Madam Speaker, I thank the gentleman for yielding back. And before I yield back to the gentleman from Texas (Mr. CARTER), I just want to mention one other thing too because while we are talking about these protections and hearing the tragic story that the gentleman from Georgia (Mr. PRICE) mentioned, another bill that I put in, H.R. 1313, is one that would also help us with the uninsured and underinsured. One of the issues the

President has committed to putting more funding in is community health centers, community health centers where people pay a sliding fee scale supported by the local community which provides more close access for people who are uninsured and underinsured.

□ 2215

We have situations there where physicians who were paid or hired by these clinics are covered by the Federal Liability Act where they may not go in front of a jury trial, but the judge will decide what happened if there was a problem there.

The sad thing about it is if a physician, if a nurse or psychologist or podiatrist or dentist wants to volunteer in those settings, they are not covered. So it happens we have a huge shortage of health care providers when at a time we could be expanding because many providers would like to volunteer their time at community health centers.

A big example is the problems that just occurred down in the gulf coast with the hurricanes. Many people wanted to volunteer at community health centers, but if we do not provide some of these protections to make sure they can provide excellent health care and be there, we will not have enough.

So that is another area I certainly urge my colleagues to help us pass. With that, there are many other issues to cover tonight.

Mr. CARTER. Madam Speaker, at this time we are joined by the gentleman from Tennessee (Mrs. BLACKBURN), one of our wonderful colleagues, a real asset to this House, and at this time I yield to the gentleman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Madam Speaker, I thank the gentleman from Texas for yielding, and I thank him for organizing this hour tonight and for the work he has put into this issue and how wonderful that our colleagues here in this body and that the American people can hear from the gentleman from Georgia (Mr. PRICE) and the gentleman from Pennsylvania (Mr. MURPHY) and the gentleman from Georgia (Mr. GINGREY) and the gentleman from Texas (Mr. CARTER) and hear how Members of this body, Members who have served as a part of our legal and judicial system, Members who are health care providers address this situation and realize the need to address medical liability here in this country.

I think it is worthy, too, that we hear from consumers in this debate, and being a health care consumer is something that is important to me and important to so many of my constituents in Tennessee.

The gentleman from Georgia (Mr. PRICE) had mentioned the Harris poll, and I think the results of this poll are so reflective of what we hear from our constituents. Seventy-eight percent of the individuals polled in the Harris poll talked about medical liability costs and expecting Congress to do something to address that issue, 78 percent.

Seventy-three percent want us to make medical malpractice reform a top issue for the U.S. House of Representatives, and they do that because they see this as a freedom issue, a freedom for them to choose who they want to be their doctor, who they want to take care of them, to have access to the health care that they know is there and available, but because of a litigious society and a legal system that many times is out of control, is not available.

I will have to tell my colleagues I had a constituent in a town hall meeting recently stop the town hall meeting when we got to this, stand up and say, I have got something to say. He said I think when it comes to lawyers suing doctors that we ought to have a law. He said, a doctor cannot diagnose you; he cannot give you any medicine unless he has a face-to-face meeting with you and checks you out. I think the same thing ought to apply to these lawyers, that they thought to have a face-to-face meeting and get to know these patients before that lawyer can help that patient sue that doctor.

That is sometimes the frustration that we hear and good common sense that people bring forward. This is what we are hearing from the consumers of this Nation, from our citizens, from our constituents: Address this because it is a freedom issue. It is a freedom issue for physicians who want to practice the skill that they have been trained to do. It is a freedom of access issue for our constituents.

Our constituents know that because of the liability crisis in this great Nation that their hospital choices are limited; that their physician choices are limited; that they are having to drive further distances; that health care is not as available, especially in our rural and underserved areas. I tell my colleagues, if that hospital is 60 miles away, many times it might as well be 600 miles away because it is so difficult to get to.

So I really want to thank the leadership of this House. I want to thank the gentleman from Georgia (Mr. GINGREY) and the gentleman from Texas (Mr. CARTER) and the gentleman from Pennsylvania (Mr. MURPHY) and the gentleman from Georgia (Mr. PRICE) for bringing their expertise to bear in this body and bringing attention to the medical liability crisis and to the need to move forward, complete addressing H.R. 5 and taking a lead in the medical malpractice/medical liability issue.

Mr. CARTER. Madam Speaker, I thank the congresswoman for her comments. The congresswoman is always willing to stand up for the people in her district and talk about the people of her district, and she never fails to tell us a story about the people in her district.

I want to tell my colleagues a couple of stories. I want to tell my colleagues, in 21 years on the bench, I have seen an awful lot of people who really have the attitude that suing people is kind of a profession. I want to tell my colleague

true stories, and these are both absolutely true stories, but I am not going to use the people's names because, as far as I know, they are both still alive. Hey, I do not know, they might even be watching.

I have this one friend that I worked with many years ago down in the Texas legislature when I was working for the staff down at the legislature as a young lawyer. When I talk about this, I am a lawyer and practiced law for about 12 years before I went on the bench. So I am not picking on lawyers here.

But anyway, I used to go deer hunting with this fellow, called him Joe, and about 10 years later, I ran into him kind of on the street. I said, hey, Joe, what is going on; what are you doing? He said, oh, I got me a job. I said, what do you do? He said, I am a suer. I said, a what? I thought he works for the sewer, is that what he said? He said no, I am a suer. I said, what in the world is a suer? He said, I get out in my old car out on the highway, slam on my brakes and somebody runs into the back of me; I slap a collar around my neck and I sue him. I thought he was joking. I laughed. I thought that was a funny thing for a fellow to say, until I ran into a guy that I knew who knew him well, and he said, no, well, that is what he does. That is what he does.

That is an attitude about our court system that has got to change, and it has got to change. If necessary, we have to turn this world around. That is why juries go crazy on these verdicts.

I will tell my colleagues another story.

Mr. GINGREY. Madam Speaker, if the gentleman would yield before he starts that next story, the point the gentleman is making, and I think it is a good one, is that in this current climate, it is easier to sue your doctor than to see your doctor. Clearly, there is something wrong with that picture.

Mr. CARTER. Absolutely, absolutely. You have to stand in line a lot longer to see him than to sue him.

This other fellow, friend of mine, was a cigarette smoker, and this was back many years ago. He was sitting there. He is a prolific reader. He said, I have decided how I am going to retire as soon as I get out of college. This was back when I was in college. I said, okay, John, how are you going to retire? He said, well, I read an article that said that the reason people smoke is because they were weaned too soon. He said, so I smoke three packs of cigarettes a day. At that time cigarettes cost about 35 cents a pack. He would get rich today on his plan. He said, so I have added up how many packages of cigarettes I think I am going to smoke in my lifetime, and I happen to know the reason my mother weaned me soon is because her doctor gave her that advice. He said, so I am going to sue my mother and my doctor because I smoke. He said, and I think I can get \$1 million out of that deal, by the way, by my calculation.

That was a joke, but it does underlie how people view the court systems and

the lawsuits that people perceive that can be heard. Now we are having people wanting to sue hamburger people for obesity. They are wanting to sue schools for the vending machines that are in the schools, and of course, they are suing the doctors for everything under the sun. It is amazing. It is absolutely amazing.

I think what we will do here is let us just open this up to a general discussion. Let us first let the gentleman from Georgia (Mr. GINGREY) talk a little bit about this bill, and then the gentleman from Pennsylvania (Mr. MURPHY) wants to talk about some stuff.

Mr. GINGREY. Madam Speaker, I thank the gentleman for yielding, and H.R. 5, the HEALTH Act of 2005, the same bill I said earlier in the evening that the 107th, the 108th twice, and now the 109th have passed in this body, and by the way, the gentleman from Georgia (Mr. PRICE), the orthopedic surgeon, was talking earlier in his presentation and showed a poster with the pretty alarming statistic that 78 percent of the American public want us to do something about this crisis because they want to be able rather than sue their doctor to see their doctor.

So those Members either in this body or the other body, on both sides of the aisle, I say to my colleagues, if you are poll driven, this is a no-brainer. This is a slam dunk winner of an issue, but even if the statistics were not there, it is the right thing to do. It is the right thing to do.

I would say to our colleagues in the other body, and I know that we are not supposed to stand over here and criticize the other body, and I will not do that, but I am awfully frustrated. I am terribly frustrated that we have addressed this issue, this same bill, every provision identical, for the last three Congresses, and yet, the other body, for some reason, I will let my colleagues figure out why, but for some reason, they are not addressing this issue. I would literally beg them on behalf of my patients, our patients, to address this issue because the statistics are clearly there, but it is the right thing to do.

Mr. MURPHY. Madam Speaker, if the gentleman would yield, I would like to say to our colleagues, ask him to point out a couple of the issues here. In particular, let me raise one that some people say. Does this bill protect physicians who may perhaps be practicing out of their realm of expertise or really doing wrong? Does this allow these physicians to continue practicing?

Mr. GINGREY. Well, yes, and of course, the good judge certainly knows this. I am sure he has seen it in his courtroom many times.

But the issue that is brought up a lot of times is, well, gosh, you are about to take away an injured person's right to a redress of their grievances; you are going to take away their day in court. That is absolutely not true, and I am

so glad that the gentleman from Pennsylvania (Mr. MURPHY) brought that to our attention.

We are talking about in the major provision of this bill, which is patterned, modeled after the California bill on tort reform in the late 1970s that stabilized the market and health care delivery system in that State, is a cap on so-called pain and suffering awards or what we call noneconomic, at some figure. In our bill, it is \$250,000. Some States have addressed that, and maybe it is \$350,000.

In some instances, if there are more than one defendant in a case, and I can tell my colleagues and I know my two colleagues here with me this evening know this, but in almost every case there are multiple defendants. So let us say the cap on noneconomic was \$350,000, and you had two or three defendants, then that award in itself, not counting any economic damages, is over \$1 million dollar.

Mr. MURPHY. Madam Speaker, if the gentleman would yield, a question on that. Another question is what if the patient perhaps needs rehabilitation costs, other medical care, would the gentleman point out what this bill does if a person has ongoing medical needs as a consequence? My understanding is it does not limit it and the patient could get that ongoing care.

Mr. GINGREY. Madam Speaker, in fact, the gentleman from Texas (Mr. CARTER) may want to address that as to how a calculation is made in a court of law in regard to making a patient whole, the so-called economic awards based on income and loss of income.

Mr. CARTER. Add future medical care. By my understanding, this bill does not limit any amount of medical care that has already been expended nor any projected needs in medical care in the future including, as you say, rehabilitation. Even mental health issues could be addressed. If there is proof of the necessity, this can be carried forward, and it is not limiting it.

It is that undefinable pain and suffering issue that can allow people to break the bank at Monte Carlo with their judgment and get \$1 billion in that category.

□ 2230

A billion dollars has been awarded in the past. Many times multimillions of dollars have been awarded for pain and suffering. That is the issue. That is the real issue in a nutshell.

Something needs to be mentioned here. We have had a lot of doctors come in here, and some people watching might be thinking, of course, these doctors are in the business; of course they want to do this. Well, these doctors are not in the business. These doctors have left the practice of medicine to come to Congress. And I think in many instances they came to Congress because they had a voice that needed to be heard on many issues, including this issue here.

I know I have become very close with many of the doctors, the gentleman

from Georgia (Mr. GINGREY) being the prime example, and they are here because they care about multiple issues affecting their people back home, and they are here to represent all of the people of their State. They are no longer practicing physicians, so they are not doing this because they are reaching into their pocketbooks, but they are doing this because they know there is an abuse here that needs to be rectified, and this stands for the Senate as well as the House. These doctors do not practice their profession while they are serving in the Congress.

Mr. GINGREY. If the gentleman will yield on that point. Clearly, as the gentleman from Texas points out, there are those of us that you have met here this evening who are health care professionals in our former life but now are Members of Congress. And while we know of individual anecdotal cases, maybe friends of ours who have got a problem in regard to a frivolous lawsuit or something, what is more important now is for us to have a view from 30,000 feet, as the expression would go. Because as my colleague, the gentleman from Texas (Mr. CARTER) points out, we have an obligation and a duty to every patient-citizen, 285 million in this country, and not just the 630,000 or so in our congressional districts or the doctors who we practiced with when we were in that profession.

So my colleague is absolutely right. We have to look at that big picture.

Mr. CARTER. If the gentleman will yield back for a moment. As we talk about lawsuit abuse, right now we are talking about doctors, but you can talk to your small businessman and ask him what he pays for the insurance coverage because of liability factors that influence whatever business he is in. He can be in the manufacturing business, he can be a consultant, he can be an engineer, an architect, or a lawyer. There is not a small businessman or a profession in America that is not facing the possibility of frivolous lawsuits that can cause them major damage in their business.

In fact, lawsuits have become a tool of competition in America today in the business community. There are people and organizations who actually try to drive a person out of business by filing frivolous lawsuits against them, knowing it will cost them \$25,000 to \$50,000 to defend them. They come back and they come back and they come back again, and, thus, ultimately, the small businessman finally throws up his hands and says, I cannot pay these attorneys fees any more. My insurance people will not cover me any more, and so I am getting out of this business. That is happening. It probably happened in this Nation while I was talking tonight.

Fair redress is what we ought to have in the courts; fair disputes settled between two parties. But using the court as a weapon to direct people, whether it be in business, in politics, or in a profession, is wrong.

Mr. MURPHY. If the gentleman will yield, there are a couple of points that I want to draw upon the judge's knowledge and experience, as well as that of the prime sponsor, the gentleman from Georgia (Mr. GINGREY).

There are two elements that are important to note. One, this bill does not preempt, if States have their own caps on punitive damages, or noneconomic damages. If States have higher or lower limits, out of respect for the Tenth Amendment, States' rights, the Federal law would not preempt that in any way, shape, or form, which is very important.

It also deals with the issue of joint and several liability, as I understand. That is to say that sometimes what happens is someone will go after what is known as the deep pockets. If a person is only a couple percent responsible for something, perhaps the hospital would be sued, even though the hospital had a very, very limited role in something, or a doctor with a very limited role, maybe just another surgeon who was asked to come in and check up on the patient but that may be the person who has the most coverage, so they would sue that individual. This really protects them and makes sure it is based upon their actual responsibility in the case.

Am I right on that?

Mr. GINGREY. The gentleman from Pennsylvania is absolutely right. A perfect example: Dr. Jones asks Dr. Smith to look in on her patient on Sunday morning because she was going to be at church for a couple of hours. Dr. Smith goes by the room, waves to the patient and says, how are you doing? Is everything okay? Dr. Jones wanted me to look in on you. The patient is fine, but in a subsequent time, a day or two, all of a sudden the patient's health deteriorates.

Now, it has nothing to do with this doctor that was covering for 2 hours so his colleague could attend services at her church, yet that doctor gets named along with the primary defendant, who may or may not have had some significant responsibility or liability. But they are judged just as culpable, as the gentleman from Pennsylvania points out, and maybe more culpable, particularly if they happen to have the most insurance or the deepest pockets. That is what he is referring to when he says this joint and several liability.

This bill, as my colleague alleges, eliminates that provision and it changes it to several liability, so that a person who maybe has some minor participation in a case that goes south, where the patient does not do well and is injured, and maybe there is some practice below the standard of care, they are only culpable for a pro rata percentage of that. And that is the way it should be, and not liable based on the amount of malpractice coverage they have. And I really appreciate the gentleman for bringing that up.

The other thing that I think is important to mention, is that a major

provision of this bill is something called collateral source disclosure. The gentleman from Texas, just a few minutes ago, was talking about economic awards, and if a person needs some additional surgery or they need additional testing to make them whole because of some injury, then there is compensation for that. As an example, lost income, lost wages because an individual cannot work. But suppose that plaintiff has a disability income policy that covers 90 percent of their income for the rest of their life if they remain disabled. Suppose that person has the best first dollar health insurance policy that money can buy that covers any additional medical expense and rehabilitation expense, such as durable medical equipment, power wheelchairs, or whatever. Then that needs to be disclosed to the jury so that we do not have this situation, Madam Speaker, of what I consider double dipping.

It is a fairness issue. And as we said at the outset, that is all we are talking about. We want to make sure that those that are injured get justly compensated, but we do not want, as my colleague from Texas said, this civil justice system to become a lottery in the minds of individuals. Because that is where we get to the situation where indeed it is easier to sue your doctor than to see your doctor. And I yield back to the gentleman from Texas.

Mr. CARTER. Madam Speaker, I thank the gentleman for yielding and for his comments. What we are talking about tonight is a climate that has developed over a long period of time in our court system. It is a climate which was never designed or anticipated by the founders of our Nation; that our courts would become a weapon to batter someone into submission; that our courts would become a tool of business; that our courts would become a slot machine where individuals could pull the handle and receive big benefits.

I love our court system, and I think our court system has the potential to be fair, impartial, and to resolve grievances for every American citizen. I think the court system works hard to see that it does just that. But there are issues and attitudes of the American people that we can only change by redirecting the thought pattern of "I am going to get rich on this lawsuit," rather than the fairer thought process of "I am going to recover for how I was damaged and how I suffered." That is what we are looking here for.

I think that every American is looking to his or her government to be treated fairly. I think it is our responsibility here as Members of Congress to try to do everything we can to make sure that all who appear in the courts get fair justice.

So I thank the Chair for being willing to listen to us tonight and to hear our discussion about lawsuit abuse and in particular medical malpractice, and I urge my colleagues on both sides of the aisle to stand up and be counted by casting their vote for fairness. I also

urge our colleagues in the other body to address this issue and cast their vote for fairness in the American justice system. If we instigate and create fairness, we will have done the will of the framers and the will of the American people.

### 30-SOMETHING WORKING GROUP

The SPEAKER pro tempore (Mrs. SCHMIDT). Under the Speaker's announced policy of January 4, 2005, the gentleman from Florida (Mr. MEEK) is recognized for 60 minutes as the designee of the minority leader.

Mr. MEEK of Florida. Madam Speaker, once again it is an honor to come before the House. We would also like to thank the Democratic leader for allowing us to come to the floor.

We usually have a 30-something Working Group, which has now picked up on many new purposes, and tonight, once again, we have the opportunity to come to the floor on behalf of the American people, to inform the Members, and to make the process better. With us tonight we have the gentleman from New Jersey (Mr. PALLONE), who is an outstanding Member of this body, and I am also joined by the gentleman from Ohio (Mr. RYAN), and I know others will be coming.

I just want to say that usually we deal with issues that are facing young people, but today there are a number of issues that are facing Americans in general and I am very, very concerned about not only what is going on here in Washington, D.C. but also what is not going on, and I think it is important to talk about those issues in this democracy that so many Americans have lost their lives for, that so many Americans have lost limbs and their mobility to allow us to come to this floor to represent them and represent everyday Americans.

Madam Speaker, we talked last week about the issue of the independent commission, and I think it is important that we look at this independent commission and look into what happened not only with regard to Hurricane Katrina but Hurricane Rita. I strongly believe that we can do a lot more than what we are doing right now.

I know there is a committee that is looking into this effort, but it is not a bipartisan committee. And once again I want to go on the record commending the Democratic leader for not making appointments to that committee, and I will discuss the reasons why later. I think also tonight we will talk about what is happening here in Washington, D.C., or what is not happening here in Washington, D.C., and I think we will help crystallize this not only for the Members but also for the American people.

Mr. Speaker, I took the opportunity to go on to the White House Web site.

Mr. MEEK. Mr. Speaker, I ask unanimous consent to submit for the RECORD the information I will be referring to regarding the White House Web site.

The SPEAKER pro tempore (Mr. CARTER). Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. MEEK of Florida. Mr. Speaker, I know the President put forth a task force with his homeland security adviser as the head of it. He mentioned this in an announcement, and I assumed that it would be something where this task force would actually have some findings which would come back to not only the Congress but to the American people. So I checked out the White House Web site, at WhiteHouse.gov, if any of the Members in their offices want to go on to that Web site to find out what is there and what is not there.

This is actually the front page of the Web site. It has a lot of things on here. It talks about what the President is doing, about press briefings, and a number of other things, such as the war on terror. There is a little box down here that says Hurricane Relief Efforts. You click on that and then move over to this particular page here.

□ 2245

Madam Speaker, it goes on. The President is hugging emergency management personnel in Texas. That is fine. We want to commend those Americans who are doing what they are supposed to be doing. It talks about a number of things, speeches in the news, Federal Government Hurricane Rita preparedness. It goes on further down the page, which is the first page if you are looking at it on the computer, President Bush declares a state of emergency for the States of Louisiana and Texas. It goes on and talks about his major speeches.

Madam Speaker, the point is that the President mentions nothing about this review, what went wrong, where it went wrong, and why it went wrong. We know that hurricanes and natural disasters are acts of God; but we also know in the case of Hurricane Katrina, and I can tell Members there are some who came to the Capitol today saying that in the case of Hurricane Rita, and we will be voting on the energy bill tomorrow, one Member said it is the worst bill we have seen in 7 months, and I can tell Members there are some real issues that are going on in that bill that we will talk about a little later.

Madam Speaker, I think it is important that the American people understand that I believe we are not taking this issue seriously. The 9/11 Commission came out saying that many of their recommendations were not enacted, such as interoperability to allow emergency workers to talk to one another. We had Coast Guard people who could not talk to the 82nd Airborne. We had local police officers who could not talk to one another because we did not do what we were supposed to do years after 9/11.

I can tell Members, the number of Democratic amendments to come up