

Testimony In Favor of Bill 6622, AAC The Burden of Proof in Medical Malpractice Cases and the Standard of Care Related to Emergency Medical Care and Treatment.

**Daniel Freess, MD
Connecticut Emergency Physician**

Good afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is Dan Frees and I am a practicing emergency physician in Connecticut. Every Connecticut resident expects that if they are suddenly injured or become severely ill, there will be Emergency Physicians and Specialists available to care for them. Despite this, it is becoming increasingly common for there to be nights and even days without on-call coverage to the emergency department by certain specialties. This problem is even more prominent when you move to the community and rural setting, forcing ED physicians to either transfer patients or treat patients without specialist guidance. In response to these issues, a comprehensive Institute of Medicine report concluded that the loss of on-call specialist coverage is “one of the most troubling trends in emergency care.”² Though little has seemed to halt the trend in what has now been called an “on-call crisis,” it is important to understand the financial disincentives fueling the problem and explore what may be required to recover comprehensive consultant services and ensure emergency care for all.

Across emergency medicine, the specialties in which ED directors report the greatest deficit in consultant coverage are Plastic Surgery (38% of directors report a lack of coverage), ENT (36%), Dentistry (35%), Psychiatry (26%), Neurosurgery (23%), Ophthalmology (18%), and Orthopedics (18%), but the problem certainly does not end there.¹ In a study of specialist coverage in US emergency departments, availability of coverage was rated as worse than 3 years ago in 10 of 16 specialties evaluated.

The 1986 Emergency Medicine Transfer and Active Labor Act (EMTALA) mandates that all patients who present to a licensed emergency department must undergo a medical evaluation and stabilizing treatment. Unfortunately, EMTALA’s mandates were not funded, leaving emergency departments (and other providers) responsible for the evaluation and treatment of poor and uninsured patients without any funding to cover these expenses. It is estimated that EMTALA mandated care costs hospitals and emergency physicians \$138,300 per physician per year in uncompensated care.¹ EMTALA also effects on-call physicians who under most staffing agreements, are mandated to care for these patients if called upon. This financial burden placed on consultants has been a significant factor in many specialists’ decision to reduce or eliminate their on-call activities.

Everyone wants to be paid for their work and their time, but many consultants are finding themselves consistently providing charitable care. As the number of uninsured and Medicare/Medicaid patients has risen, emergency physicians and consultants have seen reimbursement plummet. Don’t get me wrong, there has always been uncompensated care and

few doctors have a problem providing it as we see it as a part of our chosen profession. The problem is that when you ask people to work for free (or even for fair reimbursement), and put themselves at increased risk of being sued, a financial disincentive is created.

The main issue is that on call services are considered “high risk” from an insurance standpoint. The specialist is taking care of patients he or she does not know, usually when they are very ill or injured, and often in a less than ideal environment. This greatly increases the likelihood of an adverse outcome for the patient, which far more than medical error, is a predictor of the likelihood of malpractice lawsuits. As a result, malpractice insurance companies penalize physicians for providing on call services by raising their premiums. When combined with limited reimbursement, this clearly creates an earn less, pay more, lose-lose situation. In a 2005 survey of Pennsylvania specialists, 42% of respondents stated that they had already eliminated “high risk” aspects of their practice due to increasing liability insurance premiums and 50% stated they planned to reduce or continue to reduce them over the following 2 years.³ The same is occurring in Connecticut every minute.

I hope you will consider these issues in voting for this bill and when you consider who you want available to take care of you and your family when you need it most.