

1 Montana physicians can take pride in our accomplishments during the 2005 legislature. Our Montana Medical
2 Association, working together with the Rocky Mountain Health Network, Montana Hospital Association,
3 UMIA, The Doctors' Company and the Sisters of Leavenworth affiliated hospitals, has marshaled eight medical
4 liability reform bills through the session and into Montana law. These eight measures address nine remedies,
5 specifically:

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- 7 • revision of loss of chance doctrine
- 8 • relief from mandatory advanced payments in contested medical liability actions
- 9 • relief from the threat of common law third party bad faith actions
- 10 • protection from actions brought under an erroneous presumption of a physician as 'captain of the ship'
- 11 • expression of sympathy without admissibility
- 12 • statutory delineation of limits of responsibility in independent medical exams
- 13 • statutory delineation of expert witness qualifications
- 14 • reestablishment of a medical liability safety-net in the form of a joint underwriting association
- 15 • reestablishment of mandatory annual reports of casualty carriers
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17 MMA thanks Representatives Roy Brown, Don Roberts, George Golie, Dave Wanzenried and Senators Kim
18 Gillam, Duane Grimes, and Greg Lind for their sponsorship of medical liability reform legislation.

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20 MMA set aside pursuit of pretreatment binding arbitration legislation in this session as a similar statute in Utah
21 has proven problematic. A draft statutory informed consent bill was also set aside. MMA was unsuccessful in
22 advancing legislation specific to offset for personal consumption expenses and attorneys' fees limitations.
23 Nevertheless, it bears noting that medical liability reform was the only tort reform passed in Montana in 2005.
24 Each of our legislative successes represent distinct and specific progress toward improving the medical liability
25 climate in Montana, providing protection to physicians against spurious tort actions and closing liability
26 loopholes.

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28 On other fronts, MMA supported several bills which provided for tax incentives to promote purchase of health
29 insurance including HB 667 sponsored by Dave Wanzenried. Now law, HB 667 establishes purchasing pools
30 and tax credits for health insurance for Montana small businesses. MMA likewise supported HB 278, sponsored
31 by Emelie Eaton, which provided for a tax credit for prescription drug purchases, and SB 324 sponsored by Jon
32 Tester. Now law, SB 324 expands eligibility for access to discounted drugs for individuals and families with
33 income up to 250% of the federal poverty level. The measure will be funded through Montana's tobacco tax
34 special reserve fund. On a related front, MMA successfully supported HB 169, sponsored by Dave McAlpin
35 revising statutes related to the tobacco master settlement agreement.

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37 MMA successfully opposed HB 238, an act providing that an abortion may not be performed unless the woman
38 upon whom the abortion is being performed has been given a choice as to whether she wants the unborn child to
39 have an anesthetic or analgesic. MMA opposed this legislation on several points including stipulations in the
40 bill that the Department of Public Health and Human Services prepare written material concerning unborn child
41 pain, the lack of existing medical standards as to administration of anesthesia or analgesia to a fetus, and an
42 undue paper work burden for physicians providing a legal surgical service.

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44 MMA was successful in working with Christopher Harris sponsor of HB 254, an act making it a civil offense for
45 a medical practitioner to issue a written prescription of dubious legibility. MMA amendments specifically
46 deleted the bill's original stipulation that 'a person of ordinary intelligence and learning' be able to read the
47 prescription and instead stipulate that the prescription be legible to a registered pharmacist licensed to practice in

1 Montana. More importantly, HB 254 now provides that any allegation of violation will be routed through the
2 State Board of Medical Examiners and may only proceed if advanced by the State Board of Medical Examiners.

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4 Acting on the advice of Legislative Committee member Dr. Don Harr, MMA supported HB 255 – now law,
5 sponsored by Don Roberts. HB 255 specifies that for the purposes of emergency commitments and under other
6 circumstances a mental disorder may co-occur with addiction or chemical dependency.

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8 MMA supported SB 41 - now law, sponsored by Bob Keenan. SB 41 amends current Montana statute
9 delineating priorities and principles in Medicaid funding and in particular ‘giving priority to services that
10 employ the science of prevention ... to reduce the need for acute inpatient or residential care.’

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12 MMA also supported SB 110 - now law, sponsored by John Cobb. SB 110 provides authority for the
13 establishment of health insurance flexibility and accountability demonstration initiatives. Similarly, MMA
14 supported SB 433 sponsored by Greg Lind, which provides for a Medicaid pilot program for individuals with
15 developmental disabilities. SB 433 is now law.

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17 Working in conjunction with the anti-smoking coalition, MMA supported HB 643 – now law, sponsored by Tim
18 Dowel. This carefully crafted compromise legislation will eliminate smoking in all enclosed public places over
19 a four-year period. MMA supported public health legislation on other fronts including SB 104 sponsored by
20 Kim Gillan, enacting graduated drivers licenses for Montana teenagers, SB 287 sponsored by Trudi Schmidt,
21 regulating the sale of pseudoephedrine and ephedrine, and SB 80 sponsored by Gary Perry, prohibiting open
22 alcohol containers in motor vehicles.

23 MMA supported SB 154 – now law, sponsored by John Cobb, which limits CHIP administrative and reserve
24 costs. On a somewhat related front, MMA supported SB 317, sponsored by Greg Lind, regulating conversion of
25 a health insurer from nonprofit to for profit status. Dr. Lind should be commended for his careful and diligent
26 work on this difficult piece of legislation, which is now law and will protect the interests of hundreds of
27 thousands of Montanans. Dr. Lind also sponsored SB 479, supported by MMA and Montana pathologists. Now
28 law, SB 479 requires direct billing for pathology services. Dr. Michael Brown of Billings deserves special
29 recognition for his work on this bill as well as all of his efforts along with the Rocky Mountain Health Network
30 during the 2005 session. Dr. Brown was instrumental coordinating testimony before key committees by
31 numerous Billings physicians. In a similar vein, Dr. Jim Jarrett coordinated a luncheon in the Capitol bringing
32 together more than a dozen physicians and Missoula area legislators.

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34 MMA successfully lobbied for amendments to SB 451, which will redefine speech-language and audiology
35 licensing laws.

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37 In all our MMA Legislative Committee reviewed more than 100 bills during the 2005 legislative session. We
38 are greatly appreciative of the skill and tireless efforts of our lobbyists Pat Melby and Beda Lovitt and also
39 Executive Vice President, G. Brian Zins. I want to thank each of the active members of our Legislative
40 Committee, William G. Ballinger, M.D., Michael S. Brown, M.D., James W. Crichton, M.D., Jack L. Davis,
41 M.D., Noel D. Drury, M.D., Jay S. Erickson, M.D., John R. Gregory, M.D., Donald L. Harr, M.D., James E.
42 Jarrett, M.D., Hollis K. Lefever, M.D., Everett R. Lensink, M.D., Gregar H. Lind, M.D., Mel L. Margaris, M.D.,
43 Timothy J. McInnis, M.D., John W. McMahon, Sr., M.D., Joan M. McMahon, M.D., John T. Molloy, M.D.,
44 Van Kirk Nelson, M.D., J. Bruce Robertson, M.D., and Antonio Santin, M.D., for their efforts and patience
45 through this legislative season. I would further like to thank and commend all those physicians who testified
46 before the 2005 legislature including Drs. Brad Anderson, Aaron Billin, James Boslough, Michael Brown,
47 David Chavez, Corby Freitag, John Galt, John Hanson, Fred McMurry, John Oakley, Mark Rabold, Mark
48 Rumans, Mike Schweitzer, Roger Williams, and John Wilson.

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50 Our MMA Committee on Legislation has continued to meet monthly through the 2005-2007 legislative interim
51 period. We seek input from regional and specialty medical societies and any interested member regarding
52 specific goals for physician advocacy. Our plan is to have in place a list of 8 to 12 legislative initiatives, ideally

1 to include draft legislation where feasible, by July 1, 2006. Such initiatives might include a measure to address
2 non-reimbursed insurer mandates, liability insurance reform, and inadequate Medicaid reimbursement to
3 physicians. We will likely continue to pursue further tort reform such as measures to address Montana's point in
4 time doctrine, joint and several liabilities, and another run at survival actions and attorney contingency fee
5 limitations. We can then, once again, query legislative candidates as to their perspective and positions on
6 specific legislative goals and initiatives during the 2006 election cycle. This will bring us well prepared into the
7 2007 legislative session.

8 Our Montana Medical Association is pleased to report that Senator Conrad Burns has co-sponsored S 1081.
9 Critical to practicing physicians, S 1081 will put in place a two year fix to the 4% cuts in Medicare physician
10 reimbursement which will otherwise occur under the current Sustainable Growth Rate (SGR) formula. As
11 ranking Democrat on the Senate Finance Committee, Senate decorum precludes Senator Baucus from joining his
12 colleagues in co-sponsoring S 1081. Nevertheless, we will greatly appreciate Senator Baucus' support on this
13 vital legislation. Brian Zins and I met directly with David Schwartz, Senate Finance Committee staff person
14 appointed by Senator Baucus, and we were afforded an opportunity to discuss SGR along with other issues at
15 length.

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17 In addition, Senator Burns has joined Senator Baucus in signing a letter to Office of Management and Budget
18 Director Joshua B. Bolten. This letter urges OMB to remove Part B drug costs from the SGR.

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20 We take this opportunity to once again commend Senator Burns for his consistent and ongoing support of
21 definitive and proven medical liability reform modeled on California MICRA legislation. This legislation
22 includes a federal cap on non-economic damages of \$250,000. Contrary to the assertion of plaintiff attorneys,
23 such legislation has been consistently proven to have a positive effect on reducing medical liability costs at the
24 state level. Federal medical liability reform is made all the more important as a motion is presently before a
25 Montana district court challenging the constitutionality of our cap on non-economic damages.

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27 We have urged all Montana physicians to contact Congressman Rehberg and urge his support and co-
28 sponsorship of House companion legislation to S 1081, specifically HR 3617 "Medicare Value-Based
29 Purchasing for Physicians' Services Act of 2005. Brian Zins and I met directly with Congressman Rehberg in
30 August to discuss this and other issues. Without revision of projected cuts in physician reimbursement
31 anticipated under SGR, Montana physicians will lose \$7M in reimbursement for providing services to
32 Montana's older and disabled citizens in 2006 and \$330M through 2014 relative to 2005 reimbursement levels.
33 Physicians in Montana and across the country are already taking a hard look at whether their practices can afford
34 continued participation in Medicare.

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36 Without revision, Medicare payments to physicians are projected to lag the Medicare Economic Index (MEI) by
37 41% from 2006-2011. Medicare reimbursements to physicians so at odds with unavoidable increases in practice
38 costs are simply unsustainable and unworkable.

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40 The current SGR formula ties total Medicare expenditures for physician reimbursement to Gross Domestic
41 Product. At first glance, this might seem a reasonable and certainly sustainable mechanism for adjusting
42 physician reimbursements overtime. Closer inquiry reveals fundamental failings in the SGR formula. The rate
43 of growth in our nation's Medicare population is far outpacing past and projected increases in GDP. Part of this
44 is driven by simple demographics and the graying of the baby boom. This inescapable growth in the Medicare
45 population is coupled with an ongoing extension in life expectancy. Ironically, under the current SGR formula,
46 physicians are and will continue to be penalized for the remarkable success of our American health care system.

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48 We must continue our labors through the next twenty months, supporting legislative candidates, allying with
49 like-minded organizations, and educating ourselves on those specific Montana statutes which bear upon our
50 practice of medicine and the manner in which healthcare is financed and provided in Montana.

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52 Respectfully Submitted,

- 1 Kurt T. Kubicka, M.D., Chair
- 2 Report Dated – September 10, 2005