Although physicians have trumpeted the need for medical malpractice reform for many years, the issue rarely gains much traction among the public. Since a picture is worth a thousand words, in 2002 the American Medical Association made a dramatically visual case for reform, publishing a US map that categorized states based on the viability of their medical malpractice coverage. Just eight states were considered OK; 12 states were designated as being in crisis and the remaining 30 were said to be showing signs of trouble.

Physicians across the nation used the map as a symbol to communicate the growing need for national medical reform and also to show their state lawmakers how they rank vis-a-vis the rest of the nation. Perhaps thanks to the AMA’s efforts, medical liability reform became such a hot issue that it figured in the 2004 presidential debates, but it has since been back-burnered on the national agenda. A few months ago, busloads of medical professionals rallied in Washington to remind the president of his campaign promises.

Despite physicians’ best efforts, each successive edition of the AMA map has gotten a little worse. The newest version, released last month and available through the AMA’s web site (www.ama-assn.org) under “Medical Liability Reform,” is no exception: just six states are now considered OK and the number of crisis states has risen from 12 to 20. However, there is a glimmer of hope: Texas gained a new designation for having enacted reforms sufficient to halt the crisis. What will the immediate future hold for your state? Can you too get some of the “Texas justice” that your colleagues in the Lone Star state have achieved? How did they do it? Here are reports from the front lines in several pivotal states.

**CODE RED CRISIS**

“The national trend is pretty poor,” says Bill Plested, MD, a Santa Monica cardiovascular and thoracic surgeon and immediate past chair of the AMA board of trustees, “There’s been a core deterioration overall.”

Although the mayor of Washington, DC is trying to get malpractice awards passed to halt the exodus of specialists from the city’s limits, Dr. Plested said the joint efforts of the AMA and the American Academy of Neurology to get medical liability reform passed at a national level have met frustrating dead-ends.

Proposals always seem to make it through the House of Representatives, says Dr. Plested, but then are thwarted by filibusters from Democrats in the Senate. “Many times we think we have the votes to pass it but, like what’s happen-
LIABILITY CRISIS

BY NATHAN HALL
ASSOCIATE EDITOR
According to Bill Plested, MD, a state’s medical society requests a review from the AMA when things start looking bad due to an increase in rates, less luck in hiring new physicians and keeping recent graduates in the state, or an apparent rise in doctors closing the doors of their practices. During the evaluation the AMA looks at what Dr. Plested calls “the three R’s.”

- **Relocating:** How many physicians are leaving the state for a neighboring one or even a cross-country trip and why?
- **Restricted Services:** Is there a dearth of a particular specialty, such as OB/GYNs or neurosurgeons, and if so why?
- **Retiring:** How many doctors are retiring early, and are they being replaced by new hires?

Dr. Plested says the AMA also often consider a fourth R, “recruitment,” to look at how hard it is to bring new physicians into the state. If a state is ultimately losing more doctors than it’s attracting and those still practicing find their malpractice liability rates getting significantly higher every year, it is likely to have poor overall access to care for a majority of its population and will be marked in red on the map.

Malpractice Reform

**2005 AMA Medical Liability Crisis Designations**

- States in crisis
- States showing problem signs
- Effective reforms halting crisis
- States currently OK

**WHAT MAKES A CRISIS STATE?**

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awful lot of time and energy giving out information about what has worked in various states,” Dr. Plested says. “We’ve traveled around the country to hospitals, state medical associations and other groups to help them with their campaigns.”

Dr. Anderson says it’s still very important for practicing physicians to remain politically active, despite the setbacks they may face. He says physicians raise awareness among the general public by talking about the crisis and “taking it to the streets” in marches and rallies. “Ultimately, practicing physicians are the most important piece of the puzzle,” he says. “Thanks to physicians becoming more politically active, the public is coming to realize how bad the system is.”

Even though Dr. Anderson notes that some states have gotten worse and how there has been less success than hoped for in battleground states such as Florida and Nevada, he still says there have been significant milestones achieved in the past two years, particularly in one very large state. “I think the reforms in Texas have been real and substantial,” he says.

TEXAS: JUSTICE FOR DOCTORS
For a long time, Texas was a textbook example of a crisis state. Malpractice premiums were skyrocketing and specialists in high-risk fields were in short supply. “The situation was out of control and the people recognized that it was,” Dr. Anderson says. “In some of the worst counties, there were three or four malpractice cases against each doctor per year.”

When citizens realized what a negative impact the crisis was having on the quality and availability of health care, Dr. Anderson says they started to embrace the idea of medical reform. “Ultimately, people choose to have access to medical care over access to a lawyer when they’re sick,” he says. The first step Texans took was getting a state government that allowed the possibility of change. “The voters elected a legislature and a governor who were sympathetic to reform,” he says.

In 2003 the state legislature enacted H.B. 4, which brought about sweeping changes to the medical liability system, including caps on non-economic damages. The voters also passed Proposition 12, which called for a constitutional amendment that limited damages for pain and suffering to $750,000 with a $250,000 cap for any one hospital or nursing home. This passed by a very narrow margin, a success that both Dr. Anderson and Randy Evans, MD, a neurologist in Houston and president of the Texas Neurological Society, attribute to the medical community coming together to work for change. “The effort was comprehensive, unified and effective,” Dr. Anderson says.

Dr. Evans was a particularly vocal proponent for change. After the Houston Chronicle wrote an editorial against the initiatives, he wrote a letter to the editor detailing his plight and rebutting the newspaper’s reasons to oppose reform, imploring readers to support the “initiative to end the medical malpractice lottery and appropriately compensate those who are truly victims of malpractice.”

Dr. Evans also noted that he is listed in Best Doctors in America but has had three malpractice cases against him in more than 20 years. One of these—a particularly large lawsuit against him, five other physicians, and a Texas hospital—amassed over $1 million in defense costs before ending in victory for the doctors. He also donated $10,000 towards lobbying efforts and helped his association join with other groups in a well-organized campaign. “We played a tiny part,” Dr. Evans says. “We couldn’t take credit without acknowledging the help we got.”

Shortly after those two pieces of legislation passed, the state’s largest medical liability insurer, the physician-run Texas Medical Liability Trust, reduced its premiums 12 percent. One year later, premiums went down an additional five percent. Dr. Evans, a client of this group, confirmed his rates have dropped noticeably. He says he has also seen the number of malpractice lawsuits in Harris county drop to about half of what they were in 2001 and 2002, with the same area getting a net gain of 689 physicians, an 8.4 percent increase.

“I suspect that we all are still wary and practice the same defensive medicine, but our chance of being hit with a frivolous lawsuit has decreased significantly since our tort reform litigation,” Dr. Evans says.

RHODE ISLAND: FROM BAD TO WORSE
The large state of Texas may be a success story, but the tiny state of Rhode Island is a sign of a setback. Even though it recently became the 20th state to receive the crisis state designation, Dr. Plested says its problems are not new; signs of crisis have been present for three years.
“Rhode Island has a double-whammy situation,” Dr. Polestedsays. “They’re last in the nation for physician reimbursements and they’ve had significant increases in liability premiums. They’ve also had a terrible time attracting new physicians,” he adds. “When someone retires, no one new comes in.”

Maintaining sufficient neurosurgery care is a particular problem, Dr. Plested says. A few years ago there were 12 neurosurgeons in the state; now, he says, there are only nine with one already thinking about retirement. What’s more, no graduates of the state’s only neurosurgery program at Brown University have stayed in the state since 1985.

Rhode Island’s shift to “crisis” designation may have a domino effect in the New England region. Malpractice rates in Vermont have skyrocketed by 50 percent between 2001 and 2004. Physicians and surgeons throughout the state have recently launched a campaign to have their state’s government consider malpractice reform legislation, taking care to note how the defensive medicine they practice often requires more expensive tests and consultations to protect themselves should their judgment be called into question. New Hampshire has also experienced shortages of high-risk specialties in many parts of the state and, as of press time, physicians in that state are supporting a bill that will set up a screening panel for malpractice claims.

WYOMING: AN UPHILL BATTLE
The politically active physicians in Wyoming have fought a long and frustrating battle in their efforts to pass an amendment that would change the state constitution’s section that specifically prevents caps on noneconomic damages. After the state was declared the 19th crisis state, the Wyoming Medical Association launched another effort to bring about change but, despite what Dr. Anderson describes as “valiant attempts,” they met defeat again in 2004 when trying to convince the legislature to put the measure on a public ballot.

Dr. Anderson says the formal “crisis state” designation is accurate, but these are not new problems for Wyoming. He says this state showed signs of trouble after the state’s largest malpractice insurer announced it was leaving, but due to the lag time in coverage cycles most physicians did not feel the effect until their yearly policies expired.

Unfortunately, there are likely to be fewer physicians trying to push for reform every year. The state has an extremely low physician/population ratio and a hard time recruiting new physicians because it neighbors “currently OK” Colorado, where malpractice insurance premiums are tens of thousands of dollars lower. Some specialists, particularly OB/GYNs, are especially in short supply in this state.

OKLAHOMA: NOT SUCH A BEAUTIFUL MORNING
An anonymous private practitioner in Oklahoma City, who has been in practice for 20 years, says he has recently had to become more defensive about the way he practices medicine. He says he will not treat pregnant patients with seizures, headaches or any other neurological condition because “the risk is too great.” He is also far more cautious about giving medicine who women of childbearing age, frequently asks them more questions about birth control and also tries to get more information about the potential risks each may cause from referrals. “If there’s any risk at all, I’ll back off,” he says of new patients. “There are other neurologists who will see them, so I know that someone will take care of them.”

To try to keep rates under control, this neurologist and his partner have switched from a physician-sponsored malpractice plan to a hospital-sponsored one. “It limits what I can do, but I don’t mind,” he says.

This neurologist says he has been very politically active and has tried to help turn the tide in Oklahoma, which is currently shown as a state showing problem signs. He even writes letters to legislators in other crisis states out of sympathy for his colleagues. In addition to writing letters focusing on the plight of high-risk specialties such as obstetricians/gynecologists, he has taken part in marches on the Oklahoma state capitol. However, he says that during one march the doctors found the legislatures had moved their session to another location that day.

“A lot of the things done here did not pay off much,” he says, noting how the experience left him feeling as though the state politicians did not care about the medical community. He also says he has little hope of seeing effective change given that many of the state’s mostly democratic congresspersons are entrenched with the trial lawyer association.

Pennsylvania: Deadlock in the Keystone State
One of the most actively contested states in the medical liability crisis, Pennsylvania is often cited as a textbook case of the medicolegal vise physicians are caught in. Every year physicians see
their malpractice rates rise as benefits are cut while newspaper headlines report multi-million dollar verdicts being awarded for malpractice. The result, says Robert B. Surrick, Esq, a retired lawyer who is now Executive Director of the Politically Active Physicians Association, is that "doctors are leaving in droves."

More specifically, Mr. Surrick says that the state is suffering a dearth of neurosurgeons. In 1996 there were 214 in Pennsylvania; today there are 151. “You need 185 to support a population of 12 million people,” he says, adding that in 2004 not a single graduating neurosurgeon from the seven medical schools in the state stayed to practice.

Mr. Surrick’s office is based in West Chester, the government seat of Chester County, an affluent area that is also an example of how bad the situation is getting. In 1999 he says there were six neurosurgeons; now all are gone. The last one left when his malpractice insurance premium reached $283,000 a year.

Instead of passing new legislation improving the situation for doctors, Mr. Surrick says the situation has gotten worse. He points to Act 13, which went into effect on May 22, 2002, requiring doctors to report to the state when they were sued. “Since then, 6,185 have been sued as of March 30, 2005,” Mr. Surrick said. “That’s a quarter of the doctors in the state, and when a doctor is sued for malpractice his or her malpractice rates are surcharged 30 to 50 percent for the year,” regardless of the outcome. He adds that there are so many suits because if one mistake is made the trial lawyer will “go through the chart” and sue every doctor involved. The result is thousands of frivolous lawsuits, but each doctor charged still has to pay the higher premiums.

As a result of this sort of tactic, there are far more lawsuits being filed. Unfortunately, Mr. Surrick says the current governor, Democrat Ed Rendell, received a great deal of financial support from lawyers during his campaign for election. “There’s a reign of terror going on here, and the legislature and the governor won’t do anything to stop it,” he says.

Still, Mr. Surrick keeps on fighting. He says he goes on the road, visits 40 hospitals throughout the state, writes letters to the media, goes on TV programs and radio stations, and gives out statistics whenever he can. “All this is to try to energize the people of Pennsylvania to get as mad as hell so they don’t take it anymore,” he says. “My mission is to inform the grass-roots of what is happening.”

In a more direct action, he started a program called PAPA Fights Back, which sues the lawyers who file frivolous lawsuits. He says Pennsylvania is one of the few states that allows this, so he tries to take advantage of it. And he’s using his experience as a lawyer to help these doctors fight back within the system.

The state’s trial lawyers association has taken notice of Mr. Surrick’s activities and has taken steps to slow him down. He says they are fighting back by sending out press releases every day purporting that caps won’t work and patients will only lose their rights while malpractice insurance premiums will still go up. “It’s a flood of this kind of misinformation,” Mr. Surrick says. “I truly believe the information I put out there makes them less credible every day.” Resources are available at www.fightingdocs.com.

**HAWAII: TROUBLE IN PARADISE**

Known for its scenic beaches and warm weather, Hawaii is hardly the first place one would associate with a crisis. However, its color on the AMA map may soon be changing for the worse.

An article in the May 9 issue of the Honolulu Advertiser reported that the state has seen a 53 percent increase in malpractice insurance premiums over the last five years, a nine percent drop in the number of these specialists in the last two years, and 42 percent of those currently practicing thinking about retiring
in the next five years.

The situation isn’t much better for other specialties. Lorne Direnfeld, MD, a neurologist in Maui, says, “What I see is fewer doctors wanting to do emergency type, on-call work.” He also says most physicians are becoming reluctant to do low-reimbursement, high-paperwork tasks, such as worker’s comp procedures.

As for his particular field, Dr. Direnfeld says there is a shortage of neurologists through the area and they have had a very difficult time recruiting new ones. Despite all the state’s attractions, he says many physicians don’t want to be so far from their families on the mainland and find there are no metropolitan attractions away from the big city, nor are there many medical centers. “People want a job, they want a salary as opposed to being in private practice,” he says. He also says his malpractice liability rates have risen considerably in the past seven years.

Dr. Direnfeld says physicians have been lobbying to try to get the state government to pass caps, and they have gotten some legislation drafted that unfortunately died in the legislature this year. “According to the state representatives, there was not enough interest among the general population to pass the reform,” he says. To combat this perception, he and other physicians are working to spread the information about how their state is showing symptoms of crisis in an effort to keep the islands from turning red.

**The Wrong Solutions**

What’s the prognosis for national medical malpractice care reform or more success in other states? Dr. Anderson of The Doctors Company says he is “guardedly positive.”

To clarify his view, Dr. Anderson offers an anecdote from World War II: When Winston Churchill was asked how it felt to have the Americans as his ally after fighting Germany for years, he said Americans can always be counted on to do the right thing… after they’ve exhausted all the other possibilities. In the same way, Dr. Anderson says he has faith in the ability of American democracy: eventually, voters will make the right decision and hopefully won’t make too many more mistakes.

“The crisis is too important for us to keep getting it wrong,” Dr. Anderson says. “Eventually, we will develop and implement the right solutions.”

Most of America may already know the right answer but lack the will to bring it to fruition. Dr. Plested said when national polls are taken most people are in favor of medical liability reform. However, most of the elected politicians owe their success more to the legal community than the medical one due to the deeper pockets of the former profession. “It’s the same story every time we go up against trial lawyers,” Dr. Plested says. “It’s a lottery for them, and unfortunately they have the money to keep the gravy train on the tracks.”

However, Dr. Plested says, when national polls are taken, most of the public reports they feel some type of reform is needed. “The problem is that we have to have a disaster situation to get any action from the state legislatures,” he says, citing how an emergency legislative session in Nevada allowed caps for a trauma center in Las Vegas that closed after too many orthopedic surgeons quit. “All of the sudden, these legislatures saw their own lives and their families’ lives were at risk and they didn’t go into patients’ rights and so on,” he says. “They got it passed.”

**ARE CAPS ENOUGH TO REDUCE RATES?**

Although caps are the most frequently touted solution to the medical liability crisis, some physicians question whether or not they will solve the worst problems. Mark Yerby, MD, a private practitioner in Portland, Oregon and a member of the AAN’s Legislative Affairs committee, says he is skeptical that caps alone can reduce malpractice premiums. “It would be the best thing for insurance companies if there are caps on awards but the costs for premiums don’t go down,” he says. “Unless there is specific language in the legislation calling for malpractice premium rates to be reduced, I’m not certain we should have great confidence that the caps will help.”

For example, he notes that when California had its caps instituted it also passed a subsequent measure to limit the rate of premium increases. “Perhaps that is the way we should pursue reform,” he says.