# WMA STATEMENT ON MEDICAL LIABILITY

*Adopted by the 56th WMA General Assembly, Santiago, Chile, October 2005,*
*reaffirmed by the 200th WMA Council Session, Oslo, Norway, April 2015*
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## PREAMBLE

In this statement the World Medical Association (WMA) addresses issues related to medical liability claims and the implications of defensive medicine. The laws and legal systems in each country, as well as the social traditions, social welfare and economic conditions of the country, will affect the relevance of some portions of this statement for some countries, but do not detract from its fundamental importance.

A culture of medical liability litigation is growing in some countries, increasing health care costs, restraining access to health care services, and hindering efforts to improve patient safety and health care quality. In other countries, medical liability claims are less prevalent, but National Medical Associations (NMAs) in those countries should be aware of the issues and circumstances that could result in an increase in the frequency and severity of medical liability claims brought against physicians.

Many medical liability systems divert scarce health care resources away from direct patient care, research, and physician training. The lawsuit culture has also blurred the distinction between negligence and unavoidable adverse outcomes. This has led to undue reliance on litigation and other dispute resolution systems to distinguish between the two, and a culture that enables the pursuit of cases without genuine merit in the interest of financial gain. Such a culture breeds cynicism and distrust in both the medical and legal systems with damaging consequences to the patient-physician relationship.

An increase in the frequency and severity of medical liability claims may result, in part, from one or more of the following circumstances:

- Advances in medical knowledge and medical technology that have enabled physicians to achieve treatment results that were not possible in the past, but that may involve considerable risks.
- Pressures on physicians by private managed care, other healthcare organizations or government-managed health care systems to limit the costs of medical care.
- Confusing the right of access to health care, which is attainable, with the right to achieve and maintain health, which cannot be guaranteed.
- The role of the media, advocacy groups and even regulatory bodies in fostering mistrust of physicians by questioning their ability, knowledge, behaviour, and management of patients, and by encouraging patients to submit complaints against physicians.

A growing culture of litigation and an increase in medical liability claims may result, among other things, in a rise in defensive medicine, defined as “the practice of ordering medical tests, procedures, or consultations of doubtful clinical value in order to protect the prescribing physician from malpractice suits.”[1] Depending on the situation, defensive medicine may entail active behaviour, such as performing tests and procedures that are not clinically indicated or prescribing unnecessary hospitalization, or passive behaviour, such as avoiding high-risk patients or avoiding potentially beneficial but risky procedures.

A distinction must be made between harm caused by medical negligence, defined as failure to conform to the standard of care in treating the patient, and harm caused by adverse outcomes occurring in the course of medical care provided in accordance with appropriate standards of care.

Compensation for patients suffering a medical injury should be determined differently for injuries caused by negligence than for adverse outcomes that may occur during medical care, unless there is an alternative system in place such as a no-fault system.

The laws of each jurisdiction should provide the procedures for establishing liability and for determining the amount of compensation to be awarded to the patient in those cases where negligence is proven.

Criminalizing medical judgment interferes with appropriate medical decision making and is a disservice to patients.

The mounting evidence of preventable deaths as a result of medical error has led for experts to call for improved safety measurements in hospitals. With this in mind, investigations should take into account the wider context, identifying systemic failings, with recommendations for change, in order to improve patient safety.

## RECOMMENDATIONS

The WMA:

1. Makes an urgent call to all national governments to ensure the existence of a reliable system of medical justice in their respective countries. Legal systems should ensure that patients are protected against harmful practices, and physicians are protected against unmeritorious lawsuits.
2. Demands that investigations consider the complete context, in order to identify systemic failings.
3. Encourages health care providers to develop systems which improve the quality of patient-safety practices.

NMAs should consider the following activities to encourage fair and equitable treatment for both physicians and patients:

4. Educate and instruct physicians to have clear and detailed documentation of patient records.
5. Develop appropriate remedial training for physicians found to be deficient in knowledge or skills.
6. Encourage NMAs and Specialist Interest Groups to produce updated protocols and guidelines to guide medical professionals and staff.
7. Inform the public, physicians, and government of the dangers that various manifestations of defensive medicine may pose. These include:

- an increase in health care costs;
- an undermining of the doctor-patient relationship;
- the commission of unnecessary test or treatments;
- the avoidance of high-risk treatments;
- the over-prescription of medications;
- the disaffection of young physicians for certain higher risk specialties and
- the reluctance by or avoidance of physicians or hospitals to treat higher-risk patients.

8. Educate the public as to the possible occurrence of adverse medical outcomes, and increased fees, and establish simple procedures to allow patients to receive explanations in such cases and to be informed of the steps that must be taken to seek resolution, if appropriate.

9. Encourage medical workplaces to break the culture of blame in the wake of medical errors or adverse outcomes and advocate for confidentiality of quality assurance processes in order to enable physicians to practice medicine to the best of their ability free from the threat of medical liability litigation and discipline.

10. Advocate for legal protection for physicians when patients are injured by adverse results not caused by any negligence.

11. Develop emotional and practical support for physicians involved in adverse events.

12. Participate in the development of the laws and procedures applicable to medical liability claims, with special emphasis on highlighting the difference between errors and adverse outcomes.

13. Actively oppose meritless or frivolous claims.

14. Explore innovative alternative dispute resolution procedures for efficiently resolving medical liability claims, such as mediation and arbitration.

15. Require physicians to have adequate medical liability insurance coverage or other resources against medical liability claims, paid by the practitioners themselves or by their employer.

16. Encourage the development of voluntary, confidential, and legally protected internal systems for reporting adverse outcomes or medical errors for the purpose of analysis and for making recommendations on reducing errors and improving patient safety and health care quality.

17. Advocate against the increasing criminalization or penal liability of medical judgment in consideration of adverse events. Aside from truly negligent behaviour or intentional misconduct, most adverse events are the result of unintentional human error, system failures, or uncontrollable circumstances and should not brand the physician with criminal motive or behaviour.

18. Support the principles set forth in the WMA's Declaration of Madrid on Professional Autonomy and Self-Regulation.

[1] "Defensive medicine." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/defensive%20medicine. Accessed 12 Mar. 2020