

Communicator

■ WINTER, 2019

Physicians Caring for Kentucky

Reflecting on the Kentucky Supreme Court Decision on Medical Review Panels

By Bruce Scott, M.D.,
2018-2019 KMA President

The following is an article that originally appeared in the Nov. 20 issue of Kentucky Health eNews in response to the Kentucky Supreme Court decision that struck down the medical review panels legislation passed in 2017. KMA will continue advocating for meaningful tort reform during the 2019 legislative session.

The Kentucky Supreme Court has once again struck down a professional liability reform measure – medical review panels – passed by the legislature, despite hard work by those who crafted the law with a specific desire to fit within the parameters of the state Constitution. Many thought this modest step, supported by a wide range of interests from physicians and hospitals to the business community, was a reasonable way to begin to improve the liability

(See MEDICAL REVIEW PANELS, Page 11)

P2 / PRESIDENT'S MESSAGE

KMA President Bruce Scott, M.D., encourages physicians to get off the sidelines and get into the game.



2019 Legislative Priorities

Tort Reform, Prior Authorization, Out-of-Network Billing, Tobacco-Free Schools

KMA remained busy over the last several months preparing for the 2019 legislative session, which convened on Jan. 8. Our advocacy team worked with members to develop a list of priorities that focus on promoting healthier lives for our patients and protecting the practice of medicine in the Commonwealth.

In November, KMA was disappointed in the Kentucky Supreme Court's ruling in the medical review panels case. The Association worked closely with those who crafted the law to ensure it fit within the parameters of the state Constitution. Many thought this modest step, supported by a wide range of interests from physicians and hospitals to the business community, was a reasonable way to begin to improve the liability situation in our state.

Despite this setback, KMA remains resolute in restoring fairness and predictability in the legal liability system, and tort reform will again be a priority for the Association in 2019. KMA looks forward to working with members of the General Assembly and other key stakeholders on initiatives

that are designed to aid physician recruitment, facilitate access to quality healthcare and stabilize patient costs.

Additional priority issues for the KMA in 2019 include:

Prior Authorization: Over the past year, KMA has engaged members through its *AIM for Better Care Initiative* to identify and work toward solutions, either through legislation, regulation, or public awareness, to lessen administrative burdens. Through this effort, prior authorization has consistently been pinpointed as a nonclinical activity for which physicians and practice staff spend an enormous amount of time, energy, and resources. The current prior authorization process being utilized by payers creates roadblocks for patients trying to access medications and treatment recommended by their trusted physicians, increases health care costs, and restricts health care providers from doing their jobs effectively. Therefore, KMA supports legislation that will remove these

(See 2019 LEGISLATIVE PRIORITIES, Page 9)

P4 / FOCUS ON HEALTH

Focus on Health, KMA's patient newsletter, focuses on pneumonia.

P6 / CCLP FEATURE

KMA asks Community Connector and Leadership Program graduate Lori Caloia, M.D., about her experience in the program.

P8 / KMA & CHFS PARTNER

Monthly "Public Health Minute" videos focus on public health issues facing the Commonwealth.



President's Message

Ready for the Big Game: The 2019 Kentucky General Assembly

The 2019 Super Bowl is February 3. While true football fans follow their team all season, even casual fans become engaged during the 30 days of the NFL Playoffs. Pardon the analogy, but the 2019 Kentucky legislative session has 30 legislative days and we need every physician to be engaged.

Much of the success of a football team is built upon the preparation before the season even begins. Similarly, Kentucky Medical Association advocacy staff and several physicians have been working in the "off-season" to lay the ground work for a successful legislative session. Members have been meeting with legislators and their staffs to educate them on medical issues and develop favorable legislation. Others

have been negotiating with health plan representatives to negotiate possible compromises. In the background, but equally important, physicians have held fundraisers, contributed to campaigns or supported candidates in other ways. On behalf of our patients and our profession, I give all these individuals a "high five," but our team is ready to take to the field and we need more physicians to become involved.

The time for sitting quietly is over, your team needs the support of our "crowd" – the 10,000 Kentucky physicians. This is a critical year! There are several pieces of legislation important to medicine including bills on prior authorization (SB54), out of network billing (SB24/HB138), coverage for medical assisted opioid treatment (HB121) and smoke free schools (SB27/HB11) already introduced in the 2019 Kentucky legislative session. Do you think the insurance companies and tobacco industry will be sitting quietly on the sideline? Senate Bill 11 proposes a constitutional amendment for liability reform and there is interest in legislation requiring a "certificate of merit" in medical liability cases. Do you doubt that the trial lawyers will be engaged? And, there is no question we will be playing defense as well, perhaps against legislation to add a "provider tax" on physicians' gross revenue to help balance the budget.

I'm not calling for an angry protest in the capitol rotunda (at least not for now) but I am asking you to stay informed and communicate with your legislator when an issue of importance arises. It's not that hard and KMA is here to make it as simple as possible.

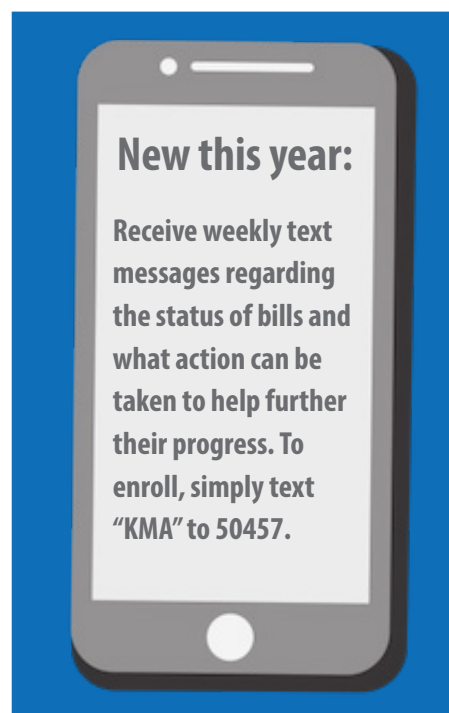
First, find out who are your state senator and representative. One way to do this is to visit the KMA action center. Just go to kyma.org/advocacy and click on "Action Center." You can find out who your representatives are just by typing in your home address. Next, meet with them in person in their office in Frankfort or at an event in your community.

Legislators meet with constituents almost every day during the legislative session. The halls are filled with lawyers, union members and teachers, not to



mention nurses, PAs and pharmacists. Contrast that with the representative who recently told me that in four terms in the Kentucky House no physician from his district had ever visited him in Frankfort. I can't emphasize enough how influential it is for a legislator to hear directly from someone on the front lines of care. If you have never visited your legislator, an easy way to begin would be to attend KMA's 2019 Physicians' Day at the Capitol, scheduled for Thursday, Feb. 21. More information is available at kyma.org.

For those that can't travel to Frankfort or meet in-person with their legislators, KMA offers a number of options for your voice to be heard. Connect via your favorite social media platform – on Twitter (@KYMedAssoc) or Facebook



(facebook.com/kymedassoc). This year, we are excited to offer a new text messaging service that will alert members to the latest updates to our priority legislation. Those who sign up for this service can receive weekly text messages regarding the status of bills and what action can be taken to help further their progress. To enroll, simply text "KMA" to 50457.

Finally, sign up for Legislative Alerts if you do not already receive them. KMA will send you an email with information on specific issues of concern to medicine and when needed ask you to email or call your legislator on a pending legislation. Advocacy staff will even suggest a possible message. Simply visit the Action Center at kyma.org/advocacy.

I remember a few years ago when a state legislator told me his office had been "flooded" with calls and emails regarding an issue, then he went on to say, "heck, I bet there were 20 or more." Can you imagine if 50 or 500 Kentucky

The time for sitting quietly is over, your team needs the support of our 'crowd' – the 10,000 Kentucky physicians. This is a critical year!

physicians called on a single bill? You can make this happen by calling the "Legislative Hotline," a toll-free number with an operator who will even help you identify your senator or representative based upon your address, and leave a message with your legislator. I've even asked my staff and patients to call on issues that they were passionate about. Surely, we can generate a "flood" of calls and emails on an issue that impacts our patients and our practices.

The legislative session kicks off for the crucial second half on February 5, plenty of time for you to have recovered from Super Bowl Sunday. I ask you to become engaged for at least these 30 days. Your

patients and our profession are counting on hearing the roaring support of our crowd!

BRUCE SCOTT, M.D.
2019 KMA President



2019 KMA PHYSICIANS' DAY AT THE CAPITOL FEBRUARY 21, 2019



Bruce Scott, M.D., Monalisa Tailor, M.D., Wayne Tuckson, M.D. and Tuyen Tran, M.D., attended KMA's 2018 Physicians' Day at the Capitol.

Schedule of Events

8:30 a.m. Legislative Briefing

KMA lobbyists will brief attendees on relevant legislation/issues being discussed in Frankfort.

Location: Capitol Annex Room 125

9:30 a.m. Legislator Visits

Attendees will meet with legislators to promote KMA positions on relevant legislation/issues. Attendees need to call the Legislative Research Commission at (502) 564-8100 to set up their own meetings in advance.

Location: Legislator Offices

9:45 a.m. Medical Student Outreach and Leadership Program Student Presentation

Advocacy presentation for students enrolled in the KMA MSOL program.

Location: Capitol Annex Room 125

11:30 a.m. Lunch

Buffet style lunch for legislators, leadership staff, and KMA attendees. Attendees are encouraged to invite their legislators to lunch.

Location: Capitol Annex Room 125

2:00 p.m. Legislator Visit Debriefing

Attendees will debrief KMA staff and Board members on their meetings with legislators.

*Location: Thomas D. Clark Center for Kentucky History
- The Brown-Forman Corporation Kentucky Room*

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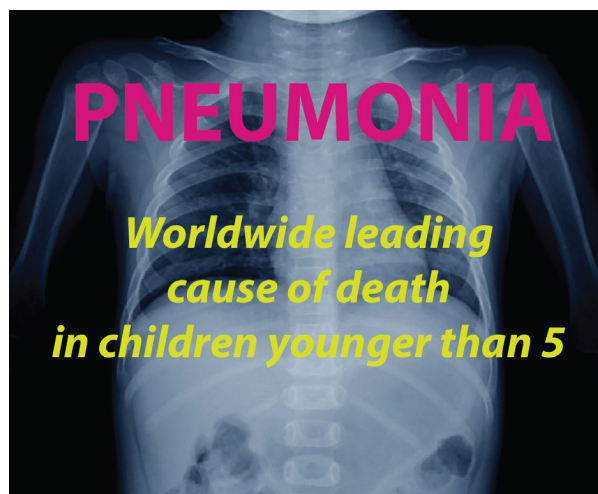
FOCUS_{on}health

■ WINTER, 2019

Physicians Caring for Kentucky

PNEUMONIA

Pneumonia is an infection of the lungs that can cause mild to severe illness in people of all ages. Depending on the cause, physicians often treat pneumonia with medicine. In addition, vaccines can prevent some types of pneumonia. However, it is still the leading infectious cause of death in children younger than 5 years old worldwide. Common signs of pneumonia include cough, fever, and difficulty breathing. You can help prevent pneumonia and other respiratory infections by following good hygiene practices. These practices include washing your hands regularly and disinfecting frequently touched surfaces. Making healthy choices, like quitting smoking and managing ongoing medical conditions, can also help prevent pneumonia.



No matter your risk level, try to stay away from sick people. If you are sick, stay away from others as much as possible to keep from getting them sick. **You can also help prevent respiratory infections by:**

- Washing your hands regularly
- Cleaning surfaces that are touched a lot
- Coughing or sneezing into a tissue or into your elbow or sleeve
- Limiting contact with cigarette smoke or quitting smoking
- Managing ongoing medical conditions (like asthma, diabetes, or heart disease)

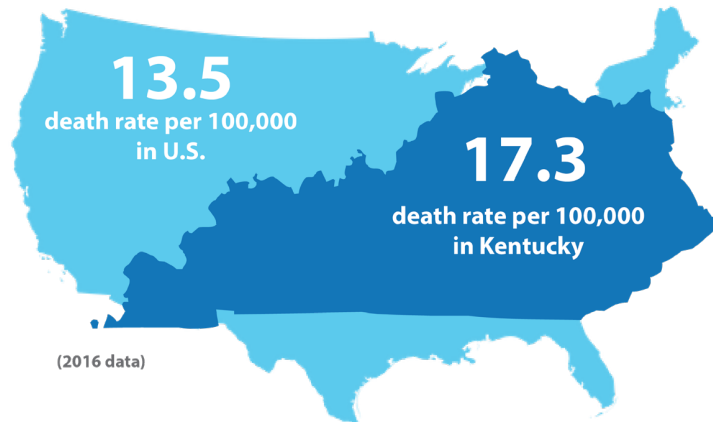


CAUSES OF PNEUMONIA

Viruses, bacteria, and fungi can all cause pneumonia. In the United States, common causes of viral pneumonia are influenza and respiratory syncytial virus (RSV). A common cause of bacterial pneumonia is *Streptococcus pneumoniae* (pneumococcus).



INFLUENZA & PNEUMONIA DEATH RATE



Influenza/pneumonia is the ninth leading cause of death in Kentucky, and pneumonia is the leading cause of death in Kentucky for those over the age of 65.

Some of the less common causes of pneumonia include:

- Adenoviruses
- Bordetella pertussis (whooping cough)
- Chlamydia pneumoniae
- Chlamydia psittaci (psittacosis) whooping cough virus
- Coronaviruses
- Fungi
- Haemophilus influenzae
- Measles virus
- Varicella-zoster virus (chickenpox)

PNEUMONIA PREVENTION: VACCINES CAN HELP

Each year in the United States, about 1 million people have to seek care in a hospital due to pneumonia. Unfortunately, about 50,000 people die from the disease each year in the United States. Most of the people affected by pneumonia in the United States are adults. Vaccines and appropriate treatment (like antibiotics and antivirals) could prevent many of these deaths.

The Centers for Disease Control (CDC) recommends two pneumococcal vaccines for adults 65 years or older:

- Get a dose of the pneumococcal conjugate vaccine (PCV13) first. Then get a dose of the pneumococcal polysaccharide vaccine (PPSV23) at least 1 year later.
- If you've already received PPSV23, get PCV13 at least 1 year after receipt of the most recent PPSV23 dose.
- If you've already received a dose of PCV13 at a younger age, CDC does not recommend another dose.



SOURCE: Centers for Disease Control

CCLP Graduate Lori Caloia, M.D., Has a Passion for Public Health



“The CCLP reminded me of the various facets of medicine. Day to day, I feel I am in the trenches working hard at our public health mission in Louisville. Coming out of those trenches, meeting with students and networking with colleagues helped me to reconnect with the traditional medical community.”

2018 Community Connector Leadership Program (CCLP) graduate Lori Caloia, M.D. works as a tireless advocate for public health as Medical Director of the Louisville Metro Department of Public Health and Wellness. She is also a retired Flight Surgeon in the U.S. Air Force. She recently sat down with KMA to discuss her work in public health and why the CCLP program was such a worthwhile experience for her.

What did you learn from your experience participating in KMA's Community Connector and Leadership Program (CCLP)?

The CCLP reminded me of the various facets of medicine. Day to day, I feel I am in the trenches working hard at our public health mission in Louisville. Coming out of those trenches, meeting with students and networking with colleagues helped me to reconnect with the traditional medical community. Being in the community and talking with people whose lives have been impacted with the work we do every day helps to keep you motivated.

Talk about the public health education aspect of your CCLP experience.

As a public health practitioner, obviously I see the value of public health in medicine! Unfortunately, I think that public health

and community medicine principles are still under-taught in medical schools today. One reason I gravitated toward family medicine is because of a focus on treating the whole person. The understanding that individuals are

in a 15 minute office visit. Public health aims to address these things in a community-based way. The KMA's Community Connector and Leadership Program emphasizes the importance of these complex relationships. Our patients trust us, and our communities look to us for guidance and advice. The program also helps an individual practitioner to see that they really can have a voice in their community, as well as with their legislature. Providing evidence-based public health recommendations can go a long way—usually much farther than our influence on the individual during an office visit.



KMA Medical Student Outreach and Leadership Program graduates Sarah Gottesman (left) and Yomna Amer (center) talk with Community Connector Lori Caloia, M.D.

connected to their families and their communities, and that society influences health in many ways is something that seemed essential to understand in order to take care of my patients. Individuals don't make health decisions in a vacuum—a lot goes into individual behaviors. Sometimes behaviors are not choices. One of my biggest frustrations in primary care was that I could not fix the problems that led to poor health for my patients. Providing transportation or a job that provides a living wage, helping children get access to programs that will increase their chances of school success, improved nutrition, and better education are not easily accomplished

When you first came on board as Medical Director of the Louisville Metro Department of Public Health and Wellness, there was a Hepatitis A outbreak. How did your previous leadership training/experiences prepare you for this?

As a flight surgeon in the Air Force, one of my primary roles on base was as a public health leader. I would consider it to be a much smaller version of my current role. Flight surgeons provide advice and medical response to outbreaks on Air Force bases.

One experience I recall was a pertussis case in an individual worker on base. This case required a coordinated, rapid and complete response to vaccinate and treat exposed individuals with prophylactic medications. A small portion of the roughly 20,000 individuals on our base were affected. Both the scale and complexity pale in comparison to the current hepatitis A outbreak in Jefferson County and Kentucky as a whole. In the military, though resources were constrained, virtually all affected by the outbreak had some sort of medical insurance, and medications and vaccine were readily available. The affected population was also very easy to identify and treat, with high rates of compliance to treatment recommendations. This is nearly the opposite of what was experienced by our communicable diseases team during the hepatitis A outbreak. Challenges with resource acquisition, effectively reaching infected patients for interviews to identify those in need of prophylaxis, and reaching the known at-risk populations were something I had not previously encountered. Taking on this challenge



on my second day on the job was something I will never forget!

What other leadership challenges have you faced and what did you learn from these experiences?

I have learned the most about leadership from being a follower and through observation. I have witnessed inspirational leaders and those that have become out of touch with the people of their organization and start to lose credibility. One thing I have learned is that to be respected as a leader, you have to work hard—no one wants to



Community Connector Lori Caloia, M.D., (right), and KMA President Bruce Scott, M.D., (left), were guests on WHA Great Day Live! to discuss the importance of the flu vaccine and how to prevent the spread of the virus

follow someone who isn't willing to put in as much or more effort than you. You also have to take care of your team. Getting to know those who work with you goes a long way. Understanding the challenges that your team faces day to day can help you make better decisions. I have learned that listening to my team

usually gives me the answers I seek as a leader. It allows me to push them harder to get better outcomes. I am a quiet and more introverted person by nature, so this style of leadership is more suited to my personality. I don't see

myself as the charismatic leader that pushes people with my words—more so, my influence tends to be in my ability to listen and really hear what is going on around me, and to take this into consideration when making important decisions. As a leader, my choices rarely reflect my own opinion. I have learned over the years, that my brain often hones onto a single solution to a problem at hand, and doesn't tend to see other options. As a leader, I find great value in humility and patience, and realize that the input of others almost always results in a better solution than my own!

What do you feel was the most valuable part of the CCLP or your most important takeaway?

Seeing the great work of my colleagues is inspirational and keeps me pushing forward when the going gets tough! There are many talented, creative and caring individuals among us. We are not alone in our struggles or our successes. Knowing that there is support and encouragement out there is reassuring. Having other people that I can bounce ideas off is very helpful in my role. I am lucky to be surrounded by individuals who are subject matter experts in public health and are very passionate about the work they are doing. Often, as an individual, we become short-sighted or single-minded, and getting the honest opinion of thoughtful and informed colleagues is really important to me.

KMA's Community Connector Leadership Program is accepting applications for its 2019 class. Visit kyma.org/cclp or email Emily.Schott@kyma.org, for more information.

KMA and Cabinet for Health and Family Services Partner for “Public Health Minute” Videos

KMA has partnered with the Kentucky Cabinet for Health and Family Services to bring members a monthly video series focused on public health issues facing the Commonwealth.

Each month, Kentucky Public Health Commissioner Jeffrey Howard, M.D. will discuss a different health topic during the short “Public Health Minute” videos. Since the debut of the series in November, Public Health Minutes have tackled influenza, tobacco use and diabetes.

The videos seek to provide resources for physicians regarding talking to patients about what can be complex and sensitive issues. The partnership developed from KMA and the KFMC’s “Focus on Flu” public health campaign. Dr. Howard received his flu vaccine during the campaign’s kickoff event on Sept. 18 and expressed an interest in reaching out directly to physicians across the state. So far, the videos have garnered hundreds of views in total.

“We are very excited to work with Dr. Howard and the Cabinet and believe this video series to be incredibly beneficial to our members. The information he provides is beyond surface-level advice—he is a physician speaking directly to his fellow physicians and connecting with them in a way only another physician can,” said KMA Executive Vice President Pat Padgett.

In December, Dr. Howard tackled the Commonwealth’s tobacco problem, but focused heavily on an emerging issue, particularly among young people: e-cigarettes and vaping devices.

“There is sound evidence that these products pose a danger to our young people and are



likely a gateway to cigarette use later in life. Many young people also don’t know that they are inhaling nicotine when they use Juul or other electronic cigarettes. A recent study showed that 63% of current Juul users did not know that the product contained nicotine.” Dr. Howard went on to provide the Quit Now Kentucky health line, which connects patients with cessation counseling and services.

Future topics for Public Health Minutes will include the opioid epidemic, obesity and pneumonia.

Members can view the videos each month as part of KMA’s Kentucky Health eNews electronic newsletter, or through KMA’s YouTube channel and on the KMA website at <https://kyma.org/public-health-minutes/>.

Topics Include:

- Influenza
- Tobacco Use
- Diabetes
- Opioid Epidemic
- Obesity
- Pneumonia

KMA AND CHFS PARTNER TO PRODUCE PUBLIC HEALTH MINUTE VIDEOS



2019 Legislative Priorities

(Continued from Page 1)

roadblocks by enhancing access to prior authorization information, establishing one-year approvals for chronic disease medications, preventing retroactive denial, improving the review process, standardizing review times, increasing access to electronic prior authorizations, and eliminating prior authorization for medication-assisted therapy services.

Out-of-Network Billing: Insurance companies are increasingly narrowing their physician networks by offering physicians reimbursement contracts that are not financially sustainable. As a result, more physicians are being forced out of network and issues regarding patients' access to care are growing. Patients also have been increasingly feeling the impact of narrower networks through increased cost-sharing, often paying the difference between what it costs the physician to provide the service and what the insurer will pay for it, creating a "surprise insurance gap." KMA supports legislation that prevents patients from receiving these unanticipated out-of-network bills but also ensures that any

out-of-network payment standards for out-of-network providers are based on data independent of the insurers and separate from Medicare.

Tobacco-Free Schools: Kentucky can enhance economic opportunity for all residents by creating a healthier future workforce. Comprehensive tobacco-free policies on school campuses are powerful tools for reducing tobacco use among teens and adolescents in Kentucky. These policies can help reduce peer pressure to use tobacco during school hours and at after-school events – creating an environment where tobacco use is not the norm. KMA supports legislation that enacts a statewide, comprehensive tobacco-free school law that prohibits use of tobacco products, including e-cigarettes, vapor products and alternative nicotine products, by staff, students, and visitors 24 hours a day, seven days a week, inside Board-owned buildings or vehicles, on board-owned property, and during school-sponsored field trips, sports events and other activities. According to the *Kentucky Health Issues Poll*, 87 percent of Kentucky

adults support tobacco-free school policies. This strong support is both bipartisan and found in all regions of the Commonwealth.

Membership-driven grassroots advocacy will be essential to achieving success. KMA will host its annual Physicians' Day at the Capitol on Feb. 21, 2019, and physicians are encouraged to attend to engage their legislators and educate them about these and other issues that are important to physicians.

This year's legislative session is a 30-day gathering. A number of impactful healthcare-related issues will be discussed, debated, and voted on during that time. KMA will be there – as the voice for physicians – to advocate for policies that promote quality, accessible healthcare and advance the practice of medicine.

IN CASE YOU MISSED IT



KY Medical Assoc @KYMedAssoc · 27 Nov 2018

KPLI graduate and KMA member Dr. Mamata Majmundar debunks a common misperception about flu vaccines. See why it's important to get one every year. [youtube.com/watch?v=MCcZwx...](https://www.youtube.com/watch?v=MCcZwx...) #FocusOnFlu



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Medical Review Panels

(Continued from Page 1)

situation in our state. Whatever one might think of the Court's opinion that cites the Magna Carta, the gist of the opinion appears to turn on whether the law violates the state constitutional provision that does not allow laws to "delay" justice.

We all know Kentucky has a problem recruiting physicians to the state and much of that is due to a lack of tort reform. Malpractice insurance costs play a part, but the real reason physicians want to practice in a state with tort reform is because they do not trust the justice system. They fear being hauled into a process that could take years to resolve, putting them, their practices, and their families through the stress of what many have labeled "jackpot justice." I have witnessed the toll that this process takes upon caring, high quality physicians even though eventually exonerated of all allocations.

Stress is also felt by the patients in such cases who are attempting to recover real economic damages for which the whole process and delay can be devastating. Of course their recovery, if any is received, is reduced by the

20-50% attorney fees. Attorneys openly speak of the fact that they take cases not based upon the actual facts in the case but rather the likelihood of recovery when they have "a plaintiff that will make the jury cry." The result is a lottery like system with few winners and others that are legitimately harmed that get nothing.

At the most recent annual conference of the Kentucky Bar Association, there was a seminar that discussed the significant decline in jury trials. Arbitration, settlements and other avenues of justice are apparently being used by those going through the civil legal process for reasons that most likely include the desire to avoid "delay" in seeking justice.

When it comes to seeking justice, people are voting with their feet and finding other avenues to settle their disputes rather than go through the agonizingly long and unpredictable process of a trial. Systemic procedures that encourage speedy resolutions are good for both parties and should be encouraged. But our Supreme Court views these matters through the lens of

what they want the court system to be rather than what it is. That is what is so ironic about the opinion turning on the medical review panels "delaying" justice. They were in fact designed to speed up justice without having to go through the long and laborious process of a trial, but still leaving open that possibility. The modern way of settling disputes through means other than a trial, with systems to ensure speedy and fair justice for both parties, is being used quite effectively in other states. Unfortunately, for now we must remain tied to the systems of the past – slide rule justice instead of modernity.

The medical profession has at times had to take a long hard look at itself. It isn't easy to change. I hope the judicial system sees its flaws and wakes up to the reality that public trust is vital, especially when actions can have profound implications to the public health and welfare, as well as economic vitality. I hope the Court acts to address the problems inherent in our legal system in a way that makes Kentucky a model for civil justice reform.

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