

## RESOLUTION

Subject: Adoption of a “Clear and Convincing” Standard of Proof in Medical Liability Cases  
 Submitted by: Northern Kentucky Medical Society  
 Referred to: Reference Committee

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WHEREAS, research on solving the malpractice crisis by Eli Engel, MD, PhD, and Edward H. Livingston, MD, published in the Archives of Surgery, Volume 45 (No 3), March 2010, introduced the idea of requiring a “clear and convincing” evidence standard in medical liability cases; and

WHEREAS, the American Medical Association (AMA) has incorporated the concept of raising the evidentiary burden of proof to a “clear and convincing” standard as part of the AMA’s principles regarding liability safe harbors for the practice of evidence-based medicine; and

WHEREAS, the Kentucky Medical Association (KMA) House of Delegates adopted policy in 2011 in support of the application of a “clear and convincing” standard of proof in medical liability cases to improve access to care and to help stabilize medical liability insurance premiums; and

WHEREAS, KMA recognizes the medical liability environment in Kentucky continues to adversely affect access to care for patients; and

WHEREAS, the Annual Rate Survey of the *Medical Liability Monitor* found that in 2019 and 2020, the proportion of premiums that increased year-to-year reached levels not seen since the early 2000s with more than 30% of premiums increasing over the previous year in 2020, potentially signaling the early stages of a hard market indicative of the last the liability “crisis” 20 years ago; and

WHEREAS, in the 14 states where premium increases of 10% or more were reported in 2020, Kentucky ranked first by share of comparisons with 29.6% of comparisons increasing by 10% or more, and third in the number of comparisons (55.6%) experiencing an increase of any size; now, therefore, be it

RESOLVED, that the KMA reaffirm current policy in support of the application of a “clear and convincing” standard of proof in medical liability cases to help stabilize medical liability insurance premiums; and be it further

RESOLVED, that the KMA support the American Medical Association’s principles of increased liability protections for physicians who adhere to evidence-based medical guidelines, including the application of a “clear and convincing” evidentiary standard in such cases; and be it further

RESOLVED, that the KMA work with the Partnership for Commonsense Justice, a coalition of business and healthcare organizations concerned about Kentucky’s liability climate, in advocating for tort reform, including increased evidentiary standards, before the legislative and judicial branches of state government.