



American Academy of Family Physicians

Liability: Joint and Several Liability

AAFP State Government Relations

Issue

One of the great myths of the medical liability insurance crisis is that it is due to incompetent doctors. As clearly stated by the AAFP Medical Liability Strike Force, most errors are *system* failures, rather than failures of individual physicians. However, many states' laws and judicial systems do not recognize the difference between role in a system and sole responsibility. As such, in many liability torts, a physician tangentially connected to treatment of a patient that resulted in a bad outcome may be found equally as responsible as a physician more directly connected to the outcome. This issue commonly is referred to as joint and several liability.

Considerations

AAFP constituent chapters have made great progress in advancing this central tenet of effectively addressing the liability insurance crisis. Chapters should continue to educate state legislators, particularly, around the importance of this issue. Separating joint and several liability is a key strategy to ensuring fairness in liability tort. Proportional liability protects the individual physician while simultaneously and tacitly acknowledging, to a degree, that errors are failures of the system.

Opening a discussion of the liability crisis to include the notion of system failures allows chapters to engage in a discussion of system improvements and the Academy's continued commitment to improving the safety of all patients. Additionally, some studies show this to be an essential piece of the liability insurance premiums puzzle. For example, a June 2005 *Wall Street Journal* article indicated that anesthesiologists pay less for malpractice insurance today, in constant dollars, than they did 20 years ago. The article cited the decision of the anesthesiologist to focus on improving patient safety as the reason for their relatively low insurance premiums

State Activity

As of October 2005, 36 states (AK, AZ, AR, CA, CO, CT, FL, GA, HI, ID, IA, KY, LA, ME, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, SD, TX, UT, WA, WV, WI, WY) separated joint and several liability, enacting proportional liability. Fourteen states (AL, DE, IL, IN, KS, MD, MA, NC, PA, RI, SC, TN, VT, VA) have no separation of joint and several liability, with Pennsylvania and Tennessee courts declaring such separations unconstitutional.

AAFP Policy

The AAFP Professional Medical Liability policy may be viewed at www.aafp.org/x7019.xml.

The AAFP *Medical Liability Strike Force Report* may be viewed at http://members.aafp.org/members/PreBuilt/congress_boardreportI.pdf (*Members Only*)

State	Joint and Several Liability
Alabama	<i>No separation of joint and several liability.</i>
Alaska	§09.17.080. Defendants are proportionally liable for damages awarded according to percentage of fault.
Arizona	§12-2506. Defendants are proportionally liable for damages awarded according to percentage of fault, unless defendant acted in concert with another person.
Arkansas	§16-55-201. Defendants are proportionally liable for damages awarded according to percentage of fault.
California	Civil Code §1431.2. Defendants are proportionally liable for noneconomic damages according to percentage of fault, but jointly and severally liable for economic damages.
Colorado	§13-21-111(5). Defendants are proportionally liable for damages awarded according to percentage of fault, unless act proved deliberate.
Connecticut	§52-572h. Defendants are proportionally liable according to percentage of fault for damages awarded.
Delaware	<i>No separation of joint and several liability.</i>
Florida	§768.81. Defendants are proportionally liable according to percentage of fault for damages awarded, monetary limits in liability according to percentage as level of fault increases.
Georgia	Enacted 2005: §51-12-33. Multiple defendants liable for apportioned damages according to percentage of fault of each person. Damages reduced by court in proportion to percentage of fault if plaintiff is found partially responsible for injury. Plaintiff not entitled to receive any damages if found 50% or more responsible for injury.
Hawaii	§671.18. Arbitration tolls statute until 60 days after panel's decision is delivered.
Idaho	§6.803. Defendants are proportionally liable according to percentage of fault for damages awarded, except in cases of intentional act.
Illinois	§735 5/2-1117. <i>No separation of joint and several liability.</i>
Indiana	<i>No separation of joint and several liability.</i>
Iowa	§668.4. Defendants are proportionally liable according to percentage of fault. Several liability not granted for economic damages when defendant is found more than 50% at fault.
Kansas	<i>No separation of joint and several liability.</i>
Kentucky	§411.182. When court apportions percentage of fault, defendant is only liable for comparable share of damages.
Louisiana	CC §2324. Defendants are liable only for percentage of fault unless conspiracy of intentional or willful act.
Maine	Enacted 2005: §14.156-A. In action involving multiple defendants, damage liability if several only for amount of damages in proportion to percentage of fault. Joint liability for defendants in case of acting in concert.

State	Joint and Several Liability
Maryland	<i>No separation of joint and several liability.</i>
Massachusetts	<i>No separation of joint and several liability.</i>
Michigan	§600.2925a. Defendants are proportionally liable according to percentage of fault for damages awarded, except when uncollectible shares are reallocated among solvent defendants.
Minnesota	§604.02. Defendants are proportionally liable according to percentage of fault for damages awarded, except when defendant is assessed greater than 50% of fault, or proven to have intentional malice.
Mississippi	§85.5.7. Defendants are proportionally liable according to percentage of fault for damages awarded, except when defendant is proven to have intentional malice.
Missouri	Amended 2005: §537.067. Defendants are proportionally liable according to percentage of fault for damages awarded; jointly liable if found more than 51% at fault.
Montana	§27.1.703. Defendants are proportionally liable according to percentage of fault for damages awarded, except when defendant is assessed greater than 50% of fault.
Nebraska	§25.21,185.10. Defendants are proportionally liable according to percentage of fault for noneconomic damages awarded, and jointly liable for economic damages.
Nevada	§41A.045. Defendants proportionally liable according to percentage of fault for economic and noneconomic damages awarded.
New Hampshire	§507:7-d. Defendants are proportionally liable according to percentage of fault for damages awarded.
New Jersey	§2A:15-5.2. Defendants only responsible for share of fault if less than 60% . Defendants found more than 60% at fault subject to modified rule.
New Mexico	§41.3A.1. Defendants are proportionally liable according to percentage of fault for damages awarded, except when defendant is proven to have intentional malice.
New York	§16-1601. Defendants are proportionally liable according to percentage of fault for noneconomic damages awarded, unless found more than 50% at fault. Defendants may be held jointly liable for economic damages.
North Carolina	§1B-7. <i>No separation of joint and several liability.</i>
North Dakota	§32.03.2.02. Defendants are proportionally liable according to percentage of fault for damages awarded, except when defendant is proven to have intentional malice.
Ohio	§2307.22. Defendants are proportionally liable for economic damages according to percentage of fault for damages awarded, unless found more than 50% at fault. Severally liable only for noneconomic damages.
Oklahoma	§23-15. Defendants are proportionally liable according to percentage of fault for damages awarded, unless found more than 50% at fault or guilty of willful misconduct or reckless disregard.

State	Joint and Several Liability
Oregon	§31.610. Defendants are proportionally liable according to percentage of fault for damages awarded.
Pennsylvania	July 2005: <i>Commonwealth Court declared separation of joint and several liability unconstitutional based on germane standard of legislation enacted in 2002. (Statute §42.71.7102.)</i>
Rhode Island	<i>No separation of joint and several liability.</i>
South Carolina	§15-38-10. <i>No separation of joint and several liability.</i>
South Dakota	§15-8-15.1. Defendants are proportionally liable according to percentage of fault; defendants found less than 50% liable not jointly liable for more than twice percentage of fault allocated.
Tennessee	<i>Joint and several liability provisions in statute declared unconstitutional by State Supreme Court.</i>
Texas	Civil Practice §33.013. Defendants are proportionally liable according to percentage of fault for damages awarded, unless found more than 50% at fault.
Utah	§78.27.40. Defendants are proportionally liable according to percentage of fault for damages awarded.
Vermont	<i>No separation of joint and several liability.</i>
Virginia	<i>No separation of joint and several liability.</i>
Washington	§4.22.070. Defendants are proportionally liable according to percentage of fault for damages awarded, unless found to be deliberately acting in concert with others.
West Virginia	§55.7B.9. Defendants are proportionally liable according to percentage of fault for damages awarded.
Wisconsin	§895.045.(2). Defendants are proportionally liable according to percentage of fault for damages awarded, unless found to be deliberately acting in concert with others or found more than 50% at fault.
Wyoming	§1.1.109. Defendants are proportionally liable according to percentage of fault for damages awarded.

Source: National Conference of State Legislatures. *State Medical Malpractice Laws: Section 1.* (<http://www.ncsl.org/standcomm/sclaw/statelaws1.htm>, accessed 13 October 2005.)