

## The Campaign Starts Here: NPHCA Charts Course for Federal Medical Liability Reform

By: Stewart B. Dunsker, MD

Stewart B. Dunsker, president of Neurosurgeons to Preserve Health Care Access, launched the NPHCA's public information and advocacy campaign at the AANS Annual Meeting in April. Dr. Dunsker urged every neurosurgeon to give at least \$1,000 each year for three years or until federal medical liability reform is attained.

"Come and volunteer with me. Come pull on the oar to strive, to seek, to work to win, and not to yield!"

These words, inspired by the closing lines of Tennyson's poem "Ulysses," concluded my Presidential Address delivered at the 2001 Annual Meeting of the American Association of Neurological Surgeons (AANS). At that time the topic of concern was how, in so many instances, the "bureaucratic tail" wags the "healthcare dog." Rising professional liability insurance (PLI) premiums and medical liability reform necessary to resolve the situation were two among several issues that were discussed.

Within just two years, PLI premiums have soared nationally, with the most exorbitant premiums-nearly \$300,000 annually in Illinois, for example-concentrated in states where medical liability reforms have not been enacted. As a result, many neurosurgeons have found that they must: move to a state where they can obtain insurance; limit their practices-43 percent say they no longer perform intracranial procedures such as surgery for aneurysms; or close their doors. Like a tidal wave the PLI crisis is sweeping neurosurgeons away, leaving our fellow Americans-who must have access to neurosurgical care-facing an expanding void.

This is why gaining federal medical liability reform is neurosurgery's most pressing concern today. It represents a lifeline to the preservation of neurosurgical care both for neurosurgeons and our patients. As such it necessarily occupies the apex of neurosurgery's agenda. And so, like Ulysses, we find ourselves embarking on an arduous and perhaps extended journey, one that will take us into the relatively unfamiliar waters of legislative advocacy via an information campaign that enlists the help of the public.

Neurosurgery's Federal Liability Reform Campaign

Our goal, simply stated, is to enact legislation that will preserve access to neurosurgical care in every state. Neurosurgery supports federal legislation-such as California's Medical Injury Compensation Reform Act, commonly known as MICRA-that contains reforms which have successfully minimized increases in PLI premiums. A critical reform is a cap on noneconomic damages, but other reforms, such as limits on contingency fees, requirements for expert witnesses, and reform

to the system of medical justice, are important as well.

Such legislation has been introduced in the 108th Congress. A full accounting of progress so far this year is provided in "Battle Lines Drawn in the Senate" in this issue, but to briefly recap, the U.S. House of Representatives passed the HEALTH Act of 2003, H.R. 5, on March 13. However, in July the Senate failed to take up the Patients First Act, S. 11, falling short by 11 votes. The focus of our efforts at this writing is to change the votes of at least 11 senators.

How will we achieve this? As modern day hero Admiral Nimitz said, "It is an axiom that in preparing for any contest, it is wisest to exploit-not neglect-the element of strength."

One area of strength is neurosurgeons' ability to organize and lead. Earlier this year the American Association of Neurological Surgeons (AANS) and the Congress of Neurological Surgeons (CNS) formed Neurosurgeons to Preserve Health Care Access (NPHCA), an organization created specifically to conceive, execute and fund neurosurgery's campaign for federal medical liability reform.

Another area of strength is our patients and their families; we must effectively communicate the issues from neurosurgery's point of view and enlist their help in influencing their legislators to enact federal reforms. But we must reach even further to bring neurosurgery's perspective to the general public through a targeted informational campaign. How else will the public learn that each neurosurgeon is sued once every 18 to 24 months in a complex judicial system that, according to a 2002 report by the U.S. Department of Health and Human Services, "does not accurately identify negligence, deter bad conduct, or provide justice" and which "forces injured patients to sue their doctors" and undergo what it calls a traumatic and random process? Sadly, without an information campaign, some may learn of the problem when a loved one needs neurosurgical care and there is no one to provide it.

A public information campaign of this magnitude can be undertaken only with appropriate funding. NPHCA launched a major fundraising initiative during the AANS Annual Meeting in April, and the initiative's momentum continued through the summer with a mailing to all AANS and CNS members. At press time nearly \$650,000 has been raised from individuals and organized neurosurgery alike toward the goal of \$3 million (see the contributor listing at <http://www.neuros2preserve.org>).

Doctors for Medical Liability Reform

But neurosurgery is not alone in its quest for federal medical liability reform. Other high-risk specialties that have borne the brunt of the PLI crisis alongside neurosurgery have joined NPHCA in a new powerhouse coalition called Doctors for Medical Liability Reform (DMLR). On behalf of neurosurgery, NPHCA has committed a

minimum of \$1 million to the coalition, securing for neurosurgery the maximum of two votes in coalition governance. Other principal members and their contributions are the American Association of Orthopaedic Surgeons, \$1 million; American College of Emergency Physicians, \$1 million; Society of Thoracic Surgeons, \$1 million; American College of Surgeons, \$1 million; American College of Cardiology, \$500,000; and the North American Spine Society, \$100,000.

To date the DMLR has raised \$6 million toward the minimum goal of \$10 million to fund the campaign through the November 2004 elections. While the DMLR will continue to collaborate with various strategic partners and existing coalitions who share the same general goals, it will remain a separate entity to ensure that high-risk specialists are appropriately represented.

#### Key Campaign Components

The four key advocacy components of the DMLR's campaign are: public education through advertising, television and print media; patient education through in-office education materials such as pamphlets and posters; grassroots political action programs and political contributions in targeted states; and legislative advocacy on Capitol Hill.

The coalition already has chosen a public relations firm that has extensive experience in fighting highly political battles in the national arena, and a campaign strategy has been charted. What remains is for all coalition members to meet their financial obligations.

Over the next few months, NPHCA will work aggressively to enlist the help of every neurosurgeon in the fundraising effort. Neurosurgeons not only will be asked to give, but also to identify non-neurosurgeons such as corporations, hospitals, and individuals whom we may be able to count among our partners in this important effort.

I have said this before, but perhaps it bears repeating:

Neurosurgeons need to be part of the solution and give their ideas, time, effort and money. If neurosurgeons do nothing, the problem will continue to fester and worsen.

We may be in for a long voyage in rough waters, but the peril to us and to our patients if we do nothing is far greater. We must stay this course for federal medical liability reform. As Admiral Rickover said, "Good ideas are not adopted automatically. They must be driven into practice with courageous patience."

Stewart B. Dunsker, MD, is president of Neurosurgeons to Preserve Health Care Access (NPHCA). Dr. Dunsker is the 2003 AANS Cushing Medalist, and the 2000-2001 AANS president.

## About NPHCA

Neurosurgeons to Preserve Health Care Access (NPHCA) is a 501(c)(4) nonprofit advocacy organization created by the American Association of Neurological Surgeons (AANS) and the Congress of Neurological Surgeons (CNS). NPHCA is dedicated to promoting sound public policies that preserve patient access to healthcare.

As its initial project, NPHCA will receive funds for and execute neurosurgery's public information and advocacy campaign aimed at passing federal medical liability reform legislation.

NPHCA board members are Stewart B. Dunsker, MD, president; Stan Pelofsky, MD, vice president; James R. Bean, MD, secretary/treasurer; A. John Popp, MD; Mark N. Hadley, MD; and Vincent Traynelis, MD.

### Contributing to NPHCA

The envelope in this issue of the Bulletin can be used to make contributions by check or credit card. Alternatively, personal or corporate checks payable to NPHCA can be sent to:

NPHCA

5550 Meadowbrook Drive,  
Rolling Meadows, IL 60008

Except to the extent allocable to lobbying or certain other nondeductible purposes, contributions paid to NPHCA will be tax deductible as business expenses under Section 162 of the Internal Revenue Code. In January of each year the NPHCA will send all contributors a letter specifying that portion of the payments made to NPHCA which is not deductible for the preceding calendar year.

### Contacting NPHCA

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### Medical Liability Resources on the Web

#### Supporters of Reform

[www.neuros2preservecare.org](http://www.neuros2preservecare.org): Neurosurgeons to Preserve Health Care Access

[www.hcla.org](http://www.hcla.org): Health Coalition on Liability and Access

[www.ama-assn.org/go/liabilityreform](http://www.ama-assn.org/go/liabilityreform): American Medical Association

[www.atra.org](http://www.atra.org): American Tort Reform Association

[www.thedoctors.com](http://www.thedoctors.com): The Doctors Company

[www.thepiaa.org](http://www.thepiaa.org): Physician Insurers Association of America

Opponents of Reform

[www.atla.org/medmal/main.aspx](http://www.atla.org/medmal/main.aspx) and [www.peopleoverprofits.org](http://www.peopleoverprofits.org):

Association of Trial Lawyers of America

[www.citizen.org/congress/civjus/medmal/index.cfm](http://www.citizen.org/congress/civjus/medmal/index.cfm): Public Citizen

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