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EXHIBIT 4
DATE 2/14/2011
HB 408

Montana "Tort Reform" Measures In Effect & Not In Effect Related To Medical Malpractice - 1977 Through 2009 [1]

Type Of Legislative Measures In Effect In Montana	
Tort Reform Measure - Statute, Case Law Or Court Rule	**In Effect?**
1. "Cap" On Non-Economic Damages - No Major Exceptions - Applies Per Claim	Yes
2. Statute of Limitations For Adults	Yes
3. Statute of Limitations For Minors Other Than Extending Limit Past Majority	Yes
4. Statute Of Repose - Time Beyond Which No Action Can Be Filed	Yes
5. Periodic Payment Of Future Damages	Yes
6. Collateral Source Offset – Duplicate Payment Of Damages	Yes
7. Comparative Negligence - Contribution - Joint And Several Liability	Yes
8. Mandatory Entry "Screening Panel" - Non-Binding Result Inadmissible At Trial	Yes
9. Mandatory Entry Mediation - Non-Binding Result Later Inadmissible	Yes
10. Voluntary Entry (Contractual), Binding Arbitration Contract *After* Incident	Yes
11. Voluntary Entry, Mediation *After* Event	Yes
12. No Statement of Damages In Complaint	Yes
13. Incident And Claims Data Reporting – To Board Of Medical Examiners	Yes
14. Report Of Incompetence Or Unprofessional Conduct - Immunity For Reporting	Yes
15. Peer Review Immunity	Yes
16. Punitive Damage Limits	Yes
17. Emotional/Mental Distress, Arising From Contract, No Recovery Of Damages	Yes
18. Vicarious Liability – *Respondeat Superior ("The Thing Speaks For Itself")* Yes	
19. Products Liability - Strict (Automatic) Liability (Responsibility For Damages)	Yes
20. Notification of Intent To Sue (Pre-requisite To Suit - Claim Filing With Panel)	Yes
21. Counter-Suit Availability, Especially For Bad Faith Or Frivolous Lawsuit	Yes
22. Costs Of Court To Prevailing Party - Valid Or Frivolous Lawsuits	Yes
23. Attorney Fees For Frivolous Lawsuits	Yes
24. Wrongful Death Actions - Combined With Survival Actions - Brought At Same Time By Representative Of Estate - Duplicate Damages Eliminated	Yes
25. Limit On Liability - Immunity For Officers, Directors & Volunteers Of Non-Profit Corporations	Yes
26. Limit On Liability - Directors Of Certain Corporations	Yes

[1] **Through 2011 Legislative Session.** This inventory is current until Legislative changes in 2011 or after, if any. Of the available empirical scientific studies as to whether a specific tort reform measure has a downward or stabilizing effect on premiums, the rate of claims (frequency) or the payment on claims (severity), only the following meet that criteria, apart from measures that eliminate any liability and damages at all: Mandatory Pretrial Screening Panel; Modification Of Statutes Of Limitation; Ban On Naming Dollar Amounts In Initial Court "Complaint"; Limitations On Joint And Several Liability; Periodic Payment Of Future Damages; Offset Of Collateral Source Payment (Elimination Of Duplicate Payment Of Damages); Broad "Discovery" Of Medical Records For Claimants; Mandatory Risk Management Programs; Patient Compensation Funds; a "Cap" Or Other Limitations On Non-Economic Or Punitive Damages; Limits On Claimant Attorney "Contingency Fees". Except for Mandatory Risk Management Programs, A Patient Compensation Fund With A "Cap" On Maximum Liability, or Limits On Contingency Fees, **each measure is present in Montana and each is qualitatively "better" than measures in almost all states.** Any other measures may or may not have such an effect on the frequency and severity of claims and even if it does, the insurance carrier must pass through those benefits for it to affect premiums. See, regarding scientific reports: Research Report 18, *Effect Of Tort Reform Measures*, Montana Medical Legal Panel, December 10, 2002. A fully footnoted version of this document is available, describing legislative histories, the impact of case law for Montana Supreme Court cases through mid-2005 and other legislative details, including statute sections and bill numbers.

Type Of Legislative Measures In Effect In Montana	
Tort Reform Measure - Statute, Case Law Or Court Rule (continued)	**In Effect?**
27. Special Good Samaritan Law - Limits On Liability (No Ordinary Negligence) - Emergency Care For Assistance Rendered To Patient Of Direct-Entry Midwife By Licensed Physician, Nurse Or Hospital – Care Rendered With Or Without Compensation	Yes
28. Special Good Samaritan Law - Limits On Liability (No Ordinary Negligence) – Medical Practitioners, Including Licensed Physicians, And Dental Hygienists - Care Rendered Voluntarily & No Compensation – At Any Site – Patient Of Clinic, Patient Referred To Clinic Or Patient In A Community-Based Program To Provide Access To Health Care Services For Uninsured Persons	Yes
29. Special Good Samaritan Law - Limits On Liability (No Ordinary Negligence) - Governor Declared Authorized Disaster Or Emergency Medicine - For Assistance Rendered To Patient By "Health Care Professional" Where Normal Capacity Of Medical Resources Is Exceeded – Care Rendered With Or Without Compensation	Yes
30. General Good Samaritan Law – Limits On Liability (No Ordinary Negligence) – Any Person Including Licensed Physicians - Care Rendered Voluntarily & No Compensation - At The Scene Of An Accident Or Emergency	Yes
31. Advance Payment Of Damages, Fact And Amount, Not Admission & Not Admissible At Trial	Yes
32. Authorization For Physician-Owned Carriers	Yes
33. Committee Immunity For Peer Review - Confidentiality Of Data	Yes
34. Locality Rule - Standard Of Care	Yes
35. Limits On Pre-Judgment Interest	Yes
36. Inadmissibility In Court - Evidence Of Expressions Of Apology, Sympathy	Yes
37. No liability - Act or omission of other providers not within employment or control	Yes
38. Joint Underwriting Association - For Emergency Insurance Carrier	Yes
39. Incident And Claims Data Reporting – To Insurance Commissioner	Yes
40. Expert Witness Qualifications	Yes
41. Damage Limits - Loss Of Chance Doctrine Modification	Yes
42. Limit On Liability - "Captain Of The Ship" Doctrine Modification	Yes
43. No Liability - Acts Or Omissions Of "Ostensible" Agent	Yes
44. Panel Results Additionally Not Admissible In Bad Faith Action	Yes
45. Emergency Room Limits On Liability - Care To Patient Of Direct-Entry Midwife; Or Care Without Compensation As To Patient Of A Clinic, Patient Referred To A Clinic Or Patient In A Community-Based Program To Provide Access To Health Care Services For Uninsured Persons; Or Care Under Disaster Or Emergency Medicine	Yes

Type Of Legislative Measures NOT In Effect In Montana	
Tort Reform Measures – Not Enacted In Montana	**In Effect?**
1. Patient Compensation Fund For Excess Insurance Coverage	No
2. Cost Bond Before Filing In District Court	No
3. Certificate Of Merit By Physician, Prior To Lawsuit, Good Cause To Sue Exists	No
4. "No Fault" Administration Mechanism For Resolution Of Dispute	No
5. Mandatory Entry, Binding Arbitration	No
6. Attorney Fees To Prevailing Party	No

Type Of Legislative Measures NOT In Effect In Montana	
Tort Reform Measures – Not Enacted In Montana (continued)	**In Effect?**
7. Prohibition On Damages - Emotional Distress Arising From Personal Injury	**No**
8. Limit - Amount Of Contingency Fees (Reverse Sliding Scale Or Other)	**No**
9. Voluntary Entry (Contractual), Binding Arbitration, Claimed Medical Malpractice *Prior To* Event (Medical Malpractice)	**No**
10. Mandatory Risk Prevention Programs	**No**
11. Limits On Expert Witness Fees	**No**
12. Deduction Of Decedent's Future Personal Consumption Expenses From Award Of Future Lost Earnings In Survival Actions	**No**

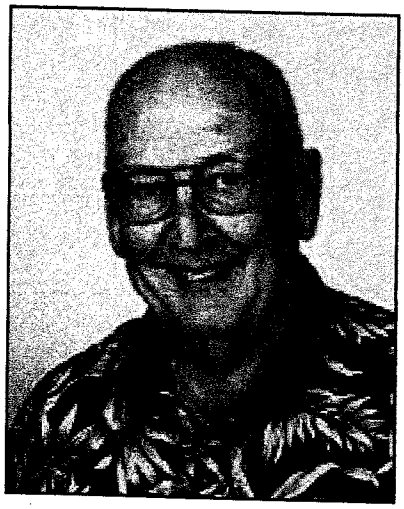
[Modified 7/16/2009]

served. Can people in rural areas expect that from a national system? Has the Indian Health Service been able to provide that to its clientele? Has the VA?

How can an increasingly specialized profession based in urban areas be made to function in increasingly isolated, rural areas where health needs are often generalized? Dr. Whiting's excellent and timely book offers some useful insights and suggestions to these questions.

I enjoyed this book and gave it five stars. It's well-written, insightful and it will appeal not only to those who know Dr. Whiting, his family and the area he served, but to medical professionals, social historians studying the flight from rural areas to urban areas, and Americans everywhere who are contemplating the great debate over the creation of a national health system for the US.

–Review by John M. Lane
--Robert Whiting, M.D.



FROM WHERE I SIT...

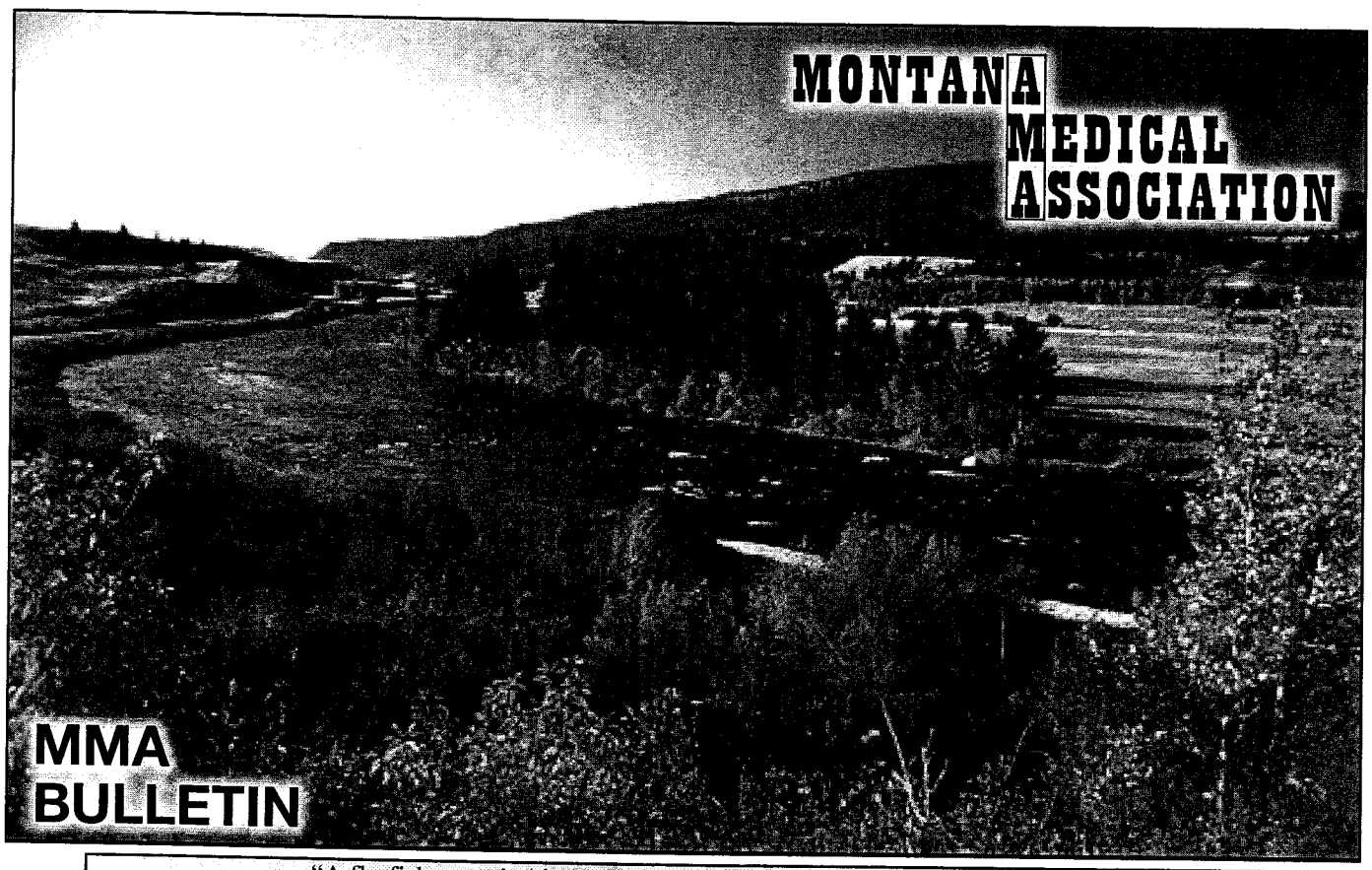
There may never have been a time when direct contact between physicians and their Washington D.C. representatives was more important. The push for a "Health Plan" is marching on in at least three fronts and the opportunities to affect the end results are gradually coming to an end. Whether or not the legislative and executive branches can get together is one question. Before that comes up, the legislative branches will have to try to agree on one plan which will require some compromises between the House and Senate plans. The driver of the bus on the Senate side is Senator Baucus.

Our input should be centered on what is best for patients. There are daily editorials and articles in the local and national news papers on the subject. Many are quite thoughtful. The American Medical Association has attempted to put their suggestions into the mix. Will anyone listen to organized medicine? That is a good question. What is being presented by our leadership are principles passed by the AMA House of Delegates. No matter who is speaking for the AMA, it will have less of an impact on our own senators and representative than communications in any direct form from Montana physicians. Who speaks is just as important as what is said. The MMA office has passed on the information from the AMA on the AMA position and the specific comments from the AMA on the House bill. If you do not have them or did not receive them, I suggest you contact the AMA office. They have been sent to the members by e-mail and I fully realize that many physicians do not check e-mail regularly if at all. One of the documents is very specific in a question and answer format on the House bill explaining as well as clearly detailing the reasons behind the AMA position.

The adage "Politics is personal" is absolutely true. We have an opportunity to affect the care of patients for generations to come. We have all had experiences where we did not speak up and wish we had. Many believe that they cannot have any influence on what happens in Washington. My own personal experience is that we can have significant influence. We should all act as if our representatives really do work for and are on our payrolls. All of us get reminded of this every March when the income tax issue is clearly brought to our attention. No profession knows medicine as we do. No one has the same patient relationship that we do. A letter, e-mail or phone call now may be the information one of our representatives uses to help make any legislation passed more appropriate for patients.

A health care plan that would encourage physicians to avoid caring for the sickest patients would be a tragedy. Rewards for a computer based system that pits physicians against one another for the best results using billing data can produce such a tragedy. We have to be sure that the decision makers in Washington understand this. A de-identified actual story about a patient is the best thing we can do to help our representatives understand real and potential effects from bad legislation. It is perfectly correct to make contacts more than once. After about the third time the Washington staffs and representatives will "know you." Have a good summer and please make your D.C. contacts now.

--John W. McMahon, Sr., M.D., Medical Director, Mountain Pacific Quality Health Foundation



"A fly fisherman's 'dream stream,' the Madison River near Ennis"
Photographer: Rick and Susie Graetz, Northern Rockies Publishing, Helena

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http://www.mmaoffice.org
406-443-4000 or 877-443-4000 (toll free in state)
e-mail: mma@mmaoffice.org

2021 11th Avenue, Suite 1
Helena, MT 59601-4890
FAX 406-443-4042

Kirk L. Stoner, M.D., President

PRESIDENT'S MESSAGE

At the recent AMA annual meeting a number of issues important to physicians were covered. The overriding issue was health system reform. It was apparent that all physicians recognize that reform is going to occur. It is important that we, as the experts in patient care, let our legislators know our opinions. Our AMA President Nancy Nielsen, spoke of building bridges during this seminal time. It is important to have positive recommendations and suggestions to make. It was painfully obvious that many physicians are extremely distrustful of any promises that the government may make, rightfully so. However, we cannot let this negative feeling undermine the positive benefits that may come from health care reform.

The overwhelming concern of physicians was that the physician-patient relationship is being eroded by various administrative decisions at numerous levels including governments, insurance companies, and hospitals. Additionally, there is increasing concern about the financial viability of many physician practices because of low reimbursements and increasing overhead. The AMA is at the table and making these concerns known to the Congress. They are a strong advocate for the patient-physician relationship.

President Obama's speech before the AMA House of Delegates was a political speech but did give a little insight into what the

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Physicians: Please provide your current email address for your office.

Handout provided to Committee by Al Smith, Montana Trial Lawyers, 439-3124