## Some say availability, access to physicians are at risk

by DEVIN COMISKEY

the effects of rising malpractice premiums insurance Connecticut on Wilton's physicians.

"We will see a sudden loss of physicians. Instead of a slow exodus, it will be immediate."

That prediction comes from Dr. Frank Garofalo, a 15-year boardcertified urologist and president of the Norwalk Medical Society. in reaction to skyrocketing malpractice insurance premiums for Connecticut's physicians.

Doctors from around the state are facing a real threat to their livelihoods due to rising malpractice insurance premiums and a lack of insurance availability, physicians have told The Bulletin.

their coverage. This may drive Wilton and practice in the area.

Some highly specialized physi- from practicing medicine alto- surprised lawmakers by calling however, the matter was not taken report recommended that a \$3cians must pay tens of thousands gether. The problem is all too real for a quick resolution on the matup in the October special legislamillion emergency fund be creat-Part one in a series examining of dollars per year to maintain for many doctors who live in ter, which included a \$250,000 tive session in Hartford and was ed to help doctors pay for rising cap proposal on damage awards. put on life support until this year. many of them either out of state or In September, Gov. Rowland Despite the governor's insistence, On Dec. 19, a state legislative

See Some say on page 18A

### As Weir Farm recalls earlier era

# Public is asked for input on restoration

by JEFF YATES

esidents curious as to how Wilton looked back in the good old days may soon get a chance to see just that. Weir Farm is considering restoration and rehabilitation work



# Some say availability and access to physicians at risk

Continued from 1A

medical malpractice insurance Associated Press, the fund would be raised from fees assessed to doctors, hospitals and lawyers.

The report also suggested further study of alternatives to malpractice lawsuits, such as a medical court or arbitration board several groups are proposing, and a "no-fault" approach to malprac-

#### A pending crisis?

Wilton and is a member of the Fairfield County Medical Association (FCMA), said the greatest problem has arisen over the past six years.

"While you see the same numly one per day — settlements have doubled to an average of \$460,000. Over that time, insurance rates have gone up several hundred percent. The most affected are the specialists, like neurosurgeons and obstetrics. The ones I know are paying over \$100,000 per year for only \$1 million in get coverage now. What's developed as the insurance companies that have withdrawn, the ones that are left are not writing new policies because of the risks," he said.

practice in Connecticut without insurance. The minimum is \$500,000 coverage, but the Norwalk Hospital average is \$1 million. As things stand now, two of three neurosurgeons that cover Norwalk Hospital and Danbury have no coverage for 2004; the third is only part-time now," he

"This is leading to a problem that cover the Darien, Westport, Norwalk area have stopped deliv-

Dr. Garofalo said physicians from around the state are already feeling the pinch and the results are serious. "We're having a steady exodus out of the state and into other businesses. We have a pending crisis of physician availability, a crisis of access.'

get of a malpractice lawsuit at any charge in Hartford.

time for almost any reason, Dr. Garofalo said most doctors are now treating patients with a great deal of fear. For example, more premiums. According to the tests are done on patients now than would normally be performed to avoid being accused of not doing a thorough job.

"We are already paying for the cost of practicing defensive medicine. So far, \$100 billion has been spent on this. The Fairfield County Medical Association conservatively estimates \$1.2 billion per year in Connecticut alone. With a population of 2.4 million Dr. Garofalo, who lives in people, that's about \$500 per person, but the insured actually pay more due to the number of uninsured people," he said.

"The greatest impact is on poorer people because doctors have to generate the income just ber of suits filed — approximate- to pay their premiums. Fifty-six percent of doctors in Connecticut admitted to doing this," said Dr. Garofalo (see survey sidebar).

> "Right now, it's coming out of your pocket. But if nothing is done about it, it's going to come out of your skin. You'll see clinics become overwhelmed," he said.

Besides the governor, the coverage. Some neuros can't even FCMA and more than 30 state legislators are calling for \$250,000 award caps in medical liability lawsuits as one way of bringing premiums down.

"California is the best example "By law, physicians cannot of why caps work," said Dr. Garofalo. "After damage awards were capped, premiums during the period of 1996 through 2002 rose 167%. During that same period, premiums went up by 505% in the rest of the country. Caps do make a difference."

Dr. Garofalo explained that socalled problem doctors are not weeded out by the current system. "Everyone is in a 'risk pool.' So, with available specialists in doctors with clear records are Connecticut. Four obstetricians equally affected." He said almost everyone during the course of their career gets named in at least ering babies as of 2003," he said. one suit, whether it's primary, secondary, or below.

#### **Seeking action**

A number of doctors, physicians groups and insurance companies are calling for Connecticut legislators to hammer out new laws as soon as possible to halt the rise in premiums. The FCMA With the reality of being the tar- is one of the groups leading the

# Fairfield County Medical Association Medical Liability Survey 2002-2003

Part I. What effects have the medical liability premium increases over the past several years had on your ability to provide medical care?

18% Have limited the scope of their practice.

Have changed patient mix by insurer (i.e dropped lower paying HMO's). Have dropped Medicaid.

Have changed patient mix by acuity (i.e. reduced number of sicker, more complex, higher-risk patients). Have raised fees to patients when possible.

Have increased the number/frequency of tests ordered to avoid being sued (defensive medicine).

Have reduced/eliminated pro-bono medical care. Depend on hospitalists to manage inpatients.

Have held off upgrading medical/business technology in their practice.

#### Part II. As a result of increased medical liability premiums:

Plan to retire within the next 12 months.

Plan to relocate their practice to a different state that offers a more attractive medical liability climate.

Have been unable to attract/recruit new physicians into their practice. Have been unable to keep up with staffing requirements.

#### Part III. Other comments:

"Stopped seeing nursing home patients."

"I carefully select procedures I will perform based on risk/reward ratio."

"I avoid procedures with complications or high risk. "I have restricted new Medicare patients to my practice."

"I cannot see ER patients any longer." "No new Medicaid patients."

"I cut down my practice. I do not treat patients. I give 2nd opinions, disability evaluations, etc."

"I have fired an MD to reduce numbers."

"I will consider practicing on a year-to-year basis."

"I would like to get out of this 'business

"I am looking for alternate career options."

"I have to hire less-qualified staff and limit benefits."

"I must simply see more patients in the same time period — rush, rush, rush."

"We want to see a strengthening of the legislation of Tort Reform Act of 1986. The wording of it is such that there are a lot of loopholes. The first thing is a 'Certificate of Merit' where the plaintiff's attorney has to find a physician that will agree that the case is legitimate. That will screen out a lot of the bogus cases. It's optional now, but it's never done. That one provision alone would improve the situation dramatical-' said Dr. Garofalo.

'Mandating a pre-trial screening where you have a board of physicians and lay people to decide if case has merit is another area we want changed. There's only an optional requirement, so it's in the lawyers' best interest not to do it," he said. "Ultimately, we need to develop an alternate dispute system, an arbitration and/or a medical court system with lawyers and judges who are experts in the medical field."

Another option the FCMA wants changed are the 'Offer of Judgment' rules. "If the plaintiff offers to settle the case and the defendant (doctor) says 'No, I didn't do anything wrong and I'll fight this in court,' the state will take the settlement from the time of that offer plus 12% interest if the plaintiff wins. That rate is out of line with the times. It was reasonable in the 80s. Not now. But, if doctor wants to settle and he wins, he can only collect \$300. one of the standard rates instead of fixed at 12%," said Dr. Garofalo.

The FCMA also want the rules of contingency fees to be strengthened. "We're arguing for more money to go to the patient. Patients now only collect 43 cents on the dollar. We're arguing that the attorneys should get no more than one-third of a settlement. They opt out of this contingency requirement or they won't take a case," he said.

"The original legislation in 1986 was meant to weed out frivolous lawsuits and to protect the patients from their own lawyers. Instead, lawyers privately contract with the patients instead of adhering to the contingency schedule," said Dr. Garofalo.

It also argues for periodic payments of any settlement over \$250,000. "That will make it more affordable," he said.

reforms, we will see a continuing decrease in the availability of physicians, with the lower socioeconomic classes seeing the greatest impact because we won't be able to take care of them. We're seeing a continued increase in the cost of medicine and the cost to the patient. It's important to know this is coming directly out of people's pockets," Dr. Garofalo warned.

'You do see experienced physicians who are leaving their practices. This has a direct impact on care in Connecticut. The best physicians are the ones who will leave first. Many are either forced to retire or change industries like pharmaceuticals or medical instrument sales.'

#### **Uncertain future**

"At the present rate, it would be impossible for me to practice in five years. Every physician in the state has this in the back of his or her mind," said Dr. Garofalo.

He said his insurance premium this year is \$43,000 and going up 30% next year. "And that's for all surgeons. This is almost a doubling of last year. If this trend continues, we will see a sudden loss of physicians."

Dr. Garofalo said the cost of doing business in Connecticut is already difficult without the high

"A typical doctor has four fulltime equivalents. Two are clerical We want the plaintiff's lawyer to and moderately paid. Others are \$50 to \$100 an hour including benefits. The cost of space is usually \$30 per square foot. That comes out to around \$1,000 to 1,200 per month per doctor. Add other services, like medical waste pickup and disposal, cost of medications, cost of compliance with government programs is extremely high, records and computers. Add to that the insurance premiums. After a while, it's not worthwhile to practice in this area," he

While the cost of doing business is higher in the Northeast than most other parts of the country, for doctors the costs seem unusually out of line. "I met a doctor from South Dakota earlier this year. His insurance premium is \$6,500 per year. In New Mexico, it's \$7,500 per year," Dr. Garofalo said.

"If we don't have these long as it's a judicial process and they make it fair. There is no doctor in the state who would argue against compensating a person affected by negligent care. There are two types of suits. One, something bad happens. Bad outcomes do occur. Two, negligence. The problem is they are treated the same way in court. Juries are unable to make a distinction between the two. Understandably, they are sympathetic towards the patient," said Dr. Garofalo.

"My concern is that we'll end up like Mississippi, when all of a sudden, a few years ago, there was one OB/GYN left in the state. The legislature finally woke up at that point. That may happen here before anyone does anything about it. From talking to patients, they are sympathetic, but they have to call their state legislators and express their concerns about it. When a doctor calls, it's looked at as self-interest. But it's different when a patient calls them," he

#### Loss of insurers

According to the FCMA, Connecticut has had a substantial decrease in the number of medical liability insurance carriers. In 2002, the state had eight carriers writing policies. Last year, the St. Paul Insurance Company withdrew from the medical liability insurance market, leaving 42,000 physicians without coverage. Three companies insuring physicians — MIIX Insurance, PHICO First, to cap non-economic dambe on a level playing field when it medically trained. Nurses make Insurance, and the Frontier ages (pain and suffering compencomes to an offer of judgment and about \$30 an hour. Just to pay Insurance Company — became sation) for victims at \$350,000. the interest rate to be indexed to staff it costs anywhere between insolvent. A fourth, AHI/SCPIE, withdrew from the state, leaving rate approval by the insurance hundreds of physicians without coverage. Farmer's Insurance insurance coverage. Third, it announced this year that it is leaving the state. The number of insurers in Connecticut now stands at civil damages for doctors or facilthree: Connecticut Medical Insurance Company (CMIC), ProMutual and GE Medical Protective.

> The CMIC is a non-profit, physician owned and run insurance company that was formed in 1984. The company's official position is similar to that of the Fairfield County Medical Association. According to the company's official statement on medical liability insurance crisis, nary board in issuing certificates "It is the CMIC's position that the ideas that were recognized as good ones in 1986 should be resurrected from the grave into which the courts have thrown "Physicians are not looking to them. Specifically, the following don't know if it ever will," said become immune to oversight as changes should be revised and Rep. Boucher.

Certificate, attorney's fees, and periodic payments of future dam-

The company is also calling for a revision of the Offer of Judgment statute and a cap placed on non-economic damages. It doesn't specify what that limit should be, although it calls for a similar cap to California's \$250,000.

#### Fight in Hartford

State Rep. and Assistant Minority Leader Toni Boucher of Wilton (R-143rd) is one of many legislators in Hartford working to find a solution. She was a cosponsor of a bill designed to limit damage awards and reform the way medical malpractice lawsuits are handled and has been one of the most vocal proponents of reform so far.

"The reason the amendment was created was to address concerns by all parties. The situation really is awful," she said.

'We are in a crisis. It's deplorable. I'm very angry about this. It's out of control. The doctors I've talked to are not happy. Managed care has changed the way doctors work. All of the administrative costs have been pushed on them. They create lots of paperwork to deal with and are holding back payments. We had to pass a bill penalizing companies if they take more than 45 days to reimburse a doctor."

"I hate to see this happen. It's a very sad place where we are," she

Rep. Boucher said proponents of malpractice insurance reform have many formidable foes in Hartford and is pessimistic about any reform actually becoming law in the near future.

"A tremendous amount of lobby dollars has been spent by the Trial Lawyers Association. They've applied a lot of pressure. They know well enough to stay away from me now. This is not a partisan issue. The attorneys in state leadership are making it very difficult," she said.

Rep. Boucher said that 43% of legislators in Connecticut are lawyers, which only adds to the problem of passing legislation that will directly affect many of them or their colleagues. "The trial lawyers are out for themselves. The public just has to start getting outraged before anything will happen," she said. "Doctors want to help people. They don't want to deal with confrontation and litigation."

Michael Cronin, House Republican legal counsel, said, "(Rep. Boucher's) proposal, which she worked to obtain 30 additional co-sponsors, was never called as an amendment because no germane bill was ever offered in the waning days of the session. The proposal had four parts —

"Second, it would require prior commissioner for malpractice would provide whistle blower protections and immunity from ities that alert authorities to incompetent physicians.

"Finally, it would have the commissioner of public health conduct a study, in consultation with the judicial branch, on reform of the malpractice system and the possibility of the creation of an oversight board of medical and legal professionals as well as laymen to oversee medical care issues and to serve as the prelimiof good faith, required as a prerequisite prior to filing all medical malpractice lawsuits.'

"The amendment failed. If it doesn't happen next session, I

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### Malpractice insurance: An ailing diagnosis? ——

## Doctors and lawyers clash over elusive remedies

cians.

malpractice insurance premiums by one Wilton doctor, Frank This week, two more physibe within reach, the fallout from Norwalk for 22 years. He is chief in Connecticut on Wilton's physi- Garofalo, a 15-year board-certi- cians from Wilton speak out in this debate will have implica- of urology at Norwalk Hospital fied urologist and president of favor of legislation to change the tions outside the medical field in and a member of the American about cost-sharing among docthe Norwalk Medical Society, legal landscape in Connecticut the state. The outcome just might Urological Association. Last tors so those who pay huge preweek, The Bulletin who practices out of Norwalk and the head of the Connecticut determine the future of civil liti- year his malpractice insurance

by DEVIN COMISKEY looked at the effects of rising Hospital, and state Rep. Toni Trial Lawyers Association clarigation and HMOs altogether. malpractice insurance premiums Boucher (R-143rd), who is a fies that group's position on the 'Attorneys should pay'

examining the effects of rising several proposals brought forth in Connecticut. While no solution appears to been practicing urology in coverage. "It's getting to a criti-

This is part two in a series on physicians in Connecticut and driving force behind tort reform matter.

Dr. Peter Dodds of Wilton has doctor per \$1 million per year in

premium rose 30%. In 2004 it's 41%. He said it costs \$47,000 per cal point," he warned.

"There's even been a thought

See Doctors on page 19A

## Doctors and lawyers clash over elusive remedies

Continued from 1A

miums, like neurosurgeons, aren't hit as hard. But that misses the point that it's the family care physicians and internists who can't afford their premiums now. They're the lowest-wage earners," he said.

'We're living in an area where it's hard to attract internists because of the cost of living and costs of practicing medicine have become burdensome. There's a major crisis coming with internists and specialists.

Dr. Dodds said he has two areas of concern. First, that most doctors can only afford the minimum amount of coverage. Second, doctors are now put in a position where their personal property is at risk. He said that threat is often made by attorneys.

"Doctors are refusing to defend themselves at all, that's why there have been so many settlements. They're afraid of losing their own property. If that starts happening, there's going to be a mass exodus, even if doctors are at the peak of their careers, or they will go into teaching positions where hospitals pick up the tab for insurance," he said.

"I don't know if caps are the fairest way. It also may be too late because it does nothing to affect the present. There's going to be a major problem in two to three years, because that's how long it would take to see any changes take effect," he said.

Dr. Dodds said attorneys ignoring the Good Faith Certificate requirement passed in 1986 is one reason a large number of frivolous malpractice suits are filed in Connecticut.

"It's an honor code that attorneys say they have contacted a health care provider that agrees malpractice has been done and the case has merit. No judge has enforced this in Connecticut. Judges are not willing to enforce the Good Faith Review. The loophole in the law is such that it says the attorney must state they had a review, but not actually *get* one," he said.

He said he knew of at least one case locally where the attorney didn't even get a copy of the person's medical records from the doctor before filing a lawsuit.

'The problem with litigation, even when there is a legitimate case, are the ancillary people who get sued as well, which could include nurses, anesthesiologist, etc. That's one of the issues: the tremendous costs of defending a lawsuit. CMIC estimates that around 60% of the medical liability lawsuits that have been filed in the past 10 out into the press. "It can do years have been dropped. The tremendous damage to a physicost of defense is enormous. It ranges from \$5,000 for a simple has done nothing wrong. deposition to \$150,000 for defense during a trial," he said. "Approximately 70% of the verdicts by jury are decided in favor of the defendant (doctors)."

"Cases can drag on for years. What people don't see is the emotional and personal toll a frivolous malpractice suit can have on a reputable doctor, ranging from severe depression and anxiety to loss of wages due to time spent defending a case," he

said. "We ask that attorneys take responsibility for their conduct. The plaintiff's attorney should

ing a bad malpractice case as well as loss of wages. I don't think doctors should be treated any more special than anyone else. This problem isn't limited to just medical liability," said Dr.

He cited a recent case of a twoyear-old model in Greenwich whose mother is suing the city of Stamford for lost wages and negligence because the child ran into a chain link fence and cut his forehead. "If negligence is found, then the city should pay. But, why should the people of Stamford have to pay to defend the case? There is no responsibility taken for filing bad lawsuits," he said.

Dr. Dodds recently found a clear answer as to how and why lawsuits are flooding the legal system, not only in Connecticut, but around the nation, from Judge Robert Satter, who was also an attorney and Connecticut state representative.

A passage in a book written by Judge Satter in 1990 called Doing Justice - A Trial Judge at Work, struck a chord with Dr. Dodds. It says, "Payment is also submission to a form of extortion. Plaintiffs' lawyers know the burden they impose on defendants by bringing such cases, and they cynically demand a tribute to grant releases.'

Dr. Dodds said, "Often, plaintiffs and attorneys leave court knowing an injustice occurred! Large companies, like WalMart, are more likely to settle case because it's often cheaper than defending against them. But the insurance companies for doctors will fight.

"Last year in Connecticut, 'tort reform' allowed attorneys to take 40% plus expenses. That was to legitimize their breaking of the earlier statute. It was no reform at all. There is a two-year statute of limitations, which is the time a patient would know whether or not anything has gone wrong. They were given an extra three months in which to perform a good faith consultation. They often show no signs of that activity," he said. "The Trial Lawyers Association says we have tort reform, but it's not reform at all.

One solution Dr. Dodds feels would stem the tide of litigation against doctors is fairly simple. "Attorneys should have to pay the defense costs and time lost from work if they are found not to have filed a good faith review. There's no true advocacy for doctors.

He said one of the things that doctors also worry about is word about a frivolous lawsuit getting cian's reputation, often when he

"Many doctors are deeply affected by these lawsuits. And that should happen if it's a legitimate case. But, if it's not, why should the doctor have to suffer and pay for it?" he said.

Dr. Dodds' future practicing medicine in Connecticut is still unclear in the coming years. "I don't know if the premiums are going to go up every year or not. As of now, I am not planning to leave. The thing that does worry me is that attachment of personal property loss to a lawsuit. I would think about retiring immediately from private practice. I'd

pened," he said.

"I know of one doctor who actually left the state because of malpractice premiums. I know of five or six who have left private economy went south and the practice or cut back on their services. Two were obstetricians. They, as far as I'm concerned, were two of the most popular around. If it were 'marginal' doctors, that would be one thing. The lawsuits are not doing that. They are causing good doctors to retire earlier than they normally would," he said.

#### **Common ground**

Despite a seemingly united stand against the Connecticut Trial Lawyers Association, there may be some light at the end of this proverbial tunnel. According to Kathleen Nastri, current president of the CTLA, there is plenty of common ground to work with.

"The Trial Lawyers Association agrees the doctors face a problem with increasing malpractice premiums and reduced payments from HMOs.

number of verdicts, claims or jury awards play no role in solving the problem," she said.

"What happened is that the insurance companies lost a lot of had not. However, she does in money. One of the problems is lack of carriers in Connecticut. The doctors don't really have any way to fight this. There's no real competition," said Ms. Nastri. "The important thing we keep focusing on is that we shouldn't be making this a profession-specific problem. Why shouldn't doctors be as accountable as anyone else?"

Ms. Nastri cited statistics provided to the CTLA by the Connecticut Medical Insurance problem isn't as overblown as some may portray it to be.

"CMIC covers approximately 1.700 physicians in the state. The average premium is under \$26,000 per year. Ninety percent of the premiums are less than \$50,000 per year. When you put the Fairfield County Medical it in perspective, it's a crisis for a Association, the group is inter-

said.

When asked whether or not she knew of any attorneys who have sought a Good Faith Certificate, Ms. Nastri said she fact support legislation to strengthen the current loophole in the law.

'We do support a strengthening of the Good Faith Certificate. As it stands now, it's not clear vou need written approval. The problem is that it can be signed without violating any rules," she

Ms. Nastri said she had "no idea" how much money had been spent on lobbying in Hartford last year. "We have a contract Company that she says shows the with a lobbying firm that's paid on an annual basis. It's the same cost no matter what. If they spend 100 hours or 1,000 hours, it's the same cost," she said.

> While Ms. Nastri said the CTLA is opposed to any sort of medical court, as proposed by

have to pay the costs of defend- do that tomorrow if that hap- Our feeling, however, is that the very small group of doctors," she ested in another option. "We would support some sort of presuit mediation or pre-trial process or arbitration. The whole process would be more effective in weeding out bad cases," she said. "We oppose anything that would eliminate a patient's right to a fair trial by jury, like a medical court."

The CTLA is also "opposed to any form of award caps," according to Ms. Nastri, such as the \$250,000 cap proposed by Gov. Rowland in September or the \$350,000 cap supported by Rep. Boucher. This appears to be one of the major sticking points in getting any reform legislation passed in the foreseeable future.

However, Ms. Nastri offers a possible ray of hope.

"We see new ideas almost every day. It's a moving target. I think cooler heads ought to prevail and believe something can be done without removing victims' rights," she said. "I support some sort of effort that would appease both sides."

## Working to save lives while looking for legal remedies

by DEVIN COMISKEY

in Connecticut on Wilton's physithe state. Kathleen Nastri, presitivo is involved in women's 30% in 2004. cians.

Bulletin has looked at the effects on as well as the opposition the Association. of rising malpractice insurance CTLA has towards non-econompremiums on physicians in ic damage award caps — a key

who live in Wilton.

Connecticut, specifically those hurdle in this debate — or a med- a radiologist specializing in

ical court system.

dent of the Connecticut Trial health care, and the emergence In the last two weeks, The common ground both sides agree the Fairfield County Medical

> Losing doctors and options Dr. Kelly Harkins of Wilton is

mammography. She works in the and practicing in the Midwest." Dr. Peter Dodds, chief of urol- This week, the series con- Stamford Health System as part Dr. Harkins said she particities becoming unaffordable to This is the final part in a series ogy at Norwalk Hospital, dis-cludes with a focus on the of Stamford Radiological pates in meetings of the Fairfield examining the effects of rising cussed his views on what many impacts of rising malpractice Associates. Her malpractice County Medical Association and ing premiums)," she said. malpractice insurance premiums are calling a "pending crisis" in premiums on a Wilton physician insurance premium is going up other groups whose representa-

are considering leaving the state patients."

tives are in contact with state leg- legal climate in Connecticut now "It affects me every single day, islators, "We are also up against dictates the way patients are Lawyers Association, discussed of new legislation proposed by It hurts us in the way we practure now treated. "The way I practice now tice. My husband is a cardiotho- have deep pockets. As physi- is directed by the possibility that racic surgeon and his premium cians, this is not something we're I can be sued any day. You have went up even more this year. I used to dealing with. We're more to be very, very careful. It's very have several surgeon friends who interested in treating our

"We're losing people because live here now (because of the ris-

See Working on page 20A

# Working to save lives while looking for legal remedies

Continued from 1A

difficult because every single patient we have represents a possible lawsuit. For example, if a patient comes in with dense breast tissue, we'll still do an ultra-sound. We often do ultrasounds and order MRIs. We're doing more for each patient," she said.

Dr. Harkins said the risk of mammograms no longer being used is real. Mammograms are a primary means for detecting breast cancer but not 100% accurate, thus the inherent risk a patient will sue because of a missed diagnosis or false reading.

"It's extremely stressful because we never know who is going to sue us," she added.

"We're talking about people's lives here," she said. "We have a screening tool that saves lives, but it's in danger. It's not a perfect tool, but it still has value. The CMIC (Connecticut Medical Insurance Company) is already giving discounts for not reading mammograms," Dr. Harkins said.

"This is hurting everybody. Individuals and businesses. Companies that want to provide health care to their employees can't because it's too expensive. I know a lot of people who can't afford the insurance any more," she said. "The patients are going

long run," she said.

"As a patient advocate, this is a real problem," said Dr. Harkins.

To give an idea of the impact rising malpractice premiums has had on her field. Dr. Harkins said more than half of the fellowships in mammography went unfilled last year in Connecticut.

On Dec.19, 2003, a state legislative report recommended that a \$3-million emergency fund be created to help doctors pay for rising medical malpractice insurance premiums. According to the Associated Press, the fund would be raised from fees assessed to doctors, hospitals and lawyers.

The report also suggested further study of alternatives to malpractice lawsuits, such as a medical court or arbitration board several groups are proposing, and a "no-fault" approach to malpractice insurance.

Amy Cole, director of governmental affairs and community relations for the Fairfield County Medical Association Trumbull, said the association is working hard to fight the rising malpractice premiums. (See accompanying chart.)

"We've written a formal response to the report. In addition drafted an omnibus piece of legislation that we'll try to initiate with the Public Health Committee, with the help of state Rep. Jack Stone (R-134th

said Ms. Cole.

She said the FCMA is looking

legislators from around the state. of patient safety and quality of "One of the things the FCMA care, so we've made some sug-

to be the ones who lose out in the Trumbull) and hopefully others," for additional support from other is very serious about is the issue gestions on what to do in the current system to try and make that system work. The public is. rightfully so, concerned. They want it to be more safe and efficient," she said. "We want legislation to address deficiencies in the current system."

"We've also put together components of a tort reform intiative. 'tweaking' statutes, so that their original intent is how they're actually used. Adding, of course the limit on non-economic damages," said Ms. Cole, "We know it's a tough, tough decision for the legislature to make, but in the absence of any other solution, we have absolute proof around the country that it (caps) works. They continue to say there isn't any proof, but there is. I don't know why they keep saying it."

Ms. Cole is referring to the impact damage award caps had in California. After damage awards were capped in the mid-90's, premiums during the period of 1996 through 2002 rose 167%. During that same period, premiums went up by 505% in the rest of the country.

"We've got to get the premiums stabilized," said Ms. Cole.

The FCMA will be hosting its annual legislation dinner on March 8 in Norwalk where the discussion will be limited to the issue of medical malpractice insurance premiums in the state.

### Medical liability reform ideas

Here is a summary of key items for medical liability reform legislation proposed by Fairfield County Medical Association

#### 1. Premium relief:

\$250,000 limit on non-economic damages. (The Connecticut State Medical Society has stated and we agree if another alternative will provide rate relief, it would most certainly be considered.)

#### 2. Adjustments to existing statutes:

- a. Improve upon certificate of merit
- b. Reduce or eliminate the offer of judgment interest penalty
- c. Mandate pre-screening panels if any party so requests. Discoverable.
- d. Amend the contingency fee schedule to make clear it is mandatory
- e. Medical expert testimony Connecticut license, same specialty
- f. Mandatory adherence to joint and several liability
- g. Mandatory periodic payments over \$200,000

#### 3. Promoting patient safety/quality of care:

a. Comprehensive database for physician identification, including complaints, settlements and award payments

- b. Develop disciplinary/screening guidelines to identify errors that violate the standard of care
- c. Construct physician review committees to participate in screening/disciplinary process
- d. Provide whistleblower-type protections
- e. Mandate continuing medical education for all physicians
- 4. Long-term solutions to remove medical liability claims from courts:
- a. Alternate dispute resolution arbitration for quick and fair recovery
- b. Workers' compensation type of no-fault when no negligence
  - c. Special medical liability courts
- 5. Public policy to encourage physician volunteers:
- a. Extend Good Samaritan law
- b. Reduce licensure fee for retired physicians
- 6. Insurance reform:
- a. Require insurers who leave marketplace to provide tail, no additional charge (coverage for previous incidents)
- b. Lower state requirement for mandatory insurance to match state insurance fund — \$300,000; hospitals, insurers must accept

Source: Amy Cole, director of governmental affairs and community relations for the Fairfield County Medical Association