June 21, 2006

The Honorable Michael B. Enzi
Chairman
Committee on Health, Education Labor and Pensions
United States Senate
Washington, D.C. 20510

The Honorable Edward M. Kennedy
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, D.C. 20510

Dear Senators Enzi and Kennedy:

As survivors of medical negligence who once used the legal system to obtain compensation and justice, we are strongly opposed to the establishment of "Health Courts" to resolve malpractice claims. While ostensibly being for the benefit of victims like us, the outline of this proposal shows misguided concern for what is best for patients and, particularly, the most severely injured patients.

First, please note that we have no problem with pre-trial settlements, in which both parties voluntarily agree to take malpractice cases out of the civil justice system. In fact, many of us took advantage of a voluntary settlement process to resolve our cases.

However, schemes like Health Courts, which *require* that cases be heard in an informal setting, without the option of having either juries or unbiased judges make decisions, and with compensation judgments determined by political bodies who can be lobbied by insurance and health industry representatives, would be highly unjust. Though promising to be a quick, fair and cost-effective method of obtaining resolution, Health Courts will actually obstruct the most seriously injured patients' path to justice, making it more likely that he or she will drop a legitimate claim altogether. This is especially true because the burden of proof on patients who are forced into the Health Court process is little different than would be required in a court of law. And, our experience with similar alternative systems, like mandatory arbitration, shows that insurance defense lawyers can be abusive toward patients when there is no unbiased judge to ensure fairness.

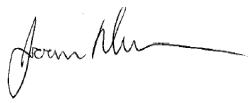
Moreover, removing the possibility of litigation would disrupt other critical functions of the legal system, most importantly the deterrence of unsafe practices, especially in hospitals. On May 11, 2006, the New England Journal of Medicine published an article showing how litigation against hospitals improves the quality of care for patients. The article also confirmed that removing the threat of litigation, as this proposal contemplates, would do nothing to improve the reporting of errors since fear of litigation is not the main reason doctors do not report errors.

Instead of taking compensation decisions away from juries and putting them in the hands of those who may be biased against patients, we should look for ways to improve the quality of

health care services in our country and to reduce preventable medical errors. It is well established that state disciplinary boards do little to weed out the small number of doctors responsible for most malpractice. This is not the time to establish a new process, which will only protect incompetent doctors even more from meaningful liability exposure and scrutiny, including the most egregiously reckless health care providers.

Health Courts will not only fail to fully compensate patients, but they will also undermine restraints the civil justice system now imposes on dangerous conduct. Mechanisms that shield grossly negligent doctors from accountability by intruding upon the legal system and eliminating individual's right to sue should not be tolerated by a society that believes in our constitution and democracy.

Sincerely,



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