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April 24, 2008

Jim Bell, Executive Producer
The Today Show
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VIA FACSIMILE: 212-664-2914
today@nbc.com

Dear Mr. Bell:

RE: Dr. Nancy Snyderman's comments in "Women and Longevity" report (April 24th, 2008)

Shocking, appalling, misinformed, and misleading were all adjectives that came to my mind this morning when I heard Dr. Nancy Snyderman say that "we have to talk about tort reform" when addressing why health care in this country – particularly as it relates to women – is so abysmal. Dr. Snyderman seemed to be arguing that health care is suffering in significant part because of costs due to "defensive medicine." Her argument was so contrary to the facts that your show has an obligation to correct the record on this.

First of all, trying to deflect any attention away from problems caused by the profiteering and exploitive health insurance and managed care industries for creating this country's abysmal health care problems, is really disgraceful. As you point out, U.S. health care spending is approximately \$2 trillion per year, or \$6,697 per person.¹ The reason for this expense is due most significantly to the fact that the private health insurance industry controls health care in this country, a fact that Dr. Snyderman glossed right over. It is why the United States continues to spend significantly more on health care than other countries in the world.² The United States is the only industrialized country in the world without a universal health insurance system.³ Administrative costs alone account for 31 percent of all health care expenditures in the United States. The average overhead for U.S. private health insurers is 11.7 percent; for Medicare, it is 3.6 percent; for Canada's national health insurance program, it is 1.3 percent.⁴ According to the UN Human Development Report, while the United States leads the world in spending on health care, "countries spending substantially less than

¹ Catlin, A, C. Cowan, S. Heffler, et al, "National Health Spending in 2005." *Health Affairs* 26:1 (2006).

² OECD, in Figures 2006-2007 Health Spending and Resources.
<http://ocde.p4.siteinternet.com/publications/doifiles/012006061T02.xls>.

³ *The Impact of Health Insurance Coverage on Health Disparities in the United States*, Human Development Report, UNDP, 2005; Universal Health Insurance in the United States: Reflections on the Past, the Present, and the Future. *American Journal of Public Health*; <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1447684>

⁴ Steffie Woolhandler, M.D., M.P.H., Terry Campbell, M.H.A., and David U. Himmelstein, M.D., Costs of Health Care Administration, *N Engl J Med* 2003;349:768-75.

the US have healthier populations.... The infant mortality rate for the U.S. is now higher than for many other industrial countries.”⁵

While 47 million Americans have no health insurance, “[o]ver a third (36%) of families living below the poverty line are uninsured. Hispanic Americans (34%) are more than twice as likely to be uninsured as white Americans (13%), while 21% of black Americans have no health insurance.”⁶ More than 9 million children lack health insurance in America.⁷ Eighteen thousand people die each year because they are uninsured.⁸

According to the UN Human Development Report, “The uninsured are less likely to have regular outpatient care, so they are more likely to be hospitalized for avoidable health problems. Once in hospital, they receive fewer services and are more likely to die in the hospital than are insured patients. They also receive less preventive care. Over 40% of the uninsured do not have a regular place to go when they are sick and over a third of the uninsured say that they or someone in their family went without needed care, including recommended treatments or prescription drugs in the last year, because of cost.”⁹

Ninety percent of Americans believe the American health care system needs fundamental changes or needs to be completely rebuilt. Two-thirds of Americans believe the federal government should guarantee universal health care for all citizens.¹⁰

How dare you blame patients injured by medical malpractice for any of this!

Second, let’s discuss the issue of “defensive medicine,” which Dr. Snyderman chose to specifically blame for our appalling health care system. The General Accountability Office (GAO), as has virtually every other government agency that has ever looked at this issue, slammed as highly inaccurate and biased doctors’ “surveys” that show the widespread existence of defensive medicine, finding both AMA and American Academy of Orthopedic Surgeons surveys on defensive medicine highly unreliable.¹¹ One of the most obvious issues noted by the GAO, with which your viewers are well-aware, is that today, “managed care provides a financial incentive not to offer treatments that are unlikely to have medical benefit.”

Even before the widespread onset of managed care in this country, the congressional Office of Technology Assessment (OTA) found that less than 8 percent of all diagnostic procedures were likely to be caused primarily by liability concerns. OTA found that most physicians who “order aggressive diagnostic procedures . . . do so primarily because they believe such procedures are

⁵ *The Impact of Health Insurance Coverage on Health Disparities in the United States*, Human Development Report, UNDP, 2005.

⁶ *Ibid.*

⁷ *The Great Divide: When Kids Get Sick, Insurance Matters*, Families USA Publication No. 07-102, February 2007.

⁸ *Insuring America’s Health: Principles and Recommendations*, Institute of Medicine, January 2004.

<http://www.iom.edu/?id=19175>

⁹ *The Impact of Health Insurance Coverage on Health Disparities in the United States*, Human Development Report, UNDP, 2005

¹⁰ http://www.cbsnews.com/htdocs/CBSNews_polls/health_care.pdf

¹¹ *Analysis of Medical Malpractice: Implications of Rising Premiums on Access to Health Care*, General Accounting Office, GAO-03-836, Released August 29, 2003, <http://www.gao.gov/new.items/d03836.pdf> at 26-27.

medically indicated, not primarily because of concerns about liability.” The effects of “tort reform” on defensive medicine “are likely to be small.”¹²

Similarly, according to a Congressional Budget Office (CBO) study, “some so-called defensive medicine may be motivated less by liability concerns than by the income it generates for physicians or by the positive (albeit small) benefits to patients.... CBO believes that savings from reducing defensive medicine would be very small.” CBO also found that limiting tort liability would have no significant impact on health care spending.¹³

And in August, 2004, the National Bureau of Economic Research researchers found: “The fact that we see very little evidence of widespread physician exodus or dramatic increases in the use of defensive medicine in response to increases in state malpractice premiums places the more dire predictions of malpractice alarmists in doubt. The arguments that state tort reforms will avert local physician shortages or lead to greater efficiencies in care are not supported by our findings.”¹⁴

Third, blaming the “tort system” for the costs of health care is absurd. Medical malpractice payouts are less than one percent of total U.S. health care costs. All “losses” (verdicts, settlements, legal fees, etc.) have stayed under one percent for the last 18 years. Moreover, medical malpractice premiums are less than one percent of total U.S. health care costs as well. Dropping for nearly two decades, malpractice premiums have stayed below one percent of health care costs.¹⁵ Further, the Congressional Budget Office found that “Malpractice costs account for less than 2 percent of [health care] spending,” and that all the provisions of the federal medical malpractice bill, including a \$250,000 cap on non-economic damages (i.e., the typical type of “tort reform” pushed by medical lobbies), “would lower health care costs by only about 0.4 percent to 0.5 percent, and the likely effect on health insurance premiums would be comparably small.”¹⁶

On the other hand, it is well known that, in 1999, the National Academy of Sciences Institute of Medicine released a now famous study entitled *To Err is Human; Building a Safer Health System*, (Kohn, Corrigan, Donaldson, Editors; Institute of Medicine, National Academy Press, Washington, DC, 1999.). They found that up to 98,000 people are killed each year by medical errors in hospitals -- far more than die from car accidents, breast cancer or AIDS.¹⁷ The total national costs (lost income, lost household production, disability and health care costs) of negligence in hospitals are estimated to be between \$17 billion and \$29 billion each year.¹⁸ Moreover, eight times as many patients are injured by medical malpractice as ever file a claim; 16 times as many suffer injuries as receive any compensation.¹⁹

¹² U.S. Congress, Office of Technology Assessment, *Defensive Medicine and Medical Malpractice*, OTA-H--602 (1994).

¹³ Congressional Budget Office, *Limiting Tort Liability for Medical Malpractice* 1, 6 (Jan. 8, 2004).

¹⁴ <http://www.dartmouth.edu/~kbaicker/BaickerChandraMedMal.pdf>

¹⁵ See, Americans for Insurance Reform, “Think Malpractice is Driving Up Health Care Costs? Think Again,” <http://www.insurance-reform.org/pr/AIRhealthcosts.pdf>

¹⁶ Congressional Budget Office, *Limiting Tort Liability for Medical Malpractice* 1, 6 (Jan. 8, 2004).

¹⁷ Kohn, Corrigan, Donaldson, Eds., *To Err is Human; Building a Safer Health System*, Institute of Medicine, National Academy Press: Washington, DC, 1999.

¹⁸ *Ibid.*

¹⁹ Harvard Medical Practice Study, *Patients, Doctors and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York*, 1990.

More recently, a nationwide study of 12 children's hospitals, found:²⁰

“Medicine mix-ups, accidental overdoses and bad drug reactions harm roughly one out of 15 hospitalized children. . . That number is far higher than earlier estimates and bolsters concerns already heightened by well publicized cases like the accidental drug overdose of actor Dennis Quaid's newborn twins last November. . . . These data and the Dennis Quaid episode are telling us that ... these kinds of errors and experiencing harm as a result of your health care is much more common than people believe. It's very concerning,” said Dr. Charles Homer of the National Initiative for Children's Healthcare Quality.²¹

And a new “Patient Safety in American Hospitals Study” released by HealthGrades on April 8, 2008, found that from 2004 through 2006:

Patient safety incidents cost the federal Medicare program \$8.8 billion and resulted in 238,337 potentially preventable deaths during 2004 through 2006; Medicare patients who experienced a patient-safety incident had a one-in-five chance of dying as a result of the incident during 2004 to 2006; Of the 270,491 deaths that occurred among patients who developed one or more patient safety incidents, 238,337 were potentially preventable.

“While many U.S. hospitals have taken extensive action to prevent medical errors, the prevalence of likely preventable patient safety incidents is taking a costly toll on our health care systems -- in both lives and dollars,” Dr. Samantha Collier, HealthGrades' chief medical officer and primary author of the study, said in a news release announcing the study.²²

And so what does Dr. Snyderman advocate to solve these problems? “Tort reform” – i.e., taking away the legal rights of patients who have been harmed by medical negligence and making it less likely that unsafe hospitals will ever be held accountable!

The one so-called “tort reform” that medical lobbies advocate is California's law that caps compensation. This atrocious law limits compensation to even the most catastrophically injured children; the impact of this law, the Rand Corporation found, “falls on patients and families who are severely injured or killed as a result of medical negligence or mistakes.”²³ This is an outrage.

What's more, these laws have a particularly discriminatory impact on women. In her study of injury cases, Professor Lucinda Finley, the Frank Raichle Professor of Law at the State University of New York at Buffalo Law School, noted, “some types of injuries happen primarily to women -

²⁰ Glenn S. Takata, Wilbert Mason, Carol Taketomo, Tina Logsdon and Paul J. Sharek, “Development, Testing, and Findings of a Pediatric-Focused Trigger Tool to Identify Medication-Related Harm in US Children's Hospitals,” *Pediatrics* 2008;121:e927-e935, <http://www.pediatrics.org/cgi/content/full/121/4/e927>.

²¹ Lindsay Tanner, “Medicine Mix-Ups Harm Hospitalized Kids,” *Associated Press*, April 7, 2008.

²² News Release, HealthGrades, Medical Errors Cost U.S. \$8.8 Billion, result in 238,337 potentially preventable deaths, according to HealthGrades Study; April 8, 2008.

²³ See. “Rand Study: California Patients Killed or Maimed by Malpractice Lose Most Under Damage Caps,” Foundation for Taxpayer and Consumer Rights, July 13, 2004.

impaired fertility or sexual functioning, miscarriage, incontinence, trauma associated with sexual relationships, scarring or disfigurement in personally sensitive intimate areas of the body.”²⁴

What began as an informative report on women’s health in the United States, ended with an insulting commentary of mythic proportions. Dr. Snyderman does a disservice to *Today Show* viewers by perpetuating myths about the legal system and blaming lawyers and patients for problems caused by a disastrous health care system that they have nothing to do with creating. We hope you will consider doing a future segment that corrects the record.

Sincerely,

A handwritten signature in black ink, appearing to read "Joanne Doroshow", with a long, sweeping horizontal line extending to the right.

Joanne Doroshow
Executive Director

²⁴ Lucinda M. Finley, “The 2004 Randolph W. Thorer Symposium: The Future Of Tort Reform: Reforming The Remedy, Re-Balancing The Scales: Article: The Hidden Victims Of Tort Reform: Women, Children, And The Elderly, *Emory Law Journal*,” 53 *Emory L.J.* 1263, Summer, 2004.