

September 22, 2000

The Honorable Thomas M. Barrett
U.S. House of Representatives
1214 Longworth House Office Building
Washington, DC 20515

Re: H.R. 5122, "The Patient Protection Act of 2000"

Dear Congressman Barrett:

On behalf of the American College of Physicians-American Society of Internal Medicine (ACP-ASIM), the nation's largest medical specialty society with over 115,000 physicians of internal medicine and medical students, I am writing to express our concerns about the above-referenced legislation, H.R. 5122. While solutions are needed to improve the quality and safety of patient care and help the public make an informed choice of physician, we believe that opening up the raw, unsynthesized data from the National Practitioner Data Bank (NPDB) to the general public - as H.R. 5122 would do - is not the best way to address these laudable goals.

The ACP-ASIM strongly supports improving patient safety and protecting patients from preventable harm caused by incompetent or unethical practitioners. Doctors, consumers, lawmakers, state governments and other health professionals should work together to develop a system of reporting information to the public to really help them make an informed choice about practitioners. The Institute of Medicine (IOM), in its widely-disseminated report "To Err is Human," has recommended a combination of voluntary and mandatory systems of reporting of medical errors which would include information not only on what errors are occurring, but also on what is being done to correct and prevent them. The ACP-ASIM endorsed the IOM's recommendations, and has endorsed S. 2738 (Jeffords, Frist) that would establish a reporting system for medical errors.

In addition, the Federation of State Medical Boards (FSMB), the national association of state licensing boards, has developed a model program of reporting information to the public on licensure, training, disciplinary actions against physicians, and their credentials to practice medicine. More than half of state licensing boards have established physician profiling systems whereby information on physician licensure, medical education and training, specialty board certifications, disciplinary actions, criminal convictions, and liability settlements are accessible by the public through the Internet. By the end of the year, FSMB plans to establish a national on-line web site that would include publicly accessible data on licensure, disciplinary actions and credentials.

Initiatives such as those supported by the IOM and FSMB will actually help to improve quality and provide patients with accurate and useful information. Opening up the data bank to the public, however, would not improve quality, and would not solve the problem of weeding out bad physicians and other health care providers from the health care system.

The NPDB was created as a clearinghouse for information relating to disciplinary and malpractice records of physicians and its records are designed primarily for review by hospitals and state licensing boards. The data bank was also intended to prevent physicians who lost their license in one state from moving to another state without disclosing disciplinary actions taken against them. Since the creation of the NPDB, Congress has consistently recognized that only medical credentialing and licensing entities have the resources and expertise needed to evaluate NPDB reports and analyze how the reports reflect the competency of health care professionals.

Opening up the data bank to the general public is problematic for several reasons. First, the data bank includes information not only on malpractice judgments against physicians, but also instances where the medical liability insurance company settles out of court with the patient - often without the physician's

consent or even knowledge. In our overly litigious society, the number of suits filed against a physician and the number of cases settled is not an accurate indicator of the competency of the physician. Two out of three claims against doctors are dropped, usually because they lack merit. Of the cases that do go to court, four out of five are settled in favor of the doctor. Some of the best physicians, i.e., those who see the sickest patients because they are the best doctors in their field, often are sued more often than other doctors. Moreover, certain specialties, such as obstetrics or orthopedics, have much higher rates of malpractice claims, but this is mainly due to the higher risk of these practices, not the competency of the physicians practicing in these specialties.

Second, the data bank provides a very incomplete record of a physician's skill. Tom Croft, manager of the NPDB, has stated that nothing in the data bank is intended to produce an independent determination about the competency of an individual practitioner. In fact, when malpractice claims are settled, findings about the standard of care, or about liability, are rarely made. In addition, many disciplinary actions and malpractice settlements are not reported. If the data bank is opened up to the public, fewer of these kinds of actions will be reported at all - they will go underground rather than being reported to the data bank. As a result, hospitals that now use the data bank in evaluating whether to allow a physician staff privileges will have an even more incomplete record than they now have in making such evaluations. Quality will suffer accordingly.

Finally, opening up the data bank will increase health care costs and ultimately harm patients. Doctors who make honest mistakes will be reluctant to settle claims because of the professional stigma they will face. More trials, higher jury awards and increased malpractice premiums will be the inevitable results, and the higher costs will be passed on to patients.

ACP-ASIM believes that information should be made available to the public on their doctors' records and credentials, including disciplinary actions. The issue isn't the public's right to know, but whether or not the information that will be given to them is accurate, balanced, complete and a relevant indicator of quality. We support the state-based initiatives through the licensing boards and FSMB to make information available to the public on-line.

Thank you for considering our views, and we look forward to working with you and your staff as the Committee continues to address these important issues.

Sincerely,

Sandra Adamson Fryhofer, MD, FACP