

Associated Industries of Florida Service Corporation



JON L. SHEBEL
PRESIDENT & CEO

516 NORTH ADAMS STREET • P. O. BOX 784 • TALLAHASSEE, FLORIDA 32302-0784
PHONE: (850) 224-7173 • FAX: (850) 224-6532 • E-MAIL: aif@aif.com • INTERNET: <http://aif.com>

January 30, 2004

Dear Doctor:

We value you as an individual, an employer, and as a provider of critical services to the people of Florida. That's why the business community and the insurance industry joined with the Florida Medical Association (FMA), the Florida Hospital Association, and others in a *Coalition to Heal Florida Healthcare*. We went the distance with the FMA on medical malpractice limits through the regular and three special sessions! (*You can view AIF legislative reports showing our support on that issue at <http://aif.com>*). In the end, the *Coalition*, along with the Governor and the legislature, accepted a "fair compromise" with a higher cap on damages. It was not what any of us wanted, but it was the only result possible given the make-up of the legislature. Nevertheless, AIF stood with Florida physicians, shoulder-to-shoulder, throughout the entirety of the fight – at every opportunity – and this is well-documented in the public record. Over the past few months, the business community and the insurance industry have attempted to convince the FMA leadership that its proposed constitutional amendment capping attorney fees is unsupportable and even counterproductive. To date we have been unsuccessful, and thus the time has come for us to tell you succinctly why we are in opposition to the FMA amendment drive – and, by the way, the trial lawyers' amendment drive as well – so that there will be no misunderstanding. That is the purpose of this letter which is being sent to 40,400 M.D.'s and D.O.'s in Florida.

You can obtain a copy of the FMA amendment from the State Division of Election web site: <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=37767&seqnum=1>

1.) **The FMA amendment is not appropriate for inclusion in the Florida Constitution.**

Associated Industries of Florida and the business community are unanimous in opposition to constitutional amendments like those now being advanced by the FMA, the Academy of Florida Trial Lawyers, and ones pertaining to Florida Hometown Democracy and the Minimum Wage & Sales Tax Exemption. None of these provisions warrant inclusion in our Constitution. We steadfastly believe that constitutional amendments should only deal with state governance structure or limitations on state government powers – anything else is superfluous. Moreover, we believe limiting attorneys' fees, doctors' fees or any other professions' service fees,

constitutionally, is unprecedented, unwise and dangerous. What's next? Constitutional limitations on executive compensation? A requirement for mandatory liability insurance for doctors and lawyers?

2.) The FMA amendment is premature. It does not allow recent legislation the time necessary to have a meaningful impact. Even if the amendment passes, it is not likely to lower medical malpractice insurance rates, and could cause rates to increase.

With the recent medical malpractice legislation having gone into effect only on January 1, no one has yet been able to gauge the real impact of the intended reforms. While the legislation has had some impact on medical malpractice insurance rates, the FMA amendment, even if it withstands review by the Florida Supreme Court, will not significantly reduce insurance rates. This is exactly what has happened in other areas of Florida law resulting in "increased" insurance rates.

3.) The FMA amendment will be seen by newspaper editorial boards and the voting public as senseless retribution.

For the last six months, every Florida newspaper editorial board has opposed unwarranted and inappropriate amendments that might be added to Florida's Constitution. The FMA amendment, however well intentioned, will be opposed by the newspapers as well. Even the FMA's staunchest supporter – the *Florida Times Union* in Jacksonville – has publicly stated its opposition to their initiative campaign. The progress toward tort reform or medical malpractice cost reduction will be shattered when the experts weigh in on the FMA amendment. It is simply meant to punish FMA opponents. It will not be well-received, and it could set back the cause for future medical liability reform.

4.) The FMA "anti-lawyer" amendment has prompted trial lawyers to propose three "anti-doctor" amendments. In all likelihood there will be a "pox on both of your houses."

Already, the trial lawyers have filed three dangerous amendments. These amendments will take away the license of any doctor who is found to have committed three or more cases of medical malpractice; make public all adverse medical incident reports and peer review records for all facilities and providers, including the records of incidents that resulted in death or injury; and force all doctors to charge all patients the lowest rate they charge any of their patients. *Our sources in California tell us that the largest signature gathering firms in the nation have been retained by the Academy and are amassing petitions.* The trial lawyers have the financial resources and the acumen to pass each of their counter measures – witness their recent legislative successes and their victory in 1988 with Amendment #10.

We believe that if both the FMA amendment and the trial lawyer amendments were to pass, the result would be hurtful to both professions, and it would be a "pox on both of your houses." The business community and the insurance industry are unquestionably opposed to both sets of amendments, and we will not support either.

Please urge the FMA's leadership to reconsider this very dangerous endeavor. Please contact FMA President Dr. Carl W. "Rick" Lentz, M.D. by phone at (800) 762-0233 or (850) 224-6496,

or via e-mail at drlentz@bellsouth.net and tell him that his biggest supporters are not with you this time. *We can not and we will not support the FMA in this amendment battle.* We have been and we will continue to be with the medical profession on medical malpractice reform, but the constitutional amendment being proposed by the FMA will simply not produce the desired result, and could cause a reaction detrimental to medical care in Florida. Kindest regards.

Sincerely,

Jon L. Shebel
President & Chief Executive Officer