



DOCTORS  
for  
MEDICAL  
LIABILITY  
REFORM  
DMLR

2005 update  
and prospects  
for 2006

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**D**octors for Medical Liability Reform (DMLR) is a coalition of several member organizations, including the American College of Surgeons Professional Association (ACSPA) (see Figure 1, page 35). Representing 230,000 physicians and their patients, DMLR's mission has been to break the senatorial filibuster against tort reform by promoting the election of favorable senators through a grassroots approach. It was an off year for senatorial elections in 2005, but DMLR has not been lying dormant. Pursuing the 60 votes needed and hoping to build on the success of the 2004 elections when votes in the Senate for tort reform increased from 49 to 52, DMLR is poised for the 2006 elections.

Working with the consulting firm White House Writers Group, the DMLR steering committee embarked on a grassroots project in 2005 that has successfully laid the base for the final push into the November 2006 elections. The grassroots base has passed benchmark expectations and is ongoing in escalating proportions. Efforts include but are not limited to an interactive Web site ([www.protectpatientsnow.org](http://www.protectpatientsnow.org)), e-mail outreach, Internet advertising, direct-mail outreach, petition drives, physician outreach, letters to Congress, radio broadcasts, and specific state focus.

The Protect Patients Now Web site received more than 400,000 hits in 2005. Its action center has processed more than 17,000 actions; 8,450 petitions have been signed and 6,039 letters have been sent to members of Congress. The content is kept fresh with new information. It provides an interactive map of the U.S. with specific information about the tort situation in each state. In March 2006, the voting history of each member of Congress and senator was to be provided, as well as a national fact sheet, academic and government analysis, surveys, and anecdotal stories. Keywords direct Web surfers on search engines to the site, making it a dominant, easily found resource. Data show that, excluding the holiday season in December, visits to the site have increased each month.

The e-mail outreach program is designed to direct traffic to the Web site for the purposes of recruitment, education, and mobilization to action. The e-mail list includes 83,000 addresses and continues to grow. A total of 520,352 e-mails have been sent. An e-newsletter will be sent in the very

near future to those contacts requesting updates.

Advertising DMLR on other Web sites with related interests has resulted in 14,374 visits to *www.protectpatientsnow.org*. Key effective Web sites have been identified for future use as the campaign progresses.

In addition to directing patients, physicians, and concerned citizens to the Web site, direct mail has been used to generate signed petitions from patients and commitments for support from physicians, and 82,000 pieces of direct mail have been sent.

DMLR has reached an estimated 23 million people through the medium of radio. Interviews with DMLR spokespersons have been carried by 813 radio stations and have been broadcast 960 times. These interviews have focused on the crisis of patient access to care and the mission of DMLR. The Web site's call to action center has been recommended for use by those concerned.

DMLR efforts for 2005 produced a nationwide grassroots network of 103,123 people as well as a system for the accrual of ever-increasing numbers. But 2006 poses new problems. Unlike in 2004, when already established senators for tort reform were solid favorites for reelection, several are seriously challenged this year. Also, financial resources are more limited. DMLR spent approximately \$10 million in the successful 2004 effort, whereas currently it appears that approximately \$4 million will be available for 2006. Given these facts, working to protect votes from challenged states and working to pick up new votes in one or two additional states (possibly Maryland and Washington) will stretch resources.

Even so, all is not gloomy. There are 18 seats up for election currently held by anti-tort senators compared to 15 held by pro-tort senators, giving favorable odds for successful change. The DMLR think tank of lobbyists and other expert staffers has identified senators in Florida, Nevada, Michigan, New Jersey, and Washington as vulnerable for defeat from among current anti-tort candidates up for reelection (see Figure 2, page 36). Conversely, senators from the current pro-tort states of Missouri, Pennsylvania, Ohio, and Rhode Island seem vulnerable. Additional opportunities for gains exist in the anti-tort states of Maryland, Minnesota, and Vermont where seats are being left open, whereas Tennessee is the only open state on

### Figure 1: DMLR member organizations

American Academy of Dermatology Association  
American Association of Orthopaedic Surgeons  
American College of Cardiology  
American College of Emergency Physicians  
American College of Obstetricians and Gynecologists  
American College of Surgeons Professional Association  
American Society of Plastic Surgeons  
Neurosurgeons to Preserve Health Care Access  
The Society of Thoracic Surgeons

the pro-tort side of the ledger. These elections will almost surely determine the new balance of power in the Senate. ACSPA members, especially those from these 13 earmarked states, must take note and become aggressively involved in the effort to protect their pro-tort candidates who are vulnerable, to seize the window of opportunity to unseat vulnerable anti-tort candidates, and to find and elect favorable candidates for tort reform in states with open seats.

DMLR is a relatively new arm of the ACSPA effort for tort reform, having been in existence only a little more than three years. Uniquely, DMLR has given an opportunity for the surgery community to participate in a much harder-hitting approach to tort reform than it might otherwise entertain under the ACS logo. To some extent, many of us find portions of this approach distasteful. The Web-based animations have been especially criticized, but data show that success requires this more aggressive action. DMLR has also created a phenomenal think tank by providing a venue for pooling the lobbyists and additional expert staff from all of the member groups. Finally, through its involvement in DMLR, the ACSPA can gain value for its investment of financial resources by sharing the costs with other groups, hiring more sophisticated consultants, and undertaking larger projects.

The ACS continues its independent efforts for tort reform, recognizing that liability is among the top concerns expressed by its Fellows every year. The ACS lobbyists are perpetually active on the various coalitions of business, insurance, and medicine, including Health Coalition on Liability

**Figure 2: States with close Senate races or open seats 2006**

Anti-tort states with close races:	Florida Michigan Nevada New Jersey Washington
Pro-tort states with close races:	Missouri Ohio Pennsylvania Rhode Island
Anti-tort states with open seats:	Maryland Minnesota Vermont
Pro-tort state with open seats:	Tennessee

and Access (HCLA), which is chaired by ACS Washington staff member Christian Shalgian. The ACS Patient Safety and Professional Liability Committee (PSPLC) is also working apart from DMLR to enhance the agenda of the Common Good and any other health care public policymaking groups that tout medical courts as an alternative to tort law. (Watch for an upcoming *Bulletin* article by Common Good founder and chair Philip Howard, JD.)

In the past, DMLR has been totally dedicated to the election of senators for tort reform. As is commonly known, the Senate filibuster has been the ultimate deterrent to federal tort reform. Now that the DMLR action center has become so prolific with no end in sight, efforts have been extended to attempt to influence activities on Capitol Hill. There are no misconceptions; gridlock is the rule. Once elected, no senator's vote has been changed by any attempt to reason over these many years. But one never knows what will be the straw that breaks the camel's back. Some believe that the grassroots campaign has experienced secondary gains, including the enhancement of new state tort law initiatives and the possible softening of jackpot justice jury behavior. The agenda will be increasingly flexible moving forward, seizing any opportunity for progress.

The most compelling data collected in 2005 by the White House Writers Group is also the most

alarming: physicians are not mobilized to seek tort reform. Only 61 posters for office display have been requested. A paltry 21 mini-documentary DVDs have been solicited for use in patient education. There have been 85,935 "contact Congress" e-mails sent to physicians represented by the DMLR coalition. Only 20 percent of these have been opened and the link to Protect Patients Now has been clicked in only 3 percent. Specific to members of the ACSPA, 133,489 e-mails have been sent and received on many different subjects; 23 percent have been opened, and the link has been clicked in 7 percent. Consultants from the White House Writers Group tell us that these numbers exceed industry averages. Even so, they aren't numbers indicating a lust to participate in the pursuit of tort reform.

Contacts from organized medicine are of meager value compared to those from doctor to patient. Surgeons from states in crisis should require no prompt; surgeons from states not in crisis must not be smug. Even though your state may have favorable tort law now, the future is unclear. State law is highly vulnerable to judicial attack, as physicians in Wisconsin recently learned. Which state will be next to fall prey to the judiciary and lose its cap? We are left to wonder. Therefore, we all have strong incentive to pursue federal tort reform. DMLR is eager to provide us with posters, brochures, DVDs, and talking points. Progress in the pursuit of tort reform requires relentless commitment year after year. Ironically, many of us haven't even joined the effort. Success requires our individual participation. Let's start now. [Q](#)

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