

# PENNSYLVANIA ORTHOPAEDIC SOCIETY

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April 23, 2008

Dear Senator:

Over the past six years, the Senate made great strides in enacting legislation to help tame Pennsylvania's hostile medical liability environment. Act 13 and the other reforms since 2002 have greatly assisted orthopaedic surgeons in defending ourselves against medical liability lawsuits. We sincerely thank you for your efforts.

One program enacted in 2003, however, has had a tremendously positive, direct benefit to orthopaedic surgeons. The Mcare Abatement Program has greatly assisted our Society's members in meeting soaring liability costs in the face of declining revenues. Since 2003, Pennsylvania's nearly 1,000 orthopaedic surgeons have received nearly \$112 million in Mcare abatement. The liability insurance premium relief provided by the Mcare Abatement Program has allowed our members to remain in Pennsylvania and to provide world class care to our patients.

As you know, the Mcare Abatement Program was not renewed last December and the assessment deferment expired on March 31, 2008. As of this writing, most POS members have paid their Mcare assessment surcharges. While we understand that no legislatively enacted program will last forever, we did not anticipate this program would end as abruptly as it did.

Without renewal of the Mcare Abatement Program, Pennsylvania Orthopaedic Society (POS) members not only had to pay the 2008 assessments, but also face an untenable, dramatic cost increase as the Mcare Fund is phased out pursuant to the provisions of Act 13. We understand that by July 2009, the Insurance Commissioner will determine if market conditions warrant increasing the primary insurance level to \$750,000. We further understand that Acting Insurance Commissioner Joel Ario has already stated at his budget hearings that unless market conditions change, current evidence shows that he will be compelled to raise the primary level effective January of 2010. Without renewal of the Mcare Abatement Program, this likely 25% increase in liability insurance costs will have a drastic, negative impact on orthopaedic surgeons.

Fortunately, a solution seems to be on the horizon. SB 1137 passed the Senate in October of 2007, and passed the House in March of 2008. As passed by the Senate, SB 1137 renewed the abatement program for one year and uses a portion of Mcare abatement revenues for hospital acquired infection control and other programs. The House-passed version contains a ten year extension of the abatement program, retires the Mcare Fund through state revenues, and creates a new program to extend healthcare insurance to the uninsured using Mcare abatement revenues.

From a procedural standpoint, SB 1137 seems to be the best legislative vehicle to achieve Mcare Abatement Program renewal since the bill has passed both Chambers. From a policy viewpoint, we understand that the Senate, the House and the Governor's Office disagree on the length of abatement extension and the uses of surplus abatement revenues. We believe that both versions contain worthy spending options. We also believe that renewal of the Mcare Abatement Program is vital to our members' continued practice in Pennsylvania. If the state government is intent on using Mcare surplus revenues for purposes other than abatement and retirement of the Mcare Fund, however, POS prefers the legislation as passed by the House with certain reservations.

As stated in an email to House members on March 17, 2008, POS supports provisions of SB 1137 PN 1827 that would renew the Mcare Abatement Program for ten years, retire the Mcare Fund with state revenue and provide healthcare insurance for the uninsured. We have specific concerns with the legislation that need to be addressed. To that end, we request the Senate amend the legislation to:

1. Guarantee state revenues are committed to provide abatement as well as annual Mcare Fund obligations (claims and operating expenses) before other programs receive funding;
2. Provide that adequate funds are reserved to retire the Mcare Fund completely; and,
3. Require healthcare insurance contractors compensate physicians at reimbursement rates that are fair and reasonable.

We also believe the legislation should be modified to ensure that healthcare insurance contractors promptly pay physician claims and that physicians actually receive any required co-payments from PA ABC participants.

As you enter the summer session, we want you to understand the importance of the Mcare Abatement Program to orthopaedic surgeons. We urge you to quickly work toward compromise on the differences between the Senate and House passed versions of SB 1137 with our concerns in mind and we ask you to enact renewal of the Mcare Abatement Program prior to the June 30, 2008 recess.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon B. Tucker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jon B. Tucker, MD  
President