

# **New Mexico Medical Society:**

## **Amending the Medical Practice Act to Address Licensure of Medical Corporations 2010**

### **Background:**

The current Medical Malpractice Act has been in place and functioning effectively for 34 years. The current structure with a combination of private insurance coverage and a state operated patient compensation fund has allowed health care providers to access affordable liability insurance in a competitive marketplace. This combination of coverage has benefited medical providers practicing in New Mexico by reducing some of the expenses associated with operating their medical practices in a market where they are faced with higher than average instances of Medicaid and non-insured patients. It has benefited patients by ensuring the availability of medical providers and ensuring that reasonable compensation is available to patients who suffer injury due to medical error.

### **Situation Overview:**

The Act has always recognized that physicians' corporations and business entities can be qualified health care providers based on the licenses held by their individual physicians. Due to corporations themselves not being licensed, some concerns were raised by the Division of Insurance about the definition and roles for corporations under the Medical Malpractice Act. Although they are certified and regulated by the state, medical corporations are not licensed separately by the state to provide health care.

Based upon the concern that medical corporations are not licensed, the State's Division of Insurance sent a memorandum stating that contributions from corporations would no longer be accepted by the State's Patient Compensation Fund as of December 31, 2009.

This action would drastically and negatively impact the business practice of medicine in New Mexico. As a result, several legal actions were filed, including a Writ of Mandamus and a Declaratory Judgment Action including a Temporary Restraining Order (TRO). The Writ of Mandamus was deferred to the Declaratory Judgment Action decision. At this time, the TRO is still in place and a hearing regarding it is still pending.

### **Key Facts:**

The NM Medical Board is the only entity with the statutory authority to license a medical provider. The amendments to the Medical Practice Act put forth in HB-188 and SB-213 codify the licensure of medical corporations through the NM Medical Board.

The current NM Medical Malpractice Act is central to recruitment and retention of physicians in this state.

Lack of liability coverage for professional corporations exposes physicians and malpractice carriers to new levels of risk.

NM has the 4<sup>th</sup> highest population of older physicians, those who are closer to retirement.

Specialists are increasingly unwilling to undertake riskier procedures with the current degree of uncertainty surrounding their professional corporations' coverage.

### **Proposed Solution:**

New Mexico Medical Society supports HB-188 and SB-213 which modify the existing Medical Practice Act in such a way that the New Mexico Medical Board will license medical corporations to meet concerns of the Division of Insurance without requiring modifications to the existing Medical Malpractice Act.

HB-188 and SB-213 will quickly and precisely address the existing concern while leaving the Medical Malpractice Act in tact as a model and stable base for medicine in New Mexico.

### **Speaking Points:**

Currently a physician's corporation is covered under the physician's medical malpractice policy. The Division of Insurance recently determined that a physician's corporation is not eligible to be covered under the Medical Malpractice Act as the corporation is not licensed by the state.

HB-188 and SB-213 would amend the Medical Practice Act, which provides licensure for physicians, to provide a procedure for the NM Medical Board to license a physician's corporation. Consequently, with the passage of this legislation, the Division of Insurance's objections concerning the lack of corporate licensure would be met.