

Florida Medical Association FACT SHEET



FABRE

HB by Rep.

SB by Sen.

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FMA Position

The FMA strongly opposes any legislation that would repeal the *Fabre* doctrine.

Background

The *Fabre* Doctrine originated with the Florida Supreme Court in a 1993 decision and was the logical outgrowth of Florida's change from a contributory negligence to a comparative fault system. The Florida Supreme Court said that juries are allowed to fairly apportion fault among all those responsible for a plaintiff's injuries, including those who are not parties to a lawsuit. The *Fabre* doctrine was codified in 1999 by the Florida Legislature.

Discussion

The *Fabre* doctrine is important to physicians in that it allows the jury to apportion fault to a person who is not a party to the lawsuit for the purpose of reducing the other defendants' percentage of responsibility, but the non-party is not obligated to pay damages based on the jury's findings. This fact is especially useful to a physician where there are other potentially liable parties who have not been sued or who have settled out of the case. The remaining physician defendant can have these non-parties to the lawsuit included on the verdict form in order to ensure that that physician is liable only for the damages that he/she caused. The trial bar obviously would like to be able to settle with nominal or asset poor defendants and be able to hold the deep pocket defendant liable at trial for all the plaintiff's damages. Last session's legislation eliminating joint and several liability was an important reform, but will be a pyrrhic victory if the ability to place non-parties on the verdict form is eliminated with it.

Conclusion

The elimination of joint and several liability is important to ensure that physicians can only be held liable for the damages they cause. Such a determination, however, can only be made if all of the potentially liable parties are included on the verdict form. Eliminating the *Fabre* doctrine would mean that juries would no longer be allowed to allocate fault to everyone responsible and thus would render meaningless last years legislation abolishing joint and several liability.