OPPOSE Patients for Fair Compensation
SB0744/HB1150
Senator Jack Johnson (R-Franklin) and Representative Glen Casada (R-Franklin)

Patients for Fair Compensation (PFC), a group based in Atlanta, has been trying to build support among Tennessee legislators for SB 744/HB 1150, which would establish a Patient Compensation System (PCS) to replace our current medical malpractice liability system FOR PHYSICIANS ONLY.

- No other state has a Patient Compensation System; this untested experiment would be an unnecessary gamble using Tennessee physicians’ money.
- If the proponents’ cost assumptions turned out to be optimistic, then contributions to the PCS could dramatically increase, making it more expensive for physicians and driving up the overall cost of healthcare in our state.
- While Tennessee’s current medical malpractice liability system isn’t perfect, replacing it with an untested system, based on conjecture and speculation, is not what is best for patients or healthcare providers.
  - The tort reforms of 2008 and 2010 decreased claims by 40%, decreased medical malpractice insurance premiums by 37.5%, and resulted in a stable, attractive environment for physicians.
  - Making changes like the one proposed by PFC would damage this stable environment and make Tennessee an undesirable state in which to practice medicine.

PFC is using statements in support of the legislation that are not supported by facts:

**PFC states:** Physicians practice defensive medicine to avoid liability and financial exposure.
**In reality:** Most physicians practice prudent, quality patient care and do not order unnecessary tests primarily to avoid litigation. Physicians’ primary goals are the right diagnoses, not avoidance of litigation.

**PFC states:** A “no fault” administrative system would decrease the cost of defensive medicine.
**In reality:** A system that increases the number of medical liability claims paid out and reported to the National Practitioners Data Bank (NPDB) would actually increase the practice and cost of defensive medicine.

**PFC states:** A PCS would give physicians peace of mind that they would never need to go to court again.
**In reality:** Under the PCS, physicians would lose the right to defend their practice of medicine in court; an Administrative Law Judge would decide if the physician is at fault with absolutely no right of appeal to a trial court. Physicians would still be required to go to court if the facility or another healthcare provider employee is sued since the PCS would only handle claims against physicians.

**PFC states:** The cost of defensive medicine is up to $13 billion per year in Tennessee alone.
**In reality:** While studies differ as to the amount of healthcare costs attributable to defensive medicine, a widely cited 2010 study published in Health Affairs estimates the national cost of defensive medicine for physician and clinical services to be $5.4–$8.2 billion per year. PFC’s estimate of defensive medicine costs is grossly overstated.

**PFC states:** Payments made under the PCS on behalf of a physician would not be reportable to the NPDB.
**In reality:** The Director of the NPDB has stated in writing that until a PCS is established and is in operation, the Data Bank will not issue an opinion on the reportability of payments. Historically, the NPDB has required reporting in almost all situations.
PFC states: A Patient Compensation System would increase patient safety.
**In reality:** By changing the threshold for claims payments from provable medical negligence to a threshold of an “avoidable medical injury,” the system would be flooded with claims, making it very difficult to focus on true safety issues.

PFC states: The entire PCS would be funded by “mandatory contributions” from physicians, which would be less expensive than current insurance premiums.
**In reality:** Insurance premiums in Tennessee have steadily decreased by approximately 37% during the past 10 years. Increasing the number of claims paid by 67% (a PFC statistic that is likely an underestimation) would require an increase in “contributions” in order to fund the system. The PCS Board would have the discretion to increase the contribution amount without oversight from the Department of Commerce and Insurance. Non-payment of the contribution would result in the loss of licensure. Physicians would also still need to carry malpractice insurance to cover prior claims and to provide coverage for employees (especially those who are healthcare providers). All of this makes the PCS more expensive.