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The Honorable James Comer
Chairman
Committee on Oversight and Accountability
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Comer and Ranking Member Raskin:

On behalf of our members, the Advanced Medical Technology Association (AdvaMed) writes regarding the Committee's consideration of an issue that threatens to undermine the very foundations of our health care system: outside financing that generates mass tort litigation over important, beneficial medical devices. This financing has been the driving force behind most litigation over medical devices, as well as deceptive lawsuit advertising targeted at consumers. AdvaMed is grateful to the Committee for holding this hearing, as there has been little light shined on the litigation finance industry and the impact it is having on health care in America.

AdvaMed is a trade association leading the effort to advance medical technology so that people can live healthier lives and communities around the world can achieve healthier economies. AdvaMed's membership has reached over 400 members and more than 80 employees with a global presence in countries including Europe, India, China, Brazil, and Japan. AdvaMed's member companies range from the largest to the smallest medical technology innovators and companies. The Association acts as the common voice for companies producing medical devices, diagnostic products and digital health technologies.

The unfortunate reality is that today, most mass tort litigation against medical device manufacturers is "fueled by banks, private equity firms and hedge funds."[1] These financiers are injecting huge amounts of investment capital into creating litigation regardless of the merits. They start by funding mass marketing campaigns on TV, radio, internet, and social media to recruit large numbers of plaintiffs to the litigation. The lawyers then leverage the sheer number of filings, regardless of the merit of each claim, into consolidated proceedings and pressure companies into mass "inventory settlements." In short, these lawsuits are manufactured purely to feed a business model that takes advantage of the civil justice system. Today, the overwhelming majority of mass tort plaintiffs are recruited through these well-financed marketing campaigns.

For several years, AdvaMed has been actively working to protect patients, along with our medical device manufacturer members, from risks associated with third-party litigation funding. We strongly support the doctor-patient relationship and believe that proper medical advice is essential for patients to benefit from important medical devices and address their health-related concerns. However, over the past few years, we have seen lawyer-funded and investor-backed advertising mislead patients into seeking legal action for non-faulty devices, or worse, having their medical device removed without consulting their doctor through unnecessary, expensive and potentially harmful procedures.[2] These ads deceive patients into thinking their medical devices are faulty according to government authorities, but this is simply untrue. Deceptive attorney advertising poses an unacceptable threat to patient safety.

For these reasons, the American Medical Association (AMA) has passed resolutions against the "fearmongering" in lawsuit advertisements. In 2016, AMA found that these ads were "dangerous to the public at large" because they emphasized potential lethal side effects or complications without informing viewers of the small degree of risk generally associated with that side effect, the device's benefits, or that FDA allows the device to be marketed. In 2019, the AMA found that "actual patient harm is occurring" and called for commonsense reforms, including prohibiting ads from using government logos or the term "recall," and requiring ads to clearly warn patients of the danger of stopping a course of treatment without first speaking with their doctor (see AMA Res 208 [2016] & AMA Res 222 [2019]).[3]

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[1] How Profiteers Lure Women into Often-Unneeded Surgery, https://www.nytimes.com/2018/04/14/business/vaginal-mesh-surgery-lawsuits-financing.html

[2] In pelvic mesh litigation, unnecessary surgeries were used to increase the value of lawsuits. https://www.justice.gov/usao-edny/pr/surgical-funding-facilitator-and-physician-charged-alleged-nationwide-scheme-defraud

[3] The AARP, which advocates for seniors, issued a similar caution stating: "A surge in television, radio and internet ads from law firm and lawsuit marketing companies is causing some patients to take serious risks. . . . [T]he rhetoric of these ads have frightened some patients into stopping critical life-saving medications without consulting a healthcare practitioner." https://community.aarp.org/t5/Scams-Fraud/Don-t-let-Lawsuit-Ads-Put-You-at-Risk/td-p/1984308

Also, when law firms obtain funding before they obtain clients, it is unclear whether their clients know that third party funders are involved, what control they exert, and whether the plaintiff's own share of any settlement or judgment will end up being less once the law firm (and its funder) takes fees and contingency fees off the top. This is far from a hypothetical concern, as this litigation is driven more by profit-seeking financing, and less about justice.

Of additional concern to AdvaMed and our members is the adverse impact that this type of litigation will have on health care innovators. Saddling these companies with unsound liability untethered from the merits can chill innovation and diminish the value of important devices. The lawyers and funders try to leverage the inherent risks of devices into profit-generating litigation, even when those devices are highly valued and not defective. This litigation, therefore, directly hinders their ability to develop new health care technologies.

Thank you for your attention to this critical issue. It is time to shed a light on this practice and the adverse impact that it is having on medical care in this country. We are hopeful that the Committee's first step in holding this hearing is not its last, and that you and your Committee will push for legislation and rules to address this unjust dynamic that is bad for the American economy, innovation, and patients. We look forward to the hearing and welcome the opportunity to work with the Committee on solutions, including enhanced litigation funding transparency.

Respectfully submitted,

Christopher L. White
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