

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

**2005-06**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on  
Insurance  
(AC-In)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr\_AC-Ed\_RCP\_pt01a
- 05hr\_AC-Ed\_RCP\_pt01b
- 05hr\_AC-Ed\_RCP\_pt02

COMMITTEE NOTICES ...

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

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INFORMATION COLLECTED BY COMMITTEE  
CLERK FOR AND AGAINST PROPOSAL

➤ Appointments ... Appt

➤ \*\*

Name:

➤ Clearinghouse Rules ... CRule

➤ \*\*

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr\_ab0766\_AC-In\_pt01**

➤ Miscellaneous ... Misc

➤ \*\*

# Vote Record Committee on Insurance

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Date: October 19, 2005

Moved by: Gielow

Seconded by: Van Roy

AB 766 \_\_\_\_\_ SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

- Passage   
  Adoption   
  Confirmation   
  Concurrence   
  Indefinite Postponement  
 Introduction   
 Rejection   
 Tabling   
 Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Representative Ann Nischke, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Steve Wieckert</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Gregg Underheim</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Phil Montgomery</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Terri McCormick</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Curtis Gielow</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Karl Van Roy</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Joan Ballweg</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Terry Moulton</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative David Cullen</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative John Lehman</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Tony Staskunas</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Terese Berceau</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Thomas Nelson</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Michael Sheridan</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	9	6	0	0

Motion Carried

Motion Failed

## Vote Record Committee on Insurance

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Date: October 19, 2005

Moved by: Cullen

Seconded by: Lehman

AB 766                      SB \_\_\_\_\_                      Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_                      SJR \_\_\_\_\_                      Appointment \_\_\_\_\_  
 AR \_\_\_\_\_                      SR \_\_\_\_\_                      Other \_\_\_\_\_

A/S Amdt LRBa1202

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

- Passage                       Adoption                       Confirmation                       Concurrence                       Indefinite Postponement  
 Introduction                       Rejection                       Tabling                       Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Representative Ann Nischke, Chair</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Steve Wieckert</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Gregg Underheim</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Phil Montgomery</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Terri McCormick</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Curtis Gielow</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Karl Van Roy</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Joan Ballweg</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Terry Moulton</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative David Cullen</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative John Lehman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Tony Staskunas</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Terese Berceau</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Thomas Nelson</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Michael Sheridan</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	6	9	0	0

Motion Carried

Motion Failed

LRB-FILE COPY  
(Return to Room 211 North)

ASSEMBLY AMENDMENT \_\_\_\_\_

to \_\_\_\_\_ amendment \_\_\_\_\_

to \_\_\_\_\_ substitute amendment \_\_\_\_\_

TO 2005 Assembly BILL 766

Offered by Committee on Insurance

At the locations indicated, amend the bill

as follows:

1. Page 5, line 12: Following that line insert:

" These amounts shall be adjusted by the director of state courts to reflect changes in the consumer price index for all urban consumers, U. S. city average, as determined by the U. S. department of labor, at least annually thereafter, with the adjusted limit to apply to awards subsequent to such adjustments."

(end)

AB 760

Amend 15-0

Rec 15-0

AB 765

Rec 13-2

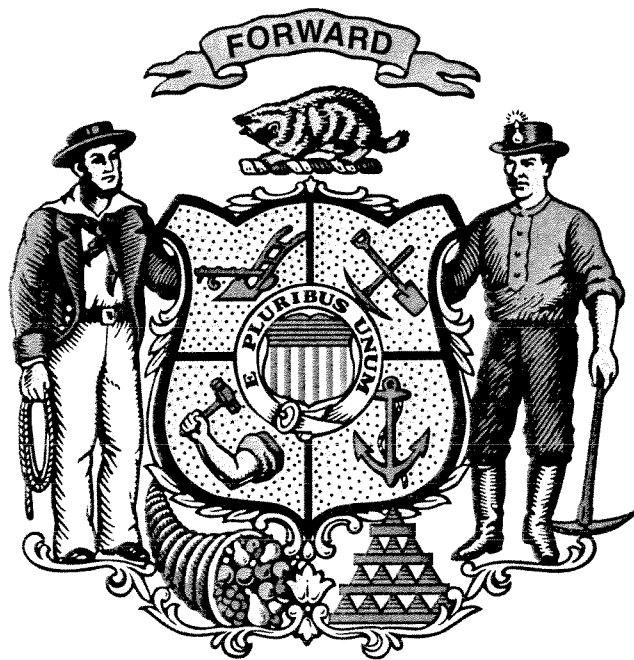
AB 766

Amend 6-9

Rec 9-6

AB 764

Amend (LRSOZL)



# Assembly

## Record of Committee Proceedings

### Committee on Insurance

#### Assembly Bill 766

Relating to: recovery of noneconomic damages in medical malpractice cases.

By Representatives Gielow, Huebsch, Nischke, Gard, Freese, Gottlieb, Gundrum, Hahn, Honadel, Hundertmark, Jensen, Jeskewitz, Kerkman, Kestell, Kreibich, Lamb, Loeffelholz, McCormick, Moulton, Mursau, Rhoades, Strachota, Van Roy, Vos, M. Williams, Wieckert, Nerison, Underheim, Suder, Friske, Owens and Petrowski; cosponsored by Senators S. Fitzgerald, Kapanke, Brown, Darling, Ellis, Grothman, Kanavas, Kedzie, A. Lasee, Lazich, Leibham, Olsen, Reynolds, Roessler, Schultz, Stepp and Zien.

October 17, 2005      Referred to Committee on Insurance.

October 18, 2005      **PUBLIC HEARING HELD**

Present:    (0)    None.

Absent:    (0)    None.

#### Appearances For

- Curt Gielow — Representative
- Scott Fitzgerald — Senator
- Eric Borgerding — Mr., Wisconsin Hospital Association
- Mark Grapentine — Mr., Wisconsin Medical Society
- Rob Walling, Bloomington — Mr., Wisconsin Hospital Association and Wisconsin Medical Society
- Charles Sammis, MD, Madison — Mr., Wisconsin Academy of Family Physicians
- ~~Mettul Shah~~, Madison — Mr., Wisconsin Academy of Family Physicians
- Claudine Taub, Nekoosa — Ms., Ministry Health Care
- Robert Phillips, MD, Madison — Mr., Marshfield Clinic

MEETUL MD

#### Appearances Against

- Dan Roltier, Madison — Mr., Wisconsin <sup>ACADEMY</sup> ~~Accedemy~~ of Trial Attornies <sup>LAWYERS</sup>
- Michael Riley, Madison <sup>MADISON</sup> — Mr., State Bar of Wisconsin
- Cindi Ferdon, Abrams — Ms.
- Dennis Ferson, Abrams — Mr.
- Kim Zak, Crivitz — Mrs.
- Darcy Haber, Madison — Wisconsin Citizen Action

DANIEL ROLTIER

↑  
AGAINST

- Elizabeth Morrison, Madison — Ms.
- Eric Rice, Middleton — Mr., Wisconsin Family Justice Network

Appearances for Information Only

- None.

Registrations For

- Nick George, Madison — Mr., Wisconsin Manufacturing & Commerce
- Ron Kuehn, Madison — Mr., Independent Insurance Agents of WI, PROFESSIONAL TRAVEL AGENTS OF WI, NAT'L ASSOC. of EMS & EMT/Paramedics
- Maureen McNally, Milwaukee — Ms., Froedtert & Community Health
- Elizabeth Schumacher, Madison — Ms., Meriter Health Services
- Barbara Connelly, Brookfield — Mr., Medical College of Wisconsin, Affiliated Hospitals
- Mark Adams, Verona — Mr.
- Tim McGinn, Madison — Mr., Wisconsin Health Care Association
- Kenyon Kies, Madison — Mr., Wisconsin Utility Investors, Inc.
- Bill G. Smith, Madison — Mr., National Federation of Independent Business (NFIB)
- Joe Leibham — Senator
- Jaime Hook, Madison — UW Medical Students
- Michael Welsh, Madison — Mr., Wisconsin Academy of Family Physicians
- Kathryn Kuhn, Milwaukee — Ms., Medical College of Wisconsin
- Jerry Deschane, Madison — Mr., Wisconsin Builders Association
- Kevin Kortsch, Waukesha — Mr., Wisconsin Society of Podiatric Medicine
- John Buonora, Madison — Mr., Wisconsin Association of Nurse Anesthetists
- Jim Hough, Madison — Mr., WCCJ, CTCU, and WEDA
- Carol Gilles, MD, Oak Creek — Ms.
- Ralph Topinka, Janesville — Mr., Mercy Health Systems

Registrations Against

- Linda Kleinschmidt — Ms., Wisconsin Council on Children & Families
- Dave Zak, Crivitz — Mr.



- Lisa Roys, Madison — Ms., State Bar of Wisconsin
- Don Garner-Gerhardt, Wausau — Mr., Teamsters Union
- Joanne Ricca, Milwaukee — Ms., WI State AFL-CIO

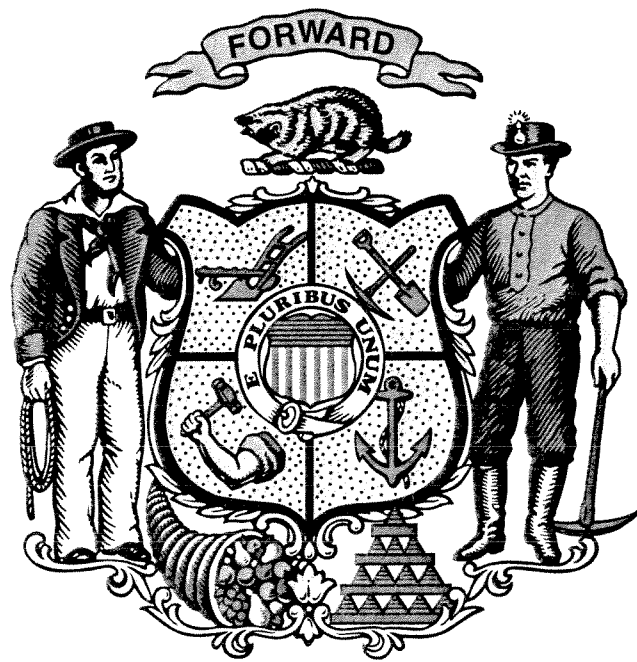
October 19, 2005

**EXECUTIVE SESSION HELD**

Present: (0) None.  
Absent: (0) None.

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Adam Peer  
Committee Clerk





# Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Speaker's Task Force on Medical Malpractice  
Representative Curt Gielow, Chairman

FROM: Mark Grapentine, JD – Senior Vice President, Government Relations

DATE: September 28, 2005

RE: Wisconsin's Medical Liability Stability Attracts Physicians

On behalf of the 10,000 members of the Wisconsin Medical Society, thank you for this opportunity to share information we believe is important to the Task Force's deliberations on restoring a reasonable and effective cap on noneconomic damages: **Wisconsin's stable medical liability environment made our state a magnet for physicians.** The Supreme Court's decision to remove noneconomic damage caps in medical liability cases dramatically threatens that stable environment, and thus our status as a magnet state.

Following this cover page are accounts of physicians choosing Wisconsin as a place to work and live. They are but a sample of a common theme heard throughout our state: Wisconsin is physician-friendly, free from threats of questionable lawsuits and career-ending "jackpot justice" awards. Within these narratives you will understand the impact the Supreme Court's decision has had on our physician community; there now is an undercurrent of uncertainty and fear.

The opening example comes from Rhinelander and is written directly to the Task Force members. Pamela Galloway, MD and her husband, Christopher Magiera, MD, left a well-established practice in Cleveland, Ohio. They call themselves "medical liability refugees" who chose Wisconsin specifically because it was one of just six states in the nation considered not in the throes of a liability crisis or near-crisis. They desperately want to avoid having Wisconsin go through what Ohio did – increased health care costs and decreased access to specialty care due to a liability environment crisis.

Other accounts follow; all share a similar theme. We have not edited content – the words and emotions are solely the physicians'.

We applaud the Task Force for its commitment to recreating what Wisconsin once had: medical liability reforms making our state the envy of the nation and a destination for high quality physicians willing to practice specialty care. We believe these experiences amply prove to the State Legislature what the medical community has known for the past 10 years: a reasonable cap on noneconomic damages is a major reform bringing physicians to the state and increasing patient access to care.

Thank you for taking the time to read these accounts. If you have any questions, please feel free to contact me at 608.442.3800.

## Real Stories – Physicians Choosing Wisconsin

Dear Sir/Madam:

My experience as a general surgeon in Ohio is relevant to the current dilemma facing the Wisconsin legislature, regarding legislation to cap medical malpractice damage awards. The absence of tort reform in Ohio caused medical malpractice premiums to rise to a level that made practicing surgery there unaffordable. One of the major reasons for rising rates was because there were no caps on awards for "pain and suffering," hence liability exposure was unpredictable. The situation in Ohio prompted a move to Wisconsin in 2003. Wisconsin was selected solely because it was only one of six states with stable medical malpractice premiums, as rated by the American Medical Association.

I do not wish to dwell on the issue of medical malpractice premium rates, however, as I'm sure this issue has been addressed by other physicians and in other testimony. I would like to address the issue of the drain that is placed on physicians by practicing in litigious areas, and by defending medical malpractice suits. The absence of caps gives attorneys a tremendous financial incentive to file suits, as each suit essentially becomes a lottery. In Ohio, a large part of my practice consisted of consults to evaluate women for the possible diagnosis of breast cancer. As "delay of diagnosis" of breast cancer is one of the commonest excuses for litigation against surgeons, every patient presented as a potential adversary. My practice was the definition of "defensive medicine," which occurred at great expense to the patients and myself. Defending a medical malpractice suit is a tremendous drain on a physician's time and energy. Just as rising premiums restrict patient access to care by causing physicians to close practices, restrict their scope of practice or to retire, so does the threat of frequent lawsuits. After a while it is no longer worth practicing, and retirement becomes an enticing option.

The legislature has a responsibility to the citizens of Wisconsin to preserve access to care by returning the state to its former status as a model of medical malpractice stability, in order to continue to attract physicians to the state. As other states such as Mississippi and Texas are enacting effective tort reform, Wisconsin has lost its competitive edge in that regard.

Thank you for considering this information.

Sincerely,

Pamela G. Galloway, MD  
Ministry Medical Group-Northern Region  
Rhinelander, Wisconsin 54501

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We moved to Wisconsin in March 2003. After 22 years in Cleveland, we had to leave. My premiums had gone up 500% in the last 16 years. Pam's was even more, and literally was so high as to make take home profit in jeopardy. Worse than the premiums was the psychological aspect of constant lawsuits. I did not know anyone who did not have one or more suits pending! The trial lawyers had convinced the populace that doctors were simply part of a lottery system.

Of course, the real tragedy was the negative effect on patients. We knew 14 other doctors leaving Ohio that year alone. And, that was just from 3 hospitals. My wife was head of a breast cancer program, and no replacement was found. The Cleveland clinic told me that they could not absorb my caseload. One hospital had to run operating rooms at only 50% because of anesthesiologists shortage. Two GYN docs left, and women were inconvenienced. Family practitioners had to stop delivering babies and doing minor surgeries, reducing them to mere paper pushers signing referrals to shortage prone, high cost specialists.

The group of which I was a part quit going to the urban hospital that cared for the poor, because of liability concerns. What good is Badgercare, Medicaid, Medicare if there are no physicians to deliver it? Our lawyers state that it would take 20 or more years to undo the damage caused by the unrestrained plaintiff's attorneys for all those years in Ohio.

Christopher Magiera, MD  
Wausau

*Dr. Magiera later shared another story – this time about his mother:*

My mother, who suffers from spinal stenosis, a very painful condition, lives outside of Rockford, IL (a state with no, until recently, tort reform). She was being treated by a member of a group of neurosurgeons from Rockford. Because of the Illinois med mal crisis, the entire group disbanded. Her doctor moved to Madison because of our favorable med mal atmosphere. The other two doctors retired.

Rockford now only has two neurosurgeons, and they are too busy to see my mother. She will most likely have to drive to Madison. However, (her doctor) will most likely not want to remain in Wisconsin.

Wisconsin must respond with ever-stronger tort reform, including reinstating the noneconomic damage cap.

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One year ago, I left beautiful Seattle to move to Green Bay. I had been in Seattle for over 10 years and never anticipated I would ever leave.

When I made the decision to leave, I was Chief of Emergency Medicine and Chief of Staff at a major downtown Seattle Hospital. I was President-elect of the Washington Chapter of the American College of Emergency Physicians and Assistant Clinical Professor at the University of Washington. So why would I give all this up to move to Wisconsin of all places?

The answer is two fold. First of all, in 15 years of practice, I have never been sued, yet I saw my malpractice premiums increase 400% over a 4-year period. This may seem insignificant, but for a hospital that had a high percentage of Medicaid and charity care, it made continuing practicing economically unrealistic.

Second, and perhaps more important, was the indirect effect of rising malpractice premiums on the ability to practice medicine. Specialists no longer wanted to take emergency call, because it meant providing very high-risk care, often for free. Obstetricians closed practices. An entire group of very good neurosurgeons had their malpractice insurance cancelled, not because of claim history, but simply because they took care of patients with broken necks and brain tumors, and these types of patients often had bad outcomes, despite the best of care.

A year ago, Wisconsin was one of only 6 states considered "safe" to practice medicine. The cap on non-economic damages and the excess compensation fund are precisely the elements needed to keep premiums stable. Not only have I seen that first hand in the year I have been here, but the joy has returned to the practice of medicine. I have all the specialists I need available when I call and they don't argue about taking a patient.

Physicians are not opposed to fairly compensating truly injured patients quickly and equitably. However, the current system is broken in most states. The lottery mentality, in which attorneys are rewarded with 40% of whatever outrageous verdict they can achieve, provides a tremendous incentive to sue and convince a jury that someone deserves \$17 million over an adverse outcome. Who wouldn't pull out all stops for 40% of \$17 million?

Personal injury attorneys somehow have the ill-conceived notion that the threat of litigation serves as a deterrent to bad medical care. This could not be farther from the truth. I, and most other physicians I know, practice good medicine because of something called integrity, not because of a threat of a lawsuit. We follow a principle outlined thousands of years ago by Hippocrates called "Primum non nocere" or "first, do no harm." We are the ones who have to look the patient or his family in the eye and explain why something went wrong should an adverse event occur.

The threat of litigation has precisely the wrong effect: it makes me not want to practice medicine at all. I do the best I can for each and every patient in each and every circumstance. I make critical decisions in split second timelines. I often have to act with little or no information about a patient. Sometimes I save lives, sometimes despite my best efforts (and those of my team) some patients do not have an optimum outcome.

I would pose the following question to malpractice attorneys: would you do a job that required split second, life or death decision making if the consequence of making an unintentional error in judgment is losing your entire livelihood and everything you have worked for? This is precisely the situation in states without caps on non-economic damages.

Do not let Wisconsin become one of the states most of us left to come here. A way must be found to restore the caps!

Paul D. Casey, MD, FACEP  
Medical Director  
Emergency Department  
Bellin Health

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I have some perspectives on the liability situation that may be helpful.

I am the medical director for the emergency department at Aurora Medical Center in Kenosha as well as the President-elect of the medical staff. I am a partner in Midwest Emergency Associates, which staffs the emergency department in Kenosha as well as Aurora Lakeland Medical Center in Elkhorn, WI and staffs 4 emergency departments in Illinois and 1 emergency department in Missouri. In addition, I helped to found and currently sit on the claims committee and finance committee for EMRRG, a risk retention group domiciled in South Carolina to provide malpractice insurance for emergency medicine physicians.

Up until this point, the favorable liability climate in Wisconsin has made the daily practice of emergency medicine radically different for us than my partners practicing in Illinois. My patients in Wisconsin, at a small community hospital, have access to specialists that patients in Illinois at much larger facilities do not. We are fortunate to have a sufficient number of neurosurgeons, obstetricians, and orthopedic surgeons to provide excellent care in emergency situations. I regularly hear stories from my partners in Illinois of patients in their ERs with life-threatening neurosurgical emergencies and long delays and hassles in finding a facility willing to accept the patient.

Our group is able to attract high-quality board-certified emergency physicians because our cost for liability insurance is reasonable in Wisconsin. In Illinois our costs were rising so dramatically that if we did not take the extraordinary step of forming an RRG we would have had to leave at least one of our ERs.

I hope this has been helpful. I am available if my experience can help the cause to help maintain quality care for our patients.

David Farkas, MD, FACEP  
Lake Forest, IL

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I am a Family Practitioner formerly from Illinois - I practiced there for several years in an emergency department and then in an urgent care. One of the main reasons I left was that I was just sick and tired of the lawsuit paranoia that is rampant there – and I mean paranoia in the fullest sense of the term. Most doctors there are just plain scared, even if they won't admit it – you can see it in their practice style. When I moved to Wisconsin (just last year) I noticed a significant difference in the way medicine was practiced. It seemed like doctors up here use their own common sense a lot more and they don't reflexively order tests just to 'cover their hind end'!

For the most part it seems that if doctors up here don't think something needs to be done, they don't do it (what a concept!) - whereas in Illinois everyone is playing the double think game of 'what if this, what if that,' ordering tests and procedures just to look good in case the absolute worst happens.

How many high dollar amount settlements will it take to make doctors in Wisconsin start practicing more defensive medicine? Probably only one or two.

Now of course I know that our medical system (and doctors, to be sure!) are not perfect, and when something happens that should not have there needs to some kind of compensation. But there has to be some kind of balance in place. The cap on noneconomic damages certainly seemed to be working – why the court struck it down while all other states are struggling to put caps in place is simply beyond my comprehension.

Jay S. Harms, MD  
Random Lake

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My name is Dr. Michael Didinsky D.O. I am a spine surgeon and my wife Dr. Eleanor Figuerres D.O. is an OB/GYN.

We moved to Wisconsin one month ago to join practices in Kenosha. We both trained in Chicago and have families in that area. However, because of exorbitant malpractice rates in Illinois and several other states that we were considering, we decided to move to Wisconsin. Our specialties carry the highest malpractice premiums. The thought of paying a combined total of up to 400-500 thousand dollars per year turned us to look to Wisconsin.

As reimbursement rates decrease, work hours increase, patient volume increases, stress increases, and quality of life suffers, this all begs the question "Is this worth my commitment?" I believe it is "worth it" in Wisconsin. I moved to this state because it was committed to keeping its physicians here. This is through malpractice reform among other things. If the cap is lifted, and malpractice rates increase, I have no doubt that physicians will leave, I know we would, and physicians will begin to select out patients that they deem to risky to treat. This is not the environment I would want to work or be treated as a patient.

Michael Didinsky, DO  
Kenosha

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I am an independent family physician in a rural area. It has become difficult enough to practice medicine in this complicated system. Although I have never had any problems with malpractice so far aside from the cost of insurance, I will have to stop clinical practice if malpractice becomes a bigger issue.

Barbara Weber, MD  
Random Lake

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My name is Rod Sathoff and I work as a locum tenens anesthesiologist. This means that I basically travel to work wherever they need me.

I was called to work in Madison County, Illinois because the anesthesiologists there could no longer find an insurance company to provide malpractice insurance for them and they were departing. Thinking that this

may be about quality of care, I did go to work at the hospital there and soon realized the scope of the problem. There I discovered that it was about a crisis in insurance and not about quality of care.

Placing and keeping a cap on non-economic damages is only a start to the necessary reform.

Rod Sathoff, MD  
Green Bay, WI

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I trained at Cook County Hospital in Chicago, Illinois. As you are aware, that county is noted for its high malpractice awards. After graduation, I joined a private practice, Healthcare for Women. My tail coverage for working there for 20 months was around \$92,000. One of the reasons that I left Chicago was the lack of tort reform.

I moved to Thomaston, Georgia and joined a group of 4 OB/GYNs. My first year in Georgia, my malpractice insurance premium was \$27,000. In 3 years it grew to \$54,000. My last year there, we were told that our insurance was expected to increase another \$23,000. It should be noted that I have never been found liable or EVER been turned into the National Practitioner Data Bank. Because of these problems, Georgia now has tort reform.

I moved to Wisconsin 2 years ago. One of the things that made Wisconsin attractive was the caps. I have seen how without caps, the cost of health care goes up.

Curt Cornella-Carlson, DO, FACOG  
Fellow American College of Obstetricians and Gynecologists  
Diplomate American Board of Obstetrics and Gynecology

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I am a foreign medical graduate that found home in Wisconsin. I have been practicing in Wisconsin for the last 5 years. As a minority, Wisconsin does not seem to be an ideal place to practice but after enjoying the non-economic caps for quite some time, it became practical for me to work and live in Wisconsin. When I was a resident in Illinois, I had personal experience being involved in litigation but fortunately got dropped from the case; however I have seen how settlements were unfairly handled. A patient's sister, which we had not seen, sued the group/hospital for the patient's death from ruptured aortic aneurysm. Although my name is cleared from the national database, this case haunts me every day.

Right now, if the noneconomic cap is not restored, there is no reason for me to stay in Wisconsin. My immediate family resides in Pennsylvania and my husband's family in Chicago. Both states have already tort reforms pending and approved, respectively.

My family's future depends greatly on this matter.

Ana Dimalaluan, MD  
Monroe Clinic

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In 1990 I moved with my family to Wisconsin to begin a career as a surgeon. I feel relatively fortunate to have had only one lawsuit brought against me since that time. However, if the cap on non-economic damages is not once again restored, my practice may have to be significantly curtailed or moved elsewhere.

Please let me know how I can contribute in this regard, as I feel this is vital to maintaining a safe environment in which to practice and to do what we all know is right for doctors and patients alike. To do otherwise would be unconscionable. Thank you.

Thomas Houting, MD, DDS  
Stevens Point

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I left my practice in the Western Suburbs of Chicago after 28 years in practice because I could not afford to practice. I was in the solo practice of OB-GYN and my income was negative for the last two years I practiced. I had to leave when I did because of the tail (insurance). My tail was \$138,000. If I had waited until my policy renewal date, my liability tail would have been \$200,000. I had a policy that covered me for 0-49 deliveries a year (low volume obstetrics and gynecology). If I had stayed, I would have had to do all 49 deliveries and the amount I made would not have covered my insurance costs, much less my other overhead.

I am now practicing part-time in Richland Center. We have had a vacation home in rural Richland County for many years, and my husband and I have chosen to make it our home. I feel that I am providing a needed service to this community doing gynecology, cesarean section call, some back-up obstetrics and obstetric ultrasound and consultations for our fine family practice physicians. However, I am now close to 60; though I enjoy what I do and would like to continue to practice medicine, I will not jeopardize my retirement security to continue to practice if the liability climate here comes anywhere near that of Illinois.

Nancy Ellen Rich, MD  
Richland Center

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I am a 43-year-old OB/GYN physician practicing in Green Bay since February 2003. I moved here from Pennsylvania where I had been practicing for 6 years but could no longer afford malpractice insurance. I had never been sued, yet I couldn't afford the astronomical insurance premiums.

The state of Pennsylvania was in such a crisis that many physicians were leaving or retiring prematurely. Patients were having trouble finding OB/GYNs, orthopedic surgeons and neurosurgeons. I researched the problem and found that Wisconsin was one of perhaps 5 or 6 states with the situation under good control. One of the few things these "good states" all had in common was the presence of the noneconomic cap on malpractice claims.

I was fortunate to find an excellent group of doctors to join in Prevea Clinic located in Green Bay. Now I'm in shock. I can't believe Wisconsin is taking a giant step back – in the wrong direction – after having things well controlled.

Erich Metzler, MD  
Green Bay

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I must state that (noneconomic damage caps) definitely was one of the reasons that I chose to contract with an associate in Wisconsin. I was shocked and appalled to hear from said associate, only weeks after accepting her offer as well as beginning my state license application, that this cap was being removed – going totally backwards!

In California (I practiced there since 1992), the cap was the single biggest advantage (amongst so few!) to staying put there, and was eventually overridden mostly keeping in mind each offer's state malpractice situation. I almost felt "used" to have signed up and then have this happen (and was told by my attorney that I'd have a legit "out" of my contract if I so decided. The fact I'm now in-state is testimony to how much I enjoyed the people I met at my April site-visit as well as the level of decisiveness of my new associate!

A "close-call" if there ever was one, and I'm hoping this will, indeed, have a happy ending – and soon!

Jeffrey W. Glasheim, DO  
Oshkosh

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I'm a dermatologist practicing in Waukesha County, Wisconsin.

I relocated to Wisconsin from the state of Iowa 1 1/2 years ago, after having explored numerous outstanding practice opportunities from around the USA. One of the deciding factors that weighed heavily in my decision was the more favorable professional liability laws in the state of Wisconsin.

I'm certain that I would not have moved to the state of Wisconsin had I known then the action of the Supreme Court this summer. I'm certainly not encouraging my colleagues to move to Wisconsin since the Supreme Court decision.

Thorsteinn Skulason, MD  
Waukesha

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I came to Waupun in July 2003 from Illinois after learning that my insurance premiums were going to exceed my take-home pay. I decided to leave Illinois in December 2002 and the only states I looked for positions were those that the AMA labeled "safe": Indiana, Wisconsin, Colorado, California, New Mexico, and Louisiana. The fact that Wisconsin will drop off this list will be a great loss to residents of this state.

The practice of medicine is very different here when compared to Illinois. For the most part, the doctors here are happy. They enjoy their job and they do not live under the constant threat of litigation. Here in Waupun, it is a pleasure to be the only obstetrician at Waupun Memorial Hospital. Despite the fact that I am on call 24/7, I enjoy providing service to a population that would undoubtedly be without an ob/gyn in a high risk liability environment where, quite frankly, it wouldn't be worth the hassle to practice here.

When I came to this state, I referred to it as "enlightened." The people here solved issues with access to medical care years ago with the establishment of caps on non-economic damages. I strongly doubt the doctors in this state would find a work environment similar to that which exists in Illinois acceptable. If insurance premiums rise and lawsuits escalate, early retirements and difficulty with recruitment will quickly limit access to medical care in the rural communities.

Scott Hansfield, MD  
Waupun, WI

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I am an obstetrician-gynecologist who moved here from Pennsylvania in June 2002. I have a wife and five children. We left all of our family and friends in Pennsylvania solely to escape the liability crisis in that state. My main goal in life is to be able to put my children through college. I don't desire fancy cars or expensive vacations. Unfortunately, the liability crisis in Pennsylvania made it impossible for me to put money into my children's college funds.

My partner and I in Pennsylvania were never involved in a lawsuit during the six years that I practiced there. That did not prevent our malpractice insurance rates from skyrocketing. Over my last three years there, our rates went up 60%, then doubled, then went up another 40%. We were traveling to other towns and taking call every other night and every other weekend, but our income continued to decline sharply. We could not even consider getting a third partner. To be honest, there are few good obstetrician-gynecologists available in a state like Pennsylvania at this point, anyway. Again, this is due to the liability crisis. (My ex-partner found a new partner, but he is leaving Pennsylvania in November of this year.)

When I talk to people in Wisconsin, it blows their minds that I would leave the state in which I was raised because of the liability crisis there. I explain that it was not economically feasible to continue practicing there. Actually, my family and I love Wisconsin, so I looked at it as a blessing in disguise. That was until the caps were removed here.

I am now seriously concerned that Wisconsin will become like Pennsylvania (and like so many other states). I see no way that this will not happen unless the caps are re-instated. It is not a coincidence that the few states in the nation not in crisis all have caps on non-economic damages. There is very good reason that so

many other states are trying to institute such caps. I find it hard to believe that our caps have been removed. It seems that our state supreme court doesn't truly grasp the severity of the crisis in states like Pennsylvania.

Please, re-instate the caps on Wisconsin's non-economic damages. This has been a wonderful state in which to live, and in which to practice medicine over the past three years. I know several other doctors who have moved here from Pennsylvania and who feel the same way. I have been able to start making contributions to my children's college funds, my children are happy, and my wife and I would like to live here for the rest of our lives. We learned a valuable lesson in Pennsylvania, though. It won't take us six years to figure out that obstetrics and gynecology is no longer a viable profession here when the malpractice rates begin to skyrocket. I am absolutely convinced that re-instating the caps is the most important step to prevent this from happening.

Robert D. Moyer, Jr., M.D., F.A.C.O.G.  
Green Bay

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I am quite interested in seeing the caps on medical liability restored in Wisconsin. I taught Family Medicine for 3 years in Kentucky and also worked in a busy ER there for 3 years. The public is generally unaware of how badly medical liability concerns erode their access to quality healthcare.

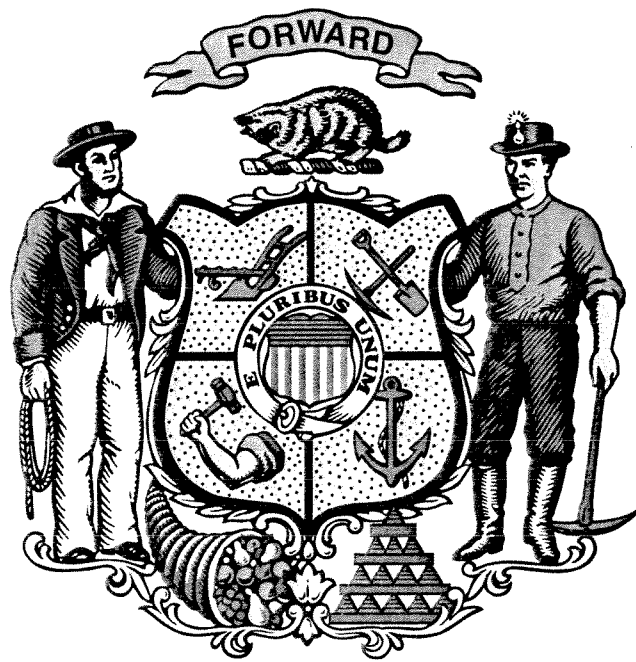
For example, a patient might show up with chest pain and in most States this forces a huge and mostly unnecessary evaluation to protect the physician from liability. When the workup is done the patient is sent home with a 4-5 thousand dollar medical bill and having had nothing done to help with their symptoms.

Further and most importantly to Wisconsin is the easy and local access to obstetric care that families here enjoy. In Kentucky it is now typical for many counties to have no way to deliver babies and for women to have to drive 60 to 90 miles for obstetric care. I last heard there were only 223 OB providers left in all of Kentucky and that these numbers were declining.

There is no reason left in much of medicine and medical care costs due to medical liability concerns. I came to Wisconsin specifically because of the favorable medical liability climate. In the relocation process I was hounded by recruiters from Illinois. I have no plans to ever practice Medicine in a high liability area again. I hope you understand my feelings about how important Medical Liability reform is.

John R. Ewing, MD  
Lake Delton

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TO: MEMBER  
ASSEMBLY COMMITTEE ON INSURANCE

From: Representative Ann Nischke, Chair  
Committee on Insurance

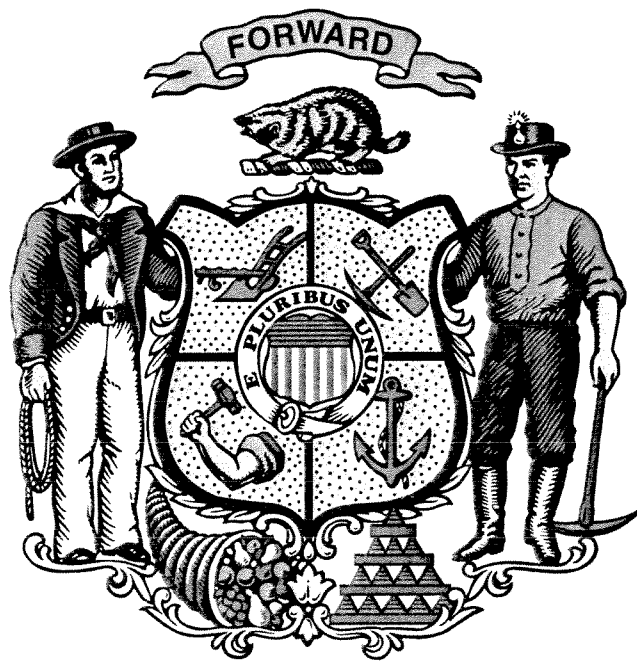
Date: October 17, 2005

**RE: Committee Public Hearing and Executive Session**

Please note that Assembly Bill 766 has been added to the public hearing and executive session notices. Please see the attached revised notices.

Also, for your convenience, I have posted the bills being heard and acted on online at ([www.RepNischke.com](http://www.RepNischke.com)). Please let my office know if you have any questions.

AMN:asp





# CURT GIELOW

State Representative

**Testimony on AB764, AB 765, and AB 766  
To the  
Assembly Committee on Insurance**

October 18, 2005

Madam Chair and Members,

The Speaker's Task Force on Medical Malpractice Reform has completed its work and presents three pieces of legislation for committee consideration - **AB 764**; **AB 765**; and **AB 766** as the work product of our efforts.

We believe these bills recognize and reflect the necessary balance between fairness, affordability and availability in the area of medical malpractice insurance coverage.

The bi-partisan Task Force heard testimony from interested parties for two full meetings and then held two more meetings to debate and consider an appropriate course of action.

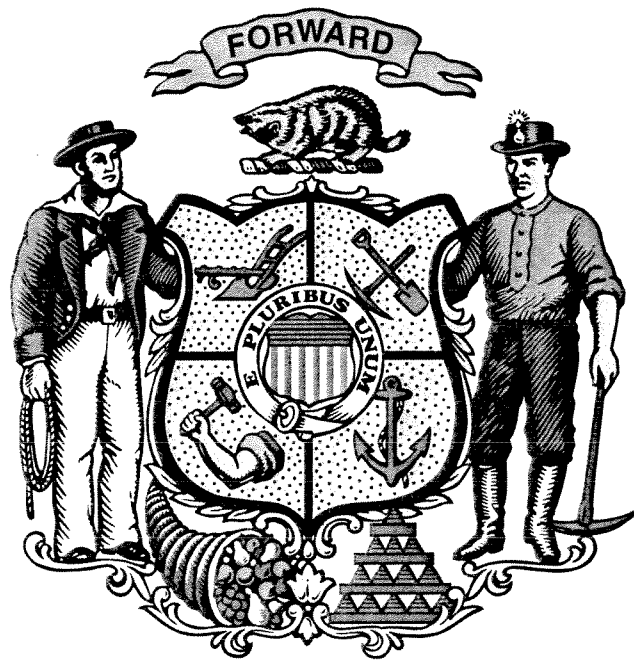
**AB 766** creates a two-tiered award benefit structure similar to current law in wrongful death cases. The award cap for persons under age 18 would be set at \$550,000, 23% higher than under the previous cap while the award cap for persons age 18 and over would be set at \$450,000, essentially the same as the recent cap. The majority of the Task Force believes this differentiation, with justifications and legislative findings, is therefore responsive to the courts objection to constitutionality under the equal protection clause of our constitution.

**AB 765** simply closes a loophole in current law that did not provide coverage under our healthcare liability requirements to individuals that completed medical school and were doctors but had not yet completed the required first year of post-graduate medical residency, commonly called their internship, to become licensed Wisconsin physicians.

**AB 764** clarifies current law on the issue of collateral sources of payments to compensate individuals in medical malpractice cases. The bill provides for the reduction of medical malpractice awards by the amount of collateral source payments, offset by any subrogation or reimbursement resulting from those collateral source payments. Earlier today we discovered some drafting errors which have been corrected in a sub amendment I present here today. The corrections preserve our intent and will not alter the legislative analysis. My preference would be that we treat the ASA as the focus of this hearing and proceed, if possible, to exec on it tomorrow.

I would note for the committee that in all of these bills the effective date is prospective and not retroactive.

I urge the committee's support for these critical pieces of legislation.







# CURT GIELOW

State Representative

## Handout for the Assembly Committee on Insurance

Re: AB 766

October 18, 2005

The data used in these two documents are from the Wisconsin Hospital Association (WHA)

**The first two pages of this document offers a “sort” of the 22 states that have a cap on noneconomic damages in medical malpractice cases by the size of the caps.** This document takes one number to stand for each state’s cap and sorts the states by that number; low-cap states appear first and caps rise as one works down the list. This two-page list DOES NOT offer full detail on the various states’ caps; that’s in the last three pages.

**The last three pages list alphabetically the 22 states that have med-mal caps** and offers all the explanatory notes on the caps. In almost no case is the cap a simple number, so numerous notes are offered to explain each cap. There are less than 50 states listed because not all states have caps.

The omission of notes and the use of one number to describe the various levels of cap in the affected states is a concession to the for an easy list. **Full understanding and comparison of the many caps requires the notes found in the last three pages.**

I hope this information is helpful.

### Caps on Damages

*All amounts are for noneconomic damages unless otherwise indicated. \$X/\$Y caps represent the fact that there is one cap for "normal" in*

Alaska	\$250,000	<b>Alaska</b> - Provides a \$250K/\$400K unadjusted cap with no life exp
California	\$250,000	<b>California</b> -\$250,000 cap on noneconomic damages. (1975)
Kansas	\$250,000	<b>Kansas</b> -\$250,000 cap on noneconomic damages. (1988)
Montana	\$250,000	<b>Montana</b> - \$250,000 cap on noneconomic damages per occurrence
Texas	\$250,000	<b>Texas</b> -\$250,000 cap on non-economic damages for claims against
West Virginia	\$250,000	<b>West Virginia</b> - \$250,000 cap on non-economic damages per occu
Michigan	\$280,000	<b>Michigan</b> – \$280,000/\$500,000 cap on noneconomic damages est
Oklahoma	\$300,000	<b>Oklahoma</b> - Two caps, one for obstetric cases and care provided in
Georgia	\$350,000	<b>Georgia</b> – \$350K/\$700K cap created in 2005.
Maryland	\$350,000	<b>Maryland</b> - Maryland originally imposed a \$350,000 limit on noi
Missouri	\$350,000	<b>Missouri</b> - Caps non-economic damages at \$350,000, regardless o
Nevada	\$350,000	<b>Nevada</b> -\$350,000 cap in 2002 with exceptions including a judicia
Ohio	\$350,000	<b>Ohio</b> - Establishes a sliding cap on non-economic damages. The c:
Hawaii	\$375,000	<b>Hawaii</b> -\$375,000 cap on noneconomic damages, with exceptions
Idaho	\$400,000	<b>Idaho</b> - \$400K cap from 1987-2003. \$250,000 cap on non-econon
Maine	\$400,000	<b>Maine</b> -\$400,000 cap on noneconomic damages in <i>wrongful death</i>
Utah	\$400,000	<b>Utah</b> - \$400,000 cap on noneconomic damages for causes of actio
Florida	\$500,000	<b>Florida</b> - For providers, \$500,000 cap on non-economic damages f
Illinois	\$500,000	<b>Illinois</b> - \$500K cap for physicians and \$1million for hospitals. C
Louisiana	\$500,000	<b>Louisiana</b> - \$500,000 cap on <b>all damages</b> , excluding damages rec
Massachusetts	\$500,000	<b>Massachusetts</b> -\$500,000 cap on noneconomic damages, <u>with exc</u>
Mississippi	\$500,000	<b>Mississippi</b> – \$500,000 cap, <i>except in</i> cases where patient suffers

North Dakota	\$500,000	<b>North Dakota</b> -\$500,000 cap on noneconomic damages. (1995)
South Dakota	\$500,000	<b>South Dakota</b> - \$500,000 cap on total general (non-economic) da
New Mexico	\$600,000	<b>New Mexico</b> -\$600,000 cap on <b>all damages</b> , excluding punitive da
Colorado	\$1,000,000	<b>Colorado</b> -\$1 million cap on <b>all damages</b> , including any derivative
Indiana	\$1,250,000	<b>Indiana</b> -\$1.25 million cap on <b>all damages</b> for any act of malpract
Virginia	\$1,500,000	<b>Virginia</b> -\$1.5 million cap on <b>all damages</b> for acts occurring on o
Nebraska	\$1,750,000	<b>Nebraska</b> -Various limits enacted at various times. \$1.75 million c

## Caps on Damages

*All amounts are for noneconomic damages unless otherwise indicated.*

*\$X/\$Y caps represent the fact that there is one cap for "normal" injuries and one cap for severe injuries.*

**Alaska**- Provides a \$250K/\$400K unadjusted cap with no life expectancy multiplier. (2005) Previous law provided a \$400K/\$1m cap, with an expectancy multiplier used for amounts below those caps. (1997-2005)

**California**-\$250,000 cap on noneconomic damages. (1975)

**Colorado**-\$1 million cap on **all damages**, including any derivative claim by any other claimant, of which non-economic losses shall not exceed \$300,000 (including any derivative claim by any other claimant). (1988, 2003)

**Florida**- For providers, \$500,000 cap on non-economic damages for causes of action for injury or wrongful death due to medical negligence of physicians and other health care providers. Cap applies per claimant regardless of the number of defendants. Cap increases to \$1 million for certain exceptions. For non-providers, \$750,000 cap on non-economic damages per claimant for causes of action for injury or wrongful death due to the medical negligence of nonpractitioners, regardless of the number of nonpractitioner defendants. Cap increases to \$1.5 million for certain exceptions. (2003)

**Georgia** - \$350K/\$700K cap created in 2005.

**Hawaii**-\$375,000 cap on noneconomic damages, with exceptions for certain types of damages, ie. mental anguish. (1986)

**Idaho**- \$400K cap from 1987-2003. \$250,000 cap on non-economic damages enacted in 2003.

**Illinois** - \$500K cap for physicians and \$1 million for hospitals. Cap applies per defendant and **not** per occurrence.

**Indiana**-\$1.25 million cap on **all damages** for any act of malpractice that occurs after 6/30/99.

**Kansas**-\$250,000 cap on noneconomic damages. (1988)

**Louisiana** - \$500,000 cap on **all damages**, excluding damages recoverable for medical care. (1992).

**Maine**-\$400,000 cap on noneconomic damages in *wrongful death actions*. (1999)

**Maryland** - Maryland originally imposed a \$350,000 limit on noneconomic damages in 1986. The limit was increased to \$500,000 in 1994, and there after that limit was increased by \$15,000 each year. By 2004, the cap on noneconomic damages was \$650,000 and a separate cap on wrongful death was over \$1.6 million. 2005 legislation suspended the \$15,000 increases until 2009, and cut the wrongful death damage cap by half from over \$1.6 million to 812,500. If there is a wrongful death action in which there is more than one claimant or beneficiary, whether or not there is also a personal injury action, non-economic damages are limited to 125% of the cap.

**Massachusetts**-\$500,000 cap on noneconomic damages, with exceptions for proof of substantial disfigurement or permanent loss or impairment, or other special circumstances which warrant a finding

Primary Source:  
American Medical Association  
Advocacy Resource Center  
March 24, 2005

that imposition of such limitation would deprive the plaintiff of just compensation for the injuries sustained. (1986)

**Michigan** – \$280,000/\$500,000 cap on noneconomic damages established in 1993, adjusted annually for inflation (\$371,000/\$664,000 in 2005).

**Mississippi** – \$500,000 cap, *except in* cases where patient suffers disfigurement or if the judge finds punitive damages are warranted from 2003-2004.

**Missouri** - Caps non-economic damages at \$350,000, regardless of the number of defendants, with no annual inflator. (2005) Previous law was a \$350,000 cap with inflation adjustment. By 2005 that adjusted cap was up to \$579,000.

**Montana**- \$250,000 cap on noneconomic damages per occurrence. (1995, 1997)

**Nebraska**-Various limits enacted at various times. \$1.75 million cap on **all damages** in 2003. Health care providers who qualify under the Hospital-Medical Liability Act (i.e. carry minimum levels of liability insurance and pay surcharge into excess coverage fund) shall not be liable for more than \$500,000 in total damages. Any excess damages shall be paid from the excess coverage fund. (1976, 1984, 1986, 1992, 2003)

**Nevada**-\$350,000 cap in 2002 with exceptions including a judicial override. 2004 law later eliminated those exceptions.

**New Mexico**-\$600,000 cap on **all damages**, excluding punitive damages and past and future medical care. (1992)

**North Dakota**-\$500,000 cap on noneconomic damages. (1995)

**Ohio**- Establishes a sliding cap on non-economic damages. The cap shall not exceed the greater of \$250,000 or three times the plaintiff's economic loss up to a maximum of \$350,000 for each plaintiff or \$500,000 per occurrence.

The maximum cap will increase to \$500,000 per plaintiff or \$1,000,000 per occurrence for a claim based on either (A) a permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system, or (B) a permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and person life sustaining activities. (2002)

**Oklahoma**- Two caps, one for obstetric cases and care provided in an emergency room and a separate cap for all other medical liability causes of action. The amount of both caps is \$300,000. These caps have significant exceptions and loopholes. (2003, 2004)

Neither cap applies in wrongful death cases because the Oklahoma Constitution specifically limits damage limitations in those types of cases.

**South Dakota** - \$500,000 cap on total general (non-economic) damages. (1985, revived by 1996 court decision)

**Texas**-\$250,000 cap on non-economic damages for claims against physicians and other health care providers. The cap applies per claimant regardless of the number of defendants. Also provides a \$250,000 cap on noneconomic damages in judgment against single health care institution and a \$500,000

**Primary Source:**  
**American Medical Association**  
**Advocacy Resource Center**  
**March 24, 2005**

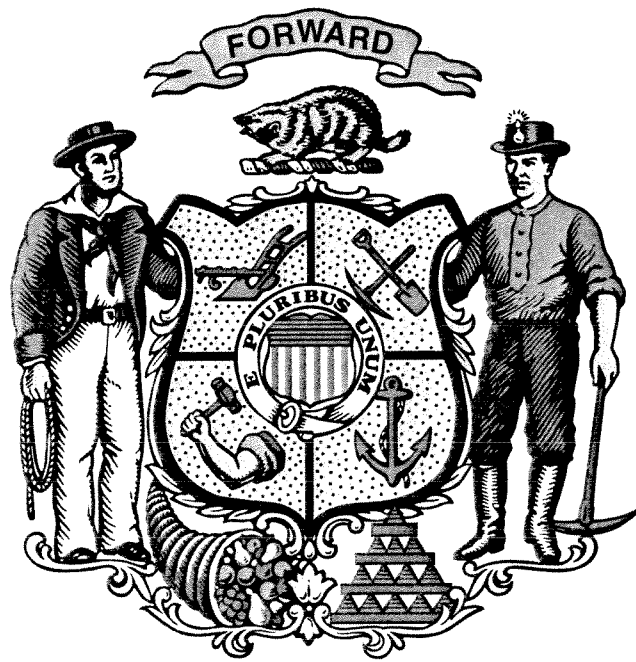
cap on noneconomic damages if judgment is rendered against two or more health care institutions, with the total amount of noneconomic damages for each individual institution, not exceeding \$250,000 per claimant, irrespective of the number defendants, causes of action, or vicarious liability theories involved. The *total* amount of noneconomic damages for health care institutions cannot exceed \$500,000. Combining the liability limits for physicians, health care providers, and institutions, the maximum noneconomic damages that a claimant could recover in a health care liability claim is capped at \$750,000. (2003)

\$500,000 cap on all civil damages for wrongful death, indexed for inflation since 1977. The cap does not apply to medical, hospital, and custodial care received before judgment or required in the future. In 2002, the cap reached approximately \$1.4 million. (1977, limited by 1990 court decision)

**Utah** - \$400,000 cap on noneconomic damages for causes of action arising on or after July 1, 2001 but before July 1, 2002. Indexed annually for inflation thereafter. (2001)

**Virginia** - \$1.5 million cap on **all damages** for acts occurring on or after Aug. 1, 1999. This cap is increased by \$50,000 annually beginning on or after July 1, 2000 until July 1, 2006. On July 1, 2007 and July 1, 2008 the cap is increased by \$75,000. The last increase shall be July 1, 2008. (1976, 1977, 1983, 1999, 2001)

**West Virginia**- \$250,000 cap on non-economic damages per occurrence, regardless of the number of plaintiffs and number of defendants. The cap increases to \$500,000 per occurrence, for the following types of injuries; permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life sustaining activities. The limits only apply to defendants who have at least \$1,000,000 per occurrence in medical liability insurance. The limits will be adjusted annually for inflation up to \$375,000 per occurrence or \$750,000 for injuries that fall within the exception. (2003)



WISCONSIN HOSPITAL ASSOCIATION, INC.

October 18, 2005



TO: Assembly Committee on Insurance  
FROM: Eric Borgerding, Senior Vice President  
SUBJECT: Support for AB 766, AB 765 and AB 764

Chairperson Nischke and members, my name is Eric Borgerding and I am Senior Vice President for the Wisconsin Hospital Association (WHA). Thank you for this opportunity to speak today in support of AB 764, AB 765 and AB 766. This hearing, and the Speaker's task force that preceded it, are an extraordinarily rapid and high-priority response to a series of damaging Supreme Court decisions, and our 130 member hospitals appreciate your concern and commitment.

Your urgency is warranted, for the consequences of inaction or delay are of a nature that threatens to undermine Wisconsin's health care delivery system.

If you work in the health care system, that is, if you struggle with recruiting physicians to rural or urban areas, if you are a rural family practice doctor who also delivers babies, or more importantly, if you are a patient who may not have access to the care you need, you know that inaction, or an inadequate response to these recent decisions could be devastating.

Yet, today you will hear all sorts of reasons why Wisconsin should not restore a cap on non-economic damages. Our opponents will tell you that the damage cap made no difference in Wisconsin and that liability insurance premiums will not go up due to its loss. And if premiums do increase, our opponents will attribute it to bad investments made by insurance companies. But today, you will hear compelling evidence to the contrary from Pinnacle Resources, authors of September, 2005 actuarial analysis of Wisconsin's medial malpractice environment.

Our opponents will attempt to distract you by claiming malpractice premiums are a minuscule percentage of overall health care costs. And you know what, I think they are largely correct. But this is not about some misleading comparison to overall health care spending -- it is about the patients put at risk when skyrocketing liability premiums force physicians to leave Wisconsin or retire too soon.

The fact that malpractice premiums amount to a fraction of overall health care spending won't make much difference to the pregnant mother who has to travel 150 miles to deliver her baby because the last OB/GYN left town.



Our opponents tell you to ignore the havoc out of control premiums are wreaking in other states -- but what has happened in Illinois, Oregon, Washington, Nevada, Ohio, and many other states without caps simply cannot be ignored or minimized:

- In Oregon, liability premiums for family practice physicians that deliver babies have increased 332% since caps on non-economic damages were struck down in 1999. By 2002, 34% of all physicians delivering babies in Oregon had quit performing deliveries.
- In Washington, where their short-lived caps were struck down in 1988, fewer doctors are delivering babies and more women are arriving in Washington hospitals never having received prenatal care.
- In Illinois, where in 2002 uncapped non-economic damages accounted for 91% of the average jury award, OB-GYNs have fled the state, many coming to Wisconsin. Southern Illinois is devoid of neurosurgeons and without head trauma coverage.
- In Ohio, where caps were struck down in 1991 and again in 1995, a 2004 survey of physicians conducted by the Ohio Department of Insurance indicated that nearly 40% of those who responded said they had retired, or planned on retiring in the next three years due to rising insurance costs. Only 9% of the respondents were over age 64.

We cannot dismiss what has happened in these and other states, and we cannot ignore the stories from the dozens and dozens of skilled physicians who have left these states to come practice medicine in Wisconsin. In fact, you will hear from some of them today.

Our opponents will bury you with a two-foot high pile of studies from academia far and wide or from sponsored advocacy groups claiming damage caps have no impact on malpractice premiums. In contrast, today you will be presented with a fresh, Wisconsin focused actuarial analysis that will show what a cap on non-economic damages helped accomplish in Wisconsin, what the absence of a cap will mean in Wisconsin, and, most importantly, what a cap, depending on the amount, can prevent in the future.

But frankly, we don't need to speculate, or wait and see what the impact of loosing the cap will be, because our members are dealing with it right now.

We have received numerous reports of how much more difficult it has already become to recruit physicians to Wisconsin, particularly to rural areas. New physicians considering practicing in Wisconsin, or those thinking of relocating here are very concerned about what has happened here and, more importantly, what will be done about it. They simply aren't buying the notion that without a cap, Wisconsin will be just fine, or that because we have an Injured Patients and Families Compensation Fund there is nothing to worry about. In the real world of 24/7/365 health care, things are quite the opposite. You will hear more about this today from a Wisconsin physician recruiter.

Through our own physician workforce studies (see attached), we know that even with a cap, Wisconsin is facing serious challenges to recruit and retain new physicians. We must do everything we can to attract and keep the young doctors we will all need to care for us in the future. Frankly, I can think of nothing more damaging to that critical effort than the Ferdon decision. Doing nothing in response is simply not an option.

Our opponents will have you believe that Wisconsin is somehow immune from the escalating damages and increasing out of court settlements that have taken hold in states without caps. They will try to sidetrack this debate by pointing to the few Wisconsin jury verdicts in the last ten years that exceeded the then existing cap. But make no mistake, without a cap on non-economic damages, we will see more lawsuits, higher damages and, more importantly (but less noticed), higher out of court settlements – all of which will drive up liability premiums.

In fact, within days of Ferdon, there were plaintiff's attorneys in Wisconsin doubling their pre-Ferdon settlement demands. We don't need to speculate about the long-term negative impact of Ferdon – it is happening already.

Until very recently, Wisconsin had one of the most balanced, and frankly envied, medical liability systems in the country -- the sum of an equation that included two key factors – the Wisconsin Injured Patients and Families Compensation Fund and a cap on non-economic damages (some would include a third component – unlimited economic damages).

Indeed, on May 12, 2005, just six weeks before the Ferdon ruling, Wisconsin Commissioner of Insurance Jorge Gomez reported on the impact of 1995 Act 10 (\$350,000 cap on non-economic damages plus inflation). In his report, the Commissioner described a then favorable medical liability climate, and the impact it has had on access to health care.

*"To conclude ... Wisconsin's malpractice marketplace is stable. Insurance is available and affordable, and patients who are harmed by malpractice occurrences are fully compensated for unlimited economic losses. Tort reform of 1995, along with well regulated primary carriers and a well managed and fully funded Injured Patients & Families Compensation Fund has resulted in the stable medical malpractice environment, and the availability of health care in Wisconsin."*  
(emphasis added)

In the same report, again issued roughly two months before the Supreme Court overturned our cap on non-economic damages, Commissioner Gomez indicated that medical liability carriers were predicting premiums would remain roughly the same in Wisconsin over the coming year. However, he also made it very clear that, and again I quote:

*"... rate stability could be dramatically impacted for both the Fund and primary carriers should the caps be removed and insurers face unlimited non-economic damages."*

Commissioner Gomez must have a crystal ball in his office, for today, three months since the Ferdon decision, his same concerns are being predicted by leading actuaries.

A fair system, one that balances the rights of injured parties with the basic need for an accessible health care system, is what we had in Wisconsin, and what we must strive to restore through this legislation. A system in which liability premiums do not drive out of business, out of the state, or into retirement, the very doctors we count on the most when we need them the most.

To accomplish this, we must have a well-reasoned and rational cap on non-economic damages – one that is developed through a deliberative process that contemplates both political and judicial realities. A cap that is meaningful, and that is not so high that it essentially does not exist. A cap that accounts for the differing life circumstances of each plaintiff, including their age. And, a cap that does not, nor is it intended to, stand

alone, but rather as the key component of Wisconsin's comprehensive medical liability system – a system that already includes:

- Unlimited economic damages
- Unlimited damage recovery through mandatory provider participation in the IPFCF
- Mandatory periodic payments
- And, unlike any other state, guaranteed recovery of damages through mandatory \$1 million/\$3 million coverage for physicians and hospitals

Now missing from this system is a cap on non-economic damages and recognition of collateral sources, both of which will be addressed by the legislation before you.

Finally, I would like to quote from testimony delivered on April 7, 2005 by my counterpart in Illinois, just one of many states facing a very real, very litigation-driven health care access emergency:

*"The medical liability crisis in Illinois is causing an unprecedented health care access crisis throughout the state. While some areas of Illinois may be suffering more than others, the systemic problems driving these crises exist all over Illinois and show no signs of abating. In the areas hardest hit, we are finding an absence of obstetricians willing to treat "high risk" babies, emergency care physicians unwilling to provide trauma care, and neurosurgeons refusing to provide complex and high-risk procedures."*

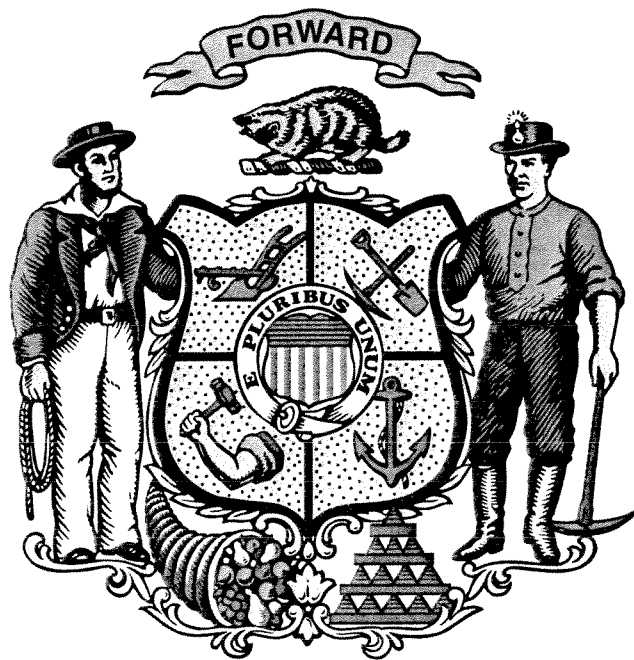
*The commercial insurance market has abandoned hospitals, leaving them to pay the astronomical costs of verdicts and settlements out of their own pockets – money that should be spent on caregivers and new technology and in dozens of other ways that would benefit patients and communities. This crisis is growing. If nothing is done, the health care access barriers may become insurmountable."*

This is not speculation or exaggeration, this is real life, and it is testimony I hope you will never here in Wisconsin.

On August 25, 2005, after passing the Democrat-controlled house and Democrat-controlled Senate, Illinois Governor Rod Blagojevich, also a Democrat, signed Illinois's new cap on non-economic damages into law.

We must learn from the mistakes of other states, not try to repeat them. We do not need to experience the dismantling of a health care system; we need to prevent it from happening.

WHA believes a balanced and equitable system can be preserved in Wisconsin but it will require the Legislature and Governor to act. We believe that system must have as its foundation a cap on non-economic damages and other important reforms, including recognition of collateral sources and IPFCF coverage for medical residents. We urge you to support AB 764, 765 and 766.





# Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Assembly Committee on Insurance  
Representative Ann Nischke, Chair

FROM: Mark Grapentine, JD – Vice President, Government Relations  
Jeremy Levin – Government Relations Specialist

DATE: October 18, 2005

RE: **Support** for Assembly Bill 766

On behalf of the more than 10,000 members of the Wisconsin Medical Society, thank you for this opportunity to testify in support of Assembly Bill 766. We urge the Legislature to join together and support this effort to maintain Wisconsin's status as a place where physicians can practice medicine in a stable medical liability environment. That stability means patients can have access to quality health care no matter where they live.

## **Restoring the Caps is a Nonpartisan Issue**

Access to health care knows no political party. When physicians see patients, they don't see Democrats or Republicans. And for the last 10 years, Wisconsin physicians have been able to do their work assessing and treating patients in a stable medical liability environment that benefits all parties.

The first attachment to this memo reveals just how stable Wisconsin's litigation environment has been. The real-life examples from physicians in their own words shows not just that other states' medical litigation environments are shockingly toxic, but that in comparison Wisconsin is seen as an oasis. This attracts physicians here, helping at least to delay an inevitable physician shortage in our state that has a significant aging population.

Physicians are as politically and ideologically diverse as any profession, but the desire to practice medicine free from rampant lawsuits searching for "jackpot justice" unites physicians as few issues do.

## **Facts and Data Point to "Effective Cap" Target**

One of the most difficult variables in grappling with the Supreme Court's decision is finding a cap figure that is both reasonable and effective. Reasonable in that it responds to the Court's concerns and finds a path to constitutionality, effective in that the cap is not set so high as to fail to provide predictability to the liability insurance system. Because both goals must be met for a cap's success, finding the "tipping point" above which stability fails has been difficult to assess.

We believe the Pinnacle actuarial report commissioned by the Wisconsin Hospital Association and the Society helps hone in on that target figure using data that shows what's happening in the country right now. When sorting the states into cap level tiers, a range of maximum stability appears. The award figures in AB 766 fall near the top of the range Pinnacle identifies as most effective on a state's medical liability stability. The cap figure overturned in July, while lower than what AB 766 proposes, was also within that range. Wisconsin's physicians believe it is no coincidence that an effective cap level is a critical component in a state's liability environment.

The dramatic change the Supreme Court's action portends is now getting national attention. The second attachment to this memo is an editorial in a recent *American Medical News*, the newspaper of the American Medical Association. Since 1995 we have avoided seeing the terms "Wisconsin" and "liability crisis" in the same headline; the editorial shows that Wisconsin's reputation as a "safe" state is in jeopardy.

**Product Shows Legislature's Response to Supreme Court's Concerns**

We believe the Legislature has done its due diligence in crafting a bill responsive to a majority of the Supreme Court. Physicians and legislative leaders agree that the medical liability system needs a balance – as the *AMA* editorial puts it, "that plaintiffs aren't paid too little and doctors don't pay too much."

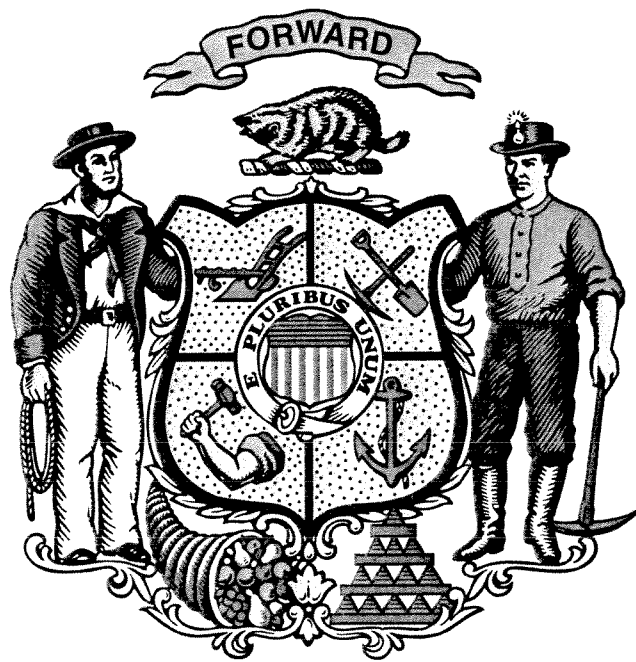
While other states have responded to their liability crises by capping economic damages as well as noneconomic damages, Wisconsin struck a better balance: unlimited economic damages, allowing plaintiffs to be made whole in quantifiable areas like lost wages and medical costs. In attempting to restore that balance, the Speaker's Task Force did an admirable job examining the issues at hand while keeping in mind that the legislative branch is not the judicial branch. A co-equal branch of government can disagree with another branch, but at the same time it must respect the duties of that branch.

With that in mind, the Society hopes the Legislature unifies behind a bill establishing a reasonable and effective cap achieved through a clear and rational process. The Task Force helps create a legislative history for this bill that differs from the history underlying the statute that was overturned. Given the thoughtful, deliberative, fact-based product demonstrated by this bill, the Society hopes the Governor will respect the Legislature's efforts and allow the Judiciary to fulfill its role in the three-part system. Opinions regarding constitutionality are best decided by those elected specifically for that purpose; the seven members of the Supreme Court should be the final arbiters of this bill's constitutionality, if it is ultimately challenged.

Thank you again for this opportunity to register the Society's strong support for AB 766. Please feel free to contact the Society on this or any other issue.

**Attachments:**

- Society Memo to Speaker's Task Force, September 28, 2005
- Editorial, *AMA American Medical News*, October 17, 2005
- *Your Doctor, Your Health*, Fall 2005



## MEMORANDUM

**To:** Members, Assembly Committee on Insurance  
**From:** State Bar of Wisconsin  
**Date:** October 18, 2005  
**Re:** Opposition to AB 764 (Collateral Source) and AB 766 (Caps)

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**The State Bar of Wisconsin opposes AB 766, recovery of noneconomic damages in medical malpractice cases and AB 764, awards to persons suffering damages as the result of medical malpractice and evidence of compensation for those damages.**

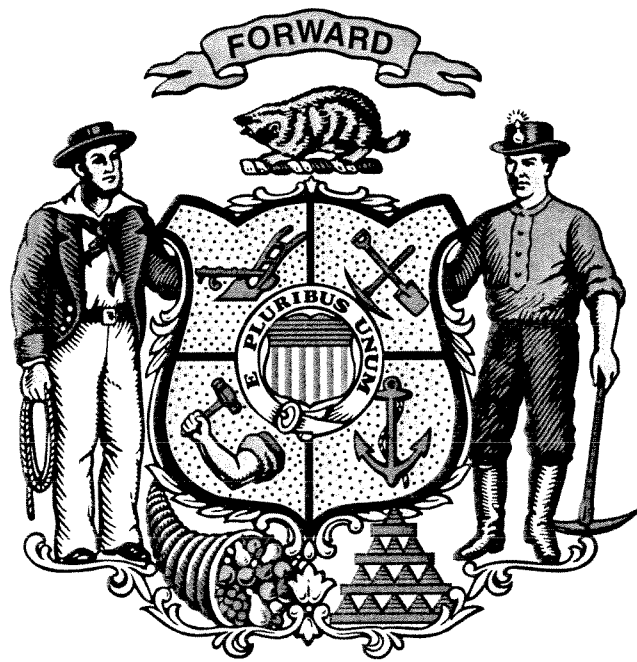
**AB 766: (Caps on Non-economic Damages)** The State Bar of Wisconsin opposes legislatively set limits on non-economic damages. Caps on non-economic damages run counter to the right of obtaining justice “completely and without denial.” Such caps set in place an arbitrary pretrial limit when those decisions are best decided by a jury and a court of law. In addition, caps on non-economic damages place an unnecessary hardship on the most seriously injured. Statutory caps are inconsistent with the nature of non-economic damages which are more difficult to quantify.

**AB 764: (Collateral Source)** The State Bar of Wisconsin opposes changes to the collateral source rule which would allow for the reduction of awards by payments from collateral sources that do not have subrogation rights. This bill does not appear to draw a distinction between payments from differing kinds of collateral sources.

The fact that payments are received from a collateral source is irrelevant in the determination of negligence or the amount of damages. The responsibility of a tort-feasor to pay damages caused should not be lessened by the victim’s prudence in planning for contingencies.

If you have any questions, please do not hesitate to contact our lobbyist on these issues, Lisa Roys at 608.250.6128 or [lroys@wisbar.org](mailto:lroys@wisbar.org).





To: Assembly Insurance Committee

From: Cindy and Dennis Ferdon

Date: October 18, 2005

RE: Testimony against 2005 AB 766

Our names are Cindy and Dennis Ferdon. On November 27, 1996, our third child, Matthew, was born. During Matthew's delivery, a medical emergency known as shoulder dystocia occurred. His shoulder got caught between pelvic bones while descending through the birth canal. This stopped his descent and his delivery. The doctor applied excessive traction in the attempt to deliver him as opposed to using well known maneuvers that apply no force to the baby's head. The traction was so excessive that it injured Matthew's nerves that ran from his spinal cord to his right arm. The nerves were literally torn apart. The injury left his right arm permanently deformed and partially paralyzed.

Suit was instituted on Matthew's behalf in the Brown County Circuit Court against the obstetrician, his insurer, and the Wisconsin Patients Compensation Fund. This was a difficult decision, but one we felt we had to pursue because of Matthew's disability.

At trial Matthew sought compensation for his disability, as well as for pain and suffering. He also asked for the cost of future medical expenses and for an award for impaired earning capacity. We brought a derivative claim, asking for past medical expenses and for the services they would provide Matthew as a result of his injury through his eighteenth birthday.

Although the defendants admitted Matthew suffered a permanent obstetric brachial plexus injury, they denied the nature and extent of his injury. They relied on a vocational expert and an economist who testified that Matthew's claim for future impaired earning capacity was speculative. We need had to pay for our experts to counter this claim.

#### B. The Verdict

The jury found that the defendant doctor was negligent and that his negligence was a cause of Matthew's injury. The jury awarded Matthew \$700,000 for past and future personal injuries and \$403,000 for future medical and hospital expenses. No money was awarded for impaired earning capacity. We were awarded \$220,000 for past medical and hospital expenses and for the amount of personal care and services they would render for Matthew up to his eighteenth birthday.

I believe the jury did not award money for future impaired earning is because they felt the noneconomic damage award would compensate Matthew for his injuries more

appropriately than determining whether he would suffer any future earnings loss. It is one of the dilemmas for a jury because as fact finders they are generally not told about cap.

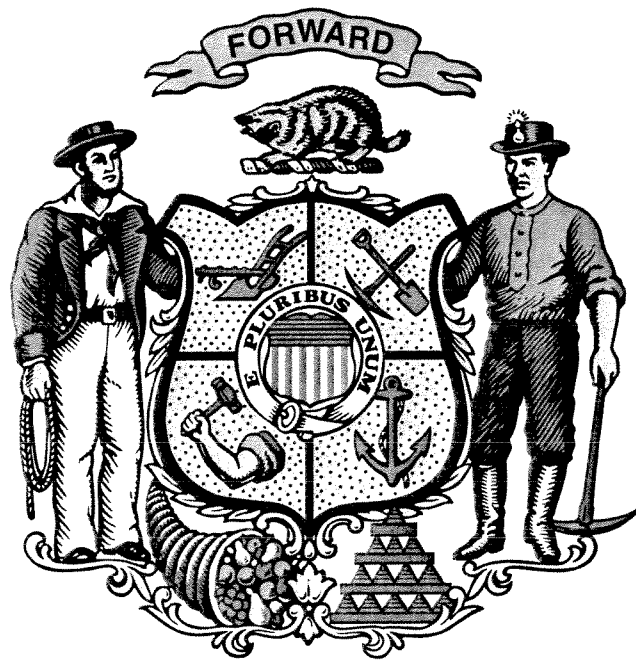
This also shows how important noneconomic damages are to injured patients and their families. The jury's award for economic loss — medical expenses and lost wages — merely replaces money that a person has actually lost and it goes to repay the doctors and other health care providers. It is only the award above the out-of-pocket loss that is available to compensate in some way for the pain, suffering, physical impairment or disfigurement that an injured person and their family must endure until death.

Following the jury's verdict, the judge applied the previous cap on noneconomic damages, deprived Matthew of over 40% of what the jury believed he deserved to compensate him for his life-long injury. We felt that was unfair and appealed our case to the Wisconsin Supreme Court.

The decision of Justice Abrahamson writing for the majority concluded that the \$350,000 cap on non-economic damages in medical liability cases violates equal protection because there is no rational basis between the goals of the legislation and the different treatment of certain injured plaintiffs under the statute. Because the majority determined that a rational basis for the statute does not exist, the statute is unconstitutional and the cap on non-economic damages in medical liability cases is now removed.

We agree with the statements of the Court that found, "The \$350,000 cap limits the claims of those who can least afford it; that is, the claims of those, including children such as Matthew Ferdon, who have suffered the greatest injuries. Thus, the cap's greatest impact falls on the most severely injured victims.

We spent several years challenging this cap and the same thing will happen again. Therefore, we urge this Committee not to adopt another cap on noneconomic damages.



*A System for Life*

**TO:** Assembly Committee on Insurance

**FROM:** Ralph V. Topinka, Vice President & General Counsel  
Mercy Health System  
Janesville, Wisconsin

**DATE:** October 18, 2005

**SUBJECT:** Testimony Regarding - AB764 (Collateral Source) AB765 (Medical Residents)  
AB766 (Medical Malpractice Caps)

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## INTRODUCTION

Mercy Health System is an integrated health care delivery system that provides physician, hospital, nursing and other health care services to residents in Southern Wisconsin and Northeastern Illinois. Mercy employs more than 3,300 individuals, including approximately 1,250 persons who are licensed or certified health care professionals, more than 250 physicians and more than 650 registered nurses. We provide clinic-based services in 39 community clinics located in six counties in Wisconsin and Illinois. Our clinics range from single physician practices to large multi-specialty centers with ambulatory surgery, urgent care services and various diagnostic services.

Please accept our strong support for Assembly Bills 764, 765 and in particular, 766. Assembly Bill 764 modifies the collateral source rule to reflect a common sense approach to awarding damages in medical malpractice actions, that is, making sure that claimants recover only once for the same item of damages. Similarly, AB 765 is a sound approach to making sure that residents in training, and their employers, may participate in the Injured Patients and Families Fund and may have the protection of caps on non-economic damages that apply to other health care providers.

## CAPS ON NON-ECONOMIC DAMAGES

The main focus of my testimony today is Assembly Bill 766. This bill restores caps on non-economic damages in medical malpractice cases.

Unlike patients in most states, patients in Wisconsin who make successful claims for medical malpractice can be assured that they will receive financial compensation. That is because in Wisconsin, health care providers by law must obtain medical malpractice

insurance, and must participate in the Injured Patients and Families Compensation Fund (the "Fund"). The combination of providers' malpractice insurance and the Fund means that in Wisconsin, successful malpractice claimants will receive their full economic damages, less costs and attorneys fees. As we are aware, until the recent *Ferdon* decision, there was a statutory cap on recovery of non-economic damages. Even with the cap, however, plaintiffs could recover hundreds of thousands of dollars in non-economic damages in addition to unlimited economic damages.

There are a variety of reports and actuarial studies that demonstrate certain basic facts about the Wisconsin medical malpractice marketplace. These facts include:

- Wisconsin's malpractice insurance market compares favorably to other states in terms of affordability of insurance;
- States with caps on non-economic damages generally have more affordable malpractice insurance and loss ratios;
- States with low to medium caps are more likely to have favorable malpractice insurance markets.

Wisconsin's careful legislative balance--mandatory malpractice insurance and participation in the Fund, unlimited Fund protection for malpractice awards and settlements, and reasonable caps on non-economic damages--has contributed to Wisconsin's favorable malpractice insurance market. This is just one of the reasons we believe maintenance of a cap on non-economic damages in medical malpractice actions is critical.

In his concurring opinion in *Ferdon*, Supreme Court Justice Patrick Crooks emphasized that "statutory caps on noneconomic damages in medical malpractice cases, or statutory caps in general, can be constitutional." While finding the caps created by the Legislature in 1995 unconstitutional, Crooks concluded, "Wisconsin can have a constitutional cap on noneconomic damages in medical malpractice actions, but there must be a rational basis so that the legislative objectives provide legitimate justification, and the cap must not be set so low as to defeat the rights of Wisconsin citizens to jury trials and to legal remedies for wrongs inflicted for which these should be redress." We believe Assembly Bill 766 meets these standards.

The majority opinion in *Ferdon* recognized that, according to a study by the U.S. General Accounting Office, a shortage of physicians existed in rural locations in states without limitations on damage awards. Further, the majority recognized that malpractice pressures are among the factors that affect the availability of services.

There are a number of reports that outline Wisconsin's current and increasing shortage of physicians. Given Wisconsin's aging population and other changing demographics, the retention and recruitment of physicians are crucial in order to provide sufficient access to health care. In addition, there are studies that have found that the retention and

recruitment of physicians, especially in rural and urban areas, are more successful in states that have stable and affordable medical liability insurance rates.

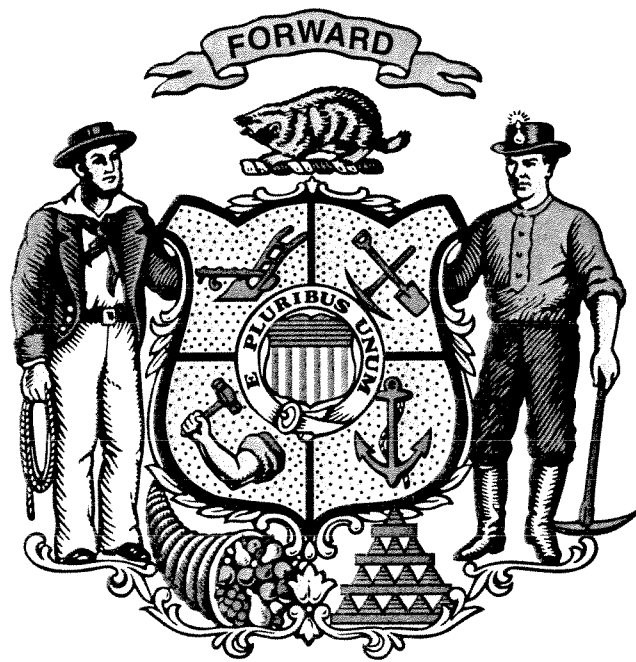
One of Mercy Health System's primary goals is to provide health care services in communities where the services are needed. In order to do that, we work diligently to recruit and retain high quality physicians. In light of a national shortage of physicians, recruitment and retention of physicians is always a difficult task.

Wisconsin has historically enjoyed a stable medical malpractice climate. Because we provide physician services both in Wisconsin and Illinois, Mercy has a good appreciation and perspective on the advantages of a stable medical malpractice climate. We have first hand experience with physicians who have left their practices in Illinois, some of them come to Wisconsin, because of the historically unfavorable Illinois medical malpractice climate. Our favorable malpractice climate has helped our recruitment and retention efforts.

#### CONCLUSION

As recognized by the Court in *Ferdon*, Wisconsin currently enjoys a stable and affordable medical liability environment. We believe that reasonable caps on non-economic damages in medical malpractice actions contribute to that environment. Based on actuarial analyses of the insurance exposure amount that would provide stable and affordable insurance rates and studies of the caps in other states, we believe a cap no greater than \$550,000 will help maintain Wisconsin's current positive environment. On the other hand, based on the same and other studies, it is reasonable to conclude that a cap or limitation in an amount above \$550,000 would have a negative impact on that environment. The studies and actuarial analyses indicate that a high cap or limitation would not provide the same predictability, stability, or affordability as a low or medium cap.

Coupled with assurances of recovery through mandatory malpractice insurance for health care providers and mandatory participation in the Fund, Assembly Bill 766 is a sound and rational approach to ensuring a stable malpractice environment and improving access to health care in Wisconsin by stabilizing or increasing the supply of physicians in Wisconsin and encouraging physicians and hospitals to provide health care services in rural and urban areas.







*Wisconsin Society of Podiatric Medicine, Inc.*

To: Chairperson Ann Nischke and Members of the Assembly Insurance Committee

From: Kevin Kortsch, DPM  
Executive Director

Date: Tuesday, October 18, 2005

Re: Support for Medical Malpractice Reform Legislation  
- AB 764 and AB 766

The statewide membership of the Wisconsin Society of Podiatric Medicine urges you to **support and favorably advance** AB 764 and AB 766. These proposals well balance the interests of health care consumers and health care providers. Taken together, the bills afford injured consumers with appropriate redress for valid malpractice claims. At the same time, health care providers, including doctors of podiatric medicine and surgery, can practice without having to be worried about excessive claims of medical malpractice.

Today, Wisconsin law requires podiatrists to have malpractice insurance coverage. It is a condition of licensure in Wisconsin.

Doctors of podiatric medicine and surgery purchase malpractice insurance in the private sector. Typically the carrier is one that has podiatry advisors regarding claims and premiums. Valid claims for reasonable amounts are settled promptly, while others are disputed. While the number of claims against podiatrists is not increasing, the amounts sought (claim severity) have been increasing.

To conclude, AB 764 and AB 766 are reasonable support their passage and respectfully request your assistance in that regard.

Dr. Kevin Kortsch  
Executive Director  
dr\_kortsch@juno.com  
(262) 521-9108