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2005-06

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Annotation

VALIDITY, CONSTRUCTION, AND APPLICATION OF STATE STATUTORY PROVISIONS
LIMITING AMOUNT OF RECOVERY IN MEDICAL MALPRACTICE CLAIMS

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One of the more controversial medical malpractice tort reforms is the imposition by statute of a limit to the damages recoverable by an injured plaintiff and those whose claims against a health care provider derive from the patient's injury. Such statutes vary in the degree to which they constrain the recovery, and may be evaluated in terms of the reasonability of a complete statutory scheme affecting many aspects of medical malpractice litigation. An unusual approach was upheld in University of Miami v Echarte (1993, Fla) 618 So 2d 189, 26 ALR5th 831, in which the court considered the validity of statutes which imposed damage limitations when the parties chose to have their dispute arbitrated, or when the plaintiff chose to go to trial after refusing a defendant's offer to arbitrate. State constitutional provisions have been important in determining the validity of damage limitations, and some courts have demanded that the statutory scheme provide an adequate substitute for the malpractice victim's former rights. In addition to issues of validity, statutory damage "caps" also present questions of construction when, for example, multiple defendants or causes of action, or other statutes limiting damages in the particular circumstances, are involved. Cases deciding these and other issues relevant to the validity and application of statutes limiting medical malpractice recoveries are collected and analyzed in this annotation.

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SOUTH DAKOTA

Knowles v United States (1993, DC SD) 829 F Supp 1147 (applying South Dakota law)--§ 30[a]
Knowles v United States (1994, CA8 SD) 29 F3d 1261 (applying South Dakota law)--§ 35[a]
Sander v Geib, Elston, Frost Professional Ass'n (1993, SD) 506 NW2d 107--§§ 2[b], 30[b]

TEXAS

Accord, Detar Hospital, Inc. v Estrada (1985, Tex App Corpus Christi) 694 SW2d 359--§ 10[b]
Baptist Hospital of Southeast Texas, Inc. v Baber (1984, Tex App Beaumont) 672 SW2d 296--§ 10[b]
Brownsville Medical Center v Gracia (1985, Tex App Corpus Christi) 704 SW2d 68--§ 15
Citing Baptist Hospital of Southeast Texas, Inc. v Baber (1984, Tex App Beaumont) 672 SW2d 296--§ 10[b]
Columbia Medical Center of Las Colinas, Inc. v. Hogue, 132 S.W.3d 671--§ 37.5
Detar Hospital, Inc. v Estrada (1985, Tex App Corpus Christi) 694 SW2d 359-- § 15
Horizon/CMS Healthcare Corp. v. Auld, 985 S.W.2d 216--§§ 15, 43
Houston v Arney (1984, Tex App Houston (1st Dist)) 680 SW2d 867--§ 34[b]
Lucas v United States (1986, CA5 Tex) 807 F2d 414 (applying Texas law)--§ 35[a]
Lucas v United States (1988, Tex) 757 SW2d 687--§§ 10[b], 13-15
Malone & Hyde, Inc. v Hobrecht (1985, Tex App San Antonio) 685 SW2d 739--§ 10[b]
Mercy Hospital of Laredo v Rios (1989, Tex App San Antonio) 776 SW2d 626--§ 15
Rose v Doctors Hosp. (1990, Tex) 801 SW2d 841--§§ 10[b], 11, 15, 29[a]
Wynn v Cohan (1993, Tex App Houston (14th Dist)) 864 SW2d 205--§ 29[a]

UTAH

Judd v. Drezga, 2004 UT 91, 103 P.3d 135--§§ 3[a], 4, 5.5, 5[a]

VIRGIN ISLANDS

Cebedo v. Tobal, 240 F. Supp. 2d 373 (applying Virgin Islands law)--§ 25 [a]

VIRGINIA

Bulala v Boyd (1990) 239 Va 218, 389 SE2d 670--§§ 2[b], 30[a], 31
Etheridge v Medical Center Hospitals (1989) 237 Va 87, 376 SE2d 525--§§ 17[a], 18, 19[a], 21, 22, 29[c], 30[a], 31, 34[a]
Fairfax Hosp. System, Inc. v McCarty (1992) 244 Va 28, 419 SE2d 621--§§ 2 [b], 31
Following Bulala v Boyd (1990) 239 Va 218, 389 SE2d 670--§ 36[c]
Modaber v Kelley (1986) 232 Va 60, 348 SE2d 233--§ 31
Power v Alexandria Physicians Group (1995, ED Va) 887 F Supp 845, 48 Soc Sec Rep Serv 290 (applying Virginia law)--§ 36[a]
Pulliam v. Coastal Emergency Services of Richmond, Inc., 257 Va. 1, 509 S.E.2d 307--§ 21
Starns v United States (1991, CA4 Va) 923 F2d 34 (applying Virginia law)-- §§ 30[a], 35[a]

WEST VIRGINIA

Daniel v. Beaver, 300 F. Supp. 2d 436 (applying West Virginia law)--§ 24.5

Robinson v Charleston Area Medical Ctr., Inc. (1991) 186 W Va 720, 414 SE2d 877--§§ 3[a], 4, 5[a], 6, 22, 30[a]
Verba v. Ghaphery, 552 S.E.2d 406--§§ 3[a], 7.5

WISCONSIN

Czapinski v. St. Francis Hosp., Inc., 236 Wis. 2d 316--§ 17[a]
Ferdon ex rel. Petrucelli v. Wisconsin Patients Compensation Fund, 2005 WI 125, 2005 WL 1639450--§ 3[b]
Guzman v. St. Francis Hosp., Inc., 240 Wis. 2d 559--§ 7.5
Herman v Milwaukee Children's Hospital (1984, App) 121 Wis 2d 531, 361 NW2d 297--§§ 30[a], 41
Jelinek v St. Paul Fire & Casualty Ins. Co. (1994) 182 Wis 2d 1, 512 NW2d 764--§§ 32, 34[a]
Martin by Scoptur v Richards (1995) 192 Wis 2d 156, 531 NW2d 70--§ 27
Maurin v. Hall, 2004 WI 100, 682 N.W.2d 866--§§ 3[a], 4, 5[a]
Phelps v. Physicians Ins. Co. of Wisconsin, Inc., 2004 WI App 91, 681 N.W.2d 571--§ 45
Phelps v. Physicians Ins. Co. of Wisconsin, Inc., 2005 WI 85, 698 N.W.2d 643--§ 45
Rineck v Johnson (1990) 155 Wis 2d 659, 456 NW2d 336--§§ 32, 34[a]
Wisconsin Patients Compensation Fund v St. Paul Fire & Marine Ins. Co. (1984, App) 119 Wis 2d 41, 349 NW2d 719--§ 29[a]

SPECIALIZED COURTS

WI 80, 613 N.W.2d 120--§ 17[a]
WI App 21, 623 N.W.2d 776--§ 7.5

ARTICLE

I. Preliminary Matters

§ 1. Introduction

[a] Scope

This annotation [FN1] discusses those cases in which the courts have considered the validity and construction of state statutory provisions which limit the amount of damages recoverable in a medical malpractice action. Only cases dealing with statutory provisions specifically limiting malpractice damages are included, and not those considering statutes, for example, which limit personal injury or wrongful death damages generally, limit governmental or charitable immunity generally, or provide for the structuring of a medical malpractice award without limitation of amount. [FN2] Although the abrogation of the "collateral source" rule may result in a lower allowable recovery in medical malpractice actions, cases considering the validity of such statutes are not included. [FN3] The questions of when a defendant qualifies as a health care provider so as to be entitled to the benefit of a statutory damage limitation, [FN4] and which patient and nonpatient claims are medical or healing art malpractice within the meaning of such a statute, have also been treated elsewhere. [FN5]

A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the courts' opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current

status of all statutes discussed herein, including those listed in the Jurisdictional Table of Cited Statutes and Cases.

[b] Related annotations

Validity, Construction, and Application of State Birth-Related Neurological Injury Compensation Programs. [111 ALR5th 459](#).

Tort Claim for Negligent Credentialing of Physician. [98 ALR5th 533](#).

Malpractice in diagnosis and treatment of male urinary tract and related organs. [48 ALR5th 575](#).

Allowance of punitive damages in medical malpractice action. [35 ALR5th 145](#).

Recovery of damages for expense of medical monitoring to detect or prevent future disease or condition. [17 ALR5th 327](#).

Medical malpractice: who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. [12 ALR5th 1](#).

Joint and several liability of physicians whose independent negligence in treatment of patient causes indivisible injury. [9 ALR5th 746](#).

What patient claims against doctor, hospital, or similar health care provider are not subject to statutes specifically governing actions and damages for medical malpractice. [89 ALR4th 887](#).

What nonpatient claims against doctors, hospitals, or similar health care providers are not subject to statutes specifically governing actions and damages for medical malpractice. [88 ALR4th 358](#).

Validity and construction of state statute abrogating collateral source rule as to medical malpractice actions. [74 ALR4th 32](#).

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action against governmental unit. [43 ALR4th 19](#).

Validity of state statute providing for periodic payment of future damages in medical malpractice action. [41 ALR4th 275](#).

Priority and apportionment of liability between medical and hospital expense insurers. [25 ALR4th 1022](#).

Effect of anticipated inflation on damages for future losses--modern cases. [21 ALR4th 21](#).

Validity of statute establishing contingent fee scale for attorneys representing parties in medical malpractice actions. [12 ALR4th 23](#).

Per diem or similar mathematical basis for fixing damages for pain and suffering. [3 ALR4th 940](#).

Collateral source rule: injured person's hospitalization or medical insurance as affecting damages recoverable. [77 ALR3d 415](#).

Admissibility of expert medical testimony as to future consequences of injury as affected by expression in terms of probability or possibility. [75 ALR3d 9](#).

Allowance of punitive damages in medical malpractice action. [27 ALR3d 1274](#).

Sufficiency of evidence, in personal injury action, to prove future pain and suffering and to warrant instructions to jury thereon. [18 ALR3d 10](#).

Necessity and manner, in personal injury or death action, of pleading special damages in the nature of medical, nursing, and hospital expenses. [98 ALR2d 746](#).

Collateral source rule: receipt of public or private pension as affecting recovery against a tortfeasor. [75 ALR2d 885](#).

Hospital and medical services furnished to injured person by government as affecting damages recoverable for personal injury or death. [68 ALR2d 876](#).

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital. [25 ALR2d 203](#).

Federal Tort Claims Act: medical malpractice cases. [9 ALR Fed 16](#).

§ 2. Summary and comment

[a] Generally

The most direct method attempted to alleviate the increasing cost of medical malpractice insurance has been the enactment of statutes limiting the damages recoverable by medical malpractice plaintiffs. Such statutes modify the result of the application of the general rules applicable to an award of damages in a medical malpractice action, which are those governing the recovery of damages generally. [FN6] Statutes limiting the damages recoverable in medical malpractice actions differ, however, not only in the specific limit applied, but in the types of damages limited, and as to whether a patient's compensation fund is created as a source of recovery beyond the judgment allowed against a health care provider. Jurisdictions providing for a patient's compensation fund, which may be found in conjunction with a medical malpractice insurance program, have usually created a scheme in which there is a statutory cap on damages recoverable from a health care provider or providers, and a higher cap on total damages recoverable, with the fund liable for the difference. These different kinds of statutes have met with various challenges, under both state and federal constitutions, but when statutes have been invalidated, there has invariably been an independent state constitutional ground.

Equal protection arguments have been based on the fact that the statutes at issue distinguish between medical malpractice plaintiffs and other tort victims, and also between less seriously and more seriously injured patients, the former being able to receive full compensation for their damage within the statutory limitation, while the latter are not. Of those damage limitations enacted, proportionately more of the least restrictive type, on noneconomic damages only, have been upheld. Courts have both upheld (§ 3[a]) and invalidated (§ 3[b]) statutes limiting noneconomic damages on equal protection grounds, the outcome depending on how closely the statute is scrutinized under the rational basis test. While the courts are in agreement that that test is the proper one, and the statutes do not affect a suspect class requiring the closest scrutiny, some courts have examined the evidence for the existence of a medical malpractice insurance crisis, or the purported effectiveness of damage limitations in ameliorating it, while others have declined to second guess legislative determinations. Under the similar analysis used to determine validity under the due process clause, statutes limiting only noneconomic damages in medical malpractice actions were upheld (§ 4). When deprivation of the right to trial by jury has been asserted, again courts have diverged, some finding it the prerogative of the legislature to regulate the remedies available to plaintiffs (§ 5[a]), and others deciding that the jury must determine, not only what the plaintiff is entitled to, but what he or she will receive in damages (§ 5[b]). As to a challenge under a state constitutional provision guaranteeing that the courts of the state be open and afford a remedy for every injury, the court held that a statute limiting noneconomic medical malpractice damages was not invalid, because it did not create any preconditions or procedural barriers to suit (§ 6), rejecting the contention that the legislature must provide a quid pro quo when it exercised its right to modify or abolish a common-law right of action. Another court, however, upheld a statute which imposed noneconomic damage limitations when the parties agreed to have their dispute arbitrated, or when a plaintiff refused a defendant's offer to arbitrate (§ 7), against the argument that it violated the right to access to the courts, even though the court required the statute to provide a benefit commensurate with the loss of the right fully to recover medical malpractice damages.

Another type of statute applicable to medical malpractice actions limits all the plaintiffs' damages except for medical and related expenses. The validity of such a statute was upheld by the state supreme court against various state and federal constitutional challenges, as to both the cap on damages recoverable from a health care provider (§ 8), and the limit on damages for which the patient's compensation fund was liable (§ 9). Earlier, that court had promulgated the analysis appropriate for the determination of

validity under the right to equal protection, and the statute was upheld by other courts against such a challenge (§ 10[a]). Another statute of the same type, however, failed to survive an equal protection challenge against its application to claims of the catastrophically injured (§ 10[b]), although it was found valid as applied to wrongful death actions (§ 11), the court deciding that there was a sufficient nexus between the statute and the state's interest in insuring compensation only to those who have the closest relation to the deceased. A violation of equal protection was found, however, when amendments allowing the exclusion of medical and related expenses from statutory limitations on medical malpractice damages differed in terms of their retroactive application to public and private patients (§ 12), because there was no rational basis for distinguishing between them in this regard.

Although a statute limiting medical malpractice damages except for medical and related expenses was found valid under the federal due process clause (§ 13), it was determined to violate the open courts provision of the state constitution, as applied to claims of the catastrophically injured (§ 14). Because that provision protected only common-law causes of action, however, the statute could validly be applied, under the constitutional guaranty of open courts, to wrongful death claims, which had been created by the legislature (§ 15). A court also found that there was no violation of a state constitutional provision prohibiting governmental immunity by a statute limiting medical malpractice damages, except for medical and related expenses, recoverable against the state (§ 16).

A third type of statute limits the total damages recoverable in a medical malpractice action. Some courts have sustained such statutes under equal protection clauses (§ 17[a]), having found a rational connection between the damage limitations and the goal of reducing medical malpractice insurance rates. Other courts have invalidated them (§ 17[b]), often stating that it was unjust to require the most seriously injured malpractice victims to bear the burden of alleviating a perceived malpractice insurance crisis. When challenged under the right to due process, however, statutes limiting the total damages recoverable in medical malpractice actions have been upheld (§ 18), whether the claim was based on substantive or procedural grounds. Violation of the right to trial by jury has also been the basis for invalidating statutes limiting total medical malpractice damages (§ 19[b]), although other courts have sustained them (§ 19[a]), because the jury retained its function as factfinder of the amount of damages, while the statute implemented the right of the legislature to limit the actual remedy. Considering a statute providing separate limits of liability for health care providers and a state-run patient's compensation fund, the court recognized that the right to trial by jury was not violated by the limit on the fund (§ 19[c]). The argument has also been made that statutes limiting the total damages recoverable in medical malpractice actions offend constitutional rights to access to the courts or to redress for injury, and, while that argument has been the ground for invalidating a statute (§ 20[b]), most courts have rejected it (§ 20 [a]). Such statutes have also been upheld against the contention that they violated constitutional provisions for the separation of powers because they encroached on judicial power to enforce judgments or establish rules of procedure (§ 21). A statute limiting total medical malpractice damages was sustained under a constitutional provision prohibiting special legislation, the court deferring to the legislative power to create reasonable classifications (§ 22), while another court remanded the issue, after specifying the standard to be applied in determining it. Courts have also had occasion to consider the validity of a statute limiting general damages in medical malpractice actions (§ 23). Although invalidating the statute under the due process clause of the state constitution, the court found it did not violate the right to equal protection. Another type of damage limitation constrained only the allowable recovery from a health care provider, and the court upheld the validity of the statute, which transferred liability for the remainder of a malpractice plaintiff's judgment to a patient's compensation fund (§ 24). [FN7]

In addition to deciding the validity of statutes limiting damages in medical malpractice actions, the courts have had to determine their construction and application in various

circumstances. The general applicability of one such statute to wrongful death claims (§ 25) and derivative claims (§ 26) has been upheld. The courts are in agreement that statutes limiting damages affect the substantive rights of medical malpractice plaintiffs and thus may not be applied retroactively (§ 27).

In many malpractice actions, the argument has been made that more than one recovery under a statute limiting damages should be allowed. When separate acts of malpractice have been alleged, under a statute limiting recovery for "any injury or death," the courts held that the plaintiff was entitled to only one recovery (§ 28[a]), while under another statute, which imposed a limit "per occurrence" of malpractice, more than one recovery was permitted (§ 28[b]). The courts have also differed as to whether one cap should apply to the recovery against each defendant (§ 29[a]), or to the aggregate recovery against all defendants (§ 29[c]). One court, having determined that the statutory limitation applied separately to each defendant, held that the total recovery against all defendants was nevertheless limited to the amount authorized to be recovered from the patient's compensation fund (§ 29[b]). A medical malpractice action may include multiple causes of action, such as parents' claims for medical expenses for an infant patient and spouses' claims for loss of consortium, or multiple plaintiffs with the same cause of action, such as wrongful death, and courts have also disagreed as to whether one cap (§ 30[a]) or more than one cap (§ 30[b]) should be applied. In this context, it has been held that a mother and her neonate were separate patients, for the purpose of determining the maximum recovery allowable under a statute limiting damages in a medical malpractice action, for injuries stemming from alleged malpractice at the time of the child's birth (§ 31).

Courts which have considered the issue have determined that if fault has been attributed to a medical malpractice plaintiff, the total verdict should first be reduced by the plaintiff's percentage of fault, before a statute limiting damages is applied (§ 32).

Another court found that veterans' benefits, paid to a medical malpractice plaintiff as a result of the injury sued upon, were properly characterized as advance payments under state law, and therefore were to be credited against the judgment after the application of the statutory cap (§ 33). When other state statutes limiting damages have been alleged to apply to a medical malpractice action, such as a statute limiting noneconomic damages in a civil action, or one limiting recovery against a charitable hospital, the courts have more often determined that the statute limiting medical malpractice damages applied (§ 34[a]), although in a medical malpractice action against a municipality, the court found the plaintiff's recovery limited instead by the state tort claims act (§ 34[b]).

As to actions under federal statutes, most courts agree that in medical malpractice actions against the United States under the Federal Tort Claims Act, the Federal Government is entitled to the benefit of state statutory limitations on damages recoverable from a health care provider (§ 35[a]). It has also been held, however, that the United States was entitled only to the application of the statutory cap on the total damages recoverable by a medical malpractice plaintiff, and not the lower cap on recovery against a health care provider (§ 35[b]). There is authority that the limitation applies in an action brought under the Emergency Treatment and Active Labor Act (§ 36[a]), but there is also authority to the contrary (§ 36[b]), and Federal District Courts in Virginia are divided on the issue (§ 36[c]).

In cases considering other questions of construction, it has been held that the term "future medical care and related expenses," as found in a statute limiting a medical malpractice recovery except for those items, referred to all medical expenses after the date of injury, and not only those incurred after the date of trial (§ 37). As to whether a patient's compensation fund must be joined as a party in a medical malpractice action, depending on the particular statute at issue, courts have held that it was (§ 38[a]) or was not (§ 38[b]) required that a plaintiff join the fund as a party in order for it to be liable for damages in excess of those recoverable from a health care provider, and it has also been held that it was not the defendant's duty to join the fund (§ 39). Under a statute which prescribed various methods by which a health care provider could

establish financial responsibility, so as to qualify for the benefit of a statutory cap on medical malpractice damages, the court said that, under a particular section, it was not necessary for the defendant to fund an escrow account with the full amount of recoverable damages for each claim pending against it (§ 40). As to interest and/or costs, courts have held that, while those pertaining to damages allowable under a statute limiting medical malpractice recoveries could be assessed against a patient's compensation fund (§ 41), there could be no award of interest on damages in excess of those specified by such a statute (§ 42).

[b] Practice pointers

Counsel for the defendant should be aware that courts have not taken consistent approaches to the question whether the failure to plead or otherwise raise a statute limiting damages in a medical malpractice action will result in a waiver of the statute's protection. It has been held that it was not necessary for a defendant health care provider to plead a statutory limitation as an affirmative defense under the state statute requiring such defenses to be pleaded. [FN8] The same result was reached in an action against the United States under the Federal Tort Claims Act, although for different reasons. [FN9] Although the statute may be considered an affirmative defense under state law, there is authority that, since the Federal Rules of Civil Procedure provide the manner and time in which defenses are raised and waiver may occur in Federal Court, a mere failure of technical compliance will not result in waiver. [FN10] Factors affecting resolution of the issue may be whether the plaintiff has been prejudiced by the failure to raise the issue, and whether there are any factual issues relating to the applicability of the statute, such as the portion of the verdict ascribable to a defendant's ordinary negligence, which may not be subject to the damage limitation. [FN11] The argument may be made that notice to the plaintiff was provided by other pleadings, whether or not the defendant has pleaded the statute as an affirmative defense. [FN12] On the other hand, it has also been held that a health care defendant should file a pleading alleging the facts on which its statutory protection depends, [FN13] and defense counsel should raise the issue early to avoid the possibility of alleged prejudice to the plaintiff, which at worst could result in the loss of the statute's protection. [FN14] Counsel should note, however, authority that no waiver of the statutory cap on damages occurred because a hospital defendant filed a motion in limine to restrict reference to the statutory limitation. [FN15]

As to jurisdictions in which a state compensation fund must be joined as a party in the medical malpractice action, counsel should be aware that it has been held necessary for the fund to be joined before the statute of limitations has run on the malpractice claim. [FN16]

Counsel should note that there is authority that payments made under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) are not collateral to an award of damages under the Federal Tort Claims Act, in a state in which the collateral source rule was applied, and the benefits were credited against a malpractice victim's award, after the application of the statute limiting medical malpractice damages, to avoid an impermissible double recovery. [FN17]

Counsel should be alert for various issues relating to settlements and judgments which may be affected by the application of a statute limiting damages or mandating a structured settlement. Under a statute providing that when a plaintiff is awarded future damages above a certain amount, the court must, at the request of either party, enter a judgment ordering such future damages to be paid periodically rather than in a lump sum, although the jury's role was to designate the amount of future damages subject to periodic payment, the court reserved the right to fashion the details of the periodic payment schedule. Counsel in that situation should consider presenting the court with a proposed schedule to meet the client's needs. [FN18] Counsel should also be aware that periodic payments to be received by a plaintiff may be valued as reduced to present value for certain purposes, such as deciding whether the plaintiff received a larger

verdict than a settlement offer rejected by the defendant. [FN19] Similarly, there is authority that a tortfeasor against whom a judgment has been rendered was not entitled to a credit equal to the undiscounted sum of payments provided for by a settlement. [FN20] When there is more than one plaintiff settling with one defendant while going to trial against another, counsel should consider whether there may be a benefit in allocating the settlement among the plaintiffs, considering the effect of damage limitations on the probable verdicts, rather than leaving it to the court. [FN21] Counsel should note that an agreement between parties to waive apportionment of fault among joint tortfeasors by the jury may become problematic if it fails to specify sufficiently the details of the credit and the effect of different potential verdicts. [FN22] Finally, although a patient's compensation fund may resemble an insurance company in some respects, at least one court has held that the fund was not subject to a statute making insurance companies liable for punitive damages and attorney's fees for its alleged failure to timely evaluate and settle a claim. [FN23]

II. Validity of Statutes Limiting Damages in Medical Malpractice Actions

A. Validity of Statutes Limiting Only Noneconomic Damages

§ 3. Under equal protection clause

[a] Validity upheld

In the following cases, the courts held that a statute limiting the recovery of noneconomic damages in a medical malpractice action was not invalid under the equal protection clause.

The California statute limiting noneconomic medical malpractice damages did not violate the federal equal protection clause, the court held in Hoffman v United States (1985, CA9 Cal) 767 F2d 1431, reversing the trial court's denial of a motion to limit the damages of a catastrophically injured patient under the statute, in an action against the United States under the Federal Tort Claims Act. The court found that the statute did not involve a suspect classification, fundamental right, or classification requiring heightened scrutiny, and stated that validity depended on the legislation having a legitimate purpose, which it was rational to believe would be furthered by the classification. The damage limitation (Cal Civ. Code § 333.2) was part of a complex plan to reduce the dramatic rise in medical malpractice insurance premiums, observed the court, which were having an adverse effect on the quality of medical services to people of the state. The reduction of the rates was thus a legitimate state purpose, and the record clearly supported a finding that the legislature plausibly could believe the amount of settlement and verdict payments would directly affect insurance premiums, the court concluded. Treating the analysis of validity under the two constitutional provisions together, in Davis v Omitowaju (1989, CA3 VI) 883 F2d 1155, the court rejected a malpractice plaintiff's claim that a statutory limit on noneconomic damages recoverable in malpractice actions violated equal protection and due process. The patient had recovered a verdict stemming from surgery on her knee for an amount in excess of the damages cap, and the trial judge had reduced the award for noneconomic damages to the statutory limit under 27 V.I.C. § 166b (1975), which provided that the total amount recoverable for any injury of a patient could not exceed a certain amount plus actual expenses, not paid or payable or reimbursed from any other source, for reasonable and necessary medical or custodial care and/or rehabilitation services, and estimated future expenses not reimbursable or payable from any other source of the same kind, and lost earnings. [FN24] A limitation on a common-law measure of recovery did not violate a fundamental right or create a suspect classification, said the court, and the plaintiff

could not assert any fundamental right to an uncapped jury verdict, nor convincingly style herself and all malpractice claimants as a suspect class. Her claim must therefore be reviewed under the rational basis test, the court continued, and clearly the decision of the legislature to curb, through legislation, the high costs of malpractice insurance, and thereby promote quality medical care, provided a rational basis for capping the amount of damages that could be awarded in malpractice actions.

In Fein v Permanente Medical Group (1985) 38 Cal 3d 137, 211 Cal Rptr 368, 695 P2d 665, app dismd 474 US 892, 88 L Ed 2d 215, 106 S Ct 214, the court held that a statute placing a limit on noneconomic damages recoverable by a medical malpractice plaintiff did not violate the equal protection clause, apparently of the California constitution. The plaintiffs argued that application of the statute violated the equal protection clause because it impermissibly discriminated between medical malpractice victims and other tort victims, and discriminated within the class of medical malpractice victims, denying a complete recovery of damages only to those with noneconomic damages exceeding the statutory limit. With respect to the first contention, the court replied that the legislature limited the application of Cal Civ. Code § 333.2 to medical malpractice cases because it was responding to an insurance "crisis" in that particular area, and the statute was rationally related to the legislative purpose. As for the second claim, the court said the legislature clearly had a reasonable basis for drawing a distinction between economic and noneconomic damages, providing that the desired cost savings should be obtained only by limiting the recovery of noneconomic damage. The equal protection clause did not require the legislature to limit a victim's recovery for out-of-pocket medical expenses for lost earnings simply because it found it appropriate to limit damages for pain and suffering and other noneconomic losses, said the court. There was no merit in the contention that the particular monetary limit chosen violated equal protection, the court continued, because although the claim was made that the particular limit was more invidious than a complete abolition of noneconomic damages, falling most heavily on those with the most serious injuries, the court said that if that analysis were valid, a complete abolition of damages would be equally vulnerable to an equal protection challenge because abolition obviously also imposed greater monetary losses on those plaintiffs who would have obtained larger damages awards than on those who would have recovered lesser amounts. Just as the complete elimination of a cause of action has never been viewed as invidiously discriminating within the class of victims who have lost the right to sue, the statutory limit, applying to all malpractice victims, did not amount to an unconstitutional discrimination, the court explained. The court also rejected the argument that the limit was unconstitutional because the legislature could have realized the desired savings by mandating a fixed percentage reduction of all noneconomic damages awards. The choice between reasonable alternative methods for achieving a given objective was generally for the legislature, said the court, and there were a number of reasons that the legislature may have chosen as it did. It could reasonably have determined that an across-the-board limit would provide a more stable base on which to calculate insurance rates, observed the court, and the limit might have been perceived as promoting settlements by eliminating the possibility of phenomenal awards for pain and suffering which could make litigation worth the gamble. Finally, the court concluded, the legislature may have decided it was fair to malpractice plaintiffs in general to reduce only the very large noneconomic damages awards, rather than to diminish the more modest recoveries for pain and suffering and the like in the majority of cases, and any of those grounds provided a sufficient rationale for the particular limit, said the court.

Accord, Semsch v Henry Mayo Newhall Memorial Hosp. (1985, 2nd Dist) 171 Cal App 3d 162, 216 Cal Rptr 913.

Accord, Flores v Natividad Medical Center (1987, 1st Dist) 192 Cal App 3d 1106, 238 Cal Rptr 24, in which the court summarily rejected a malpractice plaintiff's equal protection challenge to several provisions of the Medical Injury Compensation Reform Act, including the limitation on noneconomic damages of Cal Civ. Code § 333.2, citing Fein v Permanente Medical Group (1985) 38 Cal 3d 137, 211 Cal Rptr 368, 695 P2d 665, app

dismd 474 US 892, 88 L Ed 2d 215, 106 S Ct 214.

Provision in wrongful death statute barring recovery of non-pecuniary damages in medical malpractice cases by surviving adult children was rationally related to state's interest in controlling healthcare costs and accessibility, and thus did not violate equal protection guarantees of either United States or Florida Constitutions. U.S.C.A. Const. Amend. 14; West's F.S.A. Const. Art. 1, § 2; West's F.S.A. § 768.21(8). Mizrahi v. North Miami Medical Center, Ltd., 761 So. 2d 1040 (Fla. 2000).

Equal protection guarantees of federal and state Constitutions were not violated by statute precluding recovery of nonpecuniary damages by decedent's adult children where cause of death was medical malpractice; statute did not implicate suspect class, and statute's disparate treatment of medical malpractice wrongful deaths bore rational relationship to legitimate state interest of curtailing skyrocketing medical malpractice insurance premiums. U.S.C.A. Const. Amend. 14; West's F.S.A. § 768.21(8). Mizrahi v. North Miami Medical Center, Ltd., 712 So. 2d 826 (Fla. Dist. Ct. App. 3d Dist. 1998). Statutory cap on noneconomic damages did not deny equal protection or due process to patient in medical malpractice suit; cap was rationally related to legitimate governmental purpose of controlling increases in health care costs by reducing liability of medical care providers, reducing malpractice insurance premiums and maintaining affordable health care in state. U.S.C.A. Const. Amend. XIV; M.C.L.A. Const. Art. 1, § 2; M.C.L.A. § 600.1483. Zdrojewski v. Murphy, 254 Mich. App. 50, 657 N.W.2d 721 (2002). The limitation on noneconomic damages in a medical malpractice action in RS Mo § 538.210 (1986), was a rational response to the legitimate legislative purpose of maintaining the integrity of health care for citizens of the state, the court held in Adams v Children's Mercy Hosp. (1992, Mo) 832 SW2d 898, cert den (US) 121 L Ed 2d 446, 113 S Ct 511 and transf to, remanded (Mo App) 848 SW2d 535, and did not violate the equal protection clause of the Missouri Constitution, Mo. Const. Art. I, § 2. The statute provided that in any action against a health care provider for damages for personal injury or death arising out of the rendering of, or the failure to render, health care services, no plaintiff should recover more than a certain amount, per occurrence, for noneconomic damages from any one defendant. Rejecting the contention that the right to open courts and the right to a certain remedy were fundamental rights, and therefore the victims of medical malpractice were a suspect class for the purpose of equal protection analysis, the court said that the statutory classification would be upheld if any state of facts reasonably could be conceived to justify it, that is, if the classification were rationally related to a legitimate state interest. The statute purposely treated a restricted class of health care providers as prospective tortfeasors much differently from any other kind of tortfeasor who might be involved in a negligence lawsuit, observed the court. In addition to the noneconomic damages cap, other parts of the statute: allowed future damages to be paid in periodic or installment payments above a certain amount, altered the traditional joint and several liability rules, and provided for apportioned fault to include a percentage allocated for parties who had been released from liability. The evidence was conflicting on the existence of a crisis in medical malpractice insurance premiums, the alleviation of which was the purported goal of the legislation, the court continued, but any doubt as to the existence of the crisis must be resolved in favor of the legislature, whose province it was to determine socially and economically desirable policy. The preservation of public health and the maintenance of generally affordable health care costs were reasonably conceived legislative objectives which could be achieved, if only inefficiently, by the statutory provision under attack, added the court, and the legislature could rationally believe that the cap would work to reduce the amount of damages awards and thereby reduce malpractice insurance premiums paid by health care providers, reasoning that physicians would then be willing to continue high risk medical practices in the state and provide quality medical services at a less expensive level than would otherwise be the case. The cap did not take away from any economic or punitive damages award, the court concluded, and still allowed a significant recovery against each liable defendant, in addition to the sizeable amount awarded in economic damages.

In Vincent v Johnson (1992, Mo) 833 SW2d 859, the court summarily rejected the medical malpractice plaintiffs' argument that the statutes governing medical malpractice and limitations on recoveries in such actions violated various provisions of the Missouri Constitution, alleged to create constitutional rights to causes of action that existed at common law and to full recovery of damages, stating that the same issues were presented to the court in Adams v Children's Mercy Hosp. (1992, Mo) 832 SW2d 898, cert den (US) 121 L Ed 2d 446, 113 S Ct 511 and transf to, remanded (Mo App) 848 SW2d 535, and there was no need to repeat the same reasoning as found therein. Statutory cap on quality of life damages in medical malpractice actions was reasonable, and it substantially furthered and was reasonably necessary to the legislative goal of decreasing health care costs and ensuring the continued availability of health care, and thus, cap did not violate the uniform operation of laws provision of the state constitution, even though the cap discriminated against malpractice victims with the most severe noneconomic damages; the cap allowed sufficient quantification of quality of life damages to have a substantial impact on malpractice insurance rates. West's U.C.A. Const. Art. I, § 24; West's U.C.A. § 78-14-7.1. Judd v. Drezga, 2004 UT 91, 103 P.3d 135 (Utah 2004).

In Robinson v Charleston Area Medical Ctr., Inc. (1991) 186 W Va 720, 414 SE2d 877, the court held that W. Va. Code § 55-7B-8, as amended, a statute limiting the amount of noneconomic damages recoverable by a plaintiff in a malpractice action, did not violate the right to equal protection under W. Va. Const. Art. III, § 10 (implied), and was not special legislation prohibited by W. Va. Const. Art. VI, § 39. The court observed that the state constitution was a restriction of power rather than a grant thereof, under which the legislature had the authority to enact any measure not inhibited thereby, and that courts ordinarily presume that legislation is constitutional, requiring the negation of legislative power to be shown clearly. When economic rights are concerned, the court stated it must determine whether the classification alleged to violate equal protection is a rational one, based on social, economic, historic, or geographic factors, whether it bears a reasonable relationship to a proper governmental purpose, and whether all persons within the class are treated equally, but the judiciary could not judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines. The challenge under the equal protection and special legislation provisions asserted impermissible discrimination between medical professional liability victims and other tort victims, said the court, and between malpractice victims with a noneconomic loss less than the statutory cap and those with a noneconomic loss exceeding it. The court adopted the reasoning of the court in Fein v Permanente Medical Group (1985) 38 Cal 3d 137, 211 Cal Rptr 368, 695 P2d 665, app dismd 474 US 892, 88 L Ed 2d 215, 106 S Ct 214 (this subsection), explaining that the first distinction did not violate state constitutional equal protection principles, because the legislature had responded to a liability insurance "crisis" in the particular area of medical malpractice, by means which were rationally related to the state purpose of furthering the collectability of judgments against tortfeasors who are health care providers and of promoting health care availability. The equal protection clause did not require that a state must choose between attacking every aspect of a problem or not attacking the problem at all, the court explained. The second distinction challenged did not violate equal protection either, continued the court, because the legislature may have believed reasonably that it was fairer to medical malpractice plaintiffs in general to reduce only very large noneconomic damages awards, rather than to establish a lower limit and thereby diminish the more modest recoveries for noneconomic damages which occur in the great bulk of cases. The court pointed out that the statutory cap in question did not limit economic damages, and was the largest cap on noneconomic damages of which the court was aware, higher than almost every cap elsewhere on total damages, but emphasized that its holding that the statutory cap was reasonable was limited to the particular cap at issue.

Statutory \$1 million cap on noneconomic damage awards in medical malpractice actions did not violate state equal protection provision. Const. Art. 3, § 10; Code, 55-7B-8.

Verba v. Ghaphery, 552 S.E.2d 406 (W. Va. 2001).

Statutory cap on noneconomic damages for wrongful death caused by medical malpractice does not violate equal protection, under rational basis test; cap is rationally related to appropriate legislative objectives of assuaging the fear of huge awards of damages based on passion, and reining in insurance costs in the case of a victim's death. U.S.C.A. Const. Amend. 14; W.S.A. Const. Art. 1, § 1; W.S.A. 655.017, 893.55(4)(b, f), 895.04(4). Maurin v. Hall, 2004 WI 100, 682 N.W.2d 866 (Wis. 2004).

[b] Validity not upheld

It was a violation of the constitutional guaranty of equal protection for a statute to limit the noneconomic damages recoverable in a medical malpractice action, the courts held in the following cases.

A statute limiting noneconomic damages in medical malpractice actions violated the principle of equal protection of the Alabama Constitution, the court held in Moore v Mobile Infirmary Ass'n (1991, Ala) 592 So 2d 156, reh den, without op (Ala) 1992 Ala LEXIS 68. Stating that it was not necessary or useful to identify precisely which of the two lower levels of federal scrutiny corresponded with its standard of review in the equal protection analysis, the court noted that §§ 1, 6, and 22 of the Alabama Declaration of Rights prohibited class legislation arbitrarily discriminating against some and favoring others in like circumstances. Although the legislature may, in the exercise of its police power, create reasonable classifications in order to eradicate or ameliorate a perceived social evil, the function of the judiciary was to determine whether the legislation unreasonably encroached upon private rights vouchsafed by the constitution, said the court, and that depended upon whether the classifications created by the statute were reasonably related to the stated objective, and not whether the benefit sought to be bestowed upon society outweighed the detriment to private rights. The limitation on noneconomic damages in a medical malpractice action found in Ala. Code § 6-5-544(b) (1975), was prompted by a perceived "crisis" affecting the availability of health care as a result of the rising cost of malpractice insurance, and the limitation was calculated to reduce the size of claims, thereby making affordable insurance available to health care providers, the court explained. The court agreed with the plaintiff that the statute created a favored class of tortfeasors, based solely on their connection with health care, and also created favored subclasses within that favored class by shielding those health care providers whose actions were the most egregious; in addition, the statute precluded full recovery only for those most severely injured and thereby created classifications based upon the severity of the injury. The court then cited a study by the United States General Accounting Office (GAO) which suggested that the connection between damages caps and the total cost of health care was remote, pointing out that, despite statutory reform, including damages caps, in place for nearly 10 years in some states, total medical malpractice costs for physicians and hospitals rose by more than either the consumer price index or the medical care index in that period. Furthermore, said the court, the cost of malpractice insurance was the product of a number of elements, the size and frequency of claims resulting from damages awards or settlements being only two of those elements, and insurance costs made up only a small percentage of total professional expenses for self-employed physicians. The GAO's conclusions were corroborated by a number of other studies, continued the court, concluding that the correlation between the damages cap and the reduction of health care costs to state residents was, at best, indirect and remote. By contrast, the court pointed out, the burden imposed on the rights of individuals to receive compensation for serious injuries was direct and concrete, falling most heavily on those who were the most severely maltreated and thus most deserving of relief, and the statute operated to the advantage of those health care providers who were the most irresponsible. Thus, in balancing the direct and palpable burden placed upon catastrophically injured victims of medical malpractice against the indirect and speculative benefit that may be conferred on society, the court concluded that the damages cap represented an unreasonable

exercise of the police power.

In Carson v Maurer (1980) 120 NH 925, 424 A2d 825, 12 ALR4th 1 (criticized by State v Brosseau, 124 NH 184, 470 A2d 869), [FN25] the court held that a statute imposing a limitation on the amount of noneconomic damages a medical malpractice plaintiff could recover violated the equal protection guaranty of the New Hampshire Constitution, N.H. Const. Pt. I, Arts. 2 and 12. Although the right to recover for personal injuries was not a fundamental right, and the classifications created by the statute, RSA § 507-C:7 II (Supp. 1979), did not involve a suspect classification, the court said that the rights involved were sufficiently important to require that the restrictions imposed be subjected to a more rigorous judicial scrutiny than the rational basis test. The classifications created must be reasonable and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, observed the court. Declining independently to examine the factual basis for the legislative justification for the statute, the court stated that the malpractice statute could be justified as a reasonable measure only if the restriction of private rights sought to be imposed was not so serious that it outweighed the benefits sought to be conferred upon the general public. The medical malpractice plaintiffs in the consolidated appeals challenged the constitutionality of the entire act purporting to address the problems of the medical injury reparation system, and the court invalidated many of its provisions, ultimately voiding the statute in its entirety because the legislature would not have passed the remaining portions of the act without the invalidated sections. The purpose of the damage limitation, the court observed, was to stabilize insurance risks and reduce malpractice insurance rates, and the plaintiffs contended that the provision created an arbitrary damage limitation and thereby precluded only the most seriously injured victims of medical negligence from receiving full compensation for their injuries. The court agreed, finding a weak relationship between the legislative goal and the means chosen to attain it, because paid-out damages awards constituted only a small part of total insurance premium costs, and few individuals suffered noneconomic damages in excess of the statutory cap. The limitation distinguished not only between malpractice victims and victims of other torts, the court continued, but also between malpractice victims with noneconomic losses exceeding the cap and those with less egregious noneconomic losses. Not only did the limitation of recovery prevent adequate compensation to patients with meritorious claims, but it did nothing toward the elimination of nonmeritorious claims, said the court, and while physicians might be encouraged to enter into practice and remain there, they did so at the expense of claimants with meritorious actions. It was unfair to impose the burden of supporting the medical care industry solely upon those persons most severely injured and most in need of compensation, asserted the court. Rejecting the argument that the damage ceiling should be upheld because it did not apply to economic loss, the court stated that it was only the award for noneconomic losses that compensated in some way for the pain, suffering, physical impairment, or disfigurement that the victim of malpractice endured. No mathematic formula could be permitted in computing such damages, and if there were an excessive verdict, the court pointed out, a remittitur was always available. The court distinguished between the statute at issue and another statute, imposing a limit on tort recovery against governmental subdivisions, which had been upheld, noting that there had been no common-law right to sue a municipality, that a governmental tortfeasor was different from other tortfeasors, and that, under the statute, payment was guaranteed to the tort victim. The defendants' reliance on the validity of a statute limiting recovery in actions for wrongful death was also misplaced, said the court, because such actions were unknown at common law, and furthermore, the statute did not limit recovery when the decedent was survived by any relative dependent on the deceased. Neither did the workers' compensation law support the claim of constitutionality, for that law provided a quid pro quo for potential tort victims whose common-law right of action was supplanted by the statute, the court observed, and a societal quid pro quo in the form of lower insurance premiums and lower medical care costs did not extend to the seriously injured medical malpractice victim and was not sufficient to offset the damage. Recovery of only a

limited portion of such damages cannot be equivalent to recovery of the damages in full, the court concluded.

Rational relationship did not exist between statutory classification and legislative objective of compensating victims fairly, as factor in favor of finding that statute placing \$350,000 cap, adjusted for inflation, on noneconomic damages in medical malpractice actions not involving wrongful death of the patient violated equal protection under rational basis test; classification prevented only the most severely injured from recovering their entire noneconomic damages, the greater the injury the smaller the fraction of noneconomic damages a victim subject to the cap would receive, and young people were affected the most because they suffered disproportionate share of serious injuries from medical malpractice and also because many could expect to be affected by their injuries for 60- or 70-year life expectancy. W.S.A. Const. Art. 1, § 1; W.S.A. 655.017, 893.55(4)(d). *Ferdon ex rel. Petrucelli v. Wisconsin Patients Compensation Fund*, 2005 WI 125, 2005 WL 1639450 (Wis. 2005).

§ 4. Under due process clause

In the following cases the courts held that it was not a violation of due process for a statute to limit the amount of noneconomic damages recoverable by a malpractice plaintiff.

See *Knowles v United States* (1994, CA8 SD) 29 F3d 1261, § 35[a].

In *Davis v Omitowaju* (1989, CA3 VI) 883 F2d 1155, more fully reported in § 3[a], the court held that a statutory limit on noneconomic damages recoverable in malpractice actions did not violate due process, applying the same analysis used to determine the statute's validity under the equal protection clause.

A statute limiting noneconomic damages recoverable by a plaintiff in a medical malpractice action did not violate the due process clause, apparently of the California Constitution, the court held in *Fein v Permanente Medical Group* (1985) 38 Cal 3d 137, 211 Cal Rptr 368, 695 P2d 665, app dismd 474 US 892, 88 L Ed 2d 215, 106 S Ct 214. A malpractice plaintiff who had recovered a verdict in excess of the statutory limitation argued that reduction of the judgment under Cal Civ. Code § 333.2 denied due process in limiting the potential recovery of medical malpractice claimants without providing them an adequate quid pro quo. The court said it was well established that a plaintiff had no vested property right in a particular measure of damages, and the legislature possessed broad authority to modify the scope and nature of such damages. So long as the measure is rationally related to a legitimate state interest, policy determinations as to the need for, and the desirability of, the enactment are for the legislature, the court observed. It appeared obvious, said the court, that the statutory limit, by placing a ceiling on the recovery of noneconomic damages, was rationally related to the objective of reducing the cost of malpractice defendants and their insurers, and it was worth noting that in seeking a means of lowering malpractice cost, the legislature placed no limits on a plaintiff's right to recover for all economic losses. Commenting that serious questions as to the wisdom of awarding damages for pain and suffering in any negligence case had been raised by jurists and legal scholars, because of the inherent difficulties in placing a monetary value on such losses, because they are at best only imperfect compensation for intangible injuries, and because such damages were generally passed on to innocent consumers, the court said that no California case had ever suggested that the right to recover for noneconomic injuries was constitutionally immune from legislative limitation or revision. Referring to statutory provisions limiting damages in medical malpractice actions in other states, the court pointed out that, with only one exception, all of the invalidated statutes contained a ceiling which applied to both pecuniary and nonpecuniary damages, and several courts were apparently considerably influenced by the potential harshness of a limit that might prevent an injured person from even recovering the amount of his medical expenses. In a footnote, the court said that even if due process principles required some quid pro quo to support the statute, it would be difficult to say that the preservation of a viable medical

malpractice insurance industry in the state was not an adequate benefit in return for the detriment the legislation imposed on malpractice plaintiffs. The court explained that although it did not suggest that the legislature felt that the statutory limitations on damages alone or any other single provision of the medical malpractice reform legislation was essential to the survival of the medical malpractice insurance system, there was surely nothing in the due process clause which prevented a legislature from making a number of statutory changes which, in combination, provided the requisite benefit to justify the enactment.

The state constitutional guaranty of due process was not violated by a statutory limit on noneconomic damages recoverable in medical malpractice actions, the court held in Adams v Children's Mercy Hosp. (1992, Mo) 832 SW2d 898, cert den (US) 121 L Ed 2d 446, 113 S Ct 511 and transf to, remanded (Mo App) 848 SW2d 535. Observing that the analysis required under the due process clause was the same as the analysis under the challenge to the provisions as violative of the open courts guaranty in the constitution, [FN26] the court said that both clauses insure no more than that a claimant was entitled to whatever process was constitutionally mandated or permitted under the law at the time of the claim, and the plaintiffs received all the process due to them under law. Statutory cap on quality of life damages in medical malpractice actions was rationally related to a legitimate government interest in combating rising health care costs and fears about continued availability of health services by reducing malpractice insurance, and thus, cap did not violate the due process clause of the state constitution. West's U.C.A. Const. Art. I, § 7; West's U.C.A. § 78-14-7.1. Judd v. Drezga, 2004 UT 91, 103 P.3d 135 (Utah 2004).

In Robinson v Charleston Area Medical Ctr., Inc. (1991) 186 W Va 720, 414 SE2d 877, more fully reported in § 3[a], the court held that W. Va. Code § 55-7B-8, as amended, a statute limiting the amount of noneconomic damages recoverable by a plaintiff in a malpractice action, did not violate the state constitutional guaranties of due process, W. Va. Const. Art. III, § 10, and "certain remedy," W. Va. Const. Art. III, § 17. The "certain remedy" provision of the constitution was violated when a legislative enactment either substantially impaired vested rights or severely limited existing procedural remedies permitting court adjudication of cases, said the court. Legislation will be upheld if a reasonably effective alternative remedy is provided, the court continued, or, if the purpose of the alteration or repeal of an existing cause of action or remedy is to eliminate or curtail a clear social or economic problem, the legislative action is a reasonable method of achieving the purpose. The guaranty is qualified by the words "by due course of law," thereby extending considerable latitude to the legislature, and it is also recognized, the court pointed out, that the general authority of the legislature to alter or repeal the common law is expressly conferred by Article VII, § 13. The plaintiffs asserted that there was no clear evidence that a medical malpractice insurance "crisis" existed, and, even if one did, the statutory limit was not a reasonable method of dealing with the problem, as the legislature could only speculate as to its effect on medical malpractice insurance premiums. However, the court said it ordinarily would not re-examine the factual justification for a statute, but would inquire whether the legislature reasonably could conceive to be true the facts on which the statute was based. The legislature must be free to attempt a remedy even when the results were uncertain, and policy must frequently be made on the basis of incomplete or even conflicting information, said the court.

Statutory cap on noneconomic damages for wrongful death caused by medical malpractice does not violate substantive due process; while legislature had adjusted the underlying cap on noneconomic wrongful death damages from time to time, such periodic changes suggested legislative attention and thoughtfulness, not arbitrary action. U.S.C.A. Const. Amend. 14; W.S.A. Const. Art. 1, § 1; W.S.A. 655.017, 893.55(4)(b, f), 895.04(4). Maurin v. Hall, 2004 WI 100, 682 N.W.2d 866 (Wis. 2004).

§ 5. Under right to jury trial

[a] Validity upheld

The right to jury trial was not violated, the courts held in the following cases, by a statute limiting the noneconomic damages recoverable by a medical malpractice plaintiff.

The Seventh Amendment to the United States Constitution, providing that no fact tried by a jury shall be otherwise re-examined in any court, did not render unconstitutional a statutory cap on noneconomic damages provided by 27 V.I.C. § 166b (1975), the court held in Davis v Omitowoju (1989, CA3 VI) 883 F2d 1155. The malpractice plaintiff contested the reduction of a jury verdict in her favor by the trial judge, claiming a violation of her right to a trial by jury, because the court in effect re-examined the jury's factual determination of the extent of her damages. The court said it understood the language of the amendment to operate as a guaranty of the integrity of the judicial process generally, and as a check on the powers of the trial judge specifically, because, unlike the first clause of the Seventh Amendment, which in broad terms preserved the right to a trial by jury, the second clause spoke exclusively of the role of the court. The district judge was merely implementing a policy decision of the legislature in applying the law when it predetermined the extent and amount of damages allowed in a malpractice action, and because the second clause of the Seventh Amendment was not read as limiting the exercise of such legislative authority, the trial court was not re-examining a fact tried by a jury within the meaning of the constitutional provision, the court explained. This understanding of the text of the amendment was supported by the Supreme Court's decision in Parklane Hosiery Co. v Shore (1979) 439 US 322, 58 L Ed 2d 552, 99 S Ct 645, CCH Fed Secur L Rep ¶ 96713, 26 FR Serv 2d 669, in which the court decided that the application of the doctrine of collateral estoppel did not involve the re-examination of any fact decided by a jury, but rather rested on the premise that once an issue had been resolved in a prior proceeding, there was no further factfinding function to be performed. The court also noted that if, instead of reducing the damages award after the jury had rendered its verdict, the trial court had instructed the jury prior to its deliberations that damages could only be awarded up to the maximum amount permitted by statute, no reduction would have been necessary and no Seventh Amendment question would have arisen. Furthermore, its reading was bolstered by the historical underpinnings of the Seventh Amendment and the right to a jury trial, which provided evidence that the amendment was aimed at protecting against the abuse of judicial, as distinct from legislative, power, and judicial bias, the court concluded. In Yates v Pollock (1987, 2nd Dist) 194 Cal App 3d 195, 239 Cal Rptr 383, the court held that the statute limiting the recovery of noneconomic damages in a medical malpractice action did not unconstitutionally abridge the right to a jury trial under Cal Const. Article 1 § 16. After construing the statute, Cal Civ. Code § 333.2, to apply to the plaintiffs' wrongful death action arising from medical malpractice, [FN27] the court said that the contention that the limitation abridged the right to a jury trial was an indirect attack upon the legislature's power to place a cap on damages. Although the application of the statute would in some cases result in the recovery of a lower judgment than would have been obtained before the enactment of the statute, the court said, it is well established that the legislature retain broad control over the measure as well as the timing of damages that a defendant is obligated to pay, and it may expand or limit recoverable damages so long as its action is rationally related to a legitimate state interest. There was no authority that the right to recover for such noneconomic injuries was constitutionally immune from legislative limitation or revision, the court concluded. For a case holding that a statute limiting noneconomic damages in a medical malpractice action under certain circumstances did not violate the right to jury trial, see Santelli v Arean (1993, Fla App D2) 616 So 2d 1154, 18 FLW D 1012, reported in full (Fla App D2) 1993 Fla App LEXIS 4252, review den (Fla) 624 So 2d 268, § 7.

The principal purposes of the Medical Malpractice Act are to limit the liability of health care providers who qualify under the Act and to provide compensation to medical

malpractice victims who have been injured by qualified health care providers. LSA-R.S. 40:1299.41 et seq. Tucker v. Lain, 798 So. 2d 1041 (La. Ct. App. 4th Cir. 2001).

Statutory cap on noneconomic damages recoverable in medical malpractice action did not violate right to trial by jury as guaranteed by State Constitution. M.C.L.A. Const. Art. 1, § 14; M.C.L.A. § 600.1483(1). Wiley v. Henry Ford Cottage Hosp., 257 Mich. App. 488, 668 N.W.2d 402 (2003), appeal denied, 678 N.W.2d 439 (Mich. 2004).

There was no substantive right under the common law to a jury determination of damages under the Seventh Amendment, the court said in Adams v Children's Mercy Hosp. (1992, Mo) 832 SW2d 898, cert den (US) 121 L Ed 2d 446, 113 S Ct 511 and transf to, remanded (Mo App) 848 SW2d 535, and therefore, a statute limiting the noneconomic damages recoverable in a malpractice action did not violate the right to jury trial. The malpractice plaintiffs argued that under Mo. Const. Art. I, § 22(a), they were entitled to have a jury determine all damages without interference by the legislature. Noting that the right to a jury trial protected by the constitution was the same as that which existed at common law before the adoption of the first constitution, the court said that a jury's primary function was factfinding, including determination of a plaintiff's damages, but when the assessment of liability and the determination of damages was accomplished, the jury had completed its constitutional task. The court's job was to apply the law to the facts, and the statute, RS Mo § 538.210 (1986), established substantive, legal limits to the plaintiffs' damage remedy, the court explained. The permissible remedy was a matter of law, not fact, and because the limit was not applied until after the jury had completed its constitutional task, it did not infringe upon the right to jury trial, concluded the court, pointing out that since the legislature had the right to abrogate a cause of action cognizable under the common law completely, it thus also had the power to limit recovery in those causes of action.

Statutory cap on quality of life damages in medical malpractice actions did not violate plaintiff's right to a jury trial under the state constitution; the jury was allowed to determine the facts in the first instance, and then the court applied the statutory cap to the jury's award. West's U.C.A. Const. Art. I, § 10; West's U.C.A. § 78-14-7.1. Judd v. Drezga, 2004 UT 91, 103 P.3d 135 (Utah 2004).

In Robinson v Charleston Area Medical Ctr., Inc. (1991) 186 W Va 720, 414 SE2d 877, the court held that W. Va. Code § 55-7B-8, as amended, a statute limiting the amount of noneconomic damages recoverable by a plaintiff in a malpractice action, did not violate the right to jury trial guaranteed by W. Va. Const. Art. III, § 13. The limit on the recoverable amount of noneconomic loss in a medical professional liability action did not violate the "re-examination" clause of the jury trial provision because that language did not apply to the legislature, explained the court, which may fix in advance the amount of recoverable damages in all cases of the same type. The clause applied only to judicial action in any particular case, the court maintained, and the legislature was not acting as a factfinder in a legal controversy, but was acting within its legislative power to create and repeal causes of action.

Statutory cap on noneconomic damages for wrongful death caused by medical malpractice does not violate the constitutional right to trial by jury. W.S.A. Const. Art. 1, § 5; W.S.A. 655.017, 893.55(4)(b, f), 895.04(4). Maurin v. Hall, 2004 WI 100, 682 N.W.2d 866 (Wis. 2004).

Statutory cap on noneconomic damages for wrongful death caused by medical malpractice does not violate the constitutional right to trial by jury. W.S.A. Const. Art. 1, § 5; W.S.A. 655.017, 893.55(4)(b, f), 895.04(4). Maurin v. Hall, 2004 WI 100, 682 N.W.2d 866 (Wis. 2004).

[b] Validity not upheld

In the following case the court held that a statute limiting the amount of noneconomic damages recoverable in a malpractice action violated the constitutional right to jury trial. In Moore v Mobile Infirmary Ass'n (1991, Ala) 592 So 2d 156, reh den, without op (Ala) 1992 Ala LEXIS 68, the court held that the portion of Ala. Code § 6-5-544(b) (1975),

imposing a limitation on damages for noneconomic loss in medical malpractice actions, represented an impermissible burden on the right to trial by jury as guaranteed by § 11 of the Constitution of Alabama. The trial court had reduced a medical malpractice plaintiff's noneconomic damages, the final verdict exceeding the cap by an amount representing economic damages for lost earnings and medical expenses. Under Ala. Code § 6-5-544(b) (1975), the amount of recovery for noneconomic losses, including punitive damages, either to the injured plaintiff, the plaintiff's spouse, or other lawful dependents, or any of them together, could not exceed a certain sum. "Noneconomic loss" was defined as that intended to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, and other nonpecuniary damage. Noting that the analysis and conclusions reached were based entirely on adequate and independent state law grounds, the court said it was undisputed that juries had been employed in Alabama since the writing of the constitution to assess "quality of life" damages in actions alleging negligent personal injury. The hospital defendant contended that the legislative imposition of a damages cap did not impair the right to a jury trial any more than traditional forms of judicial supervision of damage assessments, such as remittitur. However, the authority to interfere with the jury's findings on the amount of damages was one to be exercised with great caution, said the court, and particularly in cases involving damages not susceptible of precise measurement, a jury's assessment may be disturbed only when it is so flawed by bias, passion, prejudice, corruption, or improper motive as to lose its constitutional protection. As a corollary to that principle, the soundness of a jury's findings on the issue of damages must be evaluated on a case-by-case basis, the court explained. To the extent that the assessment of a jury exceeds the predesignated ceiling found in the statute, no consideration for the exigencies presented by each case was allowed, said the court, and the requirement was patently inconsistent with the doctrines of remittitur or new trial as they had been applied. Pointing out that it was not relevant, under an analysis of the right to jury trial, that the statute had not entirely abrogated the right to empanel a jury in a malpractice case, the court asserted that the relevant inquiry was whether the function of the jury had been impaired. Because the statute capped the jury's verdict automatically and absolutely, the jury's function, to the extent the verdict exceeded the damages ceiling, assumed less than an advisory status and was insufficient to satisfy the mandate of the constitutional right to jury trial, the court concluded.

§ 5.5. Under separation of powers

The following authority considered the validity of statutes limiting only noneconomic damages in medical malpractice actions under the constitutional doctrine of separation of powers.

Statutory cap on quality of life damages in medical malpractice actions did not violate the separation of powers under the state constitution; the damages cap represented law that was to be applied by a jury, not an improper usurpation of jury prerogatives. West's U.C.A. Const. Art. V, § 1; West's U.C.A. § 78-14-7.1. Judd v. Drezga, 2004 UT 91, 103 P.3d 135 (Utah 2004).

§ 6. Under guaranty of open courts

Under the constitutional guaranty of access to the courts or redress for injury, the courts held in the following cases that a statute limiting noneconomic damages recoverable by a malpractice plaintiff was valid.

See Knowles v United States (1994, CA8 SD) 29 F3d 1261, § 35[a]. In Adams v Children's Mercy Hosp. (1992, Mo) 832 SW2d 898, cert den (US) 121 L Ed 2d 446, 113 S Ct 511 and transf to, remanded (Mo App) 848 SW2d 535, the court held that a statutory cap on noneconomic damages in medical malpractice actions did not violate the open courts provision of the Missouri Constitution, Mo. Const. Art. I, § 14.

That section provided that the courts shall be open to every person, and certain remedy afforded for every injury, observed the court, and the malpractice plaintiffs claimed that the damages cap violated the provision by permitting the legislature to intrude impermissibly upon the judicial process. Observing that there had always been a distinction between statutes that impose procedural bars to access to the courts, and statutes that change the common law by the elimination or limitation of a cause of action, the court said that the former were impermissible, while the latter were a valid exercise of a legislative prerogative. The statutory damages cap, and other provisions of the statute relating to medical malpractice actions, modified the common law, but did not erect a condition precedent or any other procedural barrier to access to the courts, the court explained, and the plaintiff was not denied a lawful remedy, but noneconomic damages were limited by modification of the substantive law. The plaintiffs argued that without a quid pro quo for the limitation or abolition of a cause of action, the statute arbitrarily denied full compensation to the injured plaintiff. The court replied that in Missouri the open courts provision had never been interpreted to mean more than its original, textually implicit, purpose of assuring citizens procedural due process. Rejecting the requirement imposed by other courts of a reasonable substitute for an abolished or limited cause of action, the court stated that such a requirement arbitrarily and unnecessarily limited the legitimate lawmaking role of the legislative branch in a manner not intended by the constitution. The common law was in force in Missouri only to the extent that it had not been subsequently changed by the legislature or judicial decision, the court concluded, doubting the wisdom of a rule which limited the legislature's ability to respond statutorily to changing societal concerns or to correct previous policy positions upon receipt of better information.

See Robinson v Charleston Area Medical Ctr., Inc. (1991) 186 W Va 720, 414 SE2d 877, § 4, in which the court, treating the analysis of the validity of a statute limiting noneconomic damages in malpractice actions under the two provisions together, held that W. Va. Code § 55-7B-8, as amended, did not violate the state constitutional guaranties of due process, W. Va. Const. Art. III, § 10, and "certain remedy," W. Va. Const. Art. III, § 17.

§ 7. --When claim is arbitrated or plaintiff refuses arbitration

Under a statute providing for a statutory cap on noneconomic damages recoverable by a malpractice plaintiff when the claim was arbitrated, or when the plaintiff refused the defendant's offer of arbitration, the court held that there was no violation of the right to access to the courts.

In University of Miami v Echarte (1993, Fla) 618 So 2d 189, 18 FLW S 284, 26 ALR5th 831, cert den (US) 126 L Ed 2d 252, 114 S Ct 304, the court held that statutory provisions which provided a monetary cap on noneconomic damages in medical malpractice claims when the claim was arbitrated or when the plaintiff refused arbitration did not violate a medical malpractice claimant's right of access to the courts, reversing and remanding the trial court's declaratory judgment to the contrary. The statutory scheme to address the medical liability insurance crisis provided for a presuit investigation process to eliminate frivolous claims and a voluntary arbitration process to encourage settlement of claims. If the claimant established reasonable grounds for the medical negligence claim at the completion of the presuit investigation, either party could request that a medical arbitration panel determine the amount of damages under Fla. Stat. § 766.207(2) (Supp. 1988). The other party's agreement to participate in arbitration bound both parties to the arbitration panel's decision and precluded other remedies by the claimant against the defendant, but pursuant to § 766.207(7), the claimant's noneconomic damages were limited to a maximum per incident, calculated on a percentage basis with respect to capacity to enjoy life. The statute also provided for prompt payment of the award to the claimant, § 766.211, including interest, and the defendant was required to pay the claimant's reasonable attorney's fees and costs, and all arbitration costs. Under § 766.211(h), each defendant participating in the arbitration

proceeding was jointly and severally liable for all damages assessed by the panel. However, § 766.209(3) provided that if the defendant refused arbitration, the claimant could proceed to trial without any limitation on damages and was entitled to receive reasonable attorney's fees up to 25 percent of the award. If the claimant refused a defendant's offer to arbitrate, the claimant could proceed to trial, but noneconomic damages were capped at a certain sum per incident under § 766.209(4). The court said that the statute must be tested against the principle that the legislature had the power to abolish a right of access to the courts for redress of a particular injury only if it provided a reasonable alternative to protect the rights of the people of the state to redress for injuries, unless the legislature could show an overpowering public necessity for the abolishment of the right, and no alternative method of meeting the public necessity could be shown. The initial question was whether the arbitration statutes, which included the noneconomic damages caps found in § § 766.207 and 766.209, provided claimants with a "commensurate benefit" for the loss of the right fully to recover noneconomic damages, explained the court. Noting that a claimant's right was only limited after a defendant agreed to submit to arbitration, the court said that the defendant's offer to arbitrate provided the claimant with the opportunity to receive prompt recovery without the risk of uncertainty of litigation or having to prove fault in a civil trial. The defendant or the defendant's insurer was required to conduct an investigation to determine liability within 90 days of receiving the claimant's notice to initiate a malpractice claim, observed the court, and the defendant had to provide a verified written medical expert opinion to corroborate an assertion of lack of reasonable grounds to show a negligent injury. The claimant benefited from the quick determination, the court continued, and also saved the cost of attorney and expert witness fees which would be required to prove liability. Furthermore, a claimant who accepted an offer to have damages determined by an arbitration panel received the additional benefits of a relaxed evidentiary standard for arbitration proceedings as set out by Fla. Stat. § 120.58 (1989), joint and several liability of multiple defendants in arbitration, prompt payment of damages after the arbitration panel's determination, or interest penalties against the defendant for failure to promptly pay an award, and limited appellate review of the arbitration award requiring a showing of "manifest injustice." Rejecting the District Court's finding that because the medical malpractice arbitration statutes did not provide a no-fault basis for recovery or mandatory insurance coverage to assure recovery, like workers' compensation laws, they did not provide a commensurate benefit, the court pointed out that the task force appointed by the legislature to study the problem specifically considered and rejected other methods to control increases in medical malpractice insurance rates. The legislature had made factual findings that if the present crisis were not abated, persons subject to civil actions would be unable to purchase liability insurance, and injured persons would therefore be unable to recover damages for either their economic losses or their noneconomic losses, said the court, which constituted the legislature's conclusion that the current crisis was an "overpowering public necessity." Moreover, the court continued, the legislature's factual and policy findings were supported by the task force's report, which also supported the conclusion that no alternative or less onerous method existed, because the task force considered different solutions to the complex problem and concluded that all were necessary to address it. Stating that the plan as a whole must be considered in deciding whether no alternative means existed to meet the public necessity, the court said it was clear that both the arbitration statute, with its conditional limits on recovery of noneconomic damages, and the strengthened regulation of the medical profession were necessary, and no alternative or less onerous method of meeting the crisis had been shown. Without discussion, the court also held that the statutes did not violate the right to trial by jury (Fla. Const. Art. I, § 22), equal protection guaranties (Fla. Const. Art. I, § 2; U.S. Const. Amend. XIV, § 1), substantive or procedural due process rights (Fla. Const. Art. I, § 9; U.S. Const. Amend. XIV, § 1), the single subject requirement (Fla. Const. Art. III, § 6), the taking clause (Fla. Const. Art. X, § 6(a)), or the nondelegation doctrine (Fla. Const. Art. II, § 3).

In HCA Health Servs., Inc. v Branchesi (1993, Fla) 620 So 2d 176, 18 FLW S 291, the court reversed and remanded the appellate court's decision that Fla Stat §§ 766.207 and 766.209 (1989) violated the right of access to the courts, based on University of Miami v Echarte (1993, Fla) 618 So 2d 189, 18 FLW S 284, 26 ALR5th 831, cert den (US) 126 L Ed 2d 252, 114 S Ct 304, this section.

The court affirmed the trial court's order granting the defendant doctors' motion to compel arbitration in Santelli v Arean (1993, Fla App D2) 616 So 2d 1154, 18 FLW D 1012, reported in full (Fla App D2) 1993 Fla App LEXIS 4252, review den (Fla) 624 So 2d 268, rejecting the malpractice plaintiffs' contention that the arbitration provisions of Fla Stat §§ 766.207 and 766.209 (1989) were unconstitutional in that the noneconomic damages caps and other limitations imposed when arbitration was elected violated their rights of access to the courts and the constitutional right to jury trial. The court found that the statutes in question were not unconstitutional as applied to the specific facts of the case, because the plaintiffs actually requested voluntary binding arbitration and voluntarily subjected themselves to the limits, even though nothing in the statute required them to do so.

B. Statutes Limiting All Damages Except Medical Care and Related Expenses

§ 7.5. Other grounds

In action by shipowner against hospital for equitable indemnity based in plaintiff's settlement to satisfy foreign judgment in action brought under Federal Maritime Act by ship employee for injuries sustained due to improper medical treatment, determination that hospital could invoke state law limiting recovery of noneconomic damages by injured party against health care provider to \$250,000 in order to limit amount by which plaintiff could be indemnified did not contravene or even implicate supremacy clause. Allowing hospital to invoke limitation, even though its proportional share of liability was \$1.8 million, did not impair plaintiff's rights or interests under federal maritime law; it simply left one concurrent tortfeasor to pay more of loss than its proportionate fault. Western Steamship Lines, Inc. v San Pedro Peninsula Hosp. (1994) 8 Cal 4th 100, 32 Cal Rptr 2d 263, 876 P2d 1062, 94 CDOS 5854, 94 Daily Journal DAR 10626, reh den (Sep 22, 1994) and mod 8 Cal 4th 440c, 94 CDOS 7275, 94 Daily Journal DAR 13404.

Statutory cap on awards of noneconomic damages was not an arbitrary, capricious, or unreasonable method for addressing legitimate interest in protecting availability of liability insurance, and thus did not constitute impermissible special legislation in violation of State Constitution. Const. Art. 3, § 19; I.C. § 6-1603. Kirkland v. Blaine County Medical Center, 4 P.3d 1115 (Idaho 2000).

Statutory \$1 million cap on noneconomic damage awards in medical malpractice actions did not violate state separation of powers doctrine. Const. Art. 5, § 1; Code, 55-7B-8. Verba v. Ghaphery, 552 S.E.2d 406 (W. Va. 2001).

Statute putting a cap on the recovery of noneconomic damages in medical malpractice actions did not violate right-to-remedy clause of State Constitution. W.S.A. Const. Art. 1, § 9; W.S.A. 655.017. Guzman v. St. Francis Hosp., Inc., 240 Wis. 2d 559, 2001 WI App 21, 623 N.W.2d 776 (Ct. App. 2000).

§ 8. Generally, recovery from health care provider

Under a statute limiting the damages recoverable by a malpractice plaintiff, except for medical care and related expenses, the court held that the portion of the statute limiting recovery from a health care provider was not constitutionally infirm.

In Butler v Flint Goodrich Hosp. of Dillard University (1992, La) 607 So 2d 517, cert den (US) 124 L Ed 2d 249, 113 S Ct 2338, the court held that a statutory limitation on medical malpractice judgments against health care providers, applying to all damages

except those for past and future medical expenses, did not violate the state or federal constitution, even as applied against multiple defendants. The cap had been challenged by a plaintiff who had settled with a hospital and its employee for the amount equal to the statutory cap on recovery available from a covered health care provider, and received judgment against the Louisiana Patient's Compensation Fund for the balance of the recovery allowable under the statute. The patient then filed suit against other health care providers, and appealed a summary judgment granted to the defendants because of the plaintiff's receipt of the maximum allowable recovery under LSA-R.S. § 40:1299.42(B)(1). The court noted that the Louisiana Constitution mandated equal protection of the laws under Art. I, § 3;

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prohibited arbitrary, capricious, or unreasonable discrimination because of physical condition under Art. I, §§ 3 and 12; and guaranteed open courts which must provide an adequate remedy for injury under Art. I, § 22. Under the state's medical malpractice law, said the court, the liability of multiple health care providers, aggregating a sum exceeding the cap allowable against any one health care provider, did not inure to the victim but reduced the excess due from the compensation fund, LSA-R.S. § 40:1299.42(B)(3)(a), and the total amount paid by multiple health care providers could not exceed the maximum allowable recovery. Noting that the cap on general damages from the fund had been held valid, [FN28] but the validity of limiting payment by an individual health care provider had not been determined, the court pointed out that since the statute did not affect fundamental rights, the constitutional test was whether its provisions were reasonably related to furthering general social interests. Many courts invalidating damages caps did so because of a state constitutional right to jury trial in civil cases, the court observed, but such a provision was lacking in the Louisiana Constitution. The statutory cap on medical malpractice judgments in excess of a certain amount distinguished between classes of persons according to their physical condition, continued the court, those with injuries evaluated below the cap being fully compensated, and those with damages above the statutory cap being fully compensated only for their medical expenses and related benefits. As to whether that discrimination was arbitrary, capricious, and unreasonable, the court pointed out that the state offered those most severely injured by medical malpractice three benefits to offset the limitation: (1) greater likelihood that the offending physician or other health care provider had malpractice insurance; (2) greater assurance of collection from a solvent fund; and (3) payment of all medical care and related benefits. Compensation and full medical care for those grossly injured by medical malpractice were legitimate social interests furthered by the malpractice legislation, said the court. The discrimination in the act against those with excessive injuries was accompanied by a quid pro quo, a reasonable alternative remedy having been provided, and since the statutory solution to the medical malpractice problem furthered the state's purpose of compensating victims, it did not offend the constitution, the court concluded.

Because the Medical Malpractice Act limits the liability of health care providers in derogation of the general rights of tort victims, any ambiguities in the Act should be strictly construed against coverage. LSA-R.S. 40:1299.41 et seq. Richard v. Louisiana Extended Care Centers, Inc., 835 So. 2d 460 (La. 2003).

Issue of whether medical malpractice victim's recovery against health care provider can be constitutionally limited has been addressed by state supreme court and answered affirmatively. Turner v Massiah (1994, La App 5th Cir) 641 So 2d 610.

§ 9. --Recovery from patient's compensation fund

The limitation on the liability of a patient's compensation fund, established by a statute limiting recovery for medical malpractice damages, except for medical care and related expenses, was not constitutionally invalid, the court held in the following case.

In Williams v Kushner (1989, La) 549 So 2d 294, the court held that there was no constitutional infirmity in the state's providing for payment of a certain limited amount in noneconomic damages from the state's patient's compensation fund to a malpractice plaintiff who had settled with a defendant health care provider, after the trial court had reduced the damages granted in a jury trial to the statutory limit and entered judgment in that amount against the fund. The limitation was part of a statutory scheme which limited overall damages in malpractice actions, limited the recovery against any one health care provider, with the balance, if any, recoverable from the state fund, and provided for payment of future medical expenses, if appropriate, from the state fund. The malpractice plaintiff had settled with the attending doctor for the damages allowable by statute against a qualified health care provider before trial, and the court said the issue of the constitutionality of that damage limitation was thus moot. The legislature had the power to establish the patient's compensation fund and provide a supplemental recovery for those more seriously injured by medical malpractice, said the court, and the limitation on recovery from the fund was not subject to the same constitutional analysis as that which would apply to a negligent party. The court said that because the fund was a state-run insurance company, the state was free to limit its liability in any amount it wished, and the plaintiff had no constitutional claim for a greater amount.

In patient's medical malpractice action against two emergency room physicians after patient's left arm was amputated following transfer from one hospital's emergency room to another hospital, patient's damages were limited by the Louisiana Medical Malpractice Act's \$500,000 cap, and thus, as physician's liability was limited to \$100,000 plus interest pursuant to Act, Patient's Compensation Fund was required to pay remainder of amount under the \$500,000 cap minus \$11,000 credit for settled claims against hospitals. LSA-R.S. 40:1299.42, subd. B(3)(a); LSA-C.C. art. 1803. Coleman v. Deno, 832 So. 2d 1016 (La. Ct. App. 4th Cir. 2002).

§ 10. Under equal protection clause

[a] Validity upheld

The validity of a statute limiting medical malpractice damages except for medical and related expenses was upheld or deemed supportable in the following cases, against the contention that it violated the right to equal protection.

In Sibley v Board of Supervisors of La. State Univ. (1985, La) 477 So 2d 1094, on remand (La App 1st Cir) 490 So 2d 307, cert den (La) 496 So 2d 325, the court, on rehearing, after holding that a statute limiting the recovery of a malpractice plaintiff in an action against the state did not apply to liability for the alleged independent negligence of the Louisiana State University Medical Center Board of Governors, [FN29] directed that, in the event no liability was found of the board and the plaintiff's damages exceeded the statutory limitation, the case be remanded to the trial court for determination of its constitutionality under the guaranty of equal protection. In an earlier opinion, [FN30] the court had upheld the statutory malpractice damages limitation against an equal protection challenge, employing the three-level system of scrutiny developed by the United States Supreme Court. The court said it was called upon, in guiding the determination of the statute's validity, to decide whether the federal system of scrutiny was appropriate in interpreting the state constitution's right to individual dignity, La Const. Art. I, § 3 (1974), which included the right to equal protection of the laws and prohibited arbitrary or unreasonable discrimination against a person because of physical condition. Concluding that the federal model was not appropriate for interpreting Louisiana's equal protection clause, the court ruled that