

Task Force Meeting Attendance Sheet


Medical Malpractice Task Force

Date: 9/29/05 Meeting Type: Working Session

Location: 328 NW State Capital

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Representative Curtis Gielow, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mike Huebsch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Ann Nischke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jason Fields	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Bob Ziegelbauer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. David Striffling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Mary Wolverton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dr. Clyde "Bud" Chumbley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. David Olson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Ralph Topinka	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

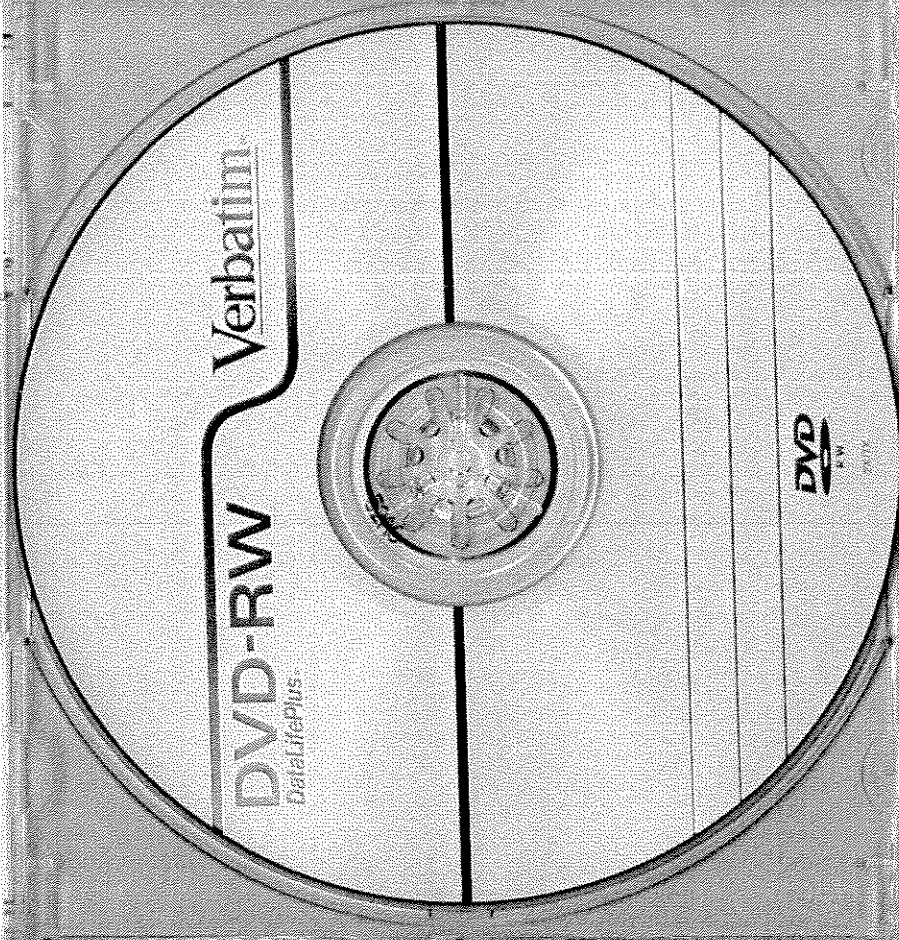
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John Reinemann
 Task Force Clerk

Assembly
Medical Help practice
Jack Joyce
9/29/05

 Verbatim



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(@ hearing on 9/29/05



Wisconsin Medical Society

Your Doctor. Your Health.

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

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

DATE: September 28, 2005

RE: Wisconsin's Medical Liability Stability Attracts Physicians

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

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

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

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

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

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

Real Stories – Physicians Choosing Wisconsin

Dear Sir/Madam:

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

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

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

Thank you for considering this information.

Sincerely,

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

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

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

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

Christopher Magiera, MD
Wausau

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

David Farkas, MD, FACEP
Lake Forest, IL

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

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

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

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

Jay S. Harms, MD
Random Lake

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

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

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

Michael Didinsky, DO
Kenosha

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

Barbara Weber, MD
Random Lake

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

I was called to work in Madison County, Illinois because the anesthesiologists there could no longer find an insurance company to provide malpractice insurance for them and they were departing. Thinking that this may be about quality of care, I did go to work at the hospital there and soon realized the scope of the problem. There I discovered that it was about a crisis in insurance and not about quality of care.

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

Rod Sathoff, MD
Green Bay, WI

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

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

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

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

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

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

My family's future depends greatly on this matter.

Ana Dimalaluan, MD
Monroe Clinic

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

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

Thomas Houting, MD, DDS
Stevens Point

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

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

Nancy Ellen Rich, MD
Richland Center

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

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

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

Erich Metzler, MD
Green Bay

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

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

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

Jeffrey W. Glasheim, DO
Oshkosh

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

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

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

Thorsteinn Skulason, MD
Waukesha

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

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

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

Scott Hansfield, MD
Waupun, WI

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

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

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

I am now seriously concerned that Wisconsin will become like Pennsylvania (and like so many other states). I see no way that this will not happen unless the caps are re-instated. It is not a coincidence that the few states in the nation not in crisis all have caps on non-economic damages. There is very good reason that so many other states are trying to institute such caps. I find it hard to believe that our caps have been removed. It seems that our state supreme court doesn't truly grasp the severity of the crisis in states like Pennsylvania.

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

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

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

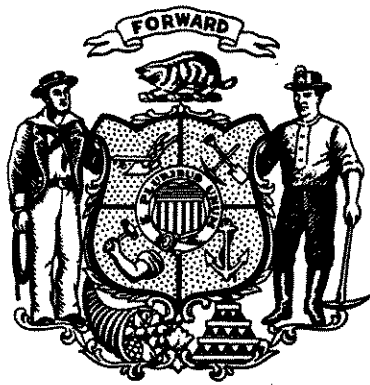
For example, a patient might show up with chest pain and in most States this forces a huge and mostly unnecessary evaluation to protect the physician from liability. When the workup is done the patient is sent home with a 4-5 thousand dollar medical bill and having had nothing done to help with their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

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

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

John R. Ewing, MD
Lake Delton

END



END



...the first choice.

MEMORANDUM

DATE: September 28, 2005
TO: Representative Curt Gielow, Chair Medical Malpractice Task Force
FROM: C.M. Chumbley, M.D.
RE: Ideas Regarding Medical Malpractice Non-economic Caps

I apologize for not meeting your suggested deadline for ideas of September 19, 2005.

Non-economic Damage Cap

I suggest that the Task Force recommend reinstatement of a cap on non-economic damages of the greater of \$500,000 or eight thousand dollars times the life expectancy of the claimant. I believe that this approach addresses two of the concerns expressed by the Supreme Court in their recent decision. This seems like a reasonable approach given what other states have done and the testimony that we have heard. However, I would like to see outside validation that this recommendation would again stabilize the medical malpractice environment in Wisconsin.

A state's real as well as its perceived medical malpractice climate influences the recruitment and retention of physicians to that state. Wisconsin has been fortunate in this regard in the past, however I am fearful that if the non-economic damages cap is not reinstated, that the looming shortage of physicians will impact our state disproportionately.

Related Issues

"Collateral Source"

I believe that juries should be allowed to alter awards on the basis of collateral source information.

Medical Residents

Unlicensed medical residents should be afforded the same protections under the patient compensation fund as other health care providers in the state.