WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Agriculture and Insurance (SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

COMMITTEE NOTICES ...

- *Committee Hearings ... CH* (Public Hearing Announcements)
- **

- *Committee Reports ... CR*
- **

- *Executive Sessions ... ES*
- **

- *Record of Comm. Proceedings ... RCP*
- **

INFORMATION COLLECTED BY COMMITTEE CLERK FOR AND AGAINST PROPOSAL

- *Appointments ... Appt*
- **

Name:

- *Clearinghouse Rules ... CRule*
- **

- *Hearing Records ... HR* (bills and resolutions)
- **05hr_ab0764_SC-AI_pt01**

- *Miscellaneous ... Misc*
- **

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PRESS RELEASES

Wisconsin Citizen Action: Health Professionals Crying Wolf over Bogus Poll
8/25/2005

Contact Darcy Haber (608) 235-7471

"Once again, front groups for the malpractice insurance industry and the Republican party are trying to distract us from the real health care crisis in Wisconsin, "stated Darcy Haber, Healthcare Campaign Director of Wisconsin Citizen Action. "With 593,000 uninsured people in Wisconsin this year, why on earth should the public allegedly care so much about an expense that amounts to less than half of one percent of health care costs in Wisconsin.

"What's even more absurd is that there is absolutely no experience or evidence that would show that there is any correlation between malpractice rates and whether or not Wisconsin has a cap in place. There is however, a correlation between medical malpractice rates and stock market trends."

"First, the public must understand that the survey is utterly bogus unless survey respondents were provided with an objective account of the current situation and a fairly-phrased question," stated Haber. "Moreover, most of Wisconsin has only been exposed to alarmist statements by the medical industry and its allies, with none of the actual facts being presented by them.

"Second, the impact of medical malpractice on southern Illinois healthcare has been grossly overstated, according to recent a study by the respected Prof. Neil Vidmar. While the Carbondale mayor can undoubtedly offer some anecdotes about doctors leaving the area, his claims are simply not backed up by solid data. There have actually been only a tiny handful of malpractice verdicts in southern Illinois over the past decade, far too few to explain any alleged change in the number of doctors practicing there.

"Third, this media event marks yet another instance where the Medical Society and the Hospital Association are being used as pawns by the insurance industry and the Republican party to further their agenda of maximizing profits and limiting consumer rights, respectively."

Their Chicken Little scenario simply can't be believed in light of the following incontrovertible but inconvenient facts about Wisconsin that the medical industry resolutely wants to avoid confronting," charged Haber.

Among these facts:

· During the decade of 1995-2005 when the cap on pain and suffering was in effect in Wisconsin, just 9 jury verdicts exceeded the cap (originally set at $350,000) in a state of 5.5 million people.

· At a somewhat similar moment when Wisconsin's cap of $1 million expired in 1990, the number of malpractice filings did not explode, but actually dropped by 16%.

· Medical malpractice costs are less than 40 cents out of every $100 dollars spent on health care.

· Medical malpractice litigation is actually very rare, with just 23 cases heard by Wisconsin juries in 2004 and 4 rulings for the patient.

· Wisconsin malpractice premiums for doctors have been kept low by a unique non-profit insurance fund, not the cap. Wisconsin's Injured Patients and Families Compensations Fund has accumulated nearly $750 million in assets.

For more information and sources, please consult the study, "Justice Capped: Tilting the Scales of Justice Against Injured Patients and their Families available on our website at www.citizenactionwi.org.

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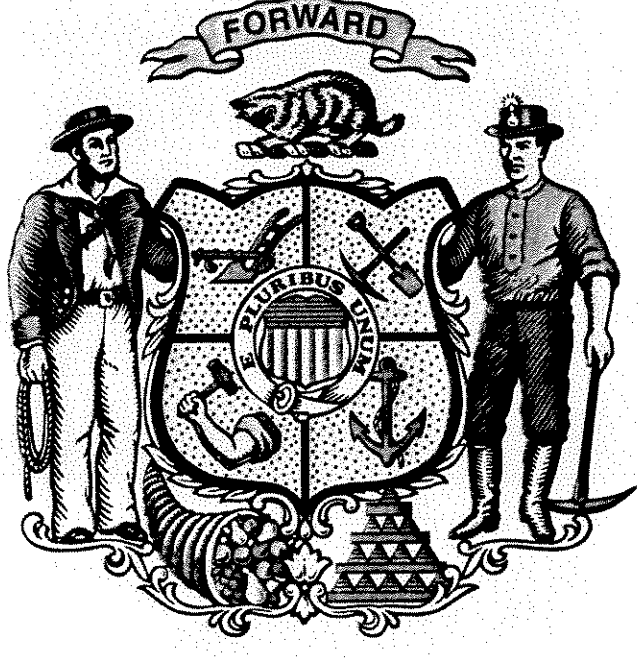
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PRESS RELEASES

Wisconsin Medical Society: Poll Finds Strong Public Support for Cap on Medical Liability Awards
8/25/2005

For Information Contact:
Steve Busalacchi
(608) 442-3746/800-762-8977
Cell (608) 576-2274 Steveb@wismed.org

Public fears higher health costs from unlimited awards

Madison (August 25, 2005) Wisconsin voters want limits on intangible awards, i.e. for pain and suffering, in medical liability cases, according to a statewide poll conducted in mid August.

When asked whether Wisconsin should cap non-economic damages to prevent both higher health costs associated with frivolous lawsuits and unnecessary medical testing, 66% agreed and only 28% disagreed.

Public Opinion Strategies, commissioned by the Wisconsin Medical Society and the Wisconsin Hospital Association, surveyed 500 likely Wisconsin voters. The poll found a majority wants the cap on non-economic damages reinstated, despite the Wisconsin Supreme Court's recent ruling that the state's decade-old cap is unconstitutional.

"Voters understand the connection between unlimited awards and the consequence of higher health costs," said Susan Turney, MD, CEO/EVP of the Wisconsin Medical Society. In fact, for certain medical specialties, such as emergency medicine physicians, liability insurance costs total almost 40% of practice expenses.

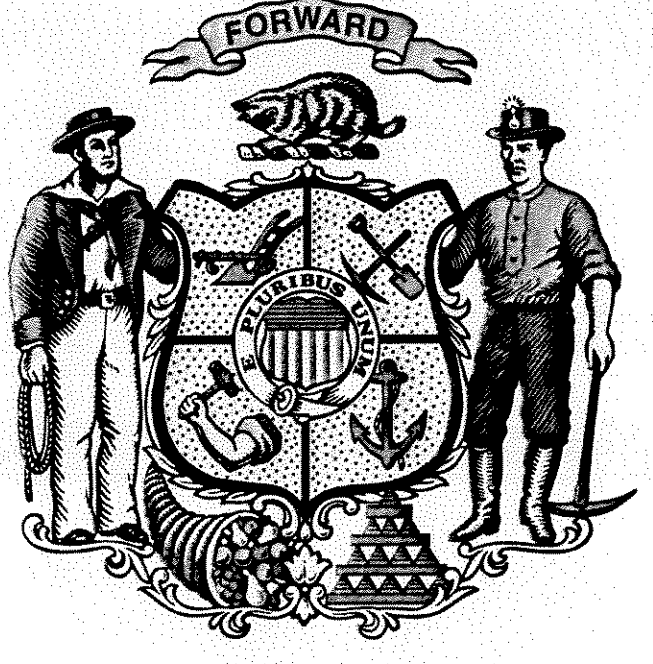
The mayor of a small community in southern Illinois is so convinced of the need to control liability costs that he successfully spearheaded an ordinance last year that created an award cap. That Council action followed the departure of the region's two brain surgeons.

"When they decided to close their doors and relocate to states with more favorable malpractice insurance rates, it left the lower third of Illinois without a neurosurgeon," said Brad Cole, Mayor of Carbondale. One of Cole's friends had to be evacuated to Missouri following a head injury because there wasn't a surgical specialist available locally anymore. She died from her injury.

The Wisconsin Medical Society has created www.keepdoctorsinwisconsin.org to educate and empower the public so citizens can support public policy that prevents such serious threats to our health care system.

"We are all in this together," said Dr. Turney, "and together we will change our liability laws so patients can have reasonable assurance that doctors will be there when they need them."

The new website offers information about what has happened in other states that have lost their cap on non-economic damages, what voters can do to bring back the cap and the opportunity to become part of the campaign to keep doctors in Wisconsin.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PRESS RELEASES

Wisconsin Hospital Association: Wisconsin Overwhelmingly Supports Medical Malpractice Cap
8/25/2005

Contact: Mary Kay Grasmick, WHA 608-274-1820 or 575-7516 (cell)

New poll shows 75 percent of those asked support reinstating limit

MADISON (August 25, 2005)------ Concerns that health care costs will rise is just one reason why the public supports reinstating a cap on non-economic damages in medical malpractice cases. Just six weeks ago, the Wisconsin Supreme Court struck down the cap, but according to a statewide poll released today by the Wisconsin Hospital Association and Wisconsin Medical Society, public support is already overwhelmingly in favor of putting an effective cap back in place.

More than 75 percent of Wisconsin residents who were asked said they would favor a new law to reinstate a limit on medical malpractice damage awards that are related to pain and suffering. Support is so strong, in fact, that it carries to the voting booth as 68 percent of the respondents said they would be more likely to vote for a candidate for the state legislature who supported a cap. That sentiment is derived from a bi-partisan sampling of 500 Wisconsin voters, including some who said they had filed a personal injury lawsuit in the past.

In addition to rising health care costs, respondents said they fear that without a cap, a medical liability crisis will force doctors to stop practicing in or leave Wisconsin. There was also a fear that access to obstetrical care and life-saving services, such as brain surgery, will be limited.

Experiences in other states prove these concerns are very real. Skyrocketing medical liability premiums have caused physicians to stop practicing in states without caps, such as Oregon, Washington and Illinois, to name just a few. Trauma units have closed in southern Illinois, and one-third of the obstetricians in Oregon have stopped delivering babies in that state only three years after losing their cap on non-economic damages.

WHA Senior Vice President Eric Borgerding said Wisconsin can't afford to take a "wait and see what happens" position.

"We had an enviable medical malpractice environment before the Supreme Court struck down the caps because it protected injured patients while ensuring that all patients could access medical care," Borgerding said. "The more the public learns about the consequences the high court's action will have on their access to health care when they need it, the more supportive they are of restoring the cap."

Gene Ulm, a partner in Public Opinion Strategies, the polling group that conducted the study for WHA and the Society, agreed with Borgerding. Ulm said the results clearly show that residents here don't want to repeat other state's mistakes.

"Support was strong, 66 percent, even before respondents were asked to react to factual statements that described how access to health care changed in states without caps," Ulm explained. "After they heard that high medical liability premiums cause physicians to leave, trauma centers to close, and women to show up to deliver babies without having any prenatal care because there was not an obstetrician in their community, the public support for reinstating the cap goes through the roof."

When malpractice insurance rates soar, it leaves rural and inner cities areas particularly vulnerable to physician shortages. Sandy Anderson, president of St. Clare Hospital in Baraboo, said recruiting and retaining physicians is an on-going challenge. One made even more difficult now.

"Physicians are in demand in all areas of the country," said Anderson. "Rural hospitals in Wisconsin are not only competing with larger cities for doctors, but with other states."

"The difficulty we have is getting physicians to come to a rural area to practice," Anderson continued. "That difficulty is compounded if they won't even consider coming to Wisconsin."

Borgerding emphasized that 89 percent of those asked said the Governor and Legislature should consider this issue a "priority."

"Clearly, state legislators should know that their constituents are concerned about the future of health care in Wisconsin, and they are willing to vote for those candidates who support making health care accessible to all citizens in our state," he concluded.


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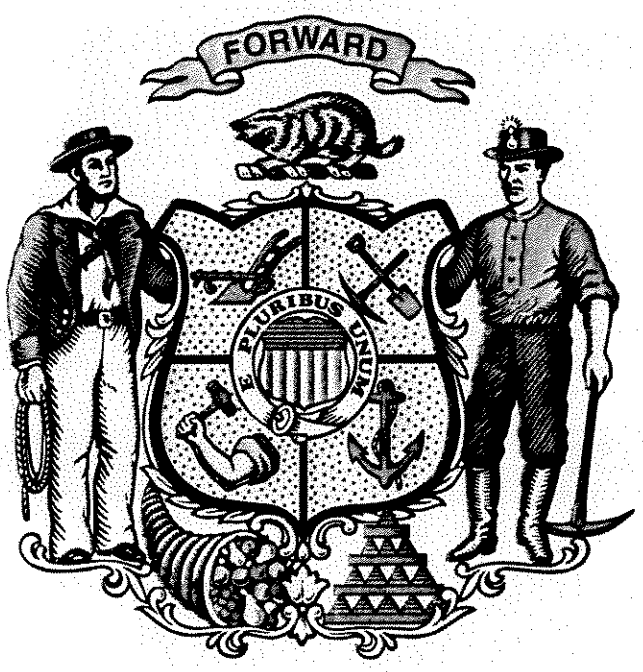
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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE CURT GIELOW AND MEMBERS OF THE ASSEMBLY MEDICAL MALPRACTICE TASK FORCE

FROM: Richard Sweet and Ronald Sklansky, Senior Staff Attorneys

RE: Possible Recommendations

DATE: September 27, 2005

This memorandum is a brief summary of possible recommendations submitted to staff by members of the Assembly Medical Malpractice Task Force. Additional details and rationale for some of the recommendations are included in attachments to this memorandum.

Noneconomic Damage Cap

The following four recommendations were submitted to address the elimination of the statutory limit on noneconomic damages in medical malpractice cases by the Wisconsin Supreme Court in *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125 (2005). In discussing any of these four proposed recommendations or any other recommendations regarding noneconomic damage caps, the Task Force may wish to consider the following in order to bolster the constitutionality of the recommendations:

- Make any new noneconomic damage cap prospective only. In other words, the cap would apply only to incidents of malpractice that occur after the bill's effective date.
- Index any dollar amounts for inflation.
- Include a statement of legislative findings that addresses issues such as adequate compensation of victims, and stability of medical malpractice premiums and the Injured Patients and Families Compensation Fund (referred to in this memorandum as "the Fund").

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http://www.legis.state.wi.us/lc

The following four recommendations were submitted with respect to the noneconomic damage cap:

Option 1

- Establish the cap on noneconomic damages at $500,000, with an increase of $5,000 per year of life expectancy of the injured patient.

- Establish a separate cap for each family member who is entitled to noneconomic damages under current law at 25% of the cap for the injured patient.

Option 2 (see attachment from David Strifling)

- Establish the cap on noneconomic damages at $500,000 or $8,000 times each year of life expectancy of the injured patient, whichever is greater.

- Create a higher cap (e.g., $750,000) for noneconomic damages for the most severely injured patients. Consider not making the higher cap applicable in high-risk medical fields, such as emergency care or obstetrics/gynecology.

- Do not adjust the caps for additional family members who are entitled to noneconomic damages under current law (i.e., one cap would apply to the injured patient and all family members in the case).

Option 3

- Maintain the current cap ($445,755) as the maximum liability on individual health care providers but require the Fund to pay noneconomic damage awards in excess of that amount, subject to the limits established in the next item.

- Limit noneconomic damages for the injured patient to $2 million. The $2 million cap would be reduced by 1% for each year that the patient's age exceeds 20 years at the time the malpractice occurred.

- Limit noneconomic damages for family members who are entitled to noneconomic damages under current law to 10% of the noneconomic damages awarded to the patient or $20,000, whichever is greater, for each family member who suffers noneconomic damages.

- Ensure that insurance premiums and Fund assessments do not increase due solely to inflationary increases in caps.

Option 4 (see attachment from Ralph Topinka)

- Cap noneconomic damages at $550,000 through one of the following mechanisms: (1) provide immunity from liability for health care providers for amounts above this level; (2) provide immunity from liability for health care providers for amounts above this level if the providers participate in Medical Assistance.

- Establish a state fund that is separate from the Injured Patients and Families Compensation Fund to cover noneconomic damages up to the $550,000 cap. The new fund would be financed through assessments on providers and general revenues and be backed by the full faith and credit of the state.

Medical Residents (see attachment from David Strifling)

This item addresses the issue raised by the Wisconsin Supreme Court's decision in *Phelps v. Physicians Insurance Company of Wisconsin, Inc.*, 2005 WI 85 (2005). In that case, the court held that the statutory cap on noneconomic damages did not apply to a person during his or her medical residency who was not yet a physician and, in the circumstances of the particular case, was not an employee of a hospital. However, the Supreme Court sent the case back to a lower court for a determination of whether or not the medical resident can be considered to be a "borrowed employee" of a hospital.

The recommendations in this area are as follows:

- List medical residents as persons who are covered by the cap on noneconomic damages.

- Consider covering medical residents who are not direct employees of a hospital under the Fund and providing for assessments on those residents for Fund coverage.

Collateral Sources

The recommendation in this area relates to the Wisconsin Supreme Court's decision in *Lagerstrom v. Myrtle Werth Hospital-Mayo Health System*, 2005 WI 124 (2005). In that case, the court noted that current statutes provide that a jury may receive information about other sources of payments for the injured patient's injuries, in addition to payments from the defendant, but the statutes are silent on how the jury is to use that information. The court held that the jury may not use the information about collateral sources to reduce the award to the injured patient, but may use the information to determine the value of medical services rendered.

Option 1 (see attachment from David Strifling)

- Require the jury to reduce the injured patient's award by any collateral source payments received. Offset this reduction by the amount of any obligations that the injured patient has to reimburse the collateral sources (e.g., Medicare).

Option 2 (see attachment from Ralph Topinka)

- Allow or require the jury to reduce the injured patient's award by any collateral source payments received. Require a collateral source to seek redress for payments only from the defendant rather than the plaintiff.

Health Courts (see attachments from Reps. Jason Fields and Ann Nischke)

- Create health courts that deal exclusively with medical malpractice cases.

Audits of the Fund (see attachments from Reps. Bob Ziegelbauer and Jason Fields)

- Require a periodic ***actuarial*** audit of the Fund. Current statutes require that the Legislative Audit Bureau perform a ***financial*** audit of the Fund at least once every three years.

Coverage by the Fund

Currently, the Fund provides coverage for awards above $1 million per occurrence and $3 million per calendar year.

- Allow the Fund to provide first dollar coverage for medical malpractice cases through a subsidiary (see attachment from Rep. Bob Ziegelbauer).

- Reduce the coverage levels of the Fund to $500,000 per occurrence and $1.5 million per calendar year (see attachment from Insurance Commissioner Jorge Gomez).

- Allow the Fund to function as a private insurer (see attachment from Rep. Jason Fields).

Medical Malpractice Prevention (see attachment from Rep. Bob Ziegelbauer)

- Review recommendations made by the Joint Legislative Council's Special Committee on Discipline of Health Care Professionals in 1999 Senate Bills 317 and 318. (A copy of a report describing those bills is attached to this memorandum.)

Worker's Compensation Type of Program (see attachment from Rep. Ann Nischke)

- Consider a long-term reform of creating a medical malpractice system that is similar to the Worker's Compensation system.

Attorney Contingency Fees (see attachment from David Olson)

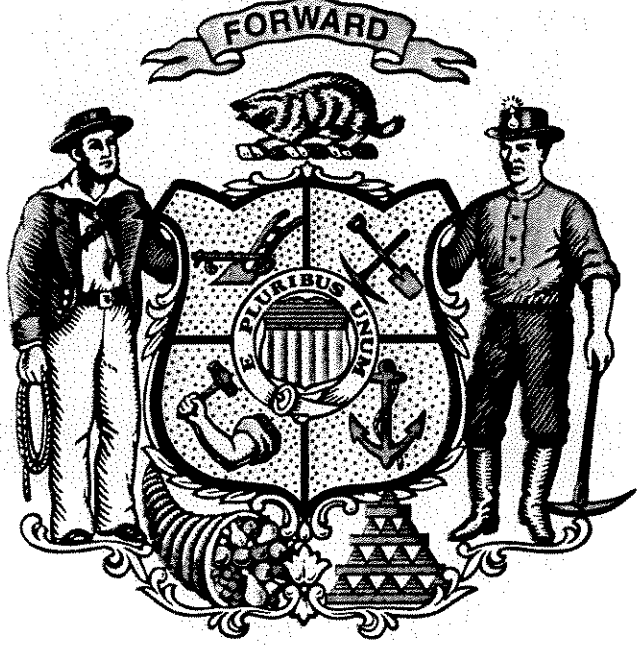
Currently, attorney's contingency fees in medical malpractice cases are limited to 33-1/3% of the first $1 million received (25% if liability is stipulated within 180 days after filing and not later than 60 days before the trial date), and 20% of amounts in excess of $1 million. A court may approve higher amounts for exceptional circumstances, including an appeal.

- Limit contingency fees to 40% of the first $50,000 received, 33.3% of the next $50,000, 25% of the next $500,000, and 15% of amounts recovered above $600,000.

Feel free to contact us if we can be of further assistance.

RNS:RS:jal

Attachments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Wisconsin Hospital Association, Inc.

NEWS

Contact: Mary Kay Grasmick 608-274-1820 (office) 608-575-7516 (cell)
Eric Borgerding 608-274-1820 (office) 608-335-3949 (cell)

Evidence Mounts: Wisconsin Headed Toward Medical Access Crisis

Loss of limits on excessive pain and suffering awards is already negatively affecting Wisconsin physician recruitment

MADISON (October 17, 2005) ---- Less than four short months after the Wisconsin Supreme Court eliminated limits on excessive awards for pain and suffering in medical liability cases, Wisconsin is already seeing evidence of physician recruitment prospects turning down offers to practice in Wisconsin communities because of the loss of the cap. If this trend continues, Wisconsin patients will likely find it more difficult to access the health care they need.

"We are often asked: "When will the loss of the caps have an impact?' The answer is right now," reveals Wisconsin Hospital Association (WHA) President Steve Brenton. "Physician recruiters are now reporting that new physicians are starting to turn down offers to practice in Wisconsin communities, fearing that Wisconsin will soon turn into one of the medical liability crisis states physicians are either leaving or avoiding."

Kurt Mosely, a vice president with the MHA group, the largest physician recruitment agency in the country, said states with caps have about 16 percent more physicians per capita than those that don't have caps.

"Wisconsin, along with every other part of the country, is already in the midst of a physician shortage that is only going to get worse as our population ages," Mosely said. "You need every advantage you can get when you are competing with 49 other states for physicians."

Mosely added that for states already in crisis, the only alternative is to hire temporary physicians through staffing agencies. "In crisis states, temporary doctors become a permanent solution because physicians won't commit to a full-time, permanent practice."

Now, without the stability of the pain and suffering cap, Wisconsin communities are at a competitive disadvantage at the same time that physicians are hard to recruit and in short supply. Wisconsin hospitals are reporting that it is more

difficult to recruit physicians to come to their communities. If this trend continues, it will be difficult to access medical care when it is needed.

Baraboo, Wisconsin, is a notable example of how the loss of the cap has placed additional challenges on rural hospitals. Sandy Anderson, president of St. Clare's in Baraboo, told reporters on August 25, 2005, of the difficulty of recruiting new physicians to Baraboo after the Supreme Court decision. "I have interviewed two orthopedic surgeons and they asked me 'what is going to happen to our malpractice rates?'"

Anderson also told reporters her own personal story of the difficulty she had in finding a physician to deliver her twins when she lived in Ohio. Ohio is one of 20 states identified by the AMA as a medical liability crisis state.

Stevens Point's Saint Michael's Hospital, in central Wisconsin, is another example, according to Claudine Taub, RN, physician recruiter for Ministry Health Care – Central Region. "I had been working to recruit several family practice physicians in the state of Illinois to central Wisconsin, but soon after the Supreme Court decision, the physicians declined our invitation, citing the caps as a factor in their withdrawal," she explained.

"The loss of our ability to recruit new physicians to Wisconsin is the first shoe to drop," said Brad Neet, president of Saint Michael's Hospital-Ministry Health Care in Stevens Point. During his six-year tenure at Saint Anthony's Hospital in Illinois, Neet saw first-hand the negative impact of practicing in a state without damage caps, as doctors fled the state. "We are concerned that the next effect of the loss of the caps will be the reverse of the trend that brought physicians to Wisconsin - physicians will 'escape from Wisconsin' as they seek out a less hostile liability environment."

"The effect of the loss of the cap on excessive pain and suffering awards will continue to impact health care for patients, employers and other health care providers throughout the state," cautioned Brenton. "It is imperative that we find an equitable solution to this impending crisis." Brenton noted that just introduced legislation that is the result of the work of a special legislative Task Force represents such a solution.

Note to editors: The Assembly Committee on Insurance will be holding a hearing at 2pm today at the Capitol on legislation to reinstate limits on excessive awards for pain and suffering in medical liability cases.

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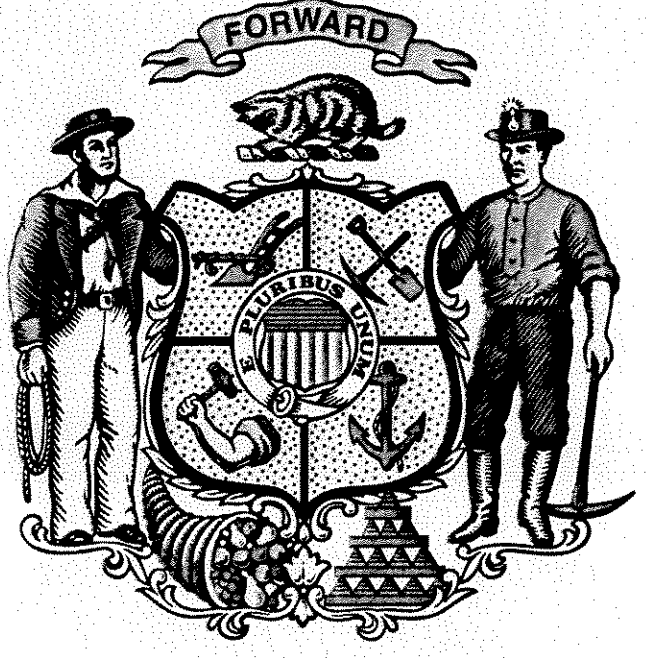
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1910 South Avenue, La Crosse, Wisconsin 54601-9980
Telephone (608)782-7300
Fax(608)785-2181

Facsimile Transmittal

Number of pages: 3 (including this page)

Today's Date: 10/21/05

Time: 2:55 pm.

To: Ken Dan Kapanke

At:

Phone No./Ext: 608-207-5173

From: Dr Jeff Thompson

Phone No./Ext: 608-775-2145 (Jackie)

VHA Member of Voluntary Hospitals of America, Inc.

Remarks:

Gundersen Lutheran

Gundersen Lutheran Support for the Re-instatement of Medical Malpractice Caps in Wisconsin

The recent decision by the Wisconsin Supreme Court to strike down caps on non-economic damages in malpractice cases has jeopardized the stable liability environment that Wisconsin has enjoyed up until now. A stable malpractice environment is in the interests of all us here in Wisconsin. According to the American Medical Association, Wisconsin is one of only six states that are not in a medical liability crisis, and we believe that reasonable caps on non-economic damages have played an important role in controlling the cost of malpractice premiums.

We at Gundersen Lutheran strongly support the current legislation to restore the caps for the following reasons:

- **Malpractice caps increase the supply of physicians in a state.** According to a recent study, this is particularly true of OB/GYN and surgical specialists in rural counties. Wisconsin is already faced with a physician shortage in rural areas-particularly in 'high-risk' areas such as obstetrics and surgery. Up until now, Wisconsin has enjoyed a reputation as a safe haven in the malpractice crisis, and this provided us an advantage in recruiting physicians to the state. If we are to maintain access to health care in rural areas, it is important that Wisconsin maintains its reputation as a state with a stable liability environment.

- **Malpractice caps reduce insurance payouts arising from litigation.** In one study, in those states with malpractice caps, the loss-ratios (the ratio of claims amounts divided by premiums earned) were 11.7% lower Loss ratios were **25%** lower in states that had both malpractice caps and discretionary collateral offsets (these reduce the amount of reward by the amount the plaintiff will receive from other sources). (Thorpe, 2004)

- **Due to these reduced payouts, malpractice caps also reduce insurance premiums.** The Government Accounting Office has stated that "losses on medical malpractice claims appear to be the primary driver of increased premium rates in the long-term." One study found that in states with malpractice caps, premiums are 17% lower than in states without the caps. (Thorpe 2004).

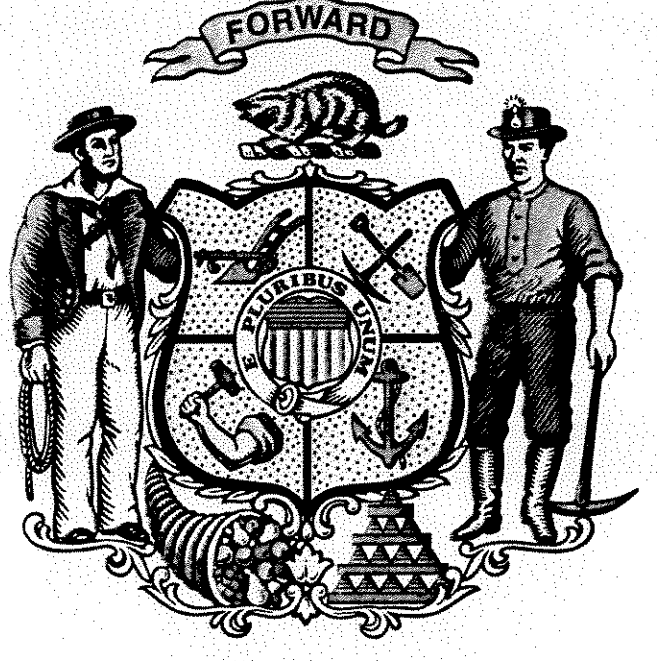
  Gundersen Lutheran enjoys an excellent rating in terms of its medical liability. Nevertheless, the organization is self-insured, employing almost 600 providers, and the prospect of unlimited liability for non-economic damagers is indeed daunting.

- **The presence of caps reduces the practice of *defensive medicine*, and thus serves to moderate increases in health care costs.** When physicians know their liability is limited, they are less likely to order test/procedures of marginal value to the patient.

- **By reducing payouts, malpractice premiums, and the practice of defensive medicine, malpractice caps are effective in helping to control rising health care costs – probably the most important issue in health care today.**

  In another recent report by the General Accounting Office, nine of the eleven cities in the United States with the highest physician 'prices' are found in Wisconsin. While there are questions about how the analysis was conducted, it is imperative that Wisconsin not become known as the state with the highest health care costs. The re-instatement of caps of non-economic damages would be an important step in this direction.

A recent analysis by Pinnacle Actuarial Resources found that low to medium-level caps ($250,000-$550,000) were relatively successful in maintaining stable malpractice environments. In summary, we believe that the goals of quality, affordable, and accessible health care for the state of Wisconsin, can best be met when there are reasonable caps on non-economic damages for mal-practice claims.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FAX

Date: 10/24/05
Number of pages including cover sheet: 3

To: Rose Smyrski
Phone: 608-266-5490
Fax phone: 608-267-5178
CC: Jim Perlick

From:
Joan Curran, MBA
Executive Director
jlcurran@gundlch.org
Phone: (608) 775-4347
Fax phone: (608) 775-6627

REMARKS: ☐ Urgent ☑ For your review ☐ Reply ASAP ☐ Please comment

Rose -

Here are the talking points / support from LL on the MED. MAL issue.

Let me know if you need anything else. Thanks

Joan

my cell is 608-386-8239

Gundersen Lutheran Support for the Re-instatement of Medical Malpractice Caps in Wisconsin

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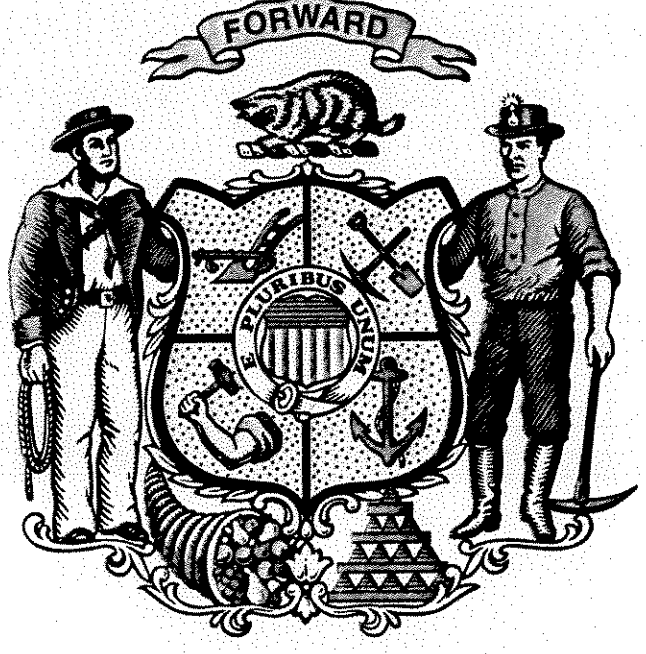
Value of cap was determined by using:
– An actuarial study – conducted by Pinnacle Actuarial Resources
– Claims experience in WI provided by OCI
– Survey of state's w/ caps the

Ave. $390,000 ⇒ the amount we included is higher than the average.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Smyrski, Rose

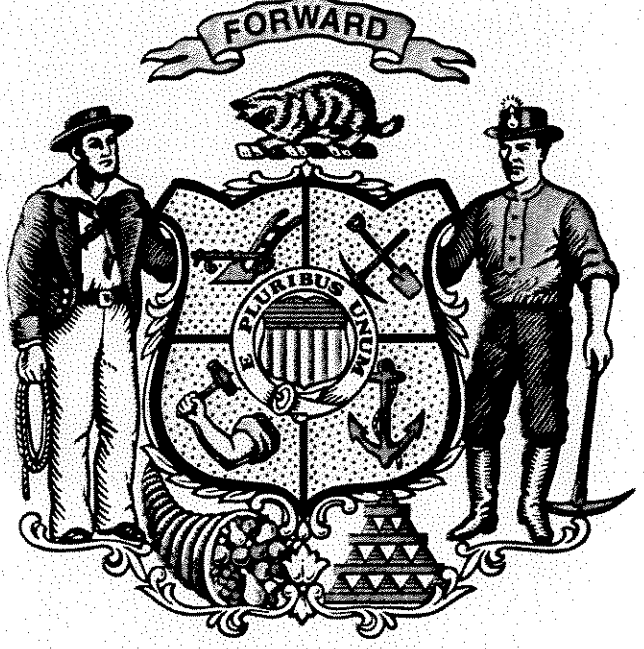
From: mary landry [pandmlandry@yahoo.com]
Sent: Tuesday, October 25, 2005 6:02 PM
To: Smyrski, Rose
Subject: Malpractice caps

Dear committee members,

I am an Ob/Gyn who has been practicing in the Madison area for the past 10 years. Despite no malpractice claims filed against me or my collegues at my private practice clinic, my malpractice premiums have increased 75% from 2003 to 2005 from $22,454 to $39,207.
I am leaving private practice, frustrated that I can't work part time because the malpractice premiums are an overhead cost that doesn't allow for decreasing work hours in our private clinic. Hiring quality Ob/Gyn's in this state is unlikely if the premiums aren't controlled. Controlling malpractice premiums will allow doctors to work safe hours, providing safe care for Wisconsin residents. Uncontrolled costs will drive quality doctors away from Wisconsin.

This is a very real issue for me and my patients who care deeply about the quality of health care in Wisconsin. Please reinstate the caps soon.

Respectfully,
Mary S. Landry
4541 Winnequah Road
Monona, WI 53716
(608) 223-9233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WISCONSIN LAWYERS
STATE BAR of WISCONSIN® | EXPERT ADVISERS. SERVING YOU.

MEMORANDUM

To: Members, Senate Committee on Agriculture and Insurance

From: State Bar of Wisconsin

Date: October 27, 2005

Re: Opposition to AB 764 (Collateral Source) and AB 766/SB 393 (Caps)

The State Bar of Wisconsin opposes AB 766/SB 393, recovery of noneconomic damages in medical malpractice cases and AB 764, awards to persons suffering damages as the result of medical malpractice and evidence of compensation for those damages.

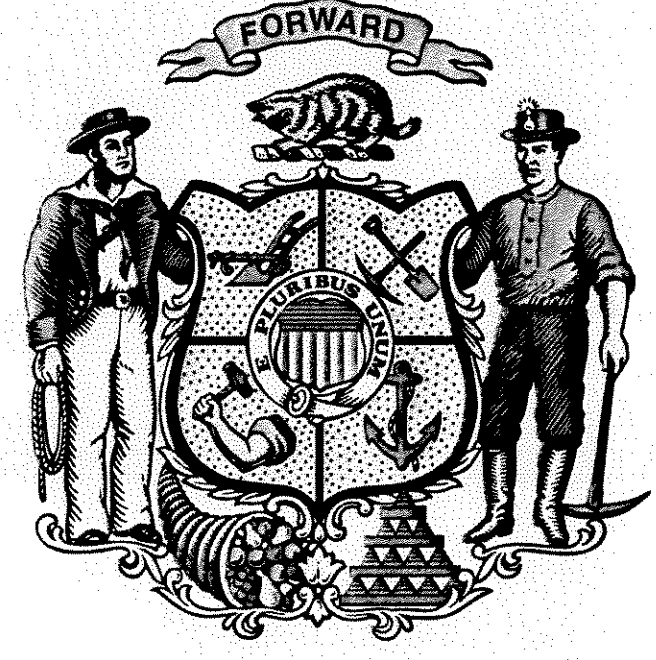
AB 766: (Caps on Non-economic Damages) The State Bar of Wisconsin opposes legislatively set limits on non-economic damages. Caps on non-economic damages run counter to the right of obtaining justice "completely and without denial." Such caps set in place an arbitrary pretrial limit when those decisions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

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

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

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

State Bar of Wisconsin
5302 Eastpark Blvd. ▫ P.O. Box 7158 ▫ Madison, WI 53707-7158
(800) 728-7788 ▫ (608) 257-3838 ▫ Fax (608) 257-5502 ▫ Internet: www.wisbar.org ▫ Email: service@wisbar.org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TO: Members of the Senate Agriculture and Insurance Committee

FROM: Janice Schreiber

DATE: October 27, 2005

RE: Testimony against caps on noneconomic damages

In June 25, 1988, my daughter Kimberly Schreiber was born in Rhinelander, Wisconsin. During the course of my delivery my uterus ruptured depriving Kimberly of oxygen. Kimberly was born a spastic quadriplegic and she cannot move below her neck or speak.

Our case involved the issue of informed consent. Kimberly was my third child and the two previous births were done by cesarean section. I had agreed to have either a vaginal delivery or cesarean section during the course of my labor. After my labor started, I requested a cesarean section several times during the course of my delivery because of the intense pain I was in. The doctor who delivered Kimberly refused my request even though the cesarean section was medically indicated and I had had two previous cesarean sections. However, by the time a cesarean was done my uterus had ruptured. It took eleven years to resolve our case going all the way to the Wisconsin Supreme Court. During that time, our family cared for Kimberly continuously.

Kimberly requires 24-hour care every day all year long. She can't be left alone. We must do everything for her — feed, dress, diaper and bathe. She cannot eat through her mouth and must be fed through a G feeding tube. She is confined to a wheelchair or bed and suffers a seizure disorder. She requires physical therapy and breathing treatments on a regular basis.

While she doesn't speak, she can communicate in her own way with her own language. She can understand things and listens well. She has her favorite books, movies and loves to go places. But we always must have someone to help her. Sometimes two people are required to help her with her activities.

For our experience going through a lawsuit was very challenging. As I stated, Kimberly was 11 year old when we settled our case. The money received in the lawsuit has helped improve Kimberly's quality of life. We have been able to provide care that was otherwise unavailable to her. Up until that time, this burden fell primarily on family members. This is a difficult burden because it physically and mentally can burn you out. However, money for medical expenses and lost wages usually are paid to someone else — nurses, doctors, therapists — it doesn't go to the injured person.

It is only the award above the out-of-pocket loss that is available to compensate in some way for the pain, suffering, physical impairment or disfigurement that Kimberly must endure for the remainder of her life. It also assures Kimberly of some quality of life. That she may do things she enjoys. These damages are very important and go to compensate Kimberly and our family for the very real losses we have suffered. The loss

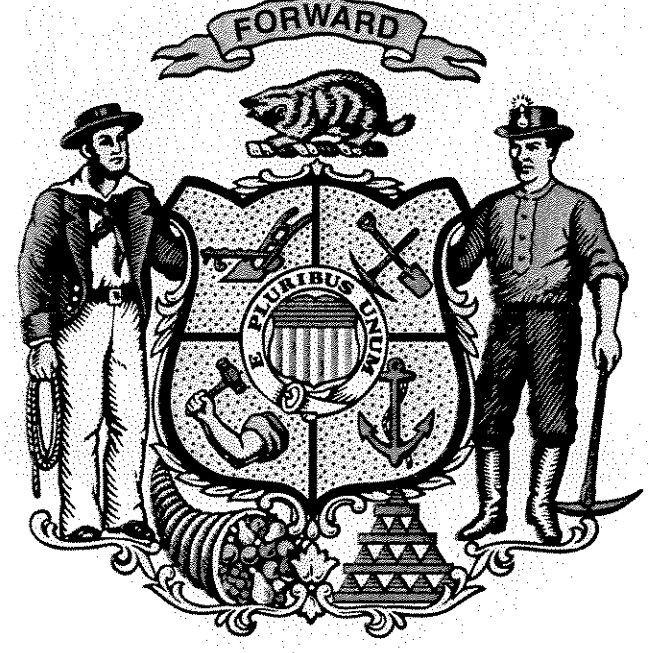
of noneconomic damages in any amount is significant because they are essential to Kimberly.

I have two older children, so I understand how different Kimberly's life is from other children. She has a great memory and understands many things, but because of her condition she will never experience all the simple things we take for granted — walking, talking and touching things. She just turned 17, but will never drive a car. This year she would be a senior in high school, but she will never graduate and become an independent citizen.

In many ways we are very lucky to have Kimberly with us today. When we were going through our court case, some of the defense experts said she wouldn't live this long. Kimberly has proven them wrong, but we want to make sure the money she has received can continue to pay for her needs as she ages.

I urge this Committee not to adopt a new cap on noneconomic damages. Caps seek to "fix" the civil justice system at the sole expense of those most seriously injured. That is neither fair nor equitable. A person whose noneconomic damages are below a cap recovers 100 percent of his or her noneconomic loss, while a person whose noneconomic are above the cap, receive only a fraction of the amount necessary to compensate them. The Supreme Court held that there is nothing rationale for treating the most seriously injured patients of medical malpractice less favorably than those less seriously injured. I must agree. People who are permanently injured like Kimberly should not be deprived of full compensation for all their injuries.

Thank you.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CURT GIELOW

State Representative

Testimony on AB 764, AB 765, and AB 766
To the
Senate Committee on Agriculture and Insurance

October 27, 2005 – Room 411 South, State Capitol

Mr. Chairman and Members,

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

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

The bi-partisan Task Force heard testimony from interested parties for two full meetings and then held two more meetings to debate and consider an appropriate course of action. These bills have all been passed by the Assembly in its action on Tuesday, October 25th.

AB 766 creates a two-tiered award benefit structure similar to current law in wrongful death cases. The award cap for persons under age18 would be set at $550,000, 23% higher than under the previous cap while the award cap for persons age 18 and over would be set at $450,000, essentially the same as the recent cap. The majority of the Task Force believes this differentiation, with justifications and legislative findings, is therefore responsive to the court's finding that the old caps failed constitutionality under the equal protection clause of our constitution. AB 766 passed 64-30.

AB 765 simply closes a loophole in current law that did not provide coverage under our healthcare liability requirements to individuals that completed medical school and were doctors but had not yet completed the required first year of post-graduate medical residency, commonly called their internship, to become licensed Wisconsin physicians. AB 765 passed the Assembly with a vote of 96-0. We adopted AA1 which I introduced with Rep. Wasserman to simplify the bill to its immediate intent, which is to correct the oversight in law affecting residents.

AB 764 clarifies current law on the issue of collateral sources of payments to compensate individuals in medical malpractice cases. The bill provides for the reduction of medical malpractice awards by the amount of collateral source payments, offset by any subrogation or reimbursement resulting from those collateral source payments. The Assembly passed AB 764 on Tuesday on a vote of 60-34. We passed ASA1 to the bill, which was introduced to clarify misunderstandings by the drafter.

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

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

State Capitol: P.O. Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-0486 • Toll-Free: (888) 534-0023 • Rep.Gielow@legis.state.wi.us
District: P.O. Box 504 • Mequon, Wisconsin 53092 • (262) 242-2728