



## NEWS RELEASE

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### Wisconsin High Court Strikes Down Malpractice Compensation Cap Decision Raises Important Issues for Illinois Law

In a victory for consumers and patients, Wisconsin's Supreme Court struck down the state's \$350,000 cap on non-economic compensation to victims of medical malpractice. The court ruled that the decision violates the equal protection guarantees of the Wisconsin Constitution.

"The impact of a cap falls most heavily on the most severely injured patients, especially children," said Amber Hard, Staff Director for CJ&D-Illinois. "The court agreed. They also found that the \$350,000 had no rational connection to lowering malpractice premiums for physicians."

The cap was challenged by Matthew Ferdon, a child who had been left severely deformed at birth because of a doctor's negligence. Based on a projected life expectancy of 69 years, the jury awarded Matthew \$700,000 -- \$10,000 a year -- to compensate him for a lifetime with a deformed, partially functioning right arm. Under Wisconsin's cap, his award would be reduced to \$350,000--\$5,900 a year—for his loss.

Wisconsin's cap was declared unconstitutional because it denies victims of medical malpractice equal protection. From the decision:

Severely injured victims with more than \$350,000 in noneconomic damages receive only part of their damages; less severely injured victims with \$350,000 or less in noneconomic damages receive their full damages. In other words, the statutory cap creates a class of fully compensated victims and partially compensated victims. Thus, the cap's greatest impact falls on the most severely injured victims.

This decision comes while Governor Blagojevich is deciding whether to sign a bill creating a similar cap of \$500,000 in Illinois. Similar caps have repeatedly been struck down as unconstitutional by the Illinois Supreme Court.

"Wisconsin patients can breathe a sigh of relief," said Amber Hard, Staff Director for CJ&D-Illinois. "Previous decisions by the Illinois Supreme Court have found the same constitutional

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problems highlighted by Wisconsin's Supreme Court, yet we have heard the Governor is considering signing it. All patients, even the most severely injured, deserve to be fairly compensated, whether they live in Wisconsin or Illinois."

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The Wisconsin Supreme Court found the following in examining many of the same issues recently discussed in the legislative debate in Illinois:

Lowering malpractice premiums:

¶128 Victims of medical malpractice with valid and substantial claims do not seem to be the source of increased premiums for medical malpractice insurance, yet the \$350,000 cap on noneconomic damages requires that they bear the burden by being deprived of full tort compensation.

¶129 Based on the available evidence from nearly 10 years of experience with caps on noneconomic damages in medical malpractice cases in Wisconsin and other states, it is not reasonable to conclude that the \$350,000 cap has its intended effect of reducing medical malpractice insurance premiums. We therefore conclude that the \$350,000 cap on noneconomic damages in medical malpractice cases is not rationally related to the legislative objective of lowering medical malpractice insurance premiums.

Attracting physicians to the state:

¶171 The available evidence indicates that health care providers do not decide to practice in a particular state based on the state's cap on noneconomic damages.

Defensive medicine:

¶175 The evidence does not suggest that a \$350,000 cap on noneconomic damages is rationally related to the objective of ensuring quality health care by preventing doctors from practicing defensive medicine. We agree with the non-partisan Congressional Budget Office's finding that evidence of the effects of defensive medicine was "weak or inconclusive."

Health care costs:

¶166 We agree with those courts that have determined that the correlation between caps on noneconomic damages and the reduction of medical malpractice premiums or overall health care costs is at best indirect, weak, and remote.

Who the caps affect:

¶99 That is, "[p]laintiffs with the most severe injuries appear to be at the highest risk for inadequate compensation. Hence, the worst off may suffer a kind of 'double jeopardy' under caps."

¶165 ... there is no objectively reasonable basis to conclude that the \$350,000 cap justifies placing such a harsh burden on the most severely injured medical malpractice victims, many of whom are children.