WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2005-06
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Insurance (AC-In)

File Naming Example:

Record of Comm. Proceedings ... RCP

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

COMMITTEE NOTICES ...

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

- Committee Reports ... CR
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- Executive Sessions ... ES
- **

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

- -

INFORMATION COLLECTED BY COMMITTEE CLERK FOR AND AGAINST PROPOSAL

- Appointments ... Appt
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Name:

- Clearinghouse Rules ... CRule
- **

- Hearing Records ... HR (bills and resolutions)
- **05hr_ab0764_AC-In_pt02**

- Miscellaneous ... Misc
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www.watl.org

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Jane E. Garrott
44 E. Mifflin Street, Suite 103
Madison, Wisconsin 53703-2897
Telephone: 608/257-5741
Fax: 608/255-9285
Email: exec@watl.org

Testimony of Daniel A. Rottier

on behalf of the

Wisconsin Academy of Trial Lawyers

before the

Assembly Insurance Committee

Representative Anne Nitschke, Chair

October 18, 2005

Good afternoon, Representative Nitschke and committee members. My name is Daniel A. Rottier. I am the managing partner of Habush, Habush & Rottier, in Madison, WI. I serve as the President-Elect of the Wisconsin Academy of Trial Lawyers (WATL). On behalf of WATL, I thank you for the opportunity to appear to testify today.

Our Wisconsin Constitution grants citizens several rights – the right to trial by jury, the right to remedy, the right to due process and the right to be treated equally under the law. WATL is dedicated to preserving these very important rights for our clients. Every day our members represent people in the state of Wisconsin who need these rights protected. Courts are places where people can go to have these rights vindicated. Not the Legislative or Executive branches. Courts then serve uniquely different functions than the Legislature or Executive branches. As Senator Lindsay Graham recently remarked while discussing judicial independence, courts are places people can go that politics often won't give them access to, where the unpopular can be heard, the poor can take on the rich and the weak can take on the strong. That is why WATL is opposing 2005 AB 766 and 2005 AB 764.

There has been little deliberative process or full participation from all interested parties. Speaker Gard announced he wanted a new cap and appointed a handpicked task force to get it. Consumer groups, injured patients and their families were completely ignored in this process, yet the legislation seeks to take away their very rights. While the legislative process shuts them out, the courts are required to listen to them. They are on equal footing with the special interests. That is not true here.

There has been a rush to judgment. The Supreme Court just threw out the last cap and the Legislature is coming back within 3-4 months with a new one. What has changed to justify it? The legislation was introduced one day and now this hearing is being held and a vote likely on the floor next week. Where is the deliberation? Where is the consideration? It is a sham. We are talking about taking away the constitutional rights of our citizens and you treat it like you're voting for a national appreciation day. The Legislature has not given this issue the weight or depth of analysis it requires.

The Task Force dismissed or did not consider evidence the Supreme Court looked at when deciding the *Ferdon* case.

The Supreme Court gave the Legislature some very clear signals — if they are going to restrict the rights of Wisconsin citizens, it had better show some very good reasons and a rationale that justifies taking this extreme step. The evidence that the Task Force was presented with did not present any clear rationale that justifies a cap, especially one at such a low amount.

The Commissioner of Insurance, Jorge Gomez, testified that, "Wisconsin, … probably has the most sound and functional malpractice environment in the country. … Wisconsin is by far in a much better position than any other state that has a non-problem at the moment with their malpractice environments. … And Wisconsin will not be [in a state in crisis] any time in the future, regardless of what your committee or the legislature decides on the issues of caps…. The reality is that the marketplace is competitive, the Fund is solvent, and we'll likely make adjustments based on the court's decision on assessment in the future."

That hardly appears like justification for a cap.

The testimony from Physicians Insurance Company of Wisconsin (PIC), the state's largest medical malpractice insurer, indicated there was no impending crisis and that the worst-case scenario resulting from the cap's repeal would be "single-digit" premium increases for Wisconsin doctors. In addition, PIC spoke of Wisconsin's "common sense" exercised by juries. Again we had only nine cases that were affected by the cap from 1995-2005, hardly a pressing problem.

Yes, I heard much hand wringing about "potential" problems, particularly access to physicians in rural areas. That problem existed before 1995. If the 1995 cap did not solve this problem, what evidence is there that a new cap will solve it?

The "findings" under Wis. Stat. § 893.55(1d) are merely statements of "hopefulness" and based on partisan studies and which do not reflect other studies that refute them. Whatever the objective is for a cap, the evidence — doctors fleeing or lower malpractice insurance premiums —is merely "speculative," which the Court held could not support the constitutionality of the cap.

How can the cap be justified? It is only $5,000 above the cap that was just determined to be unconstitutional. Where did the numbers come from? It again appears that it was picked out of the air.

The caps continue to discriminate against the most severely injured, the legislature has not remotely considered their rights in this bill and it continues to treat families unfairly, a point that was brought up in the *Ferdon* opinion.

On 2005 AB 764, the language is contradictory. It continues to recognize the right of subrogation and reimbursement, but then it requires the judge to reduce the amount required to be reimbursed and the claimant get the difference. What happens to the amount required to be reimbursed? The language doesn't do away with the requirement to pay those entitled to reimbursement or subrogation.

I, and other members of our firm, represent injured patients and their families. We have represented citizens across the state that suffered severe injuries as a result of medical negligence. For example:

Candace Shepard:

This is a woman in her early twenties who had a relatively minor gynecological problem known as a Bartholin's cyst, which is a cyst that can occur on a woman's perineium. Her doctor advised her that she should have it removed. He told her that it was a routine procedure with minimal complications. The procedure was scheduled on an outpatient basis for a Friday and she was told she would be able to return to work on Monday. In fact, this procedure is very invasive causing significant blood loss and in some cases complications, which are painful and permanent. The doctor did not tell Ms. Shepard about other far less invasive procedures which did not carry the significant risks. Ms. Shepard underwent the removal of the cyst, developed a blood clot which significantly damaged the nerves in her perineal area. She has a permanent injury which necessitates icing on her perineal area every day. She must sit on an inflatable donut to reduce discomfort. She is unable to engage in sexual activity.

A Portage County jury found the doctor who failed to properly advise Ms. Shepard responsible under the informed consent statute and awarded $700,000 for pain and suffering. Because there was little that could be done for Ms. Shepard, her medical expenses were approximately $12,000 and lost wages were $8,000. The jury awarded these amounts in addition to $700,000 in pain and suffering, for a total verdict of $720,000. Due to the operation of the medical malpractice cap, this young unmarried woman who suffers terrible pain daily along with loss of ability to have sexual relations for the rest of her life, was limited to a total recovery of $370,000.

Tanner Noskowiak

Tanner was born on February 13, 1996. Within days of birth he was diagnosed as a hemophiliac. At two months of age a family practitioner who was aware of the hemophilia, performed a lumbar puncture without consulting with a hematologist or administering a clotting factor. As a result, the child bled into the spinal canal and suffered a stroke-like injury to the artery. Resulting injuries are severe deficits of both upper extremities, which reduces them to flipper-like appendages. He will never have normal use of his hands.

Lori Schmitz

This is a 38-year-old married woman and mother of two daughters. She was being treated for neck pain and headache with up to 12,000 mg of morphine on a daily basis in combination with 10 other medications. Finally, when the physician attempted to convert her morphine to methadone, Ms. Schmitz developed nausea, vomiting, anorexia and muscle spasms which caused her to collapse during the conversion process. She subsequently suffered seizure activity and permanent brain damage. Since August of 1998, she has been incapable of caring for herself and/or her family, is a danger to herself and others, and has had to be institutionalized.

Sharon Swatek

A 43-year-old married woman and mother of two children, was having flu-like systems in February 2001. She sought treatment at an urgent care and ER, but was not placed on antibiotics. She continued to be ill and eventually went into septic shock. Subsequent cultures revealed she was infected with Strep A which exacerbated into strep pneumonia. The treatment for septic shock included the use of vasopressors which preserve perfusion to vital organs at the expenses of the periphery. This resulted in a loss of perfusion to her extremities, necrosis and finally amputations of both arms, one above the elbow and one below, and bilateral below the knee amputations of her lower extremities.

These are the Wisconsin citizens trial lawyers all across Wisconsin are representing — real people injured through no fault of their own — who simply want to understand what happened to them and have whoever caused the wrong held responsible. They are not asking for special treatment, but they expect whoever caused the injury should be held financially and legally responsible.

The Ferdons' challenged the cap's reduction because the law did not treat them equally. The Supreme Court took this challenge very seriously. In a scholarly, exhaustive and well-reasoned opinion, the Court reviewed the legislative purpose of the 1995 cap as well as evidence to support and refute it. The Court reviewed over 50 reports and articles.

I would like to highlight the evidence against the caps.

Medical malpractice insurance premiums are an exceedingly small portion of overall health care costs. In Wisconsin, they are now less than 40 cents out of every $100 dollars spent on health care and it is a declining proportion. *Expansion Magazine* has rated Wisconsin's malpractice costs as the lowest in the nation. Meanwhile, Wisconsin health insurance premiums are rated second highest in the nation. There is no correlation between malpractice costs and health care costs.

The Court found that "even if the $350,000 cap on noneconomic damages would reduce medical malpractice insurance premiums, this reduction would have no effect on consumer's health care costs." That certainly proved true under the $350,000 cap. Did anyone experience lower health care costs since 1995? The Court concluded, "Accordingly, 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."

Just nine (9) jury verdicts were impacted by the cap from 1995-2005. Below is a summary of the case and how the cap impacted the injured patients and their families.

Jury Verdict Date, County, Case #	Injured Patient and Age	Nature of injury	Noneconomic damages jury awarded, including pain and suffering	Final award	Percentage Reduced
April 2005 Milwaukee 2003CV3456	Joseph Richard mid-50's	He underwent an unnecessary removal of his rectum, with a leak of the anastomosis, ten further surgeries, and permanent bowel problems.	$540,000	$432,352	20%
May 2004 Marinette 2002CV60	David Zak mid-30s	Failure to diagnose suspicious infection causing body to shut down resulting in loss of bodily function	$1 million	$422,632	57%
April 2004 Kenosha 2001CV1261	Estate of Helen Bartholomew Early 60s	Failure to diagnose heart attack causing massive heart and brain damage requiring her to live in nursing home and resulting in her death 3 years later	$1.2 million	$350,000	70%

Jury Verdict Date, County, Case #	Injured Patient and Age	Nature of injury	Noneconomic damages jury awarded, including pain and suffering	Final award	Percentage Reduced
Dec. 2003 Ozaukee 1999CV360	Sean Kaul infant	Negligent failure to provide timely and proper treatment for hypoglyceminia and hypovolemia that developed shortly after birth rendered child permanently disabled	$930,000	$422,632	55%
Dec. 2002 Brown 2001CV1897	Matthew Ferdon infant	Negligent delivery resulting in right arm being deformed and partially paralyzed	$700,000	$410,322	40%
June 2002 Dane 2000CV1715	Scott Dickinson mid-30s	Negligent treatment during a psychotic episode and rendered a quadriplegic.	$6.5 million	$410,322	93%
June 2001 Eau Claire 2000CV120	Kristopher Brown 16 years old	Negligent treatment of a broken leg resulting in part of the leg being amputated	$1.35 million	$404,657	67%
March 2000 Eau Claire 1998CV508	Bonnie Richards Early 40s	Common bile duct clipped during laproscopic cholecystectomy resulting in residual hernias requiring additional surgeries and almost dying twice.	$660,000	$381,428	41%
October 1999 Portage 1998CV169	Candice Sheppard mid-20s	Negligent surgery to remove a cyst in the vaginal area resulted in permanent pain and injury	$700,000	$350,000	50%

These nine cases show a reduction of approximately $10.2 million from what the juries determined the damages to be after hearing all the evidence compared to the damages available under the cap enacted in 1995. That's about $1 million per year. That comes to 18 cents per person in Wisconsin per year. Furthermore, because an injured patient shares the cap with family members, the cap has a disparate effect on patients with families. It is these injured patients and their families who are bearing the total burden if medical malpractice occurs and a jury awards more than the cap. Why is it fair to burden the most seriously injured while providing monetary relief to health care providers and their insurers?

The data from the National Practitioner Data Bank, to which all payments to people injured by medical negligence must be reported, show that Wisconsin was the third lowest state for the number of payments per 1,000 doctors in 2003, the same ranking we held in both 1994 and 1995, before the cap on damages took effect.

With a cap, the Fund's enormous assets are denied to patients for whom juries have awarded compensation above the cap. In the last 10 years, the Fund's assets have almost tripled, increasing an average of $47 million a year to almost $750 million. During the same period, the Fund was only drawn upon an average of 19 times per year and payments made to families averaged only $28.5 million per year. *That amounts to $18.5 million less than the average annual increase in Fund assets.* Meanwhile, the Fund's assets, while barely tapped by injured patients, have been utilized to reduce Fund malpractice fees for doctors. Fund fees have been cut six of the last seven years, most recently by 30 percent. *The Fund fees for 2005-2006 are more than 50% lower than fees from 1986-87.*

Injured Patients & Families Compensation Fund		
Year	Number of Cases Paid	Losses Paid to Injured Patient & Families
1994-95	25	$24,098,896
1995-96	28	$51,456,670
1996-97	16	$34,679,277
1997-98	24	$18,718,458
1998-99	28	$19,929,978
1999-2000	12	$19,657,326
2000-01	22	$39,636,276
2001-02	14	$35,304,773
2002-03	11	$22,074,552
2003-04	13	$19,496,969
Total	**193**	**$285,053,175.00**
Average	**19.3**	**$28,505,318**

WATL believes that grossly inaccurate actuarial projections have fueled the need for a cap. In 1995, sponsors of the cap legislation used the inaccurate projections by actuaries as a reason to impose the noneconomic damages cap. Legislators were told there was a *$67.9 million projected actuarial deficit* as of June 30, 1994. Instead, the actuaries now estimate there was a *$120 million actuarial surplus*. ***It shows that when the Legislature acted in 1995, it was given estimates that were off by almost $188 million!!*** As the Supreme Court it didn't seem to make any difference if there was or wasn't a cap because the Fund has flourished both with and without a cap.

In Wisconsin, few medical malpractice claims are filed. In a state with 5.5 million people, with millions of doctor-patient contacts yearly, only 240 medical negligence claims were filed in 2004 with the Medical Mediation Panels. That is one claim for every 22,916 Wisconsin citizens. The number has been steadily decreasing since the mid-80s. This pattern suggests that even when there was no cap on damages from 1991-1995, there was no corresponding explosion of claims. In fact, there was a decline in filings. So, the imposition of a cap is simply an additional, but wholly arbitrary, barrier to justice for most families.

Year	Medical Mediation Claims Filed	Amount of Cap*
1986	***	$1,000,000
1987	398	$1,030,000
1988	353	$1,070,170
1989	339	$1,123,678
1990	348	$1,179,862
Total	**1438**	
Average	**359.5**	
1991	338	No Cap
1992	313	No Cap
1993	276	No Cap
1994	292	No Cap
Total	**1219**	
Average	**304.75**	
1995	324	$350,000
1996	244	$359,800
1997	240	$369,874
1998	305	$375,052
1999	309	$381,428
2000	280	$392,871
2001	249	$404,657
2002	264	$410,322
2003	247	$422,632
2004	240	$432,352
Total	**2702**	
Average	**270.2**	

** The $1 million cap went into effect on June 15, 1986 and the cap was indexed on that day each year. The $350,000 cap went into effect on May 25, 1995 an was indexed each year on May 15.*
**** No numbers for that year.*

One of the most persistent assertions about caps is that they would hold down malpractice premiums for doctors. The Court analyzed several studies and found that "according to a General Accounting Office report, differences in both premiums and claims payments are affected by multiple factors in addition to damage caps, including state premium rate regulation, level of competition among insurers, and interest rates and income returns that affect insurers' investment returns. Thus, the General Accounting Office concluded that it could not determine the extent to which differences among states in premium rates and claims payments were attributed to damage caps or to additional factors. For example, Minnesota, which has no caps on damages, has relatively low growth in premium rates and claims payments. "

In fact if you listened to the insurance companies own executives, they would not promise any savings from caps. This was recently highlighted in Illinois. In a recent news article it was reported, "As for caps on awards resulting in reduced rates for malpractice insurance premiums that doctors must pay, supporters of caps say they can't promise the new caps will significantly lower insurance rates.

Ed Murnane, the leading tort reform advocate in Illinois, said at a tort reform summit in mid-May, 'No, we've never promised that caps will lower insurance premiums.'"

> ### *Insurance execs speak up*
>
> ***"We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates."*** Sherman Joyce, President of the American Tort Reform Association, (Source: "Study Finds No Link Between Tort Reforms and Insurance Rates," *Liability Week*, July 19, 1999.)
>
> ***"Insurers never promised that tort reform would achieve specific premium savings . . ."*** (Source: March 13, 2002 press release by the American Insurance Association (AIA).)
>
> ***"[A]ny limitations placed on the judicial system will have no immediate effect on the cost of liability insurance for health care providers."*** (Source: "Final Report of the Insurance Availability and Medical Malpractice Industry Committee," a bi-partisan committee of the West Virginia Legislature, issued January 7, 2003.)
>
> An internal document citing a study written by Florida insurers regarding that state's omnibus tort "reform" law of 1986 said that ***"The conclusion of the study is that the noneconomic cap . . . [and other tort 'reforms'] will produce little or no savings to the tort system as it pertains to medical malpractice."*** (Source: "Medical Professional Liability, State of Florida," St. Paul Fire and Marine Insurance Company, St. Paul Mercury Insurance Company.)

This theme was further bolstered by a recent rate filing by GE Medical Protective, which sought a 19% rate increase just one year after Texas voters narrowly approved a $250,000 cap on non-economic damages in medical malpractice cases. After claiming that caps would reduce malpractice premiums, the insurer admitted in its rate-filing request that "capping non-economic damages will show loss savings of 1%."

Further, we must agree with the Supreme Court that, "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."

Various new studies have been released to bolster this statement. In Texas, researchers looking at Texas found that soaring malpractice premiums were not correlated with malpractice lawsuits and settlements. A team of legal scholars from the University of Texas, Illinois, and Columbia examined all closed claim cases from 1988 to

2002. The law professors found that claims rates, payments and jury verdicts were roughly constant after adjusting for inflation and concluded that the premium increases starting in 1999 "were not driven primarily by increases in claims, jury verdicts, or payouts. In the future, malpractice reform advocates should consider whether insurance market dynamics are responsible for premium hikes."

A second comprehensive study of medical malpractice claims, this time in Florida, also shows no sharp increase in lawsuits relative to population growth and a modest increase in the size of settlements. "When we compared the number of malpractice cases to the population in Florida," said Neil Vidmar, one of the study's authors and professor at Duke's School of Law, "there has been no (large) increase in medical malpractice lawsuits in Florida." Vidmar said rising health-care costs and more serious injuries resulting in larger claims or litigated payments caused the increase in the claim total. Finally, the report concludes the "vast majority of million-dollar awards were settled around the negotiation table rather than in the jury room." Of the 831 million-dollar awards reported since 1990, 63 were awarded by juries. The rest occurred as settlements.

The National Bureau of Economic Research study reviewed the relationship between the growth of malpractice costs and the delivery of health care in three areas: (1) the effect of malpractice payments on medical malpractice premiums, (2) the effect of increases in malpractice liability to physicians closing their practices or moving and (3) defensive medicine. The study found a weak relationship between medical malpractice payments and malpractice premium increases.

A July 7, 2005, study released by Center for Justice and Democracy finds that net claims for medical malpractice paid by 15 leading insurance companies have remained flat over last five years.

Meanwhile, net premiums have surged ***120 percent.*** During the 2000-04 period, the increase in premiums collected by leading 15 medical malpractice insurance companies was ***21 times*** the increase in claims they paid. The study shows an "overall surge in malpractice premiums with no corresponding surge in claim payments during the last five years."

Other key highlights of the study:

- "Over the last five years, the amount the major medical malpractice insurers have collected in premiums more than doubled, while their claims remained essentially flat."
- "...In 2004, the leading medical malpractice insurers took in approximately three times as much in premiums as they paid out in claims."
- "{T}he surplus the leading insurers now hold is almost double the amount the National Association of Insurance Commissioners deems adequate for those insurers."

Wisconsin Unique System: The Injured Patients and Families Compensation Fund

A short history of the Injured Patients and Families Compensation Fund may be in order since it has figured so prominently in the discussion of Wisconsin's malpractice system. Wisconsin's medical malpractice insurance structure was set up in 1975 to deal with a serious problem in availability of medical malpractice insurance. The Legislature guaranteed the availability of insurance by creating the Wisconsin Health Care Liability Insurance Plan (WHCLIP) as a risk-sharing plan to provide primary insurance coverage and by creating the Patients Compensation Fund (the Fund) to pay claims in excess of primary coverage. (The Legislature changed the Fund's name in 2003 to the Injured Patients and Families Compensation Fund. 2003 WI Act 111.) The same Board of Governors governs both.

The 1975 Statutory Scheme

The statutory scheme is unique: insurance is mandatory for physicians (except government-employed) and hospitals; primary coverage is from WHCLIP or a private company; the Fund fees are also mandatory and provide unlimited coverage over the primary level.

WHCLIP is run like an insurance company; the Fund is not. Fund fees were originally calculated as a percentage, not to exceed 10%, of the WHCLIP rates. Fees were to be reduced if "additional fees would not be necessary to maintain the Fund at $10 million."

The 1975 legislation contained a potential limitation on payouts. Wis. Stat. § 655.27(6) initially provided,

> If, at any time after July 1, 1978 the commissioner finds that the amount of money in the Fund has fallen below $2,500,000 level in any one year or below a $6,000,000 level for any 2 consecutive years, an automatic limitation on awards of $500,000 for any one injury or death on account of malpractice shall take effect. ... This subsection does not apply to any payments for medical expenses.

In March 1980, the law was changed to require an annual report for the Fund, prepared according to generally accepted actuarial principles, that would give the present value of all claims reserves and all

Timeline of the Fund

1975 — Legislature establishes Patients Compensation Fund (Fund) and the Wisconsin Health Care Liability Insurance Plan (WHCLIP). The legislation required that all physicians carry malpractice insurance either from a private insurer or WHCLIP for up to $200,000 and then mandates participation in the Fund, which provides unlimited coverage and pays claims in excess of primary coverage. The same 13-member Board of Governors governs both. WHCLIP is run like an insurance company; the Fund is not. Fund fees were originally calculated as a percentage, not to exceed 10%, of the WHCLIP rates and the Fund was not to have more than $10 million in assets.

1980 —The fiscal nature of the Fund was changed to give the present value of all claims reserves and all incurred but not reported (IBNR) claims. IBNR claims are claims that are not presently known but are presumed to exist. This changed the Fund from a form of "pay as you go" system to a system with a potential surplus or deficit.

1986 — The Legislature adopts an indexed $1 million cap on pain and suffering. The Fund also collapsed the number of Fund classes from 9 to 4 for purposes of calculating fees.

1987 — Doctors' primary coverage increased to $300,000.

1988 — Doctors' primary coverage increased to $400,000

1991 — $1 million indexed cap sunsets.

1995 — $350,000 indexed cap adopted.

1997 — Doctors' primary coverage increased to $1,000,000.

2003 — Fund name changed to Injured Patients and Families Compensation Fund.

incurred but not reported (IBNR) claims. IBNR claims are those claims that are not presently known but are presumed to exist; they have played an important role in the Fund's financial situation ever since 1980.

The net effect of this statutory change was to change the Fund from a form of "pay as you go" system to a system with a potential surplus or deficit based on the annual actuarial reports. The potential surplus or deficit relied heavily on the projected value of claims reserves and IBNR claims.

The Fund was established to pay claims in excess of primary coverage. Health care providers are required to purchase primary coverage — $200,000 in 1975, $300,000 in 1987, $400,000 in 1988, and $1,000,000 in 1997. Fees assessed against all health care providers in the state pay for the Fund. The Fund fees are created by administrative rule, providing the Legislature with oversight authority. The Fund is divided into no more than four

The 1986 Legislative Changes

In the early and mid-80s, was a sudden and dramatic requests for premium and fee increases. This led to a second "crisis" in medical malpractice insurance. Because WHCLIP and the Fund mechanisms worked as intended, Wisconsin did not have problems with *availability* of insurance as it had in 1975. Instead, Wisconsin suffered an "*affordability* crisis," that is; the dramatic price increases made insurance premiums and Fund fees less affordable.

The highest Fund fee increase suggested by the actuaries was a 160% fee increase for 1985-86; more than half of the increase was meant to offset a portion of the actuarial deficit. The Legislature would not go along with that huge increase but did approve a 90% fee increase.

The increased cost of medical malpractice insurance led health care providers to lobby the Legislature for strong tort "reform" measures, including caps on damages, limits on the attorneys fees of injured consumers, and limits on payments for future medical expenses. After much debate, the Legislature made numerous changes to the law in 1986 including a cap of $1 million on all noneconomic damages. The legislation, however, made few changes to directly address the elimination of the Fund's actuarial

deficit. Nevertheless, Fund fees were only moderately increased from 1986 through 1994. There was virtually no impact on fees after the noneconomic damage cap sunset on December 31, 1990 (resulting in no cap being in effect).

In addition, during the 1980s, the Fund collapsed the number of classes from nine to four, thereby moderating costs between general practitioners (Class 1) and neurologists and OB-GYNS (Class 4).

The establishment of the Fund represented an egalitarian reform that involved *sharing of risk* among all providers to hold down malpractice rates. Consequently, the Fund's premium structure divided the medical profession into just four categories, resulting in substantially lower rates for higher-risk specialties and somewhat higher rates for lower-risk categories. This sharing of risk helps Wisconsin to retain doctors in high-risk specialties upon whom general practitioners can rely for referring patients in need of more specialized care.

In sharp contrast, the cap on pain and suffering imposed a *shift of risk* from providers as a whole to patients and the public. Patients could no longer count on the legal system to give them full compensation for the pain and suffering caused by medical negligence. Juries were deprived of the power to fully compensate injured patients.

Moreover, it is precisely the Fund's unique and progressive features—not the cap—that have actually accounted for the decreases in malpractice premiums:

a) **Non-profit:** The Fund is not-for-profit. In contrast to private insurance corporations characterized by huge executive salaries, massive bureaucracies, and wild swings in premium rates contingent on stock and bond

How Wisconsin doctors are insured against malpractice

Nature of malpractice claim	Source of insurance	Premiums
For claims up to $1 million	Private insurers	Set by insurance firms, highly dependent on stock and bond investments
For claims up to $1 million when private insurance is not available	WHCLIP (serves only 2.3% of doctors)	Rates are set by the Board, and are set higher than other private malpractice insurance
For claims above $1 million	Injured Patients and Families Compensation Fund	Set by Fund Board. Fees have been cut to sub-1986 levels.

market investments, the Fund does not subject Wisconsin medical providers to these burdens.

b) **Universal:** The Fund is universal, covering virtually all health care providers in the state. Thus, the Fund draws upon a large pool of doctors to share the risk and hold down costs.

c) **Sharing the risk:** The Fund spreads the cost of insuring against risk across interrelated medical professions, so that high-risk specialties do not bear an inordinately heavy burden.

Because the Fund has been so successful at accumulating assets — almost $750 million assets. As the Supreme Court noted in *Ferdon v. WCFP*, 2005 WI 125, ¶158 "The Fund has flourished both with and without a cap. If the amount of the cap did not impact the Fund's fiscal stability and cash flow in any appreciable manner when no caps existed or when a $1,000,000 cap existed, then the rational basis standard requires more to justify the $350,000 cap as rationally related to the Fund's fiscal condition."

Conclusion

The ominous implications for the Constitutional rights of Wisconsin citizens—particularly injured patients—were minimized during the legislative debate in 1995 that imposed the cap on pain and suffering in medical malpractice cases. Instead, advocates of the cap argued that this loss of legal access for a relative few would be far outweighed through a tradeoff for broader public benefits — lower health care costs, more doctors in underserved areas and a solvent and stabilized Fund for injured patients and their families.

In practice over the past decade, the tradeoff of legal rights for public benefits proved to be disastrous. While our legal rights certainly were diminished, the promised benefits have never appeared. Wisconsin does not have lower health care costs, doctors are still not going to underserved areas and the Fund was never in jeopardy, it had been in surplus since 1990, the year the $1 million cap expired.

The Legislature is following down the same trail again to impose a cap the attempts to ask the most severely injured patients and their families of severely injured patients to bear the burden of "fixing" the legal malpractice system alone. That is neither fair nor just.

Caps are a barrier to the courthouse for injured patients and their families and strike at the very heart of the civil justice system. It deprives juries of their constitutional mandate to do *justice* in individual cases. You are once again tilting the scales of justice in Wisconsin against severely injured patients and their families in favor of health care providers and their insurance companies.

We believe that is not only immoral, but unconstitutional.

Wisconsin's Healthcare Picture by the Numbers

	Medical Malpractice Facts	Healthcare Facts
1	***40 cents out of every $100 dollars*** **spent on healthcare goes for medical malpractice costs — insurance costs and payments to injured patients and families**	***8 of top 10*** **U.S. cities with highest physician fees**
2	**50th and lowest** Wisconsin's rank in terms of medical malpractice costs in U.S.	**2nd highest** Wisconsin's rank in terms of healthcare premiums in U.S.
3	**9 verdicts** Exceeded the cap on noneconomic damages from 1995-2005	**18 cents a year** Average *savings* per Wisconsin resident per year for those cases exceeding the cap
4	**48th lowest** Wisconsin's rank in frequency of paid malpractice claims, 7.9 claims per 1,000 doctors	**+24.3%** Percentage that Wisconsin *exceeds* the national average for health care coverage per worker.
5	**49th lowest** Wisconsin's rank in frequency of jury findings in favor of injured patients per 100,000 Wisconsin residents	**+49.3%** *Rise* in Wisconsin workers' out-of-pocket health costs, 2000-2004, more than 4 times wage increases over the same period of time.
6	**$30,000 lower** Difference in Wisconsin's average paid medical claim compared to the national average	**+27%** Percentage that Milwaukee spending on overall health care *exceeds* the U.S. average.
7	**-16%** Percentage of *decline* in malpractice claims after Wisconsin's cap of $1 million expired in 1991 and there were no limits until 1995.	**+63%** Percentage that Milwaukee hospital costs *exceed* the national average.
8	**4 cases** In 2004, injured patients and their families won just 4 out of 23 cases tried to juries.	**+33%** Percentage that Milwaukee doctor prices *exceed* the national average.
9	**$28.5 million** Average yearly payments by the Injured Patients and Families Compensation Fund from 1994-2004 to injured patients and their families	**$47.0 million** Average yearly increases in Fund assets through investment income and fees collected by the Injured Patients and Families Compensation Fund from 1994-2004.
10	**50th lowest** Wisconsin's ranking of taking serious actions against doctors by the Medical Examining Board in 2003	**195,000** Number of people who die each year in hospitals in the U.S. from medical errors

Sources:

1. Wisconsin Insurance Reports, Wisconsin Office of the Commissioner of Insurance and the U.S. Census, Statistical Abstract of 2004-05 and GAO-05-856 FEHBP Health Care Prices, September 2004.

2. *Expansion Management* magazine, February 14, 2005.

3. Randy Sproule, Administrator, Medical Mediation Panels.

4. Kaiser Family Foundation, *Milwaukee Journal-Sentinel,* September 26, 2005 and Families USA, *Health Care: Are You Better Off Today, Than You Were Four Years Ago?,* September 2004.

5. National Practitioners Databank Reports, 1992-2002.

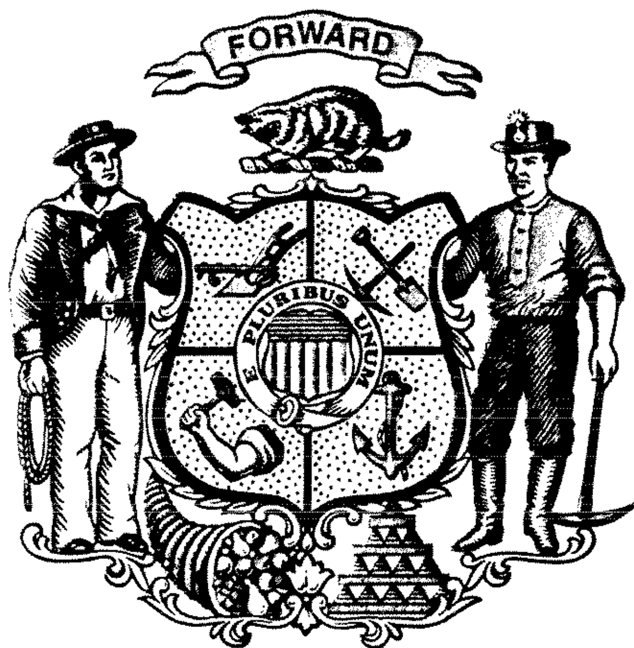
6. Kaiser Family Foundation, *Milwaukee Journal-Sentinel,* September 26, 2005 and GAO-04-1000R, *Milwaukee Health Care Spending*, August 2004.

7. Randy Sproule, Administrator, Medical Mediation Panels and GAO-04-1000R, *Milwaukee Health Care Spending*, August 2004.

8. Randy Sproule, Administrator, Medical Mediation Panels and GAO-04-1000R, *Milwaukee Health Care Spending*, August 2004.

9. Injured Patients and Families Compensation Fund Financial Reports, Office of the Commissioner of Insurance.

10. "Ranking of the Rate of State Medical Boards' Serious Disciplinary Actions in 2003," Public Citizen, April 2004 and HealthGrades report July 2003. See *Milwaukee-Journal-Sentinel* article, 1A, July 28, 2003.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Memorandum

TO: Members of the Wisconsin State Assembly

FROM: Wisconsin Academy of Trial Lawyers

DATE: October 25, 2005

RE: Opposition of Assembly Bills 764 and 766

The Wisconsin Academy of Trial Lawyers urges Assembly members to defeat Assembly bills AB 764 and 766. The bills are unfair and discriminatory.

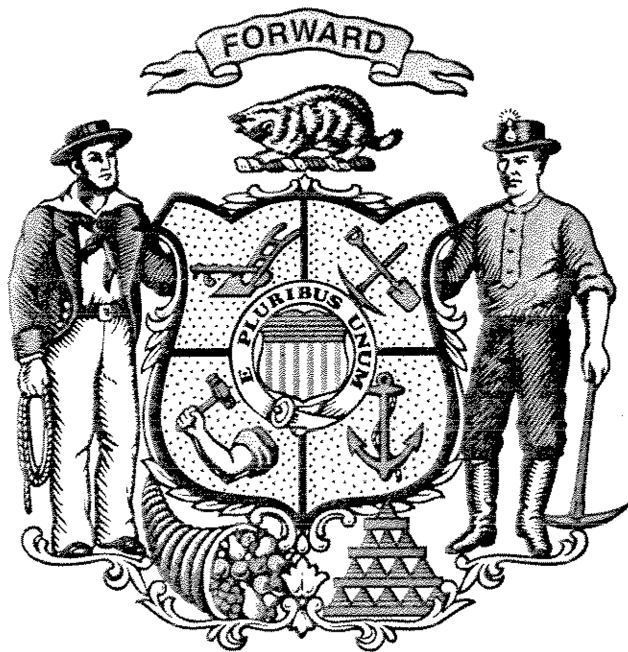
We urge you not to override the constitutional rights of Wisconsin citizens because there is no justification for a new cap that is only 1% more than what the Supreme Court found unconstitutional. Here are the facts:

- *Lowest in nation:* Wisconsin's malpractice costs are ranked very lowest in the US, while its healthcare premiums are ranked 2nd highest.
- *Malpractice costs tiny*: Medical malpractice costs now make up less than 40 cents out of every $100 dollars spent on health care in Wisconsin, lowest in the nation.
- *9 verdicts*: During the decade of 1995-2005 when the previous cap on pain and suffering was in effect in Wisconsin, exactly 9 jury verdicts exceeded the cap in a state of 5.5 million people.
- *Caps lifted, lawsuits dropped*: When Wisconsin's cap of $1 million expired in 1990, the medical industry and allies predicted a vast explosion of medical malpractice lawsuits. So what happened? Malpractice filings actually dropped by 16% from 1991 to 1994.
- *$750 million.* This is how much money is in the Injured Patients and Families Compensation Fund (Fund). A cap prevents the very people the Fund is named for from recovering an amount the jury found fair after hearing all the evidence.

- *$47 million versus $28.5 million.* The first number is the average amount of investment income the Fund earned each of the last 10 years compared to the average amount paid out to injured patients and their families.
- *4 out of 23 jury verdicts last year.* Medical malpractice litigation is actually very rare, with a grand total of 4 verdicts in favor of injured patients of the 23 malpractice cases heard by Wisconsin juries in 2004.
- *No reason for panic.* A top insurance executive testified Sept. 8 that the worst-case scenario from the cap's repeal would be "single-digit" increases in medical premiums, saying, "I don't see any reason for panic."
- *Reimbursement of government health care programs would be denied if AB 764 passes.* If injured people don't recover money for their medical bills, they won't be able to reimburse Medicare, Medicaid or any other government program. This shifts the burden of compensating someone fairly away from the person causing the wrong to the taxpayers who pay for the government programs. That is not fair.

Where is the evidence to support a cap? As Insurance Commissioner Jorge Gomez told the Speaker's task force, "Wisconsin will not be in crisis regardless of what the Legislature does about the caps. Wisconsin does not have runaway juries. Juries are uninformed about the caps. The marketplace is very competitive and the Fund is very solvent."

Wisconsin citizens value the freedom to seek justice when they are wronged by the powerful. Every citizen—no matter how rich or poor—should have an equal shot at justice before a jury. Legislators must demand that solutions involving less drastic alternatives — insurance reform and patient safety — be explored before rushing to re-impose the caps simply to serve the interests of well-heeled special interests. Legislators need to demand proof that there is a problem, which requires our citizens to give up their constitutional rights. If the proof cannot be shown, the Legislature should not deprive the most severely injured citizens of their right to be treated equally under the law.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EMBATTLED SURGEON

Questionable operation

Concerns raised over doctor's numerous malpractice suits

© Leader-Telegram

By Traci Gerharz Klein, Eric Lindquist and Dan Holtz
Leader-Telegram staff

Since coming to Eau Claire 5 ½ years ago, Dr. Thomas V. Rankin has been the target of more than twice as many malpractice claims as any other neurosurgeon in Wisconsin, according to a Leader-Telegram investigation.

Narotzky

Rankin, 57, who performs spine and brain surgery at Sacred Heart Hospital, has been sued 11 times in the past three years. An Eau Claire County jury found him negligent in one case, and three cases were settled out of court. The remaining seven cases are pending.

Immerman

"I don't think you will find one other person in the whole world, who is a neurosurgeon, who has this pattern," said Menomonie attorney Michael Wagner, who has represented clients with claims against Rankin. "I think it's unusual for any physician, regardless of his specialty."

Steans

Rankin denied all charges but would not comment directly on the lawsuits. He conceded that 11 suits in three years are a lot but blamed another neurosurgeon's allegations — not his own actions — for prompting the string of claims in Eau Claire.

Rankin has had 12 claims against him registered with the state agency that handles malpractice cases since he began practicing at Sacred Heart in October 1993. No other Wisconsin neurosurgeon had more than five malpractice claims in the same period, according to the state Medical Mediation Panels, a division of the Supreme Court of Wisconsin.

During that time 61 percent of the state's 84 licensed neurosurgeons had no claims, and 93 percent had two or fewer claims, the Medical Mediation Panels reported. The agency tracks malpractice claims, which include lawsuits and requests for mediation.

Before coming to Eau Claire, Rankin was the target of several lawsuits in Florida, where he filed Chapter 7 bankruptcy to erase his debts in October 199[illegible] after his malpractice insurer went out of business.

He filed a petition to reorganize his debts under Chapter 11 of the U.S. Bankruptcy Code in September 1996 in Eau Claire after accumulating $1.2 million of debt to the Internal Revenue Service and $90,000 of debt to the Wisconsin Department of Revenue for unpaid income taxes for 1994 and 1995, according to U.S. Bankruptcy Court documents. The filing showed Rankin also owed $436,000 to Sacred Heart Hospital for an unpaid loan. He estimated his gross monthly income for the next 11 years at $70,000.

While a record of malpractice lawsuits alone doesn't give consumers enough information to judge a doctor, it should raise a red flag any time a doctor has been sued that many more times than his peers, said Michael Donio, director of projects for the People's Medical Society, a national health care consumer advocacy organization based in Allentown, Pa.

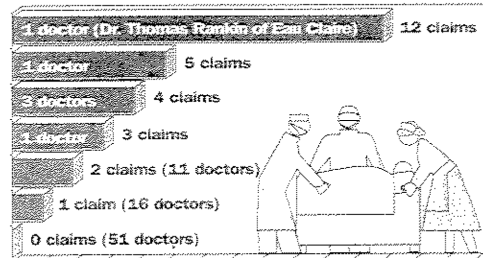
See **RANKIN**, Page 6A

Staff file photo by Dan Reiland

Dr. Thomas V. Rankin, a neurosurgeon at Sacred Heart Hospital, has faced more malpractice lawsuits in Eau Claire County than any other place in his career, he said. Rankin, shown in this 1993 photo, was recruited to revive the hospital's neurosurgery program following the exodus of Midelfort Clinic neurosurgeons after the clinic and Luther Hospital merged with Mayo Clinic in 1992.

Malpractice Claims Against Wisconsin Neurosurgeons

Of the 84 licensed neurosurgeons in Wisconsin, here is a breakdown of how often they have been the target of malpractice claims from October 1993 to present:



Source: Wisconsin Medical Mediation Panels

Staff graphic by Kathy Nelson

Woman blames Rankin for mother's ailments

By Traci Gerharz Klein
Leader-Telegram staff

Judi Wolter's 78-year-old mother can't button her blouse, zip her coat, pull a sweatshirt over her head or lift a pan to cook a meal.

Wolter blames neurosurgeon Thomas V. Rankin for her mother's limited arm and hand use and nerve damage. Wolter, of Eau Claire, believes he performed unnecessary surgery on her mother.

Another neurosurgeon who treated Wolter's mother following her surgeries by Rankin plans to testify to that effect in June 2000, the date her mother's lawsuit against Rankin is scheduled to go to trial, Wolter said.

Wolter's mother is one of seven people with malpractice suits pending in Eau Claire County against Rankin. Four other former patients have received settlements or jury awards for their claims against Rankin since he began practicing at Sacred Heart in October 1993.

Rankin declined to comment on individual cases.

In January 1998 Wolter noticed her mother — whom she did not want to name for this story — started to become unsteady on her feet, get dizzy spells and fall.

Rankin said the cushioning between discs in Wolter's mother's neck was deteriorating, and he recommended surgery, Wolter said. "He said if it

See **SURGEON**, Page 7A

Doctor questions Rankin's work

RANKIN
from Page 1

"People definitely should take his history into consideration if they are referred to that neurosurgeon," Donn said, recommending patients do as much research as they can before submitting to a procedure by a doctor with a questionable record.

The 11 lawsuits filed against Rankin in Eau Claire County all deal with complications resulting from surgery. While the cases vary, many of the lawsuits contend Rankin performed unnecessary surgical procedures without considering less intrusive treatments.

"What I see evolving is a pattern of Dr. Rankin convincing people they need surgery they don't really need, and then I see complications that require a second surgery," Wagner said. "If you have a problem and it's him recommending surgery, I think you owe it to yourself and your family to get a second opinion."

In one lawsuit against Rankin, the plaintiff — Robert Determan of Red Wing, Minn. — contended Rankin punctured his lung because the screws used in the spinal surgery were too long.

In another suit, Brian Pierce of Chetek claimed Rankin aggravated his back problems and caused permanent nerve damage during spinal fusion surgery. Medical reports indicated Pierce, 36, suffered from chronic leg pain, numbness and weakness and was unable to stand for more than 30 minutes at a time.

Both Determan and Pierce required corrective surgeries by other doctors, the suits contend.

In Pierce's case an Eau Claire County jury in January found Rankin negligent and awarded Pierce $463,000, including $250,000 for past and future pain, suffering, disability and disfigurement. Determan's case against Rankin ended with a $65,000 out-of-court settlement.

Marlene Carrette of Chippewa Falls sued Rankin because of complications — including a loss of strength and permanent nerve damage — resulting from an October 1996 surgery. The case was settled in March for an undisclosed sum, which Carrette's attorney, Paul Steans of Menomonie, characterized as a "multiple six-figure amount."

In Florida, where Rankin practiced from 1987 to 1995, he had five malpractice claims against him. Three of the cases resulted in settlements, and two remain pending.

One of the suits claimed a 51-year-old Boca Raton woman woke up from a 1988 surgery with permanent brain damage. One claim against Rankin resulted in a $1 million payment by his malpractice insurer.

Another Florida suit on behalf of a paraplegic man in his 20s seeks millions of dollars for medical expenses, pain, suffering and the loss of earning capacity and enjoyment of life. The suit, scheduled for trial this fall, alleges Rankin failed to identify a spinal injury that, if treated immediately, might have prevented the man's paraplegia. The man's chances of collecting much appear bleak because Rankin shielded his assets when he filed for bankruptcy, said Lawrence Friedman, the Boca Raton attorney representing the plaintiff, who was injured in a motorcycle accident.

Upon learning Rankin has had 17 more malpractice claims since coming to Wisconsin, Friedman exclaimed, "Obviously, he should not be allowed to practice anymore. The medical review board has got to do something with repeaters like this. They're endangering the lives of patients.

"If he had that many cases down here, his license would have been pulled a long time ago."

Rankin also said he reached a settlement in one malpractice claim in Pennsylvania, where he worked for eight years before moving his practice to South Palm Beach County in Florida.

When Rankin applied for a license to practice medicine in Wisconsin, he submitted a large file filled with claims and lawsuits, according to the state Division of Health Professions and Services Licensing in Madison.

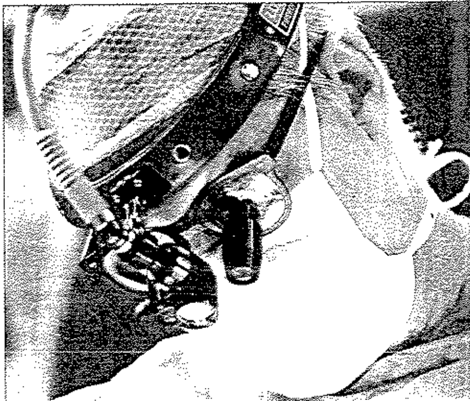
As a result Rankin was asked to take an oral exam, which required him to explain the lawsuits. He passed the oral and practical exams, and was granted his license.

In a recent interview, Rankin downplayed his litigation history by pointing out he has been sued 17 times in his 31-year neurosurgery career. He said he has performed more than 25,000 operations.

"It hasn't been that my skills have deteriorated," he said.

Rankin contended another Eau Claire doctor has tried to damage his reputation.

"Another physician in the community has indicated to this particular group of patients the care fell below the standards, and one might wonder what his motivation might be," Rankin said. "His actions speak for themselves, and we will leave it to the discretion of others to determine his motives."



Staff file photo by Dan Reiland

Dr. Thomas V. Rankin wore special surgical glasses to perform a procedure in 1993.

Dr. Robert Narotzky, a neurosurgeon at Midelfort Clinic and Luther Hospital who left Eau Claire earlier this year to begin a practice in Wyoming, acknowledged he is the doctor to whom Rankin is referring.

"I got involved because I saw patients who were needlessly hurt," Narotzky said in a telephone interview from Wyoming. "A lot of physicians will turn their backs, but I felt I needed to stand up and get involved to the point of testifying about what I was seeing."

Narotzky said he performed "redo surgeries" on some of Rankin's patients and then ended up testifying against Rankin in some cases.

Narotzky saw several of Rankin's patients after Rankin operated on them and said he believes there were serious problems with Rankin's surgeries on these patients. Rankin performed unnecessary operations, and patients were harmed by the surgeries, Narotzky said.

"Complications were happening at a much greater rate and frequency than they needed to be," Narotzky said.

"They are coming out of surgery with new neurologic deficits," he said. "That should be a rare occurrence. You are not going to get a perfect outcome every time, but the risk of making somebody worse should be very low."

Wagner, the Menomonie lawyer, portrayed Narotzky as a brave person who has shown the willingness to do the right thing, even when it means taking the unusual step of questioning a fellow neurosurgeon.

Narotzky, who got involved in Carrette's case after the operation by Rankin, testified on behalf of Carrette in the case, and two other expert witnesses corroborated his opinion, Steans said.

"I've been doing medical malpractice for over 20 years, and I've never seen such a cluster of cases against one doctor in this region," Steans said.

Considering malpractice cases are difficult for plaintiffs to win, the record of cases against Rankin that led to payments suggests these are more than just idle complaints by unhappy patients, he said. "It would appear that there are problems with Dr. Rankin's practice," Steans said.

Still, state regulators haven't taken any disciplinary action against Rankin or placed any restrictions on his Wisconsin medical license.

A state Department of Regulation and Licensing screening panel reviews all cases in which a settlement is paid. The agency took no action after concluding its review of three Rankin cases — one of which prompted an investigation — earlier this year, said Michael Berndt, records custodian and attorney supervisor for the department's Division of Enforcement.

Berndt said he is prohibited from commenting on cases under review. While the agency doesn't automatically investigate physicians with unusually large numbers of malpractice claims, Berndt noted that screening panel members have the records of previous cases in front of them when new cases are reviewed.

Rankin's malpractice insurer has made payments in all four of the surgeon's closed cases in Wisconsin. By contrast, the Physicians Insurance Association of America reported that in 1997 only 28.7 percent of the closed claims against U.S. neurosurgeons resulted in payments to plaintiffs.

Of the 69 paid neurosurgery claims reported in 1997 to the PIAA — a trade association of more than 60 professional liability companies that insure about 60 percent of the nation's private practice physicians — the median payment was $225,000.

Rankin said he is a reviewer and examiner for a national neurosurgical peer review organization, which means one of his roles is to help investigate neurosurgeons who may have a large number of lawsuits in a limited amount of time.

"You have to look at each of the cases, but more than that you have to look at the total body of the person's work" to judge the surgeon's skills, he said.

People who hear about his 11 lawsuits in Wisconsin will not know about the rest of his career and will judge him incorrectly, Rankin said.

"I want to put it in context of my whole career," he said. "I understand very well technically and intellectually what (neurosurgeons) are supposed to be about, and this is why I am able to answer somewhat categorically why the charges brought against me are rather frivolous and self-serving."

For most of his career at Sacred Heart, Rankin has been the only neurosurgeon. For 15 months, from about January 1997 to March 1998, neurosurgeon Dr. Thomas Oravetz worked with Rankin.

As a result Rankin — whose practice consists of about 70 percent elective spine surgeries and about 30 percent brain operations — is available 24 hours a day, seven days a week to do surgery if necessary. He is searching for another neurosurgeon to join his practice.

"It's been a significant challenge," he said of being the hospital's sole neurosurgeon. "It's not a casual undertaking. It's a very demanding situation."

But neurosurgery gives his life great meaning, he said, because it's intellectually, spiritually, physically and technically challenging.

Rankin said he operates significantly more often than most U.S. neurosurgeons, who perform an average of 260 procedures a year, according to the American Association of Neurological Surgeons.

"If you are operating on 300 or 400 people a year, you are afforded the opportunity to do some significant good," Rankin said.

The numbers of surgeries he does varies from year to year, but he did the most operating during the Vietnam War when he was based at Brooke Army Medical Center at Fort Sam Houston in San Antonio, Texas, he said.

Huge numbers of soldiers were sent home to the United States for operations, said Rankin, a lieutenant colonel in the U.S. Army who began as a staff neurosurgeon and finished as chief neurosurgeon at the military hospital.

Lance Gambrell, now 15, the son of Leonard Gambrell and Lori Miller of Eau Claire, became one of Rankin's success stories in July 1997 when Rankin operated to remove a rare tumor growing in the 13-year-old's brain.

"This was life-threatening for Lance," Leonard Gambrell said. "Rankin said Lance could lose vision, he could lose speech. He went over this a half-dozen times with us.

"He had a very blunt demeanor and was professionally cold in that, but I'm not sure I'd be any different in that way."

Rankin told them he was as confident as he could be but that even with confidence, the operation might not go as hoped, Leonard Gambrell said.

Lance Gambrell is doing well today, but his type of tumor tends to return 30 percent of the time, his father said.

If it does return, "I wouldn't hesitate to have him do (the surgery) again," Leonard Gambrell said of Rankin.

Rankin also operated on Chrissy Schlageter, 12, of Eau Claire in December to remove an egg-size brain tumor.

Rankin told her parents, Mark and Jane, the operation was risky. "He was so honest with us I had to get up and leave the room," Mark Schlageter said. "I didn't want to hear that my daughter might die."

Chrissy Schlageter was like a newborn baby after the surgery and a subsequent coma. She needed to learn to walk and talk again, but she is making significant progress, her father said.

"If something would have happened to Chrissy, I would not have blamed Dr. Rankin," Mark Schlageter said. "He went into it to do his best."

Dr. Steven Immerman, a general surgeon in Eau Claire, operates with Rankin about twice a month and has recommended him to relatives who've needed surgery.

If Rankin needs to reach the spine from the front or side, Immerman is a surgeon called in to open the chest or abdomen. After Rankin does his surgery, Immerman returns to close the chest or abdomen.

What impresses Immerman is that Rankin accurately estimates how long it will take him to do his work, so Immerman knows when to return. "That implies that he knows what he's doing and how long it will take as opposed to him getting into problems," Immerman said.

"If I didn't think he was doing a good job and we weren't getting good results, I would be reticent to work with him," he said.

But lawyers who are handling cases against Rankin paint a far different picture.

In addition to the 11 lawsuits, Rankin has been involved in three mediation cases that have yet to result in litigation. All three cases were mediated last year, and none were settled through the mediation process.

Malpractice cases are heard by a state medical mediation panel consisting of an attorney, medical professional and member of the general public before a lawsuit can be filed. The purpose of mediation is to try and settle cases without litigation, said Steans, the Menomonie attorney who has represented plaintiffs in suits against Rankin.

Both parties can waive the mediation process, Steans said.

Wagner, the other Menomonie attorney, is investigating five more cases and Steans is looking into three more cases that could result in new lawsuits against Rankin.

"It's nuts. (Potential clients) call almost every week," Wagner said. "I've never seen anything like it."

Wagner said he hears a common question from his clients and prospective clients in Rankin-related cases: "'How come Sacred Heart lets him do surgery over there?'"

In a statement, Sacred Heart's director of communications, David Duax, said Rankin leases space at the hospital but is not an employee.

The hospital monitors the performance of doctors who work there through a process called physician peer review. "Peer review involves ongoing review and analysis of a wide variety of patient care rendered in the hospital," Duax said. "This includes incidents of unusual or serious nature."

However, the review process is confidential under state law, and the hospital is not able to release information about specific doctors, he said.

In an interview, Duax said patients are the hospital's first priority. "As a Catholic hospital we want to provide the best possible care both from a medical and spiritual perspective," he said. "Secondly, quality improvement in all we do is a very high priority."

Rankin said his litigation history in his short time in Eau Claire and the negative perception of him by a few people leave an inaccurate impression. Many patients have been pleased with his surgical care, he said.

In addition, Rankin rejected the insinuation by some people that he is a "money grabber." It's not true, Rankin said, claiming that more than half of his work in Eau Claire is uncompensated and that he feels a moral obligation to care for people regardless of their ability to pay.

He wouldn't have been able to operate on large numbers of people in his career and "be a person with impaired judgment and moderate skills," he said. "That simply doesn't work."

Klein can be reached at 833-9206. Lindquist can be reached at 833-9209. Holtz can be reached at 833-9207. They also can be reached at (800) 236-7077.

> **"If you have a problem and it's (Dr. Rankin) recommending surgery, I think you owe it to yourself and your family to get a second opinion."**
>
> — Michael Wagner, Menomonie attorney who has represented clients with claims against Rankin

Rankin Cases

Following is a summary of the 11 malpractice lawsuits filed against neurosurgeon Thomas V. Rankin in Eau Claire County since 1996:

March 1996 — Robert Determan of Red Wing, Minn., sued Rankin and Sacred Heart Hospital, claiming Rankin's negligence while performing surgery led to the man suffering permanent lung damage.

The suit was settled in May 1998 for $65,000.

According to Determan's suit, he was admitted to Sacred Heart on Aug. 2, 1994, with injuries, including a fractured vertebrae, suffered in a motorcycle accident.

Three days later Rankin performed spinal fusion surgery on Determan, inserting screws to stabilize the fractured vertebrae.

The suit claimed Rankin inserted screws that were too long, puncturing Determan's lung, which required corrective surgery three weeks later at the University of Iowa Hospital.

September 1997 — Kristin Bonn of Durand sued Rankin, claiming he deviated from standard care by performing an anterior discectomy and fusion surgery.

Bonn claimed the June 13, 1994, surgery was unnecessary.

Bonn accused Rankin of failing to conduct appropriate diagnostic testing and ignoring findings on two MRI scans that were essentially normal.

Rankin used bone plugs from a bone bank during surgery instead of using bone from Bonn's body.

Rankin failed to take an appropriate health history of Bonn, which would have disclosed she was a heavy smoker and a poor candidate as a recipient from a bone bank, the suit claimed.

Rankin failed to inform Bonn of alternative treatments to surgery, including diagnostic testing, steroid injections and physical therapy.

The suit was settled last December for an undisclosed sum.

Bonn was seeking $500,000 in the lawsuit and offered to settle for $400,000 in September 1997.

October 1997 — Brian Pierce of Chetek sued Rankin for negligent care and for inadequately informing him of his medical condition before, during and after his Feb. 16, 1996, surgery.

Pierce's suit claimed his back problems were aggravated by Rankin's negligence, which included causing permanent nerve damage.

Rankin performed a spinal fusion on Pierce at Sacred Heart that failed. Pierce eventually had a second successful surgery at Luther Hospital, said Chuck Eye of River Falls, Pierce's attorney.

A jury in January found Rankin negligent in the care and treatment of Pierce and awarded him $463,000.

April 1998 — Kimberly J. Hansen of Blair sued Rankin for performing unnecessary surgery on March 22, 1995, without conducting normal and accepted diagnostic procedures.

Hansen injured her neck at work and was referred to Rankin.

The suit claims Rankin's negligence during surgery resulted in nerve impingement and permanent loss of nerve function, including numbness and weakness.

The surgery resulted in significant disfigurement at the site of the original bone graft harvest, the suit claims.

Hansen's suit against Rankin is scheduled for trial Aug. 10.

April 1998 — Marlene Carrette of Chippewa Falls sued Rankin because of complications resulting from an Oct. 18, 1996, surgery.

Carrette was referred to Rankin because of severe pain and numbness in her left arm and hand.

After she emerged from surgical anesthesia, Carrette lost use of both arms and required prolonged hospitalization, the suit claimed.

Complications from the surgery included possible osteomyelitis and six weeks of antibiotic therapy.

The suit claimed Rankin failed to use the degree of care, skill, and judgment normally exercised by a neurosurgeon under like or similar circumstances.

The case was settled in March for an undisclosed sum.

November 1998 — Donald Allard Jr. of Holcombe sued Rankin for negligently performing an anterior cervical fusion on Allard on Aug. 26, 1994.

Allard's suit accuses Rankin of performing an unnecessary surgery and misdiagnosing Allard's neck problem.

Rankin failed to take an appropriate health history which would have disclosed that Allard was a heavy smoker. That made Allard a poor candidate as a recipient from a bone bank for the surgical procedure.

Rankin failed to give Allard sufficient information concerning his medical condition and the risks and benefits of treatment options, the suit claims.

Allard sought $400,000 in the lawsuit and made a settlement offer for that amount in January.

A trial date has not been set.

December 1998 — Mary Haun of Eau Claire sued Rankin for negligently recommending and performing two surgeries on her in January 1998.

Rankin failed to inform Haun of alternative treatment methods to surgery. Rankin failed to give Haun enough information about her medical condition before she opted for the surgeries, the suit claims.

Haun named Sacred Heart as a defendant for allowing Rankin to perform the surgeries.

The case is pending, and no trial date has been set.

January 1999 — Elke Nelson of Fall Creek sued Rankin because of negligence stemming from her Nov. 14, 1997, surgery.

The suit claims Rankin was negligent in his care of Nelson before, during and after surgery.

Nelson claims Rankin inadequately informed her about her treatment.

The case is pending, and no trial date has been set.

January 1999 — Darrin P. Johnson of Eau Claire sued Rankin as a result of three surgeries performed by Rankin in 1996 and 1997.

Rankin was negligent by failing to disclose alternative procedures and the risks and disadvantages of the three surgeries, the suit claims.

That negligence didn't allow Johnson to make an informed choice about his care, the suit claims.

Sacred Heart is named in the lawsuit as a defendant for allowing Rankin to perform the surgeries.

Johnson has suffered severe temporary and permanent injuries as a result of the negligence, the suit claims.

The case is pending, and no trial date has been set.

April 1999 — Richard Lanner of Augusta sued Rankin for negligent care and treatment he received through April 16, 1996.

The suit provides no details about the type of care Lanner received from Rankin.

The case is pending, and no trial date has been set.

May 1999 — Anthony Danby of Colfax sued Rankin and Sacred Heart for negligence before, during and after Danby's surgery on July 1, 1996.

Danby claims Rankin failed to adequately inform him about the procedure and didn't obtain Danby's proper informed consent.

The case is pending, and no trial date has been set.

— Dan Holtz

Patient: Operation created new problem

SURGEON
from Page 1

was not corrected and she fell, she would be paralyzed," Wolter said.

Wolter's mother woke up from the surgery with "excruciating pain down both her arms," Wolter said, adding her mother could not lift her right arm. Before surgery, she did not have arm pain, Wolter said.

When the pain didn't stop, Wolter was told by another doctor that Rankin had pinched a nerve during surgery and would fix the problem in a second surgery when he returned from vacation, Wolter said.

Following the second surgery, Wolter's mother's condition was no better, Wolter said.

Wolter had her mother transferred to another hospital, where a neurosurgeon told Wolter her mother was having small strokes but did not need the first surgery, Wolter said.

"The surgery had nothing to do with her symptoms, so she had a surgery she didn't need," Wolter said.

Wolter said Rankin created a new medical problem for her mother by performing a surgery that wasn't necessary in the first place.

Kristin Bonn of Durand echoes Wolter's sentiments when she talks about her own medical problems, which she said were worsened by Rankin's care.

Her case against Rankin was settled in December for an undisclosed sum.

"Maybe somewhere along the way he's helped somebody, but it's a shame that he's hurting the innocent people who don't need surgery," said the 34-year-old.

"As a victim, this is why I don't have good feelings about him," Bonn said. "In so many words he has ruined a lot of my life. He's taken away something that can't be given back."

In 1993, Bonn, then 29, was having severe arm pain and numbness in both arms. Rankin told her she had a pinched nerve in her neck. "He led me to believe I needed this surgery if I wanted to be out of pain," she said.

After surgery, Bonn's arm pain was no better, but she also had a new, severe pain — in her neck.

When she told Rankin on a follow-up visit about the arm and neck pain, he recommended a second surgery to replace a bone plug used from a bone bank in the first surgery, she said. One of the bone plugs had dissolved, she said.

At that time, he also diagnosed Bonn with carpal tunnel syndrome and told her he could do surgery on that at the same time, she said.

"That was a new diagnosis, and it sent some red flags up in my mind," Bonn said, adding that she had never been tested for carpal tunnel syndrome.

She sought a second opinion and was told she did not have carpal tunnel syndrome, she said. Bonn also was told the first surgery was unnecessary and she should have first been offered alternatives, such as pain medication, physical therapy or chiropractic care, Bonn said.

She was told a second surgery was now necessary because a bone plug had dissolved, said Bonn's husband, Mike.

Her own bone graft — which she said the body is more apt to accept — was used for the second surgery, which was performed by a different surgeon. She now has a plate and seven screws in her neck to stabilize it.

Five years after surgery, she continues to have pain and numbness in her arms, so bad that she loses sleep many nights. With further medical treatment, she hopes the arm pain will some day be controllable.

But the neck pain and lack of mobility are here to stay, she said.

As a result, she can't back up her car without turning her entire body, and she no longer can deer hunt, play tennis and volleyball or shoot pool. The jolt of every sneeze and cough sends pain down her neck.

"When she has soup, she can't bend to eat it; she has to bring the bowl up to her mouth," said Mike Bonn, who now backs the car into the garage so his wife can drive it straight out.

She is not supposed to lift anything weighing more than 20 to 25 pounds, which is difficult for a mother of two young children, Michael, 7, and Kayla, who turns 3 in July. "I try not to pick them up, but when one of them falls I have to," she said.

Her dream of teaching preschool-through-kindergarten children may be just that because of all the movement required, said Kristin Bonn, who is nearly finished with her teaching degree from the University of Wisconsin-Stout. She will be certified to teach preschool-age children through third-graders.

"I think Dr. Rankin needs to be faithful to his patients and give them every alternative, and surgery should be the last alternative," she said. "We are trusting in (doctors). When somebody says surgery, they should mean that is the last option."

For Judi Wolter's mother, a third surgery by another doctor to correct problems from the first and second surgeries was ruled out. It was too risky because of her mother's osteoporosis and diabetes and because of the damage done to her nerves, Wolter said she was told.

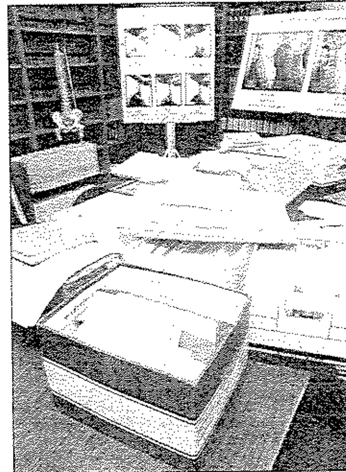
So Wolter's father began taking care of his wife. He cleaned the house and cooked meals, and dressed his wife. He died of a heart attack in April while helping her get dressed, Wolter said.

When he died most of his retirement benefits stopped. His wife now lives in a local assisted living center but is $900 short each month to pay the cost.

Wolter and her sister took out loans to pay the extra money each month and have applied for further funds to pay for their mother's care.

"This lawsuit isn't for our own benefit," Wolter said. "I don't want a penny. I just want my mom taken care of."

Klein can be reached at 833-9206 or (800) 236-7077.



Staff photo by Mark Christian
With several malpractice lawsuits pending against Dr. Thomas Rankin and other potential ones under investigation, attorney Michael Wagner has assembled quite an array of files and supporting materials for the cases in his Menomonie office.

Suits also hit Luther neurosurgeons

By Leader-Telegram staff

In addition to Dr. Thomas Rankin, one of the three other neurosurgeons in Eau Claire has had malpractice lawsuits filed against him in Wisconsin.

Dr. Alfred Murrle, a neurosurgeon for Luther Hospital and Midelfort Clinic, has been named in two lawsuits since coming to Eau Claire in 1982.

No malpractice suits have been filed against Dr. Theresa Cheng or Dr. Shih Liu, both colleagues of Murrle's at Luther/Midelfort.

Cheng joined Luther/Midelfort in August 1995, and Liu arrived in the summer of 1998.

Dr. Robert Narotzky, who left Luther/Midelfort earlier this year to begin a practice in Wyoming, was named in five lawsuits during the nearly 20 years he worked as a neurosurgeon here.

In the first suit filed against Murrle in Chippewa County in 1993, Gladys I. Gotautis of Holcombe claimed the antibiotic therapy she received to treat an infection she developed after disk surgery caused her permanent injury.

A jury found Murrle was not negligent in his treatment. But the jury did find Murrle failed to adequately inform Gotautis of the risks and advantages of the antibiotic prescribed.

Elmer Nelson of Rice Lake sued Murrle in August 1997 stemming from a spinal fusion surgery in September 1994.

Nelson claimed Murrle failed to carry out the fusion at the correct and intended level. The suit claims Nelson sustained permanent injuries as a result of the surgery.

The suit was settled for an undisclosed amount in 1998.

The five suits against Narotzky all have been closed. A jury found in favor of Narotzky in the suit that went to trial.

In that lawsuit, Susan Gunderson of Eau Claire claimed Narotzky didn't get her informed consent before performing two brain biopsies in November 1985.

Gunderson's claim of lack of informed consent was denied, and the jury judgment was in Narotzky's favor.

Peter Selz of Eau Claire filed suit against Narotzky, who performed a lumbar puncture on Selz in September 1981 at Sacred Heart Hospital.

The suit claimed Narotzky failed to timely diagnose Selz's cryptococcus meningitis, failed to retest Selz and reported inaccurate information to another doctor.

A medical malpractice screening panel found Narotzky was negligent with respect to certain medical services rendered. The case was settled for an undisclosed amount.

June Gilbertson of Eau Claire claimed Narotzky used a halo pin that was tightened to the point where it pierced her skull and invaded her brain.

Gilbertson's suit claimed the incident caused her to have focal seizures, imbalance, confusion, muscle atrophy and poor speech. The case was dismissed.

Karen Retzloff of Menomonie sued Narotzky after seeing him in January 1986 for neck, arm and shoulder pain.

Retzloff claims the drug he prescribed caused her to have a reaction called Stevens-Johnson syndrome. The case was dismissed.

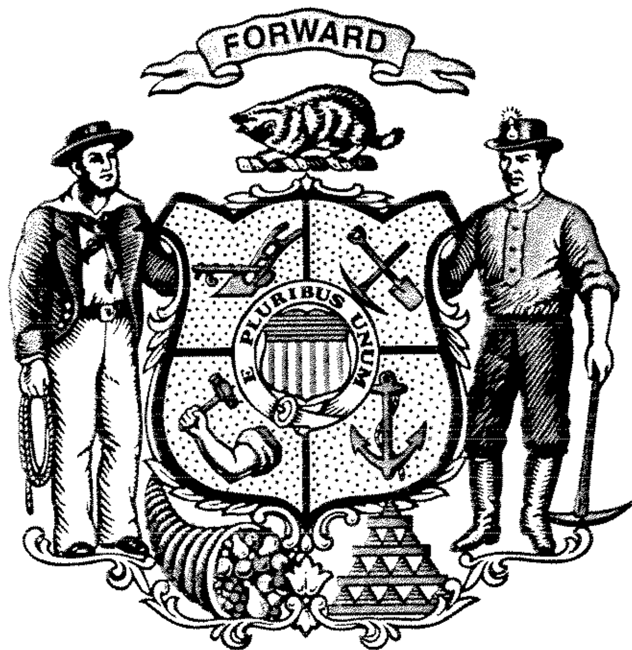
A former University of Wisconsin-Eau Claire student sued former Eau Claire neurosurgeon Peter Gianaris, Narotzky and Midelfort Clinic because of a 1993 spinal surgery that left him a quadriplegic.

The case filed by Derek Riebau was settled in June 1998 for $3.5 million. The settlement was paid only on Gianaris' behalf.

The lawsuit claimed Gianaris stuck a needle through Riebau's spinal cord during surgery. The action pushed the cord against a bone.

The suit claims the cord became herniated and compressed into the bone, causing quadriplegia.

The suit claimed Gianaris was negligent during the surgery at Sacred Heart Hospital. The suit said Narotzky supported Gianaris, who never had performed the procedure used during Riebau's surgery.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FACTS AND REASONS WHY

THE WISCONSIN FAMILY JUSTICE BILL (SB-467) MUST BE MADE INTO LAW --

AND

THE 180-DAY NOTICE RULE FOR MEDICAL MALPRACTICE FOR STATE RUN INSTITUTIONS AND STATE PHYSICIANS MUST BE REPEALED RETROACTIVELY (SB-70)

3 March 2004

FACTS AND REASONS WHY THE WISCONSIN FAMILY JUSTICE BILL (SB-467) MUST BE MADE INTO LAW -- A FACT SHEET FOR THE LEGISLATURE

March 3, 2004

Madison, WI. Did you know that if your single son or daughter is 18 or older and experiences medical malpractice and dies in Wisconsin that you, as a parent or sibling, will not be able to bring a claim for wrongful death against the wrong doers. Also, did you know if your single parent experiences medical malpractice and dies as a result in Wisconsin, that you as an adult child of that parent will not be able to bring a claim for wrongful death against the wrong doers. You will never find out what really happened, you will never get accountability, you and your family will never see justice. It will be tough to gain closure. Wisconsin law currently discriminates against two classes of people, single young and single elderly.

In this time of "family values", it is totally unbelievable that Wisconsin law does not recognize the life-long, and growing with age, bond between parent and child, regardless of the child's or parent's age and regardless of whether the parent is widowed or divorced. Up until now, the state law has been based on the bottom-line values of the health care providers, insurance companies, physicians' organizations and manufacturers and other big campaign contributors, not the family values held by the majority of Wisconsin citizens.

Wisconsin, of all states, you would think would be supportive of its citizen's rights. Not currently so. Six other states/districts in the US also have discriminating laws like this one, namely, Indiana, Florida, Maine, New Jersey, Maryland, and DC. Victims in these states are also fighting to change the law there to allow equality under the law. Forty-four states do not discriminate!

Wisconsin families who have suffered the loss of a family member due to apparent medical negligence have found the courthouse door slammed shut in their faces. In response, they have formed the Wisconsin Family Justice Network (WFJN).

A group of Wisconsin families, made up of both Republicans and Democrats from all walks of life, who suffered the loss of a family member due to apparent medical negligence, have been fighting to change the Wisconsin law back to what it was prior to 1995. We are a small group of families who now understand what the law means. The rest of the public still doesn't understand. We have few resources, but we must get the message out to the unsuspecting public, voters, media, and work with our legislators to get the law changed! The current WFJN members, their home towns, and their victimized family member are:

Jeanine & Lauren Knox
Milwaukee (mother)

Stephanie O'Connell
Green Bay (father)

Roger Fransway
Chippewa Falls (sister)

Jim & Donna Harvey
Waterford (mother)

Sherry Ellis
Oak Creek (mother)

Bernice Watts
Brown Deer (daughter)

Sandy Gunwaldt
New Berlin (mother)

Dan & Kim Leister
Mukwonago (daughter)

Lonny & Rhonda Brown
Chippewa Falls (son)

Willie Davis
Milwaukee (mother)

John Zachar
Greendale (mother)

Judy Demeuse
Germantown (father)

Carolyn Walasek
Park Falls (mother)

Helen Szurovecz
Milwaukee (mother)

Pam Vertanen
Manitowoc (mother)

Susan Czapinski
Madison (mother)

Patty Schey
Wauwatosa (father)

Steve Janasik
Park Falls (mother)

Harriet Yancey
Milwaukee (father)

Sheryl Holdmann
Milwaukee (mother)

Jake Budrick
Saukville (mother)

Lee Davis
Menomonee Falls (brother)

Ray & Betty Lange
Beaver Dam (son)

Rosemary Halvorson
Readstown (mother)

Peter Torgerson
Colfax (mother)

Anita Harris
Milwaukee (son)

James & Dottie Webb
Whitewater (daughter)

Eric & Linda Rice
Middleton (daughter)

Dimitri Jordan
Milwaukee (mother)

James Bollig
Cottage Grove (father)

Sharon Kind
West Bend (mother)

Jonna Fedie
Hammond (mother)

Mary McBride
Madison (father)

Mack Kirksey
Brown Deer (mother)

Mary Siedschlag
Argyle (mother)

Kathleen Sese
Kewaskum (son)

Lee Brown
Milwaukee (mother)

Taron Monroe
Milwaukee

Michelle Martin
Green Bay (mother)

Phil Tipke
Cottage Grove (son)

Jeanne Hanson
Neenah (son)

Sister of Jackie Hemenway
Twin Lakes (father)

Mark Lavalle
Twin Lakes (mother)

Lisa Jacobsen
Darlington

The focus of the Wisconsin Family Justice Network (WFJN)—growing since being formed five years ago to over 45 families across the state—is now turning to the State Legislature, where Network members are working to build bi-partisan support for the passage of the Wisconsin Family Justice Bill (SB-467) and other legislation. This is not a political issue! Republicans and Democrats together should recognize that this problem needs fixing as soon as possible. We will not stop our efforts until we get the Wisconsin Family Justice Bill passed by the legislature and signed by the Governor -- our motto is *"We Will Not Stop Until Justice and Accountably is Available to all Wisconsinites"*. The bill is aimed at closing loopholes in current state malpractice law. In 2002, this bill passed the Senate, but failed to be put up in the Assembly.

A barrage of "mis-information" by opponents of the Wisconsin Family Justice Bill may again be upon us. Those trying to protect the unfair status quo will claim that Wisconsin's insurance rates will go up and that we will see doctors leaving the state or refusing to practice in nursing homes. But, malpractice costs are about one-half of one percent (0.55%) of all medical costs, so the claims of skyrocketing medical costs were plain ridiculous. 44 other states allow all families to have legal rights in malpractice cases, and they have not suffered any loss of doctors willing to practice.

Private malpractice insurance carriers are very healthy. The loss ratios for malpractice insurers from 1995 to 2000 are very low. During this period, the average loss ratio is 18. That is only 18¢ of every dollar the insurance company estimates it will pay on all malpractice claims. In addition, private physicians are compelled by state law to pay into the patient's medical compensation fund every year (roughly $30 to 55M per year). The fund now has grown to over $678,000,000. Because it is so big, the Governor wants to take some of this surplus to help the state's budget problems. These insurance rates should be going down! But they are not – why?

The Wisconsin Family Justice Network suggests that once you, as a representative of the people of this great State of Wisconsin, honestly consider the thoughts below that you will be compelled to support the Wisconsin Family Justice Bill. Try answering the questions below and we think you will understand exactly what we are fighting for.

- ❑ Do you believe that the bond between you and your parent and you and your child is life-long, and not eroded by age or marital status, but actually grows with age? Ponder that thought for a minute.
- ❑ How would you deal with the awful prospect of the loss of your own 18-year old son or daughter due to gross medical errors? How would you react with the fact that you can't get any legal representation because you are not allowed to have a wrongful death case under current Wisconsin law?
- ❑ Consider the prospect of the loss of your mother or father due to medical errors in a simple medical procedure and you can't get answers, accountability or justice.
- ❑ How would you deal with the fact that you can't get any attorney to take your case because of the current law constraints and limits?
- ❑ Do you feel comfortable with Wisconsin being one of ***just 6 states of 50*** that make arbitrary distinctions in legal rights, based on the age and marital status of the victim?
- ❑ Think about this, do you have less love? less compassion? less affection? or less connection to your family members when they become 18 or even when they become 60 years old?
- ❑ And finally, was it really the intent of the Wisconsin State Legislature to implement an biased and discriminating law that denies equal protection that says your loving son or daughter, over 17 years old and your single mother or father has **ABSOLUTELY NO VALUE.**

The Wisconsin Family Justice Network and the rest of the citizens of this state simply want a single standard of access to the courts and accountability for all citizens. It is a fundamental matter of equity and equality; the current law is biased, discriminating and totally unfair and must be changed!

FACTS AND WHY THE 180-DAY NOTICE RULE FOR MEDICAL MALPRACTICE FOR STATE RUN INSTITUTIONS AND STATE PHYSICIANS MUST BE REPEALED RETROACTIVELY (SB-70)

March 3, 2004

Madison, WI. Did you know that if you are treated by physicians at UW Hospital & Clinics or UW Health/Physicians Plus and medical malpractice results in injury or death to your family member, you will not likely be able to bring a claim forward unless you have given notice to the state attorney general within 180 days after the event occurs? The current statute allows for discovery after this period; however, the most all the courts (case law) have made this tough to do. If you are late with your notice, not only will it be difficult or impossible to ever bring a case, but you may never find out what really happened, you and your family will never see justice, and the physicians won't talk and will never be held accountable for any of their errors/mistakes. Wisconsin law favors state physicians over private ones. Did you also know that state-employed physicians do not have to pay medical malpractice insurance? The state self-insures them. Private physicians and organizations remain outraged by this and the 180-day notice rule.

Again, Wisconsin families who have suffered the loss of a family member due to apparent medical negligence have found the courthouse door slammed shut in their faces.

A group of Wisconsin families, made up of both Republicans and Democrats, who suffered the loss of a family member due to apparent medical negligence have been fighting hard to fix Wisconsin law. We are a small group of families and we have few resources, but we must get the message out to the unsuspecting public, voters, media, and work with legislators to get the law changed!

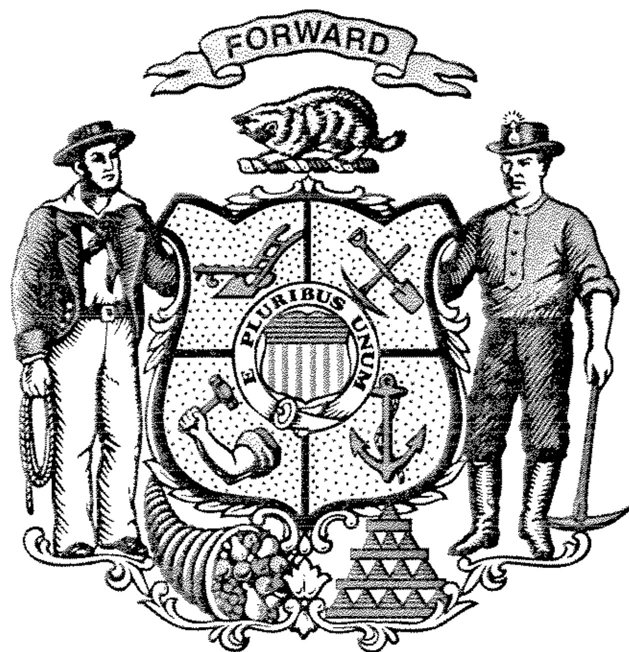
The focus of the Wisconsin Family Justice Network (WFJN)—growing since being formed five years ago to over 45 families across the state—is now turning to the State Legislature, where Network members are working to build bi-partisan support for the passage of the Wisconsin Family Justice Bill and now, the repeal of the 180-day notice rule for medical malpractice by state healthcare employees. These are not political issues! Republicans and Democrats together should recognize that these problems need fixing as soon as possible. We will work to get the retroactive repeal of the 180-day notice bill passed by the legislature and signed by the Governor. Senator Fred Risser, a Democrat, has agreed with Dr. Eric Rice, a Republican constituent of Senator Riser, to again to whole heartedly sponsor this year's bill. Last year, it passed the Senate by voice vote, but never was introduced to the Assembly.

The Wisconsin Family Justice Network suggests that once you, as a representative of the people of this great State of Wisconsin, honestly consider the thoughts below that you will be compelled to support the repeal of the 180-day notice for medical malpractice claims for state healthcare employees.

- For example, how would you deal with the awful prospect of the loss of a loved one due to gross medical errors at UW Hospital? After much grief, you finally get around to talking with an attorney and then the attorney tells you how sorry he or she is, but you missed the 180-day notice deadline and your potential legal claim is now likely void! You, like almost everyone, thought you had 3 years to respond. This happens all the time to grieving families!

- How would you react to the fact that you can't get any legal representation because you are not likely to have a case under this current Wisconsin law if you are late with your notice of claim?
- Was it really the intent of the Wisconsin State Legislature to implement a biased law that denies Wisconsin citizens their rights for justice and accountability?
- How are you ever to know about the 180-day notice rule? Have you ever heard of it before? The public does not know. Check out your constituents – ask them if they know. We would bet that none do, except us and our close friends.
- If you loose a loved one at the UW Hospital, do they tell you have only 180 days to file a claim for malpractice with the Attorney General's Office? No. Of all the forms one has to sign in the hospital, is there a form that you sign in the hospital that says you have 180 days to file a notice of claim if the hospital were to perform malpractice? No!
- Private health care providers (HMO's etc.) and UW co-mingle their employees at the HMO and UW Hospital facilities. How do you really know which physician is a UW employee and which one is with the HMO private provider? Which ones do you give notice to, if you knew of the rule?
- If medical malpractice occurs, it seems to take forever to get a copy of the medical records. This cuts into your time to assess and decide if you have a claim or not with the 180-day rule. We don't need to be filing notices of claim if we are not sure! Time is needed to assess the medical records and have other expert physicians review what happened.
- For sure, the 180-day rule is likely never to be known by a grieving family.
- One should believe that there should be fairness and equal protection under the law for all Wisconsinites, regardless of what hospital they go to, but is not currently the case.
- It's obvious that this law is aligned to protect the insurance companies and the UW physicians; not the patients and their families. The law is biased to benefit state employees and state-run medical facilities.
- Private physicians are outraged by this discrimination and that the State self insures them at no cost.

The Wisconsin Family Justice Network and the rest of the citizens of this state simply want a single standard of access to the courts and accountability for all citizens. It is a fundamental matter of equity and equality; the current law is biased, discriminating and totally unfair and must be changed! The retroactive repeal of the 180-day notice for state medical employees needs to be made ASAP so more people are not totally defeated by this unfair and biased favoritism.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Opinion

EDITORIALS ▪ LETTERS ▪ COMMENTARY

Wisconsin opens door to liability crisis

Some physicians in states recently ravaged by soaring medical liability insurance rates have been picking up and moving their practices to Wisconsin, a safe haven for two decades as a state with caps on noneconomic damages awarded in malpractice suits. At least it was — until two months ago, when the Wisconsin Supreme Court stripped the state's doctors of that protection.

In a 4-3 decision, the court said it didn't see a connection between the adjustable cap — which stood at $445,775 at the time of the ruling — and the legislative intent of "compensating victims of medical malpractice fairly." But a fair law would ensure that plaintiffs aren't paid too little and doctors don't pay too much. Without caps, though, the system goes off kilter, with plaintiffs' lawyers aiming to lead juries to return irrationally large verdicts.

And the majority of justices said they didn't see a specific connection between the cap and the idea that it keeps liability insurance premiums low.

They didn't see a connection? The AMA lists 20 states in the midst of a medical liability insurance crisis, with rates that have doctors retiring early, discontinuing high-risk procedures or fleeing to another state with a better insurance climate. Only six states make the AMA's "OK" list. The thing those states have — or should we say *had* — in common was a cap on noneconomic damages.

Wisconsin has been "OK" since the list's inception in June 2002. The question now is whether it can remain OK.

It can. But lawmakers at the state and federal level need to act quickly. They need to pass noneconomic damages caps.

At the state level, doctors and some politicians are doing their part to bring back the cap.

The Wisconsin Medical Society created a Web site *(http://www.keepdoctorsinwisconsin.org/)* that informs residents what could happen if the state goes without a cap for too long. In addition, State Assembly Speaker John Gard formed a task force to study the issue. Already citizens are behind the cap, with a medical society and Wisconsin Hospital Assn. poll showing that 66% of 500 likely Wisconsin voters agreed that the state should cap noneconomic damages "to prevent both higher health care costs associated with frivolous lawsuits and unnecessary medical testing."

Legislation is expected to pass the Republican-dominated Legislature by Thanksgiving. But it is unclear whether the state's governor, a Democrat, would sign a bill. If he does, doctors want to prevent the court from tossing out the cap again, so WMS is pursuing a constitutional amendment that would deem the cap legal.

Of course, if Congress would pass national tort reform, it would stop this state patchwork of laws that are a determining factor of where some doctors set up practice. The House repeatedly has passed legislation with a $250,000 noneconomic damages cap, most recently approving a bill in July. But proposals have stalled in the Senate again and again, and it looks like the latest effort is going nowhere again this year.

Insurance rates didn't go up in Wisconsin overnight. But settlements are already up.

There's one report of a plaintiff lawyer who had reached a settlement agreement a week before the state Supreme Court decision now calling the defendants back and saying he would settle only if the agreed-on amount was doubled. Also, those seeking to recruit doctors already are reporting that they're getting questions from physicians concerned about what insurance rates will do in the coming years without caps.

Before Wisconsin becomes the liability wasteland that 20 other states are, it's time for the state government again to pass tort reform that includes a cap that will be held constitutional and keep Wisconsin as a place physicians can go for shelter from high medical liability premiums.

Better yet, Congress should pass tort reform so doctors can practice where they want, not just where the insurance rates are affordable because a state has a noneconomic damages cap. ◆

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GOVERNME
Geri Aston
STAFF
David Glend
PROFESSIO
Tanya Alber
STAFF
Damon Adar
(Reporter), E
BUSINESS /
Bob Cook
STAFF
Tyler Chin (
(Reporter), E
HEALTH AN
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ART DIRECT
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Casey R. Bra
CHIEF COPY
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George Kru
Katherine S
ADMINISTR
AND SYSTE
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STAFF
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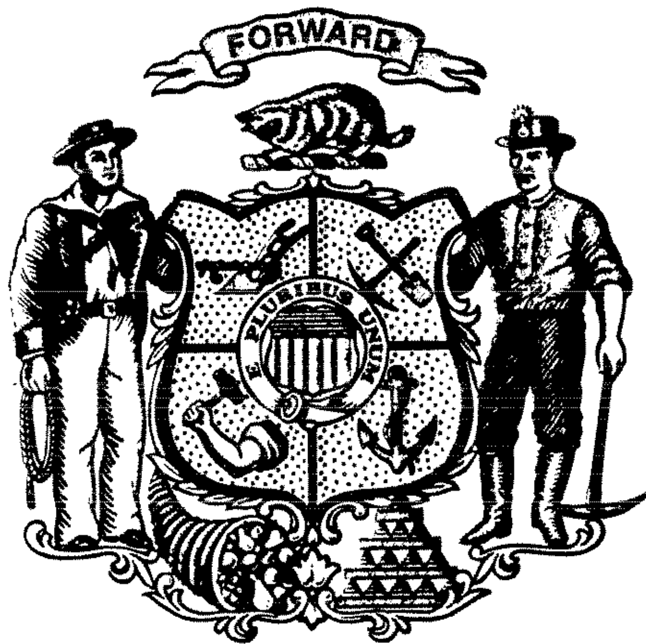
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PROVIDED BY YOUR PHYSICIAN, A MEMBER OF THE WISCONSIN MEDICAL SOCIETY

Your DOCTOR *Your* HEALTH

FALL 2005
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How far will you go to get the critical care you need?

Your DOCTOR *Your* HEALTH

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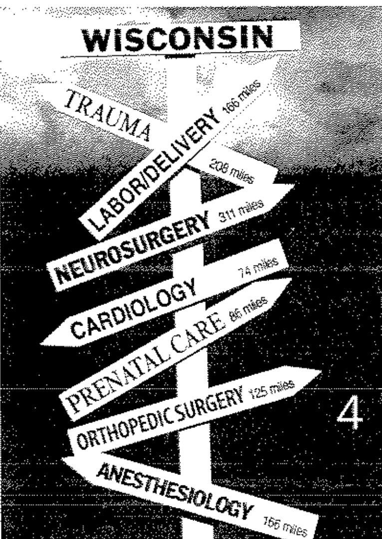

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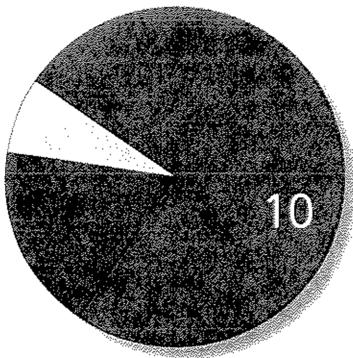

Note: Names of physicians who are members of the Wisconsin Medical Society are printed in bold.

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Contributing Writers
Rachel Berens-VanHeest
Steve Busalacchi
Drew Kasel

Design/Editing
Kendi Parvin

Advertising Representative
Jan Lottig
Slack Attack Publishing
608.222.7630

Please direct all editorial inquiries to:
Linda Syth, Sr. Vice President
Membership, Marketing and Communications
608.442.3750
lindas@wismed.org

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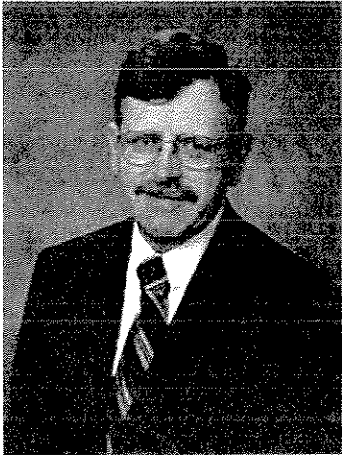
Fixing what the Supreme Court broke



Mark K. Belknap, MD, specializes in internal medicine in Ashland, Wis.

It was barely two years ago when a Congressional aide from Illinois called the Wisconsin Medical Society to ask, "What are you people doing over there? One by one, our doctors are leaving here and going to Wisconsin."

The truth is we weren't doing anything at that moment. It was bipartisan efforts begun 30 years ago that helped Wisconsin become a magnet for doctors from other states, including Illinois. They were coming to our state because they either couldn't afford to pay enormous insurance premiums or they were unable to find an insurance company to cover them in Illinois at any price. In fact, the last two brain surgeons in Southern Illinois left last year, requiring severely injured patients to be airlifted to Missouri. Luckily, they were recently able to recruit one replacement.

Wisconsin hasn't had these problems because our state had been progressive. We addressed the factors that drive sky-high premiums, while also assuring that patients injured through medical negligence receive all of the compensation necessary to cover hospital bills, lost wages and other tangible economic losses.

But on July 14, the Wisconsin Supreme Court announced a ruling that turned everything upside down. In a 4-3 decision, the Court threw out the cap on noneconomic damages in medical liability cases. These are the awards for pain and suffering, loss of companionship and other emotional scars that are impossible to quantify.

This means Wisconsin now has no limits whatsoever on awards in non-governmental medical liability cases, which may mean higher health costs, more lawsuits, larger judgments and rising insurance premiums to cover the heightened risk. The most important result, though, is that it may become more challenging to find doctors who perform high-risk procedures. This is a big concern for smaller communities and inner cities, where we already have a physician shortage. It also may mean early retirements or doctors leaving for other states.

This means Wisconsin now has no limits whatsoever on awards in non-governmental medical liability cases, which may mean higher health costs, more lawsuits, larger judgments and rising insurance premiums to cover the heightened risk.

But we don't have to let this happen in Wisconsin. Read this issue of *Your Doctor. Your Health.*, then log on to keepdoctorsinwisconsin.org and get involved. The most important thing you can do is let your legislators know that you support efforts to pass a new limit on noneconomic damages that will survive constitutional muster.

Mark K. Belknap, MD
President, Wisconsin Medical Society

WISCONSIN

TRAUMA

LABOR/DELIVERY 166 miles

208 miles

NEUROSURGERY 311 miles

CARDIOLOGY 74 miles

PRENATAL CARE 86 miles

ORTHOPEDIC SURGERY 125 miles

ANESTHESIOLOGY 166 miles

Distance no one can afford to travel

By Steve Busalacchi

Wisconsin Supreme Court ruling could lead to higher insurance premiums and jeopardize critical access to health care

By definition, birth is a time of new beginnings. But not always. Not for Katherine Merrill, MD, of Astoria, Oregon. For this Medical College of Wisconsin graduate, one particular birth in August of 2003 signaled the end of something very special for her personally and professionally.

"It was really hard," recalls Dr. Merrill. "I went into family practice because I wanted to do everything–the old cradle to grave concept. I felt pretty strongly about it, so I went to a residency program that was quite strong in obstetrics."

But circumstances beyond Merrill's control forced her to quit delivering babies. "The last patient that I delivered before I gave up obstetrics was the first person that I ever delivered in town. I delivered three of her four children in that time," explained Dr. Merrill.

So why leave obstetrics? In 1999, the Oregon Supreme Court ruled that the state's cap on noneconomic damage awards in medical negligence cases was unconstitutional. And soon afterward, liability insurance rates took off like a rocket. Insurance premiums for family practice physicians who deliver babies soared 332 percent, while general surgeons have seen increases of 196 percent, according to a 2004 analysis by the economic consulting firm ECONorthwest. The firm reported premium increases of 221 percent for obstetricians.

After six months in private practice with another family medicine colleague, Dr. Merrill's premium doubled, despite the fact that neither doctor had been sued. When the insurance renewal notice came the next year, their premium doubled yet again. That was the last straw, which made the call both an easy and a sad one.

"I made the decision so I could remain financially viable and stay in town," says Dr. Merrill. "There's nobody in our entire county delivering babies from an FP (family practice) perspective." She and her partner were the last two family doctors offering obstetrics care.

Doctor shortage in Wisconsin?

Could something like this happen in Wisconsin? On July 14, the State Supreme Court announced a ruling throwing out Wisconsin's

cap on noneconomic damages, which include compensation for pain and suffering and loss of companionship. This means that Wisconsin now has no limits whatsoever for awards in liability cases involving private medical practices and hospitals.

If Nevada, Pennsylvania, Ohio, Oregon and many other states are a guide, there eventually may be shortages of doctors who perform high-risk procedures here. When there's a potential for an enormous jury award, of which trial attorneys may receive one-third or more, lawyers may be more willing to take a chance on a case involving a sad outcome, whether actual negligence was involved or not. "Defending these extra suits will surely tax our health care system because they will lead to higher medical liability premiums," said **Susan Turney, MD**, who is Executive Vice President/CEO of the Wisconsin Medical Society.

"Nobody knows what type of similar situations will occur in Wisconsin if the system is allowed to spiral down out of control in the absence of caps and necessary physician protections," said Brad Cole, Mayor of Carbondale, Ill., speaking at a Madison news conference August 25. This is a topic Cole happens to know quite a bit about. His southern Illinois community lost the region's only two neurosurgeons in May of 2004, forcing critically injured patients to be taken by helicopter to Missouri for care.

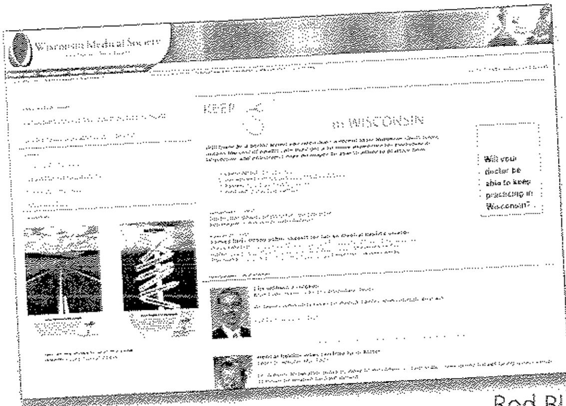
"I never want to deliver the eulogy again at a funeral that could've been prevented by sound and proper legislation to keep doctors practicing and protecting patients and saving lives," said Mayor Cole, referring to the loss of a friend who died after having to wait four hours to see a neurosurgeon. (*See Cole's guest column on page 10.*)

Reason for optimism

But Dr. Turney sees reason to be optimistic. "A clear majority of likely voters, when given the facts, understand that unlimited damage awards will eventually raise their medical costs," she says. "And of course, that will mean disruptions in their medical care, too." So she's hopeful that there will be enough public support to convince the Legislature and Governor to re-establish a cap on noneconomic damages that is constitutional.

www.keepdoctorsinwisconsin.org

Learning from Illinois



By Steve Busalacchi

The Wisconsin Medical Society has created www.keepdoctorsinwisconsin.org to educate and empower the public so citizens can support public policy that prevents medical liability problems from handcuffing our health care system.

To accomplish this goal, informed patients will need to join with the medical community and let lawmakers and the Governor know how they feel, just as citizens did in Illinois. Following a public outcry for reform, Illinois Governor Rod Blagojevich signed legislation in August establishing a cap on noneconomic damage awards and other reforms. The leaders of Carbondale, a small community in southern Illinois, were so concerned that they passed an ordinance that created a local limit on medical liability awards.

"This issue became the central and deciding factor in a Supreme Court Justice election and it forced the Legislature to finally address the issue," said Mayor Brad Cole, of Carbondale at a news conference August 25 in Madison. His community lost both neurosurgeons who had served the southern third of the state when liability costs exploded there two years ago. Tragically, one of Cole's friends had to be airlifted to Missouri following a head injury because there wasn't a surgical specialist available locally anymore. She died from her injury.

www.keepdoctorsinwisconsin.org offers information about the exodus of physicians from other states without a cap, what voters can do to bring a cap back and the opportunity to become part of the campaign to keep doctors in Wisconsin. The site also contains a tremendous amount of other information, including the latest results from a statewide survey in mid-August of what likely Wisconsin voters think about the Supreme Court's ruling and an audio file of Mayor Cole from the news conference.

Until then, though, hospital administrator Sandy Anderson says she doesn't know what to say to prospective physicians she's trying to recruit for rural St. Clare Hospital in Baraboo. "I interviewed two orthopedic surgeons in the past two weeks to come to Baraboo and the first question that came out of their mouths was, 'What is Wisconsin doing about the new Supreme Court action?'"

Anderson says she's short orthopedic surgeons now and hates to think what would happen if family doctors stopped delivering babies in her community. "In fact, in Baraboo, every single baby is delivered by a family practitioner and that's true for most rural hospitals," added Anderson.

If Oregon's experience is a guide, Wisconsin would be wise to address this problem sooner rather than later. Doctor Katherine Merrill predicts Wisconsin will see serious cracks in the health system in two to three years if the cap on jury awards isn't reestablished. She warns that once doctors stop practicing certain high-risk procedures, there's no turning back.

"The extra training involved to update and prove your skills is just beyond what most people are able and willing to do," explains Dr. Merrill. "Probably once people stop doing obstetrics they'll never do it again. You'll have to recruit new ones to do it."

Legislation as good as its advertising

By Congressman Mark Green

Congressman Mark Green

I admit it. I'm occasionally guilty of something we in public office are known to do: over-exaggerate the effects of legislation. Those of us in the political arena often use a bit of hyperbole when we are arguing about ideas. Suddenly, rather inconsequential proposals become either panaceas or catastrophes, depending on your point of view.

However, sometimes legislation is as good as advertised. Ten years ago, when I was in the State Assembly, I authored the law that, among other things, placed a cap on noneconomic damages in medical liability cases. I argued that caps were critically important for both the survival of the Injured Patients and Families Compensation Fund and access to quality health care.

Of course, there were lots of great reasons for our legislation–including curbing frivolous lawsuits by trial attorneys hoping to win the "lawsuit lottery." But there were two overriding arguments we used in advocating for the cap in 1995. First, that many doctors, especially some in high-risk specialties, would quit their practice or leave Wisconsin because of rapidly escalating malpractice insurance rates. Second, that our state's health care costs were being artificially increased through these high premiums and the other costs of "defensive medicine."

Let's see if our rhetoric back then matches today's reality.

Ten years ago, some doctors told me they'd soon have to retire or look elsewhere to practice medicine. Our rural areas, in particular, were in danger of losing important specialty practices—like obstetrics. Today's good news is that not only have the caps reversed the risk of doctors leaving the state, but they've actually become a recruiting tool for clinics and hospitals in trying to bring great physicians here to practice.

That means there are more doctors saving lives and helping people get well in Wisconsin. I've met doctors who told me they recently moved here almost entirely because of the efforts Wisconsin takes to control malpractice premiums. Ask their patients—better yet, ask their patients' families and friends—if these physicians' decision to move to Wisconsin has made a difference in their lives.

Back in 1995, we argued that health care costs were rapidly increasing not only because of rising malpractice premiums, but also because of the unnecessary tests and procedures that some felt driven to consider as part of "defensive medicine." Treatment decisions should obviously be solely based on sound medical judgment—not an effort to build a defense against potential malpractice claims.

Now, no one is going to argue that health care costs aren't still rising too high and too quickly, but can you imagine what those increases would be like if we return to the days of unlimited liability? Unfortunately, we may soon find out.

All in all, I couldn't have asked for a better result than what we've seen the past 10 years. The noneconomic damage cap has worked as well, if not better, than we promised back in 1995.

Sadly, all that we've accomplished with our legislation is in jeopardy because of the recent Supreme Court decision. As the original author of the medical malpractice cap, I am very proud our work has delivered such great results. I hope our leaders in Madison recognize the success these caps have had in our state and work quickly to reinstate a strong liability cap.

If we fail, we're likely to once again see doctors fleeing Wisconsin for states that value quality medical care more than trial lawyers' bank accounts.

Currently serving his third term in the US House of Representatives, Congressman Green represents Wisconsin's 8th Congressional District.

Giving booster seats a boost

"Recent research shows that motor vehicle crashes remain the leading cause of death and disability for children between the ages of 4 through 7 years," says Rep. Jerry Petrowski (R-Marathon), co-author of a bill that would create a booster seat requirement to cover older children.

Current law does not mandate booster seat use for children over 4 years of age or 40 pounds. Among other things, the bill (Assembly Bill 618/Senate Bill 305) would require that children aged 4 through 7 who weigh between 40 and 80 pounds and are under 4 feet 9 inches tall must be properly restrained in a child booster seat.

Passage of the bill will not only save lives, but could bring $2.5 million to Wisconsin in federal funds by bringing Wisconsin into full compliance with "Anton's Law." Our current child safety seat laws are inadequate, and parents look to the current inadequate law to keep their children safe. [The bill] will bring federal dollars to help parents purchase child safety seats as well as provide funds to educate parents of safety seats' importance," says Sen. Carol Roessler (R-Oshkosh), the Senate co-author.

The national Safe Kids campaign gave Wisconsin an "F" and ranked it 8th worst in the country for child occupant protection.

Drug repository program expands

"Nick's Law," proposed in honor of Kenosha cancer patient Nick Scavone, established Wisconsin's cancer drug repository in 2004. The cancer drug repository program allows individuals to donate unused prescription drugs or supplies used to treat cancer for redistribution to others, often those who can least afford them.

In summer 2005, a new law expanded the program to include prescription drugs and supplies for other chronic diseases. The bill, supported by the Wisconsin Medical Society, passed the legislature on unanimous votes and was signed into law by Governor Doyle.

The Wisconsin Department of Health and Family Services is currently drafting the rules for the program. Once the rules are complete, donations may be made at any medical facility or pharmacy that elects to participate in the program.

Restoring caps a Capitol priority

The Wisconsin State Legislature is not willing to let Wisconsin slip into a medical liability crisis and is working to pass a law that restores the caps on noneconomic damages in medical liability cases. The legislature "must act immediately to prevent potentially catastrophic consequences of the Supreme Court decision invalidating caps on noneconomic damages" said Rep. **Sheldon Wasserman, MD** (D-Milwaukee).

Senate Majority Leader Dale Schultz (R-Richland Center) called restoring the caps a "key issue" and Assembly Speaker John Gard (R-Peshtigo) created a Medical Malpractice Reform Task Force. Made up of five legislators (three Republicans, two Democrats) and five members of the public, the Task Force's mission is to craft a new law that would withstand any future constitutional challenge.

Even with considerable support, such legislation faces a long journey to pass both houses of the legislature and be signed by the Governor. The courts could also rule the new caps unconstitutional. If the issue is not addressed legislatively, there would be a push for an amendment to the Wisconsin Constitution. For that to happen, an identical amendment must be passed by two consecutive sessions of the legislature and then be approved by voters in a statewide referendum. Such an amendment does not require the Governor's approval and the courts cannot invalidate clauses of the constitution in the same way that they might overturn legislation.

For talking points, sample letters and other help in contacting your legislator about this issue, visit the "What Can I Do?" page at the Web site www.keepdoctorsinwisconsin.org.

Voters Agree

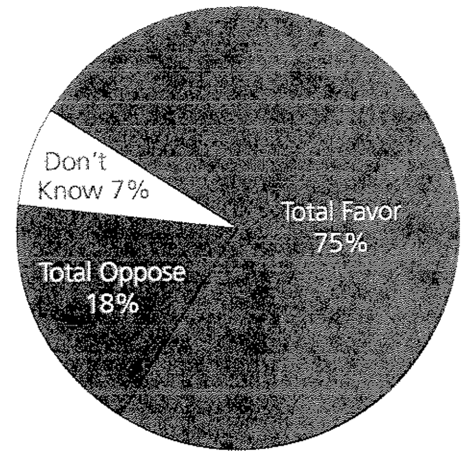
Survey reveals broad support for caps on noneconomic damages

Wisconsin voters support limits on intangible awards for damages like pain and suffering in medical liability cases, according to a statewide poll sponsored by the Wisconsin Medical Society (Society) and the Wisconsin Hospital Association.

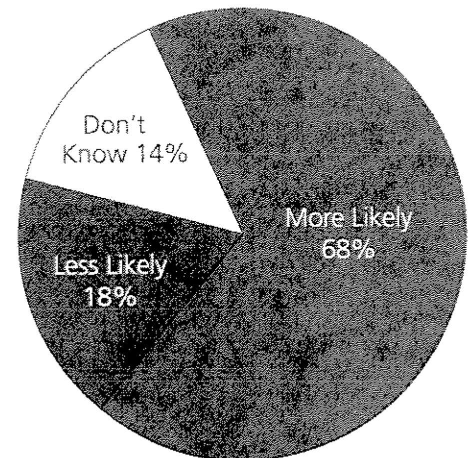
When asked whether Wisconsin should cap noneconomic damages to prevent higher health costs associated with frivolous lawsuits and unnecessary medical testing, a clear majority agreed.

Public Opinion Strategies surveyed 500 likely Wisconsin voters in August. The poll found a majority want the cap on noneconomic damages reinstated, despite the Wisconsin Supreme Court's July ruling that the state's decade-old cap is unconstitutional.

"It's clear that voters understand the connection between unlimited awards and the consequence of higher health costs," said **Susan Turney, MD**, Society EVP/CEO.



When voters are educated about the issue, they overwhelmingly support caps on noneconomic damages in medical liability cases.



Voters across party lines are more likey to vote for state leaders who support a cap on noneconomic damages in medical liability cases.

Source: Wisconsin Medical Society/Wisconsin Hospital Association Medical Malpractice Survey, August 14-15, 2005

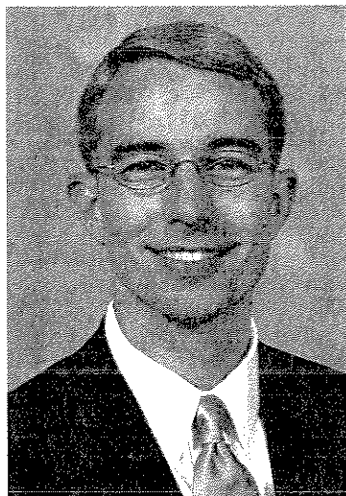
MEDICAL LIABILITY WORD SEARCH

A	F	F	O	R	D	A	B	L	E	C	J	S
N	X	H	E	A	L	T	H	S	L	G	E	P
O	L	U	E	T	A	C	O	L	E	R	C	A
I	A	Y	T	I	L	I	B	A	I	L	I	C
T	W	I	S	C	O	N	S	I	N	O	T	P
C	S	Z	U	P	L	O	T	I	P	A	C	R
E	U	J	P	A	T	I	E	N	T	S	A	E
T	I	X	U	T	R	O	T	C	O	D	R	M
O	T	A	I	R	N	M	R	A	W	D	P	I
R	V	S	E	U	Y	T	I	R	B	Y	C	U
P	C	I	M	O	N	O	C	E	N	O	N	M
E	C	I	T	C	A	R	P	L	A	M	X	S

AFFORDABLE	DOCTOR	MALPRACTICE	PREMIUM
CAPITOL	HEALTH	NONECONOMIC	PROTECTION
CAPS	JURY	OBSTETRIC	RELOCATE
CARE	LAWSUIT	PATIENT	TORT
COURT	LIABILITY	PRACTICE	WISCONSIN

Statewide crisis leads to local action

By Brad Cole



Brad Cole, Mayor
Carbondale, Ill.

The medical liability problems in Illinois hit home last summer when a friend of mine sustained a brain injury from falling down the steps of her home. She suffered a traumatic injury that needed a neurosurgeon's immediate attention, but she had to be flown more than 100 miles away, out of state to St. Louis, before she could be treated. The unfortunate situation in Carbondale, Ill. was the departure of the region's only two practicing neurosurgeons. Who knows what could have happened to save her life if we had not been without those valuable medical specialists.

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. We also began to see the same trend of doctors leaving town in other specialty care fields, such as obstetrics and gynecology.

Medical malpractice insurance reform isn't the typical city council agenda item for a small town in southern Illinois. More often, we are dealing with the standard issues of police and fire service, water and sewer lines and road projects. But just more than a year ago, out of near desperation from the lack of attention by the Illinois General Assembly, the Carbondale City Council took action.

Without any substantive remedy from the state, we adopted a local ordinance under our home rule authority to regulate medical malpractice suits. The City Council enacted caps on noneconomic damages that may be awarded to lawsuits for cases alleged to have occurred in Carbondale. Further, in an effort to end the court shopping that often takes a lawsuit away from its local origin to a friendlier jury pool, a venue restriction was instituted. This restriction still will allow due process and equal treatment under the law, but it will require that if the alleged incident happened in Carbondale, the malpractice suit has to be filed in this county.

Naysayers were quick to point out that these moves would surely be found unconstitutional by the Illinois Supreme Court, but with no other alternative and no leadership from the state office-holders we took the initiative, and—to date—our ordinance remains on the books, valid and unchallenged in court.

We realize that this didn't solve the problem by itself, but our local steps were the catalyst to get real attention to the issue and to start the momentum toward genuine reform of the problem on a broader scale. Directly because of our efforts, I think, and combining the hard work of our local health care system, we have now seen the new hire of a neurosurgeon in Carbondale, and the trend of doctors pulling-up roots has calmed.

Unfortunately, this came too late for several people in the area, including my friend, who needed medical attention but could not easily obtain it in times of an accident or other severe medical trauma. Hopefully, no one else will ever have to be in that same situation when a friend or family member needs care. And, hopefully again, maybe our action will be part of the long-term solution to the overall issue of medical malpractice insurance reform.

Note: The Illinois legislature passed a bill to create a cap on noneconomic damages, which Governor Rod Blagojevich signed into law August 25.

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Keep Doctors in Wisconsin

A doctor where and when you need one. Whether a tragic accident or the birth of a baby, your concern shouldn't be how far it is to the specialist you need. But a recent State Supreme Court ruling means health care may get a lot more expensive for everyone in Wisconsin, and physicians may no longer be able to afford to practice here. Help ensure your family has access to care. Visit www.keepdoctorsinwisconsin.org.

Wisconsin Medical Society
Your Doctor. Your Health.