

The History of Chapter 655 and Limits on Non-Economic Damages in Wisconsin Health Care Liability Cases

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Statutory History

- 1975: Chapter 37, Laws of 1975 creates Chapter 655 of the Wisconsin Statutes; awards are limited to \$500,000 if the Fund's assets fall below certain levels.
- 1986 to 1991: Non-economic damages are limited to \$1,000,000.
- 1995 to 2005: Non-economic damages are limited to \$350,000, adjusted for yearly inflation.

Legislative Findings (supporting Chapter 37, Laws of 1975, § 1)

(1) The legislature finds that:

- (a) The number of suits and claims for damages arising from professional patient care has increased tremendously in the past several years and the size of judgments and settlements in connection therewith has increased even more substantially;
- (b) The effect of such judgments and settlements, based frequently on newly emerging legal precedents, has been to cause the insurance industry to uniformly and substantially increase the cost and limit the availability of professional liability insurance coverage;
- (c) These increased insurance costs are being passed on to patients in the form of higher charges for health care services and facilities;
- (d) The increased costs of providing health care services, the increased incidents of claims and suits against health care providers and the size of such claims and judgments has caused many liability insurance companies to withdraw completely from the insuring of health care providers;

- (e) The rising number of suits and claims is forcing both individual and institutional health care providers to practice defensively, to the detriment of the health care provider and the patient;
- (f) As a result of the current impact of such suits and claims, health care providers are often required, for their own protection, to employ extensive diagnostic procedures for their patients, thereby increasing the cost of patient care;
- (g) As another effect of the increase of such suits and claims and the costs thereof, health care providers are reluctant to and may decline to provide certain health care services which might be helpful, but in themselves entail some risk of patient injury;
- (h) The cost and the difficulty in obtaining insurance for health care providers discourages and has discouraged young physicians from entering into the practice of medicine in this state;
- (i) Inability to obtain, and the high cost of obtaining, such insurance has affected and is likely to further affect medical and hospital services available in this state to the detriment of patients, the public and health care providers;
- (j) Some health care providers have curtailed or ceased, or may further curtail or cease, their practices because of the nonavailability or high cost of professional liability insurance; and
- (k) It therefor appears that the entire effect of such suits and claims is working to the detriment of the health care provider, the patient and the public in general.

Selected Court Challenges to Chapter 655

- *State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 261 N.W.2d 434 (1978). The Wisconsin Supreme Court concluded that Chapter 655 does not violate equal protection or due process guarantees, does not constitute an unlawful delegation of judicial authority, and does not impair a malpractice claimant's right of trial by jury.
- *Rineck v. Johnson*, 155 Wis. 2d 659, 456 N.W.2d 336 (1990). The Wisconsin Supreme Court held that the \$1,000,000 cap superceded the lower cap for wrongful death where the death resulted from medical malpractice.
- *Martin v. Richards*, 192 Wis. 2d 156, 531 N.W.2d 70 (1995). The Wisconsin Supreme Court held that a retroactive application of the \$1,000,000

statutory cap on non-economic damages in medical malpractice cases does not violate substantive due process.

- *Jelinek v. St. Paul Fire & Casualty Ins. Co.*, 182 Wis. 2d 1, 512 N.W.2d 764 (1994). The Wisconsin Supreme Court held that, in light of the sunset of the \$1,000,000 statutory cap, recovery of non-economic damages in medical malpractice cases involving death was unlimited.
- *Czapinski v. St. Francis Hosp., Inc.*, 2000 WI 80, 236 Wis. 2d 316, 613 N.W.2d 120. The Court of Appeals held that the statutory cap on non-economic damages in wrongful death medical malpractice cases, Wis. Stat. § 893.55(4)(f), does not violate the equal protection clause of the Wisconsin Constitution.
- *Guzman v. St. Francis Hosp., Inc.*, 2001 WI App 21, 240 Wis. 2d 559, 623 N.W.2d 776. The Court of Appeals, in three separate opinions, held that the statutory cap on non-economic damages in Wis. Stat. §§ 655.017 and 893.55(4)(d) is constitutional and does not violate the right to a trial by jury, the right to a remedy clause, substantive due process or the doctrine of separation of powers.
- *Maurin v. Hall*, 2004 WI 100, 274 Wis. 2d 28, 682 N.W.2d 866. The Wisconsin Supreme Court held that the cap on non-economic damages in wrongful death medical malpractice cases does not violate the equal protection clause.
- *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125, 701 N.W.2d 440. The Wisconsin Supreme Court held the statutory cap on non-economic damages in medical malpractice cases violates the equal protection clause of the Wisconsin Constitution.