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Topic for the Month:

Medical Malpractice

Mark A. Bartels
Philip J. Danen
John P. D'Angelo
Marc A. Hammer
Timothy A. Hawley
Steven D. Hitzeman
Sandra L. Hupfer
Robert J. Janssen
Michael J. Kirschling
Evan Y. Lin
Jackson T. Main, Jr.
Lora A. Matzke
Christina L. Peterson
Kathryn M. Reinhard
Patricia J. Sandoz
C. David Stellpflug

444 Reid St., Suite 200
De Pere, WI 54115
920-336-5766
920-336-5769 (fax)
866-525-5200 (toll-free)
wislawyers.com

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Medical Malpractice: What is It? Under Wisconsin law, medical malpractice occurs when a physician violates the standard of care and it is proven a causal connection exists between this violation and the patient's injuries. The law recognizes that just because a bad medical result may occur, this does not prove a physician was negligent. The injured patient has the burden of proving a physician failed to use the degree of care, skill and judgment which reasonable physicians (within the same area of expertise) would exercise in the same or similar circumstances, having due regard for the state of medical science at the time the patient was treated or diagnosed.

Our Medical Malpractice System: Wisconsin's medical malpractice system is set forth in Chapter 655 of the Wisconsin Statutes. The core objective of our medical malpractice system is to ensure adequate and fair compensation for victims of medical malpractice. The system provides a means of identifying health care providers who are practicing below the standard of care. It also provides a means of deterring physicians and other health care providers from negligent practices. The task of the trial court is to conduct a fair and neutral evaluation of the merits of the case in light of the state's laws and constitution.

Recent Developments in Medical Malpractice Law: In 1995, the Wisconsin legislature passed a law which placed a cap on the amount of non-economic damages, recoverable in medical malpractice cases. Non-economic damages include damages to compensate for pain and suffering, mental distress, loss of enjoyment of normal activity and loss of society and companionship. In ***Ferdon v. Wisconsin Patients Compensation Fund,*** The Wisconsin Supreme Court held that this damage cap was unconstitutional. Application of the cap to certain victims violated the equal protection clause of the Wisconsin Constitution.

The Court analyzed our medical malpractice system, the legislative objectives for imposing a damage cap and the equal protection clause. The Court concluded, ***application of the damage cap led to unreasonable and arbitrary results.*** The cap on non-economic damages divided the universe of injured medical malpractice victims into two classes - a class of severely injured victims and less severely injured victims. Severely injured victims with more than $350,000 in non-economic damages received only part of their damages. Less severely injured victims with $350,000 or less in non-economic damages received full compensation. When applied to jury verdicts, the cap was regressive, penalizing malpractice victims who had sustained the most serious injuries.

The penalty was compounded in cases of malpractice which caused loss of society damage to the patient's spouse, minor children or parents. The cap limited the total non-economic damages to $350,000 per occurrence. This meant the ***total award*** for a patients claim for pain and suffering AND the claims of a spouse, minor children or parents (for loss of society and companionship), could not exceed $350,000. Whether there was one injured party or five, $350,000 was the total compensation available. The Court held a rational relationship did not exist between the classifications of victims, the $350,000 cap and the legislative objective of fair compensation to victims of medical malpractice.

The Court also concluded the $350,000 cap was not rationally related to the legislative objective of lowering medical malpractice premiums. After reviewing unbiased government reports, the **Court concluded there are many factors which affect malpractice premium rates and the rates are not affected by caps on non-economic damages.**

Our Malpractice System is Not Perfect: Due to the adversarial nature of our system, victims of malpractice are pitted against the health care provider in whom the patient and family previously placed their trust. To compound matters, there are a host of interest groups making claims there is a medical malpractice crisis pitting physicians against injured patients and their attorneys. The ***Ferdon*** decision shows that our system of checks and balances works. When a legislative act unreasonably invades rights guaranteed by the state constitution, a court has not only the power but also the duty to strike down the act. Our Supreme Court analyzed all arguments, for and against the damage cap and concluded the cap did not pass constitutional muster. We need to trust our jury system and the judges who have taken an oath to protect our constitutional rights.

Welcome to Our Newest Associate: Kathryn M. Reinhard recently joined our firm, as an associate attorney. Look for more information on Attorney Reinhard in the October issue of ***LawClips***. We are pleased and excited to have Attorney Reinhard as part of our ***full-service*** team.