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WI Supreme Court Upholds Non-Economic Damage Cap **Key WHA physician workforce advocacy priority remains intact**

Earlier this morning, the Wisconsin Supreme Court issued a 5-2 decision in the *Ascaris Mayo v. IPFCF* case upholding Wisconsin's \$750,000 cap on non-economic damages in medical liability cases enacted in 2006. The decision overturns lower court rulings that found Wisconsin's non-economic damage cap unconstitutional.

"Recruiting and retaining physicians to provide health care in rural and underserved communities is a top priority for Wisconsin and the Wisconsin Hospital Association," said Eric Borgerding, WHA President/CEO. "Today's Court decision preserves Wisconsin's balanced medical liability system that has been instrumental in attracting physicians to communities across Wisconsin, while providing assurance to injured patients that they will receive payment for the full amount of a jury's award of medical expenses, lost wages, and other economic losses."

Chief Justice Patience Roggensack wrote the majority opinion, and emphasized the importance of Wisconsin's balanced liability system.

"The legislature was concerned with massive noneconomic damage awards because they are unpredictable and often based on emotion," wrote Chief Justice Roggensack. "The legislature wanted to plan for accessible health care while providing reasonable compensation for those who are injured. The legislature chose to provide a mechanism to pay 100 percent of all damages arising from medical malpractice except for noneconomic damages, on which it placed a \$750,000 cap. The legislature made a rational policy choice by limiting noneconomic damages...."

"[A]ny cap, by its very nature, will limit the amount that some people will be able to recover," wrote Chief Justice Roggensack. "If the cap did not do so, it would have no economic effect. It must be noted however, that while there is a cap on noneconomic damages, there also is a guarantee of payment for all other categories of damages that a victim of medical malpractice may be awarded. No other tort has a guarantee of unlimited payment for a jury's award of economic damages."

Borgerding echoed the Chief Justice's conclusion. "Enacted with bipartisan support and signed by Democrat Governor Jim Doyle in 2006, Wisconsin's balanced system includes a unique guarantee of a full and uncapped payment of awarded economic damages, as well as capped, subjective non-economic damages," said Borgerding. "As Wisconsin continues to work to address current and future physician workforce shortages, that balanced medical liability system is just as important today as it was in 2006."

In January, WHA filed an amicus brief with the Supreme Court in support of the cap. A significant emphasis of that brief—authored by Timothy Feeley and Sara MacCarthy, attorneys with Hall, Render, Killian, Heath & Lyman P.C.—focused on the impact of the cap on access to care in Wisconsin.

Today's decision is a culmination of WHA's and the medical community's advocacy in the Legislature and the Courts to enact and protect public policy that preserves access to care across the state. In 2006, WHA joined many other groups to craft and enact bipartisan legislation that could withstand a constitutional challenge, and continued through WHA amicus briefs and coordination with other partners as this challenge worked its way up to the Supreme Court.

Please visit our website at www.wha.org to view the following:

- Supreme Court's Decision (6.27.18)
- WHA President Eric Borgerding Statement on Supreme Court Decision Regarding Medical Liability Caps (6.27.18)
- WHA's January 2018 Amicus Brief filed with the Supreme Court (01.2018)
- *Valued Voice* Article: AB 1073 Becomes 2005 Wisconsin Act 183 (3.24.06)