



DATE: March 2, 2006

TO: Members, Wisconsin State Assembly

FROM: Eric Borgerding – Senior Vice President
Matthew Stanford – Associate Counsel

RE: **Support for AB 1071, AB 1072, and AB 1074**

Assembly Bill 1071:

WHA supports AB 1071, a bill that would address a 2005 Wisconsin Supreme Court decision regarding the statute of limitations applicable to actions brought by developmentally disabled minors against health care providers. In that decision, the Court found that the statute of limitations that is generally applicable to minors' medical malpractice actions does not apply to actions brought by developmentally disabled or imprisoned children. The Court also found that the general statute of limitations for medical malpractice actions does not apply. AB 1071 provides a definite statute of limitations for minors who are developmentally disabled or imprisoned when they are injured by medical malpractice, providing the same limitation provided to other minors.

Assembly Bill 1072:

The WHA supports AB 1072, a bill that would abrogate Wisconsin's collateral source rule. When a court is determining the amount of damages sustained by a plaintiff, this bill would allow a court to consider evidence of payments made by insurers and other third party payors for the treatment of the plaintiff. This bill addresses a recent Wisconsin Supreme Court decision that held that current law does not allow courts to consider evidence of such third party payments when determining a plaintiff's damages. Ignoring such payments could artificially increase the size of medical malpractice claims by allowing plaintiffs to recover expenses they never actually incurred. This bill will prevent such windfalls, thereby curbing the rising cost of providing medical services in Wisconsin while still protecting the "make whole" principle central to tort law.

Assembly Bill 1074:

WHA supports AB 1074, a bill that would allow an injured plaintiff to receive more of a jury award or settlement. One unspoken reality of medical liability cases is that injured plaintiffs pay a significant amount of their award to their personal injury lawyers in the form of attorney contingency fees and other legal costs. In general negligence cases, an attorney's contingency fees are frequently 33% or more of a jury award or settlement. AB 1074 would lower Wisconsin's contingency fee limit to the same statutory limit used in California, thereby placing more of an award or settlement in the hands of an injured plaintiff. In fact, if AB 1074 were in effect for the Ferdon case, Matthew Ferdon and his family would have received over \$120,000 more of their award. Furthermore, despite claims that this bill would make it more difficult for plaintiffs to find a lawyer, the evidence from California shows otherwise; California has on average more, not fewer, paid medical malpractice claims per capita than does Wisconsin.