

# Missouri's medical liability reform again contested in court

JUN 15, 2021

**Tanya Albert Henry**

Contributing News Writer

---

Missouri's highest court will decide whether a 2015 law that limits how much a jury can award for noneconomic damages in a medical liability lawsuit is constitutional. The court's finding will ultimately affect Missouri patients' access to quality and affordable care, physicians say.

Upholding the cap that lawmakers adopted would help ensure that Missouri physicians have access to affordable professional medical liability insurance, discourage the practice of defensive medicine and ensure that new physicians want to set up practice in the state while the ones already practicing there stay. Those are among the key points in an amicus brief filed with the court by the Litigation Center of the American Medical Association and State Medical Societies and the Missouri State Medical Association (MSMA).

The brief cites numerous studies supporting those arguments, including a study that found reduced access to care as physicians looked to reduce their medical liability exposure. Researchers discovered 38% of physicians surveyed for one study cut the number of high-risk procedures they performed and 28% reduced the number of high-risk patients they saw to lower their liability risk.

Missouri's 2015 law caps noneconomic damages in medical malpractice cases to \$400,000 for noncatastrophic injuries and \$700,000 for catastrophic injuries.

"Other states have noneconomic damage limits in the same range as Missouri. These limits are a rational response to a sustained distortion of liability law; they recognize that the broader public good is served when liability remains reasonable and predictable," says the brief in the case, *Velazquez v. University Physician Associates et al.* The brief also notes that other state courts and federal courts have upheld limits on noneconomic damages.

The issue comes before the state's highest court after Maria Del Carmen Ordinola Velazquez sued multiple physicians and University Physician Associates. She alleged negligence related to the delivery of her child and the postpartum care. A jury awarded her \$330,000 in economic damages and \$700,000 in noneconomic damages.

The physicians and practice asked the court to reduce the noncomomic portion to \$400,000; Velazquez said the law requiring that reduction was unconstitutional. The court rejected the argument that the 2015 law was unconstitutional. It also found that Velazquez's injury was "catastrophic," capping the damages at \$700,000 plus a cost-of-living adjustment.

Both sides appealed and the appellate court sent it straight to the state Supreme Court because the case deals with a question of constitutionality.

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center's case-selection criteria.

## Reforms show impact in Missouri

Missouri has previously seen how not having caps on the noneconomic portion of a jury award can have "harsh, negative consequences for patients and physicians alike," the brief tells the court. The state first enacted a cap in 1986, stabilizing insurance premiums that hit an all-time high increase of 131% in 1981.

Then a 2002 Missouri Court of Appeals decision weakened the 1986 law. Surveys found an average 78% rise for individual premiums between 2002 and 2003 and 38% between 2003 and 2004. Several large carriers also left the market or became insolvent, making it hard for physicians to find liability insurance.

In response, lawmakers in 2005 modified the earlier law. Insurers cut medical liability insurance rates for physicians and doctors began returning to practice in the state. Leading up to the 2005 reform, 225 physicians left the state, but by 2009 Missouri added 486 physicians. But the court struck down that reform in 2012. So, in 2015, lawmakers passed bipartisan legislation that addressed the court's concerns with the 2005 modifications.

The law that Velazquez is challenging "was a thoughtful, balanced response to concerns that the high costs and decreasing availability of medical professional liability insurance would hinder the ability of Missourians to access quality and affordable health care," the AMA Litigation Center and MSMA brief says in urging the court to uphold Missouri's current statute.

The 2021 edition of the AMA's *Medical Liability Reform NOW!* will give you the facts you need to



know to address the broken medical liability system.