

# Medical liability noneconomic damages cap survives challenge

AUG 26, 2021

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The Missouri Supreme Court has upheld the constitutionality of the legislature's cap on noneconomic damages in medical negligence cases. The court acknowledged that the state General Assembly replaced all common law medical negligence claims and that "because a medical negligence action is a statutorily created cause of action, the General Assembly had the legislative authority to enact statutory non-economic damage caps."

The 5–1 ruling upholds a 2015 Missouri law limiting how much a jury can award for noneconomic damages in a medical liability lawsuit as constitutional. The court's ruling will ultimately help ensure Missouri patients' access to quality and affordable care.

Upholding the cap that lawmakers adopted helps 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 were 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).

## How rising liability risk affects care

The brief cited 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," said 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 came 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 noneconomic 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.

The law that Velazquez challenged "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 said in urging the court to uphold Missouri's current statute, as it ultimately did.

The 2021 edition of the AMA's *Medical Liability Reform NOW!* (PDF) will give you the facts you need to know to address the broken medical liability system.