IN THE TENTH DISTRICT COURT OF APPEALS
FRANKLIN COUNTY, OHIO

SUSANA LYON,	:	
	:	
Appellee	:	**Appeal No. 23-AP-000379**
	:	
v.	:	**On Appeal from the Franklin**
	:	**County Court of**
RIVERSIDE METHODIST	:	**Common Pleas**
HOSPITAL, et al.,	:	**Case No. 16-CV-012056**
	:	

MOTION OF AMICI CURIAE, OHIO HOSPITAL ASSOCIATION, OHIO ALLIANCE FOR CIVIL JUSTICE, OHIO STATE MEDICAL ASSOCIATION, AND OHIO OSTEOPATHIC ASSOCIATION, FOR LEAVE TO FILE AMICUS CURIAE BRIEF, *INSTANTER*

Pursuant to App. R. 17, Amici Curiae, Ohio Hospital Association ("OHA"), Ohio Alliance for Civil Justice ("OACJ"), Ohio State Medical Association ("OSMA"), and Ohio Osteopathic Association ("OOA") hereby move this Court for leave to file an Amicus Curiae Brief, which is attached hereto and has been conditionally filed herewith.

The OHA is a private, nonprofit trade association established in 1915 as the first state level hospital association in the United States. OHA has provides a forum for Ohio hospitals to come together and advocate

for health care legislation and policy in the best of interests of hospitals and their communities. The OHA is comprised of 248 hospitals and 15 health systems. OHA's member hospitals directly employ over 430,000 Ohioans. In 2022, patients had more than 36,000,000 encounters at Ohio hospitals.

The OACJ is a group of small and large businesses, trade and professional associations, professionals, non-profit organizations, local government associations, and others. The OACJ leadership includes members from the Ohio Manufacturers Association, Ohio Council of Retail Merchants, NFIB Ohio, Ohio Chamber of Commerce, Ohio Association of Certified Public Accountants, Ohio Hospital Association, Ohio State Medical Association, and other organizations. OACJ members support a balanced civil justice system that provides sufficient safeguards to ensure that defendants are not unjustly penalized and plaintiffs are fairly compensated, but not unjustly enriched.

The OSMA is a nonprofit professional association established in 1835 and is comprised of physicians, medical residents, and medical students in Ohio. The OSMA's membership includes most Ohio

physicians engaged in the private practice of medicine. The OSMA's purposes are to improve public health through education, encourage interchange of ideas among members, and maintain and advance the standards of practice by requiring members to adhere to the concepts of professional ethics.

The OOA advocates for approximately 6,000 osteopathic physicians, historically-osteopathic hospitals, and 1,000 osteopathic medical students. OOA is a state society of the American Osteopathic Association. OOA's founding purposes include promoting the health of all Ohioans; cooperating with all public-health agencies; maintaining high standards at all Ohio osteopathic institutions; encouraging research and investigation, especially pertaining to the principles of the osteopathic school of medicine; and maintaining the highest standards of ethical conduct in all phases of osteopathic medicine and surgery.

For more than 25 years, the OHA, OAJC, OSMA, and OOA have been proactive in supporting the interests of their members on civil justice issues, including supporting reasonable tort reform laws. Amici and their members support reasonable compensation for injuries caused by

another's negligence. However, damage awards that are unpredictable, unlimited, and virtually impossible to reverse are inconsistent with a fair civil justice system, as they unjustly enrich some while unjustly penalizing others. That is why amici have supported reasonable legislation limiting noneconomic damages, such as R.C. 2323.43.

Amici have an interest in this case because the trial court's decision declaring the medical claim damage cap in R.C. 2323.43 unconstitutional is of great concern to Ohio hospitals, physicians, and the greater health care community. If this decision is allowed to stand, it will be detrimental to Ohioans because it reverses the public policy decisions made by the General Assembly, which were made to stabilize of the cost of health care delivery, allow continued access to quality health care in Ohio, and strike a reasonable balance between plaintiffs and defendants in considering an award for purely subjective noneconomic damages. As such, the OHA seeks to provide this court with a broad perspective on the major issues

surrounding noneconomic damages, which will affect all hospitals in Ohio and the communities they serve.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon the following counsel of record via electronic mail January 26, 2024:

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BRIEF OF AMICI CURIAE, OHIO HOSPITAL ASSOCIATION, OHIO ALLIANCE FOR CIVIL JUSTICE, OHIO STATE MEDICAL ASSOCIATION, AND OHIO OSTEOPATHIC ASSOCIATION

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I. STATEMENT OF FACTS

Amici Curiae, Ohio Hospital Association ("OHA"), Ohio Alliance for Civil Justice ("OACJ"), Ohio State Medical Association ("OSMA"), and Ohio Osteopathic Association ("OOA"), defer to the statement of facts submitted by Appellants in this case.

II. INTEREST OF AMICUS CURIAE

The OHA is a private, nonprofit trade association established in 1915 as the first state level hospital association in the United States. OHA has provides a forum for Ohio hospitals to come together and advocate for health care legislation and policy in the best of interests of hospitals and their communities. The OHA is comprised of 248 hospitals and 15 health systems. OHA's member hospitals directly employ over 430,000 Ohioans. In 2022, patients had more than 36,000,000 encounters at Ohio hospitals.

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Retail Merchants, NFIB Ohio, Ohio Chamber of Commerce, Ohio Association of Certified Public Accountants, Ohio Hospital Association, Ohio State Medical Association, and other organizations. OACJ members support a balanced civil justice system that provides sufficient safeguards to ensure that defendants are not unjustly penalized and plaintiffs are fairly compensated, but not unjustly enriched.

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all Ohioans; cooperating with all public-health agencies; maintaining high standards at all Ohio osteopathic institutions; encouraging research and investigation, especially pertaining to the principles of the osteopathic school of medicine; and maintaining the highest standards of ethical conduct in all phases of osteopathic medicine and surgery.

For more than 25 years, the OHA, OAJC, OSMA, and OOA have been proactive in supporting the interests of their members on civil justice issues, including supporting reasonable tort reform laws. Amici and their members support reasonable compensation for injuries caused by another's negligence. However, damage awards that are unpredictable, unlimited, and virtually impossible to reverse are inconsistent with a fair civil justice system, as they unjustly enrich some while unjustly penalizing others. That is why amici have supported reasonable legislation limiting noneconomic damages, such as R.C. 2323.43.

The trial court ruled that the noneconomic damage caps for medical claims set forth in R.C. 2323.43 — which have been in existence for more than 20 years — are unconstitutional on due process and equal protection grounds. The noneconomic damage caps for medical claims are of great

importance to amici, as well as to the greater health care community throughout Ohio. Amici were proponents of noneconomic damage caps in the General Assembly when R.C. 2323.43 was adopted (as part of Senate Bill 281 ("S.B. 281") in 2003) and can state unequivocally that these caps have provided much needed stability in the availability of medical malpractice insurance in the state and affordability of that coverage, and have stemmed the tide of physicians retiring or leaving the state.

When these noneconomic damage caps were proposed more than two decades ago, the loss of physicians and the inability to recruit primary care physicians and obstetricians was a great concern to many rural areas in Ohio. At that same time, renowned health care providers in Ohio — such as The Ohio State University and the Cleveland Clinic — found it difficult to recruit and retain specialists, thereby hampering their ability to enhance and grow their nationally and internationally renowned teams of clinical and research physicians in order to provide better health care for all Ohioans.

Ohio faced a health care crisis in the late 1990s and early 2000s, due at least in part, to medical malpractice litigation. During that crisis, more than half the state's medical liability carriers left the market, and physicians and hospitals faced a significant increase in premiums. (attached hereto as Exhibit 1, excerpts from Report of Ohio Medical Malpractice Commission, April 2005, at 4, including Exhibits D and E thereto). During this same time period, numerous hospitals closed maternity wards and eliminated hospital services. Sadly, many hospitals and medical practices closed their doors entirely.[1]

It was against this backdrop that the General Assembly adopted S.B. 281, including its important cap on noneconomic damages. Recognizing that noneconomic damages are by their nature imprecise and without true measure, the General Assembly placed limits on such damages, while allowing plaintiffs to collect the full measure of their quantifiable economic damages. The General Assembly also provided a higher cap for

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[1] From 1994-2003, approximately 32 different hospitals were closed, compared with only 22 during the prior 14-year period, according to data maintained by the OHA.

persons who suffered the most severe injuries (sometimes referred to as catastrophic injuries).

As set forth in R.C. 2323.43's uncodified law, the General Assembly's response to the then-existing health care crisis was a deliberate (and appropriate) balancing of all parties' interests. S.B. 281, Section 3(A)-(C). And, at the time it enacted R.C. 2323.43, the General Assembly was keenly aware that many other states had already enacted noneconomic damage caps for medical claims and that not having them may make Ohio a less attractive state for physicians and other health care providers. *Id.,* Section 3(A)(3)(e).

Amici ask this Court to overturn the erroneous decision of the trial court and find that the caps on noneconomic damages set forth in R.C. 2323.43 are constitutional under the due process and equal protection clauses of the Ohio Constitution as they meet the applicable rational basis test.

III. INTRODUCTION

A. Brief History of Purely Subjective Noneconomic Damages

"One cannot deny that noneconomic damages awards are inherently subjective and difficult to evaluate." *Arbino v. Johnson & Johnson,* 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 69. "There is no scale by which the detriment caused by suffering can be measured and hence there can be only a very rough correspondence between the amount awarded as damages and the extent of the suffering." Restatement (Second) of Torts § 903, comment a (1965). Juries are "left with nothing but their consciences to guide them." Stanley Ingber, *Rethinking Intangible Injuries: A Focus on Remedy,* 73 Cal. L.Rev. 772, 778 (1985).

Historically, noneconomic damage awards were modest and noncontroversial. Decades ago, the availability of noneconomic damages and fact finders' inability to objectively measure pain and suffering did not raise serious concern because "personal injury lawsuits were not very numerous and verdicts were not large." Philip L. Merkel, *Pain and Suffering Damages at Mid-twentieth Century: A Retrospective Review of the Problem and the Legal Academy's First Responses,* 34 Cap. U. L. Rev.

554, 560 (2006). In addition, prior to the twentieth century, courts often reversed large noneconomic damage awards. *See*, Ronald J. Allen and Alexia Brunet Marks, *The Judicial Treatment of Noneconomic Compensatory Damages in the Nineteenth Century,* 4 J. Empirical Stud. 365, 369 (2007). Early awards in Ohio are consistent with this national experience.[2]

By the 1970s, however, pain and suffering awards often constituted the single largest item of recovery in tort lawsuits. *See Nelson v. Keefer*, 451 F.2d 289, 294 (3d Cir. 1971). This trend continued.[3] As Judge

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[2] For example (and not by any means an exhaustive list), *see, e.g.*, *Osman v. Cook*, 43 N.E.2d 641, 645, (2d Dist. 1942) (affirming $11,000 award [about $191,000 today] to a young plaintiff who suffered a brain injury as a result of a collision with an ambulance); *Barnett v. Hills*, 79 N.E.2d 691, 692 (2d Dist. 1947) (affirming $17,500 award [about $208,000 today] to a 24 year-old plaintiff who permanently lost her ability to work or have children); *Coppock v. Horine*, 32 Ohio L. Abs. 109, 111, 1940 WL 2942 (2d Dist. 1940) (remitting $12,000 award to $10,000 [$196,000 today] to a 45 year-old who became totally disabled as a result of a car accident). All adjustments for inflation in this brief are computed through the U.S. Bureau of Labor Statistics CPI Inflation Calculator, http://www.bls.gov./data/inflation_calculator.htm.

[3] "Nuclear verdicts," generally defined as awards of $10,000,000 or more, often include noneconomic damages that are vastly disproportionate to other damages in the case, are rising in frequency. *See* Shawn Rice, *Nuclear Verdicts Drive Need for Insurers Litigation Change,* Law 360, September 8, 2021 (Reporting that between 2010 and 2018, the average size of verdicts exceeding $1,000,000 rose nearly 1,000% from $2,300,000 to $22,300,000 and that nuclear verdicts "encompass awards where the noneconomic damages are extremely disproportionate.")

Niemeyer of the U.S. Court of Appeals for the Fourth Circuit observed in 2004, "irrationality [i.e., the lack of "rational criteria for measuring damages"] and awarding [m]oney for pain and suffering… provides the grist for the mill of our tort industry." Paul V. Niemeyer, A*wards for Pain and Suffering: The Irrational Centerpiece of our Tort System,* 90 Va.L.Rev.1401, 1401 (2004). In fact, pain and suffering awards in the United States are often more than 10 times higher than those in the most generous of other nations. *See* Stephen D. Sugarman, C*omparative Look at Pain and Suffering Awards,* 55 DePaul L.Rev. 399, 399 (2006).

It was against this backdrop of escalating, unpredictable, and unlimited noneconomic damage awards that the General Assembly considered measures to curtail Ohio's growing health care crisis.

B. <u>Background of R.C. 2323.43</u>

As set forth in the Statement of Interest of Amici Curiae, the General Assembly enacted S.B. 281 — tort reform measures applicable to medical claims — in 2003 in light of a health care crisis in Ohio. One of the main provisions of S.B. 281 is the cap on noneconomic damages in R.C. 2323.43, which provides in relevant part:

(A) In a civil action upon a medical * * * claim to recover damages for injury, death, or loss to a person or property, all of the following apply:

(1) There shall not be any limitation on compensatory damages that represent the economic loss of the person who is awarded the damage in the civil action.

(2) Except as otherwise provided in division (A)(3) of this section, the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a civil action * * * shall not exceed the greater of two hundred fifty thousand dollars or an amount that is equal to three times the plaintiff's economic loss * * * to a maximum of three hundred fifty thousand dollars for each plaintiff or five hundred thousand dollars for each occurrence.

(3) The amount recoverable for noneconomic loss in a civil action under this section * * * may exceed the amount described in division (A)(2) * * * but shall not exceed five hundred thousand dollars for each plaintiff or one million dollars for each occurrence if the noneconomic losses of the plaintiff are for either of the following:

(a) Permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system;

(b) Permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life sustaining activities.

* * * * *

Hence, R.C. 2323.43 provides a two-tiered cap on noneconomic damages, with a higher cap available to those with the most severe (sometimes referred to as "catastrophic") injuries as set forth in R.C. 2323.43(A)(3).

In enacting R.C. 2323.43, the General Assembly made detailed findings and expressed its intent in uncodified law.[4] For instance, the first three findings in the uncodified law are as follows:

> (A) The General Assembly finds:
>
> (1) Medical malpractice litigation represents an increasing danger to the availability and quality of health care in Ohio;
>
> (2) The number of medical malpractice claims resulting in payments to plaintiffs has remained relatively constant. However, the average award to plaintiffs has risen dramatically. Payments to plaintiffs at or exceeding one million dollars have doubled in the past three years.
>
> (3) This state has a rational and legitimate state interest in stabilizing the cost of health care delivery by limiting the amount of compensatory damages representing noneconomic loss award in medical malpractice actions. The overall cost of healthcare to the consumer has been

[4] Uncodified law is the law of Ohio, but it is not assigned a permanent section number in the Revised Code. *See Maynard v. Eaton Corp.*, 119 Ohio St.3d 443, 2008-Ohio-4542, 895 N.E.2d 145, ¶ 7.

> driven up by the fact that malpractice litigation causes health care providers to over prescribe, over treat, and over test their patients. * * *

Thus, although not required to do so, the General Assembly articulated its "rational and legitimate state interest" in enacting R.C. 2323.43.

In enacting R.C. 2323.43, the General Assembly determined that the unpredictability of unlimited noneconomic damages (*i.e.*, the potential for runaway damage awards) threatened the economic stability of businesses, the medical profession, the affordability of liability insurance for health care providers, and resulted in increased costs for patients.

IV. LAW AND ARGUMENT

A. Summary of Argument

Even though R.C. 2323.43 has existed in its current form for more than 20 years, no Ohio appellate court to date has addressed the issue of its constitutionality.[5]

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[5] There have been at least seven trial court decisions (not including this case) addressing the noneconomic damage caps contained in R.C. 2323.43, but none resulted in an appellate ruling. Three of these cases were from Franklin County, one from Lucas County, one from Montgomery County, one from Cuyahoga County, and one from Summit County.

The trial court held that R.C. 2323.43 was unconstitutional on two grounds — that it violated due process and equal protection under the Ohio Constitution. Although the trial court recognized that the applicable test is the rational basis test for both due process and equal protection, it did not properly apply this test.

1. Due Process

The trial court determined that R.C. 2323.43 lacked a rational basis under a due process analysis because the statute does not allow an award of unlimited noneconomic damages for catastrophic injuries while R.C. 2315.18[6] does allow such awards for catastrophic injuries in other personal injury cases. (Trial Court Decision ("Decision") at 6.) However, the rational basis test looks to the reasons the legislature enacted the statute at issue in the instant case (R.C. 2323.43), and whether there was a rational basis to support it. The test is not whether there was a rational basis for the legislature to pass some other statute not at issue in this case. Further, the trial court failed to consider or analyze the reasons the

[6] R.C. 2315.18 is the noneconomic damage cap applicable to general tort claims. It does not apply to "medical claims" as defined in R.C. 2323.43.

General Assembly expressly provided for enacting the tiered recovery of noneconomic damages for medical claims set forth in R.C. 2323.43.

The rational basis test does not require that the approach chosen by the legislature be the only option or the option that the court would have selected; it only requires that there be a rational basis supporting the legislative policy. The legislature articulated several bases including the need to stabilize the medical malpractice insurance market, the need to stop practitioners from leaving the state, data that caps on noneconomic damages in other states have been shown to stabilize medical malpractice premium rates, and the conclusion that drawing the distinction among claimants strikes a reasonable balance between the interests of plaintiffs and defendants. S.B. 281, Section 3(A)-(B). These are more than adequate, reasonable and rational bases for the legislative decision to cap noneconomic damages in medical malpractice cases in this manner.

2. Equal Protection

Similarly, the trial court concluded that R.C. 2323.43 "is not rational under the equal protection clause because it does not treat similarly situated plaintiffs the same." (Decision at 9.) In reaching this

conclusion, the trial court relied on a prior trial court decision which found that no other state had similar strict limits on noneconomic damages in the context of medical malpractice cases. *Id*., citing *Metts v. Nationwide Children's Hospital,* 14CV2543, Decision (C.P. Franklin Cty., Dec. 11, 2018) (J. Schneider). As will be discussed in greater detail below, that conclusion was incorrect when made by Judge Schneider in 2018 and is still incorrect today.

Further, it does not appear that the lower court considered the detailed and specific fact findings made by the General Assembly when it enacted S.B. 281.

It is well-established that the legislative branch is the ultimate arbiter of public policy, not the judiciary. *See Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 21. As the United States Supreme Court held decades ago, it "does not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions." *Griswold v. Connecticut*, 381 U.S. 479, 482, 85 S.Ct. 1678, 14 L.Ed.2d. 510 (1965). As long as there is some rational basis for the legislature's policy decision, it should be upheld as

constitutional.

B. R.C. 2323.43 is Constitutional on Due Process Grounds

1. The rational basis test is applicable

All statutes enjoy a strong presumption of constitutionality. Before a statute is declared unconstitutional, "it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 467, 2007-Ohio-6948, ¶ 25, citing *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59, ¶ 1 syllabus (1955) .

In considering the due process challenge to the noneconomic damages statute, the rational basis test is to be utilized. (Decision at 4, citing *Arbino*, ¶49.) Under the rational basis test, a court looks at whether the statute at issue (1) bears a real and substantial relation to the public health, safety, morals or general welfare of the public, and (2) is not unreasonable or arbitrary. *Id.*, citing *Mominee v. Scherbarth*, 28 Ohio St.3d. 270, 274, 503 N.E.2d 717 (1986).

As articulated by the General Assembly, the noneconomic damage caps were enacted to stabilize the cost of health care delivery by limiting

the amount of compensatory damages representing noneconomic loss awards, to ensure the continued availability of medical malpractice liability insurance in Ohio, and to ensure the continued availability of an adequate supply of general and specialty physicians practicing in Ohio. S.B. 281, Section 3(A)-(B).

In relevant part, the General Assembly stated as follows regarding the distinction it drew in permitting higher noneconomic damages for those most severely injured, in R.C. 2323.43's uncodified law:

> (4)(a) The distinction among claimants with a permanent physical functional loss strikes a reasonable balance between potential plaintiffs and defendants in consideration of the intent of an award for noneconomic losses, while treating similar plaintiffs equally, acknowledging that such distinctions do not limit the award of actual economic damages.
>
> (b) The limit on compensatory damages representing noneconomic loss * * * [as specified in section 2323.43 of the Revised Code] is based on testimony asking the members of the General Assembly to recognize these distinctions and stating that the cap amounts are similar to caps on awards adopted by other states.

Id., Section 3(A)(4)(a) and (b).

In enacting R.C. 2323.43, the General Assembly—after considering

differing policy concerns relative to the ongoing medical malpractice crisis—adopted a two-tier system with a higher noneconomic damage cap for the most severe injuries and a lower cap for less severe injuries. This legislative solution meets the rational basis test.

2. The lower court failed to properly apply the rational basis test

Although the trial court stated that it was applying the rational basis test to the due process challenge, it did not apply that test correctly. In comparing the two-tiered system of noneconomic damage recovery for medical claims found in R.C. 2323.43 to the two-tiered system for other tort cases found in R.C. 2315.18, the trial court concluded that the statute was "irrational and arbitrary" because there was no rational basis for treating medical negligence claims differently than other negligence claims. In fact, the General Assembly not only gave careful thought to these damage caps, it specifically expressed its rationally based reasons for the damage caps in the uncodified law of R.C. 2323.43. ***However, the trial court's decision does not even mention the uncodified law or the General Assembly's reasons underlying the caps for medical claims.***

Further, the rational basis test does not require the comparison of one legislative enactment to a different legislative enactment. It simply requires an analysis of whether a legislative enactment is rational in isolation.

In reaching its conclusion that the noneconomic damage caps violate due process, the trial court relies on *Metts, supra* (another trial court decision), which gives the example of a man who loses his leg in surgery versus the same man who loses his leg after an automobile accident. *Metts* concludes that it was irrational for the hypothetical man to be able to recover unlimited noneconomic damages in the automobile accident example while having his noneconomic damages capped in the hypothetical medical malpractice example. This is a false equivalency as Ohio law allows for different damages for the same injury in multiple circumstances.

For example, if this same man were to lose his leg in a workplace accident, the worker's compensation system would provide compensation under an entirely separate schedule of recovery, with benefits strictly tailored and limited to that injury compensation system. Similarly, if that

same man loses his leg as a result of liability of the City of Columbus, his noneconomic damages would be capped at $250,000 under R.C. 2744.05(C) (the noneconomic damage cap applicable to political subdivisions). The statutory cap on noneconomic damages in claims against political subdivisions—which has been upheld as constitutional by the Ohio Supreme Court[7] — is based on the public policy of safeguarding taxpayer resources. If noneconomic damages can be capped by the legislature for that sound policy reason, they can likewise be capped by the legislature to ensure the accessibility and availability of health care at affordable costs to all residents of Ohio.

As the United States Supreme Court and the Ohio Supreme Court have made clear, courts are not to sit as super-legislatures — deference must be given to the legislature's policy decisions. *See Griswold v. Connecticut*, 381 U.S. 479, 482, 85 S.Ct. 1678, 14 L.Ed.2d. 510 (1965); *Arbino v. Johnson & Johnson,* 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 58.

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[7] *See Oliver v. Cleveland Indians Baseball Company, Ltd. Partnership*, 123 Ohio St.3d 278, 2009-Ohio-5030, 915 N.E.2d 1205.

3. “Anchoring” noneconomic damages leads to increased jury verdicts

In the trial court, Appellee argued that capping noneconomic damages at $500,000 means that she will only receive “an additional $150,000 in exchange for a 40-year nursing home stay … [which] equates to less than $4,000 per year . . .” *See* Plaintiff’s Motion to Declare Damage Caps Unconstitutional, filed May 1, 2023. This type of mathematical formula argument is often referred to as “anchoring.” Empirical evidence confirms that anchoring “dramatically increases” noneconomic damage awards. John Campbell, et al, *Time is Money: An Empirical Assessment of Noneconomic Damages Arguments,* 95 Wash. U. L.Rev. 1, 28 (2017). This is precisely the type of calculation juries are cautioned against in standard instructions:

> The suggestion of counsel in argument that you use a mathematical formula to compensate for pain and suffering cannot be considered as evidence. There is no recognized unit of value for pain and suffering. Compensation for pain and suffering is solely within your province in the event you find for the Plaintiff. *OJI-CV 315.05*

The damage caps enacted by Ohio have undoubtedly helped to minimize run-away verdicts arising from medical claims in Ohio.

Turning again to the uncodified law enacted in S.B. 281, the legislature expressly stated in Section 3(A)(3)(b) and (c):

> (b) Many medical malpractice insurers left the Ohio market as they face increasing losses, largely as a consequence of rapidly rising compensatory damages and noneconomic loss awards in medical malpractice actions. The Department of Insurance reports that only six admitted carriers continue to actively write coverage in Ohio at this time.
>
> (c) As insurers have left the market, physicians, hospitals and other health care practitioners have had an increasingly difficult time finding affordable medical malpractice insurance. Some health care practitioners, including a large number of specialists, have been forced out of the practice of medicine altogether as a consequence. The Ohio State Medical Association reports fifteen percent of Ohio physicians are considering or have already relocated their practices due to rising medical malpractice insurance costs.

Respectfully, the trial court erred in its conclusion that there was no rational basis for the damage caps enacted by the legislature in R.C. 2323.43. ***The issue*** before the trial court and this Court ***is*** not whether it would have made the same decision as the legislature, but ***whether the legislature had a rational basis for the decision it made.*** Since the legislature had an articulated basis which was reasonable, rational, and calculated to meet the objectives sought for the protection of the

population of the State, the noneconomic damage cap statute must be upheld against a constitutional challenge on due process grounds.

C. R.C. 2323.43 is Likewise Constitutional Under an Equal Protection Challenge

The trial court also found R.C. 2323.43 unconstitutional on equal protection grounds, concluding that because R.C. 2323.43 limits the maximum award of noneconomic damages for severely injured medical claim plaintiffs, but not for other severely injured tort plaintiffs subject to R.C. 2315.18, the statute was not rational. Again, this disregards the grounds articulated by the General Assembly in the uncodified law for the structure of the noneconomic damage caps for medical malpractice plaintiffs, which establishes a rational basis for that structure.

Rational basis review under equal protection principles "is not license for courts to judge the wisdom, fairness, or logic of legislative choices." *Federal Communications Commission v. Beach Communications, Inc.*, 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L.Ed. 211 (1993). Challenges to a statute must therefore overcome the strong presumption of constitutionality enjoyed by each statute and prove

"beyond a reasonable doubt" that a challenged statute is unconstitutional. *Beatty v. Akron City Hospital*, 67 Ohio St.2d 483, 593, 424 N.E.2d 586 (1981), citing *State ex rel. Dickman v. Deffenbacher*, 164 Ohio St.2d at 142. Under the rational basis test, courts will ***not*** overturn a statute "unless the varying treatment of different groups is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *State ex rel. Keefe v. Eyrich*, 22 Ohio St.3d 164, 165, 489 N.E.2d 259 (1986), quoting *Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 59 L.E.2d 171 (1979).

When undertaking this inquiry, the asserted basis need not be substantiated with scientific precision. Indeed, the United States Supreme Court has opined:

> [B]ecause we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenge distinction actually motivated the legislature. … In other words, a legislative choice is not subject to court room fact finding and may be based on rational speculation unsupported by evidence of empirical data. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible preserve the legislative branch its rightful independence and its ability to function.

Beach Communications, 508 U.S. at 315 (citations and internal quotations omitted).

Far from being speculative, the legislative history (as documented in R.C. 2323.43's uncodified law) reveals the rational and legitimate bases upon which the General Assembly enacted R.C. 2323.43. In enacting the noneconomic damage caps for medical claims, the General Assembly addressed the substantial state interests in creating a level of certainty in the award of damages that are intangible, inherently subjective, and not readily ascertainable. The General Assembly had before it testimony and studies suggesting the many ways that noneconomic damages bore a real, direct and substantial negative effect on the ability of hospitals and physicians to obtain medical malpractice insurance in Ohio, the affordability of such coverage, and the loss of physicians practicing in the state. Retrospectively, since the adoption of R.C. 2323.43 in 2003, medical malpractice insurance rates in Ohio have stabilized, there are more options available for insurance coverage and there are more physicians in Ohio.

The General Assembly decided, as a matter of policy, that limits to noneconomic damages were a desirable means of promoting health care stability in Ohio. The General Assembly sought to balance the interests of injured tort claimants, providing a tiered system with a higher, but still limited cap for certain types of severe permanent injury. The General Assembly did not limit awards of economic damages for any plaintiff pursuing a medical claim, allowing all plaintiffs to receive full recovery for past and future medical expenses, past and future care, past and future lost wages, and other economic losses. Given the inherent inability to place an actual dollar value on noneconomic damages, the General Assembly reasonably and rationally placed limits on those damages. The economic wellbeing of the state's health care system is most assuredly a legitimate state interest and the public policy choice to enact limits on noneconomic damages should not be second guessed.

Instead of looking to the General Assembly's rationale, the trial court cited to *Metts*, *supra*, in which the court found that there was no other state like Ohio where a statute allowed different noneconomic damages, depending on the type of claim. (Decision at 9.) This is

incorrect. Like Ohio, other states have different noneconomic damages caps for medical claims and other personal injury tort cases. *See* Exhibits 2 and 3 attached hereto.

For example, in a case involving a constitutional challenge to noneconomic damage caps, the Colorado Supreme Court noted "most laws differentiate in some fashion between classes of persons…[but] legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality." *Scholz v. Metropolitan Pathologists*, 851 P.2d 901, 906 (Colo. 1993).

The California Supreme Court upheld its $250,000 damage cap for medical claims as far back as 1985. *Fein v. Permanente Medical Group*, 695 P.2d 665, 679, 211 Cal. Reporter 368 (Ca. 1985). The court noted that the legislature has broad control over the measure as well as the timing of damages and further noted that the legislature can expand or limit damages as long as those actions are rationally related to a legitimate state interest. *Id*. at 383.

Similarly, the Supreme Court of Louisiana upheld the constitutionality of a $500,000 cap on noneconomic damages and reduced

the jury's damage award from $6,000,000 to $500,000 pursuant to the cap. *Oliver v. Magnolia Clinic*, 85 So.3d 39 (La. 2012). *Oliver* recognized that the $500,000 cap created a class of persons who were fully compensated as well as a class of persons who were not fully compensated because of the severity of their injuries. *Oliver* explained that the objective defined by the legislature in enacting the medical malpractice cap on damages was to limit damages, thereby lower malpractice insurance costs to help assure accessible and affordable health care for the public. This produced rational and clearly identifiable benefits for malpractice plaintiffs: (1) a greater likelihood that the offending physician or other health care provider has malpractice insurance; (2) a greater assurance of collection from a solvent fund; and (3) payment of all medical care and related benefits. *Id.* at 45, citing *Butler v. Flint Goodrich Hospital of Dillard University*, 607 S.2d 517, 521 (La. 1992)

Oliver noted that this "quid pro quo," describing the balance of interests between noneconomic damage caps and the resulting benefits, had been true when the statute was enacted in 1975, when the *Butler* case

was decided in 1992, and remained constitutionally sound in 2012 when *Oliver* was decided.

The same can be said of R.C. 2323.43. The General Assembly articulated very similar reasons for enacting the medical malpractice damage caps. The unfortunate reality is that insurance and litigation costs continue to make it difficult for hospitals and physicians to obtain the affordable insurance necessary to provide care to patients, particularly in underserved areas. The "quid pro quo" for ensuring access to care is that noneconomic damages must be balanced against the availability and affordability of health care. A single nuclear verdict can bankrupt a hospital or drive the only obstetrician in a rural county to retire or relocate to another state. Reasonable and rational caps on noneconomic damages, with full recovery of the economic losses proven to the jury, strikes the proper balance of the interests of all parties.

The legislature, as the final arbiter of public policy, must be permitted to make difficult policy choices. This Court is not to sit as a super legislature and second guess the policy choices made by the General Assembly. *See Griswold v. Connecticut*, 381 U.S. 479, 482, 85 S.Ct.

1678, 14 L.Ed.2d. 510 (1965); *Arbino v. Johnson & Johnson,* 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 58. ("In an equal protection context . . . 'we are to grant substantial deference to the predictive judgment of the General Assembly' under a rational basis review."). In enacting the noneconomic damage limits in R.C. 2323.43, the General Assembly struck a balance in an effort to reasonably compensate persons who were injured as a result of medical negligence, including those most severely injured, while trying to ensure that all Ohioans had access to basic and specialized health care.

Amici respectfully submit that R.C. 2323.43 more than meets the rational basis test to survive an equal protection challenge. Just as courts in other jurisdictions have upheld limits on noneconomic damages in medical malpractice cases, this Court must uphold the statute enacted by the General Assembly. Unlimited noneconomic damage awards would put undue and unsustainable financial strain on Ohio's health care system, which fortunately has turned the corner from the most recent heath care crisis. The noneconomic damage caps are valid when analyzed under the

rational basis test utilized for an equal protection challenge. Accordingly, the decision of the trial court must be reversed.

V. CONCLUSION

Amici, Ohio Hospital Association, Ohio Alliance for Civil Justice, Ohio State Medical Association, and Ohio Osteopathic Association, respectfully submit that the trial court erred in finding R.C. 2323.43 unconstitutional on due process and equal protection grounds. Under the rational basis test, the General Assembly had valid and reasonable grounds to strike a balance of the rights of plaintiffs and defendants to cap noneconomic damages for all plaintiffs bringing medical claims. These caps ensure that medical claim defendants can have access to liability coverage and maintain their medical practices in Ohio while patients continue to have access to quality health care. Plaintiffs receive reasonable compensation for their undefined, intangible damages while economic damages are fully recoverable. Amici urge this court to reverse the decision of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon the following counsel of record via electronic mail on January 26, 2024:

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EXHIBIT 1

FINAL REPORT AND RECOMMENDATIONS

OF THE

OHIO MEDICAL MALPRACTICE COMMISSION

APRIL 2005

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Columbus, Ohio
Chairman of the Commission

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I. INTRODUCTION

Overview

The Ohio Medical Malpractice Commission was created in 2003 in legislation to address the medical liability crisis in Ohio. That legislation, Senate Bill ("S.B.") 281 (R-Goodman), was enacted in response to concerns that rapidly rising medical malpractice insurance premiums were driving away health care providers and compromising the ability of Ohio consumers to receive the health care they need.[1] The bill contained a comprehensive set of tort reforms aimed at addressing litigation costs and stabilizing the Ohio medical malpractice market. Governor Bob Taft signed S.B. 281 on January 10, 2003. The bill became effective on April 11, 2003.

In order to further analyze the causes of the current medical liability crisis, and to explore possible solutions in addition to tort reform, S.B. 281 created the Ohio Medical Malpractice Commission ("Commission"). The Commission is composed of nine members, including representatives of the insurance industry, health care providers, and the legal system. (Exhibit A). The Commission's first meeting was held in May 2003 and at the June meeting Commission members adopted the following mission statement:

"Provide available, affordable, and stable medical liability coverage for the Ohio Medical Community while providing for patient safety and redress for those who are negligently harmed."

The Commission's statutory requirements and mission statement indicate a desire among all members to conduct a thorough analysis of the causes of the current crisis. All Commission members are united in their intent to avert another crisis in which the health care of Ohio consumers could be compromised, and to mitigate the current crisis as possible. The Commission does note that many members voiced concern with the overall health system, including reimbursement rates for Ohio providers. Although reimbursement may be relevant to the affordability of medical liability coverage, the Commission has not examined that issue.

The enactment of S.B. 281 in Ohio was intended to respond to concerns raised by providers that Ohio medical liability insurance had become unaffordable, thereby creating a situation where medical liability insurance was no longer available to certain physicians.[2] Ohio's tort reform efforts were preceded by enactment of similar laws in other states. Among the states already with medical malpractice tort reform are Colorado, Indiana, Wisconsin, Louisiana, California, and New Mexico. These states are commonly referred to as "non-crisis" states as defined by the American Medical Association. A primary feature of such tort reform, including Ohio's, is caps on non-economic damages in medical malpractice lawsuits. While caps in some states include caps on economic damages (Colorado, Virginia, and Indiana) and lower caps than Ohio implemented, Ohio established caps on non-economic damages generally at $500,000, with a $1,000,000 cap for catastrophic injuries involving permanent and substantial physical deformity, loss of a limb or bodily organ system, or for an injury that deprives a person of independently caring for himself and performing life-sustaining activities.

Senate Bill 281 also changed the statute of repose to generally bar claims initiated more than four years after the occurrence of the act or omission constituting the basis of the claim, required a plaintiff's attorney whose contingency fees exceed the applicable amount of the limits on damages to file an application in the probate court for approval of the fees, and mandated lawsuit data reporting to the Department of Insurance.

Charge of Commission

As provided by S.B. 281, the Commission has two charges. First, the Commission is required to study the effects of the tort reforms contained in S.B. 281 on the medical malpractice marketplace. Second, the Commission is required to investigate the problems posed by, and the issues surrounding, medical malpractice. The Commission is required to submit a report of its findings to the Ohio General Assembly in April 2005.

Another piece of legislation impacting the Commission, Senate Bill 86 (R-Stivers), became effective on April 13, 2004. (Exhibit B). Senate Bill 86 added several additional charges to the Commission's mission. Those new charges require the Commission to

- Study the affordability and availability of medical malpractice insurance for health care professionals and other workers who are volunteers and for nonprofit health care referral organizations;
- Study whether the state should provide catastrophic claims coverage, or an insurance pool of any kind, for health care professionals and workers to utilize as volunteers in providing health-related diagnoses, care, or treatment to indigent and uninsured persons;
- Study whether the state should create a fund to provide compensation to indigent and uninsured persons who are injured as a result of the negligence or misconduct by volunteer health care professionals and workers; and
- Study whether the Good Samaritan laws of other states offer approaches that are materially different from the Ohio Good Samaritan Law.

Onset of the Ohio Medical Liability Crisis

In the late 1990's, the Ohio medical liability insurance market began to slip into what we now recognize as a crisis. Rapidly rising costs caused the profitability for insurers doing business in Ohio to plummet. In 1999, Ohio's medical liability insurers reported underwriting costs that were 50.2 percent higher than the premium they collected. In 2000, underwriting costs exceeded premium by 67.9 percent. (Exhibit C). Underwriting costs are those directly related to providing insurance, including claim investigation and payment, defense of policyholders and operating expenses. By 2000, companies were forced to react to the increasing costs and began to raise rates dramatically. By late 2001, insurers were leaving the market and rates were rapidly rising.

Since 2000, nine insurers have left the Ohio medical liability market. St. Paul, First Professionals, Professionals Advocate, Lawrenceville, Phico, Clarendon, CNA, Farmers, and Frontier all withdrew from Ohio and other states due to the difficulties faced in this line of business. The surplus lines market, where providers turn when admitted insurance carriers turn away business, grew significantly.

Health care providers faced increasing difficulty finding affordable medical liability insurance coverage since rates were rising rapidly. The five major medical liability insurance companies in the state, Medical Protective, ProAssurance, OHIC Insurance Company, American Physicians, and The Doctors Company, which collectively cover nearly 72 percent of the Ohio market, raised their rates dramatically. The attached exhibit shows the average rate change for Ohio "Physicians and Surgeons" since 2000. (Exhibit D). The average change in 2002 was the highest at 31.2 percent. Some areas of Ohio, such as the counties in the northeast and along the eastern border, experienced even higher increases. Medical specialties such as OB/GYNs, neurosurgeons, radiologists, and emergency/trauma providers were hit particularly hard.

Despite the rate increases, the premiums collected by medical liability insurers in Ohio have not been sufficient to cover the costs of providing insurance, such as the cost of investigation, defense and payment of claims and operating expenses. Financial reports by Ohio medical liability insurers have not shown a profit since the mid-1990's, with insurers reporting underwriting losses in each of the last five years. (Exhibit C). All five of the top insurers received downgrades from rating agencies over the last five years, and today only two have high "A-" ratings and one is unrated.

Another fact illustrating the crisis is the number of inquiries by Ohio providers and requests for help made to the Ohio Department of Insurance. Since late 2002, the Department has assisted 223 doctors regarding their medical liability insurance coverage. Many of the calls demonstrated that certain specialties such as obstetrics were particularly impacted by rate increases. Another 17 doctors asked the Medical Coverage Assistance Program (MCAP) to help them secure medical liability insurance coverage. Additionally, the Department has documented that 228 doctors have retired, reduced or eliminated high-risk procedures, or moved to another state. Of those doctors, 97 decided to drop their private practice, reduce or eliminate high-risk procedures, or otherwise change the service they provide; 68 decided to retire and 63 have moved to another state. As a result of these ongoing dialogues and concerns about the availability of physicians, the Department conducted a survey of Ohio providers to ascertain their concerns about the current crisis.

Impact of the Crisis on Doctors and Their Patients

In the summer of 2004, the Ohio Department of Insurance commissioned a survey of 8,000 doctors to understand how rising premiums affected the doctors' practices and their patients. (Exhibit E). The results demonstrated that the rising medical liability insurance costs have significantly affected physician behavior. Nearly 40 percent of the 1,359 doctors who responded to the survey indicated that they have retired or plan to retire in the next three years due to rising insurance costs, yet only 9 percent of the respondents were over age 64.

Northeast Ohio can anticipate the highest number of those retirements, with more than 40 percent of the local physicians planning to leave in the next three years.

Ohio's patient population is being impacted, with a significant reduction in patient services already having occurred. Sixty-six percent of doctors surveyed indicated that they have turned down high-risk procedure patients or have referred those patients elsewhere. The situation is critical in southeast Ohio, where 95 percent of doctors surveyed have declined or referred high-risk patients. In northeast Ohio, 48 percent of OB/GYN and family practice physicians reported they have stopped delivering babies due to high medical liability insurance costs. Over half of the osteopathic doctors who responded indicated that they are no longer delivering babies.

Rising insurance costs also have affected where doctors see patients. Doctors have reduced the number of patients they see in nursing homes and in home care and hospice settings. Southeast and northeast Ohio have been hit particularly hard with 60 percent of responding southeast Ohio doctors having cut their in-home visits, and 54 percent of responding northeast Ohio doctors reporting that they have done the same. Responding doctors also indicated that, as a result of these high medical liability premium costs, they are being forced to see more patients to remain financially viable and many are cutting staff. In short, the survey reported that high medical liability premiums are having an effect on health care services in Ohio, and that Ohio could soon face a crisis of access to care.

Initial Signs of Recovery

The Ohio medical liability market is beginning to show signs of recovery. Two new medical liability companies, OHA Insurance Solutions, Inc. and Healthcare Underwriters Group Mutual of Ohio, have been licensed in Ohio in the last year and a half. The five major medical liability insurers in the Ohio market have stayed in Ohio throughout these difficult times. These companies indicated to the Commission during a joint legislative hearing on April 19, 2004 that among other factors, Ohio's enactment of medical malpractice tort reform legislation made them more confident about the future of Ohio's medical liability marketplace.

Medical liability rates appear to be slowly stabilizing. In 2004, rates for the top five companies increased an average of 20 percent. The average increase, while still high, is smaller than that of the two previous years. So far in 2005, two of the top five insurers, Medical Protective and The Doctors Company, have filed and implemented rate changes averaging 12 percent. Moreover, in the past year, some of these insurers have filed decreases for some regions of the state. The Doctors Company lowered rates for General Practice by 1 percent in northwest and in southeast Ohio, and by 9 percent in central and southwest Ohio. Medical Protective filed a decrease of 3 percent for General Practice in northeast Ohio. By the end of 2005, Ohio may see average rate changes below 10 percent.

Ohio medical liability insurers are also slowly moving toward profitability, which helps ensure that the medical liability companies will remain in the market and will fulfill their financial obligations to their policyholders. Underwriting losses have steadily

decreased since 2000. (Exhibit C). While the latest year's results are not yet available, continued movement toward profitability is expected and the industry could report an operating profit for 2004 in Ohio. If that occurs, this will be the first year since 1997 that Ohio's medical liability insurance industry has reported a profit.[3]

Still in Crisis

While the Ohio medical liability market is beginning to recover, it is still in a state of crisis. Positive signs in the marketplace do not mean that doctors are no longer facing extremely high premiums. Although rate increases are stabilizing, doctors in Ohio are still suffering from the effects of rising rates. Premiums are overall much higher than they were just five years ago. For example, rates for OB/GYNs in Cuyahoga County for the top five companies averaged $60,000 in 2000. Now the average is $145,000. In Athens County, the average rate for neurosurgeons was $54,000 in 2000. Today the average is $125,000. General surgeons in Franklin County paid an average of $33,000 in 2000, and now face an average premium of $68,000.[4]

The continuing difficulties in finding affordable medical liability insurance coverage raise concerns that health care providers, particularly those in high-risk specialties, will further limit care, leave Ohio, or leave the profession entirely. Ohio health care consumers may experience increasing difficulty seeing the provider of their choice. Costs to consumers may also rise if providers defensively over-prescribe, over-treat, and over-test their patients to avoid potential lawsuits.

II. FINDINGS AND RECOMMENDATIONS OF THE COMMISSION

In this environment, the Commission held 26 meetings over a two-year period in order to meet its statutory charges. Speakers with expertise on particular medical malpractice-related topics were invited to testify before the Commission. The Commission heard testimony from actuaries, doctors, state regulators and other experts. A list of the Commission's meetings, the topics covered, and the witnesses who testified before the Commission is attached. (Exhibit F). Based upon a review of the testimony, the Ohio Medical Malpractice Commission makes the following findings and recommendations.[5]

A. Effects of Senate Bill 281

The Commission concludes that because of the nature of ratemaking - primarily relying on loss experience over a period of time - and the fact that most medical malpractice cases now being heard in Ohio courts are not subject to S.B. 281 because they were brought and/or arose before its effective date, the Commission cannot conclusively evaluate the effects of the new law on the Ohio market, or on medical malpractice cases in Ohio.

However, based on testimony and data from states that do have tort reform in place, the Commission fully expects tort reform to have a stabilizing impact on the medical malpractice market in Ohio over time. Insurance department representatives from Indiana, Wisconsin, and New Mexico testified about the positive impact damage caps and patient

compensation funds have had on their respective markets and statistics from those states and Louisiana show their relative market stability compared to Ohio's. (Exhibit G). In addition, the Texas commissioner testified that an in-house, peer reviewed study of their recent tort reform, which included a $250,000 cap on non-economic damages, estimated a 12 percent reduction in medical malpractice rates. Countrywide, those states with longstanding tort reform have more stable markets than Ohio's, and the American Medical Association's designation of non-crisis states also reflects this fact. (Exhibit H).

In addition, at the Commission's joint meeting with members of the House and Senate Insurance Committees on April 19, 2004, representatives of the five major medical liability insurers in Ohio (which hold about 70 percent of the market share) testified. Several indicated their increased confidence in operating in Ohio in light of the passage of medical malpractice tort reform, notwithstanding the fact that the industry has been losing money in Ohio since 1998. (Exhibit C). The Director of Insurance also has reported to the Commission that Department conversations with these insurers over the last two years indicate that a major reason they are still operating in Ohio is the passage of tort reform, since they are not compelled to remain in the market but are more optimistic the market will improve with tort reform.

RECOMMENDATION:

The Commission strongly recommends that S.B. 281 remain in effect in Ohio with the expectation that it will help to stabilize the medical malpractice market over time.

B. Ratemaking

The Commission heard testimony about ratemaking. Testimony included discussion of the ratemaking process, Department review of medical malpractice rate filings, various rate review standards such as "prior approval" and "file and use," and the role of investment income on ratemaking.

The Commission acknowledges and agrees with the testimony of most witnesses, including insurance actuaries, that the primary driver of medical malpractice rates is the costs associated with losses and defense of claims. For the three most recent years of financial reports, these costs have exceeded premiums collected by the top five medical malpractice insurance companies in Ohio by an average of 23.7 percent and have increased by 57 percent (241,488,088 to 378,313,587). (Exhibit I). In the last five years, rates for those insurers have increased more than 100 percent. (Exhibit D). The entire medical liability insurance industry has lost money in Ohio since 1998. (Exhibit C). Profit figures in Ohio for 2002 and 2003 show that the costs to provide this insurance exceeded premium by 46 percent in 2002 and by 30 percent in 2003.

Allegations that investment losses have caused the rapid rise in medical malpractice premiums in Ohio in the last several years are without basis. Returns on investments have been about 4 percent to 5 percent since 1999. Ohio law and regulation prohibit the recoupment of investment losses in prospective rates, and the Department ensures through

Exhibit D

Ohio Medical Malpractice Insurance
Physicians & Surgeons Rate Changes for the Top Five Insurers

Company	2003 Direct Written Premium	2003 Market Share	2000 Rate Change	2001 Rate Change	2002 Rate Change	2003 Rate Change	2004 Rate Change	2005 Rate Change
The Medical Assurance Company	112,788,357	20.7%	9.6%	30.0%	43.6%	19.3%	8.6%	
The Medical Protective Company	106,941,441	19.6%	8.4%	6.3%	21.7%	27.5%	40.0%	13.0%
OHIC Insurance Company	81,014,009	14.9%	24.3%	28.0%	24.2%	17.0%	17.9%	
American Physicians Assurance Corporation	33,625,168	6.2%	14.9%	29.5%	29.0%	87.6%	9.1%	
The Doctors Company, An Interinsurance Exchange	29,616,791	5.4%	8.4%	14.9%	49.2%	18.0%	10.0%	6.9%
Total for Top Five Companies	363,985,766	66.7%	14.3%	20.5%	31.2%	27.4%	20.1%	11.7%
Total Ohio Industry	545,525,318	100.0%						
Cumulative Change for Top Five Companies			14.3%	37.7%	80.6%	130.2%	176.3%	208.6%

Ohio Department of Insurance
Med Mal Rate Changes 2000 to 2005

Most Recent Filing Effective Date: January 1, 2005
Exhibit Last Revised: January 3, 2005

Exhibit E

Bob Taft, Governor
Ann Womer Benjamin, Director

2100 Stella Court, Columbus, OH 43215-1067
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Ohio Department of Insurance

Physician Medical Malpractice Insurance Survey

Executive Summary

The rising cost of malpractice insurance has significantly impacted Ohio physician behavior. Nearly 40 percent of the 1,359 respondents to the Ohio Department of Insurance survey said they have retired or plan to retire in the next three years due to rising insurance expenses. Only 9 percent of the respondents were over age 64.

Northeast Ohio can anticipate the highest number of those retirements, with more than 40 percent of the local physicians planning to leave in the next three years.

Ninety-six percent of the respondents had malpractice rate increases in 2004. The average annual premium for personal medical malpractice insurance paid by these Ohio physicians in 2004 was $40,385, a 39 percent increase compared with 2003 expenses. On average, physician respondents paid 18 percent of their gross annual income in premiums.

Rates for insurance, however, vary from state to state and are very different within each state based on the specialty practice of the physician.

The Ohio Department of Insurance commissioned this survey of doctors to focus on how professional liability insurance rate increases have changed the way doctors practice medicine in Ohio and to learn doctors' preferences for solutions.

Anecdotal evidence has been presented in Ohio and across the country that a crisis has been developing due to the rapid premium increases. This study quantified the impact on physicians and patients and was large enough to show how Ohioans in different regions of the state and with varying medical needs are being affected.

The rising costs of malpractice insurance have significantly impacted physician behavior and doctors have closed their practices or are planning to do so.

More than 50 percent of the state's neurology and specialty surgeons responding to the survey are planning to retire in the next three years due to insurance rate increases. These specialties, along with obstetrics, are considered higher insurance risks and are charged the highest rates among physicians.

Ohio's patient population is already being impacted. In addition to the anticipated reduction in the number of physicians, the survey results show there has been a significant reduction in the services offered to Ohio patients. Sixty-six percent of physicians surveyed have turned down or referred high-risk procedure patients elsewhere.

The situation is critical in Southeast Ohio, where 95 percent of the survey respondents have turned down or referred patients who required high-risk procedures to other practitioners.

Forty-eight percent of OB/Gyn and family practice physicians in Northeast Ohio surveyed have stopped delivering babies due to insurance costs, and more than 50 percent of the osteopathic doctors in the state no longer deliver babies.

Insurance concerns have also affected where physicians will see patients. Physicians responding to the survey have reduced the number of patients they see in nursing homes (55 percent have cut back), home care settings (46 percent have cut back), and hospice settings (30 percent have cut back).

Northeast and Southeast Ohio have been hit particularly hard. Sixty percent of the survey group from Southeast Ohio report having cut their in-home visits, while 54 percent of physicians surveyed in Northeast Ohio say they have cut in-home care.

Physicians recognize a need for patients to have recourse when malpractice occurs. In the survey, they recommend the state of Ohio pursue remedies that focus first on determining the merits of a claim before it is filed in court.

Methodology

- This is the largest study of the impact of malpractice insurance rates conducted to date in the State of Ohio.
- 8,000 surveys were mailed to a random sample of Ohio physicians.
- 1,359 surveys were returned, for a 17 percent response rate.
- Comparisons among physicians' specialties, region of the state, age, and number of liability claims were conducted on every question.

Objectives

- To understand how medical malpractice insurance has impacted Ohio physicians' revenue, as well as physicians' willingness to perform certain procedures, invest in their practices, and continue to practice medicine in Ohio.
- To learn how medical malpractice insurance has impacted overall physician care, patient access to care and the patient experience.
- To determine physician interest in various proposed measures to stabilize medical malpractice insurance premiums.

Conclusions

1. **The first conclusion is that the rising costs of malpractice insurance have significantly impacted physician behavior and doctors have closed or are planning to close their practices.**

    - We learned that nearly four out of 10 respondents said they have retired or plan to retire in the next three years due to rising insurance expenses. This finding is all the more sobering since just 9% of the respondents were over age 64.

    - More specifically:
        - The percentage of doctor retirements is even higher in Northeast Ohio.
        - More than half of Ohio's neurologists and specialty surgeons responding to the survey plan to retire because of malpractice insurance rates. These specialties, along with obstetrics, are considered higher insurance risks and are charged the highest rates.

2. **Second, rising premiums and the exodus of doctors have already negatively affected Ohio's patient population. In fact, a significant reduction in patient services has already occurred.**

    - For example, 66% of physicians surveyed have turned down or referred high-risk procedure patients elsewhere.
        - The situation is critical in Southeast Ohio, where 95% of physicians surveyed have declined or referred high-risk patients.
        - In addition, 48% of OB/GYN and family practice physicians in Northeast Ohio reported they have stopped delivering babies due to insurance costs.
        - Over half of Ohio's osteopathic doctors reported they no longer do deliveries.

    - Also, high malpractice insurance premiums have influenced where physicians will see patients. Respondents indicated that
        - 55% have reduced the number of patients they see at nursing homes.
        - 46% have cut back the number of patients they see in home care settings.
        - And 30% see fewer patients in hospice settings.
        - The percentages are particularly high in Northeast and Southeast Ohio.
        - Physicians are minimizing patients in these settings because they consider them high-risk in terms of medical liability.

- Patient care has been impacted in other ways as well:
  - Nearly three-quarters of physician respondents say that they order more tests to better defend their decisions.
  - Physicians also report that they need to see more patients to remain financially viable, which results in longer waits for appointments and less time with each patient.
  - Finally, many doctors have cut their staff in response to malpractice insurance increases.

3. **The third conclusion from the survey is that malpractice insurance premiums have risen dramatically and have strained office economics.**

   - 2004 rates went up for 96% of survey respondents, rising by an average of 39% over 2003. Well over a quarter of Ohio physicians responding paid more than $50,000.

   - On average, almost 20% of physicians' gross annual income – one dollar in five – goes to pay malpractice premium costs.

   - Rates vary widely, both among states and within medical specialties. In Ohio, for example, OB/GYN physicians responding to the survey pay an average of 30% of their annual incomes – 50% more than the average physician – to malpractice insurers.

4. **The survey's final conclusion deals with curative measures, steps we might take to remedy the current problem. Here we found that physicians, while recognizing the need for patient recourse when malpractice occurs, generally favor any proposed measure to address rising medical malpractice insurance costs.**

   - They are particularly supportive of a Medical Review Panel to screen medical liability cases, prior to court filing, to determine the merits of the cases. Almost nine physicians in 10 [88%] highly favor this proposal.

- Eighty percent of survey respondents highly favor the institution of a 60-day Mandatory Notice. This would require medical liability insurance companies to notify physicians well in advance if their policy were being cancelled or not renewed, or if they were receiving a significant premium increase. The Department spearheaded legislation (S.B. 187 effective 9/13/04) last year to implement this requirement.

- Finally, more than three doctors in four [76%] highly favor what is called Expert Witness Qualification Review. This would require the plaintiff to submit a "certificate of expert review" confirming that each medical expert witness is qualified to serve in that capacity. Legislation (H.B. 215 effective 9/13/04) was passed last year with the Department's sponsorship requiring witnesses to be pre-certified as expert witnesses in their field by the Ohio State Medical Board.

EXHIBIT 2

State	**Applicability**	**Statute**	**Provision**	**Constitutionality**
Alaska	Personal injury noneconomic damages	Alaska §09.17.010	Noneconomic damages shall not exceed the greater of $400,000 or the injured person's life expectancy in years multiplied by $8,000. In personal injury cases involving "severe physical impairment or severe disfigurement", the limit is increased to the greater of $1,000,000 or the injured person's life expectancy in years multiplied by $25,000	Upheld: *L.D.G, Inc. v. Brow*n, 211 P.3d 1110 (Alaska 2009); *C.J. v. Dep't.. of Corrections*, 151 P. 3d 373 (Alaska 2006); *Evans rel Kutch v. State*, 56 P.3d 1046 (Alaska 2002)
Alaska	Medical liability noneconomic damages	Alaska §09.55.549	Noneconomic damages for personal injury or death based on the provision of service by a health care provider may not exceed $25,000 regardless of the number of health care providers…this limit increases to $400,000 when damages are awarded for wrongful death or severe permanent physical impairment that is more than 70% disabling. The limitation does not apply if the damage resulted from "reckless or intentional misconduct."	

Colorado	Personal injury noneconomic damages	Colorado revised §13-21-102.5	In any civil action other than medical malpractice actions, noneconomic damages shall not exceed $250,000, which can increase to $500,000 if the court "finds justification by clearly convincing evidence." Adjusted for inflation in 2023 to $642,980, which may be increased upon clear and convincing evidence to $1,284,370	Upheld: *Scharrel v. Walmart Stores, Inc.*, 949 P. 2d 89 (Colo. App. 1998)
Colorado	Medical liability – total compensatory damages	Colorado revised §13-64-302	Total amount recovered before all defendants in any civil action for damages in tort brought against a health care professional…shall not exceed $1,000,000, of which not more than $300,000 shall be attributable noneconomic loss or injury. If, upon good cause shown, the Court determines that the present value of past and future economic damages would exceed such limitation of the application of such limitation would be unfair, the Court may award an excess of the limitation on the	Upheld: *Garhart ex rel Tinsman v. Columbia/Healthone*, LLC, 95 P.3d 571 (Colo. 2004); *Scholz v. Metro. Pathologists,* 851 P.2d 901 (Colo. 1993)

			present value of additional past and future economic damages only.	
Maryland	Personal injury noneconomic damages	Md. Cts. Jud. Proc. Code §11-108	In any action for damages for personal injury, noneconomic damages may not exceed $920,000 (as of October 2022). This limit increases by $15,000 on October 1 of each year. In wrongful death actions involving two or more claimants or beneficiaries, the noneconomic damage limit is 150% of the limit established above ($1,380,000). In addition, in a wrongful death action, the decedent can receive noneconomic damages through a survival action up to the individual limit ($920,000) which makes the combined limit of wrongful death and survival action $2,300,000.	Upheld: *DRD Pool Serv., Inc. v. Freed*, 5 A.3d 45(Md. 2010); *Green v. N.B.S., Inc.*, 976 A.2d 279 (Md. 2009); *Murphy v. Edmonds*, 601 A.2d 102 (Md. 1992); See also, *Sims v. Holiday Inn, Inc*, 746 F. Supp. 596 (D. Md. 1990); *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 325 (D. Md. 1989); See also, *Croell v. Turner* 2020 WL 1303621 (Md. Ct. Spec. App. Mar. 18, 2020) Cert. denied, 232 A.3d 260 (Md. 2020) (rejecting equal protection and right to jury trial and separation of powers challenges to the cap)
Maryland	Medical liability noneconomic damages	Md. Cts. Jud. Proc. Code §3-2A-09	In health care malpractice claims, noneconomic damages may not exceed $860,000 (as of January 2022). This amount increases by $15,000 on January 1 of each year. This limit	

			applies in the aggregate to all claims for personal injury and wrongful death arising from the same medical injury, regardless of the number of claims, claimants, plaintiffs, beneficiaries or defendants. In wrongful actions involving two or more claimants or beneficiaries, the noneconomic damage limit is 125% of the limit established above ($1,750,000 in 2022)	
Michigan	Product liability noneconomic damages	Michigan Comp. laws §600-2946(a)	Limits noneconomic damages to $280,000 in product liability cases unless the defect caused death or permanent loss of vital bodily function in which case noneconomic damages shall not exceed $500,000. Limit is adjusted annually based on the Consumer Price Index. In 2022, the limit is $497,000, rising to $887,500 in catastrophic injury cases.	Upheld: *Estate of Needham ex rel. May v. Mercy Mem. Nursing Ctr.*, 2013 WL 5495551 (Mich. App. Oct. 3, 2013), appeal denied 846 N.W.2d 55 (Mich. 2014); *Johnson v. Henry Ford Hosp.*, 2005 WL 658820 (Mich. App. 22 2005), appeal denied 729 N.W.2d 515 (Mich. 2007); *Jenkins v. Patel*, 688 N.W. 2d 543 (Mich. App. 2004); *Green v. Knacik*, 2003 WL 21771268 (Mich. App. July 31, 2003), remanded in part, appeal denied in part, 688 N.W.2d 80 (Mich. 2004); *Zdrojewski v. Murphy*, 657 N.W.2d 721 (Mich. App. 2002); See also, *Smith v. Botsford Gen. Hosp.,* 419 F.3d 513 (6th Cir. 2005)
Michigan	Medical liability noneconomic damages	Michigan Comp. laws §600.1483	Limits noneconomic damages to $280,000 in medical malpractice cases.	Upheld: *Wessels v. Garden Way, Inc.*, 689 N.W.2d 526, (Mich. App.2004); See also, *Kenkel v. Stanley Works*, 665 N.W. 2d 490 (Mich. Appl 2003) appeal denied, 647 N.W 2d 382

			The limit is increased to $500,000 when the plaintiff is "hemiplegic, paraplegic or quadriplegic resulting in total permanent functional loss of one or more limbs" due to "injury to the brain" or "spinal cord" or has "permanently impaired cognitive capacity"… or has "permanent loss of or damage to a reproductive organ resulting in an inability to procreate." Limit is adjusted annually on the Consumer Price Index. In 2023, the limit is $537,900, rising to $960,500 in catastrophic injury cases[1]	(Mich.) reconsideration denied, 679 N.W.2d 697 (Mich. 2004)

[1] *See* Exhibit 3 for the complete list of states that have limits on noneconomic damages in medical negligence actions.

EXHIBIT 3

(Based on information from the American Tort Reform Association)

	A	B	C	D	E
1	**STATE**	**APPLICABILITY**	**STATUTORY CITATION**	**PROVISIONS**	**CONSTITUTIONALITY**
2	**Alabama**	Invalidated - Medical liability - Noneconomic Damages	Ala. Code § 6-5-544(b)	In no action against a health care provider for medical malpractice shall the amount of recovery for noneconomic losses, including punitive damages, either to the injured plaintiff, the plaintiff's spouse, or other lawful dependents or any of them together exceed the sum of $400,000.	Found unconstitutional in *Moore v. Mobile Infirmary Ass'n,* 592 So. 2d 156 (Ala. 1991). *But see Mobile Infirmary Med. Ctr. v. Hodgen,* 884 So. 2d 801 (Ala. 2003) (noting erosion of support for *Moore*); *see also Springhill Hosps. Inc. v. Patricia Bilbrey W, 2023 WL 4948768 (Ala. Aug. 4, 2023) holding unconstitutional*
3	**Alaska**	Personal injury - Noneconomic Damages	Alaska Stat. § 09.17.010	Noneconomic damages shall not exceed the greater of $400,000 or injured person's life expectancy in years multiplied by $8,000. In personal injury cases involving "severe physical impairment or severe disfigurement," the limit is increased to the greater of $1 million or injured person's life expectancy in years multiplied by $25,000.	Upheld. *L.D.G., Inc. v. Brown* , 211 P.3d 1110 (Alaska 2009); *C.J. v. Dep't of Corrections* , 151 P.3d 373 (Alaska 2006); *Evans ex rel. Kutch v. State* , 56 P.3d 1046 (Alaska 2002); *Ass'n of Vill. Council Presidents Reg'l Hous. Auth. V. Mae I,* 507 P.3d 963 (Alaska 2022)
4		Medical liability - Noneconomic Damages	Alaska Stat. § 09.55.549	Noneconomic damages for personal injury or death based on the provision of services by a health care provider may not exceed $250,000 regardless of the number of health care providers against whom the claim is asserted or the number of separate claims or causes of action brought with respect to the injury. This limit increases to $400,000 when damages are awarded for wrongful death or severe permanent physical impairment that is more than 70% disabling. The limitation does not apply if the damages resulted from "reckless or intentional misconduct."	
5	**Arizona**	None			State constitution prohibits enacting a limit. Ariz. Const. Art. 2, § 31 ("No law shall be enacted in this state limiting the amount of damages to be recovered for causing the death or injury of any person.").
6	**Arkansas**	None			State constitution prohibits enacting a limit. Ark. Const. Art. 5, § 32 ("No law shall be enacted limiting the amount to be recovered for injuries resulting in death or for injuries to persons or property.").
7	**California**	Medical liability - Noneconomic Damages	Cal. Civ. Code § 3333.2(b) (as amended by AB 35 (2022)).	Noneconomic damages shall not exceed $250,000 in any action for injury against a health care provider based on professional negligence. **Effective January 2023**, the cap increases to $350,000 (further increasing $40,000 per year over ten years to $750,000) and to $500,000 in wrongful death cases (increasing $50,000 per year over ten years to $1 million). After ten yeas, these amounts will automatically increase by 2% annually for inflation.	Upheld. *Fein v. Permanente Med. Group* , 695 P.2d 665 (Cal. 1985); *see also Hoffman v. United States* , 767 F.2d 1431 (9th Cir. 1985); *Chan v Curran,* 237 Cal. Appl 4th 601, 188 Cal.Rptr. 59 (2015)
8	**Colorado**	Personal injury - Noneconomic Damages	Colo. Rev. Stat. § 13-21-102.5(3)(a) as amended by S.B. 109 (2019).	In any civil action other than medical malpractice actions, noneconomic damages shall not exceed $250,000, which can increase to $500,000 if the court "finds justification by clear and convincing evidence." Adjusted for inflation in 2023 to $642,180, which may be increased upon clear and convincing evidence to $1,284,370. https://www.sos.state.co.us/pubs/info_center/files/damages_new.pdf.	Upheld. *Scharrel v. Wal-Mart Stores, Inc.,* 949 P.2d 89 (Colo. App. 1998).
9		Medical liability - Total Compensatory Damages	Colo. Rev. Stat. § 13-64-302	The total amount recoverable for all defendants in any civil action for damages in tort brought against a health care professional or a health care institution shall not exceed $1 million, of which not more than $300,000 shall be attributable to noneconomic loss or injury. If, upon good cause shown, the court determines that the present value of past and future economic damages would exceed such limitation and that the application of such limitation would be unfair, the court may award in excess of the limitation the present value of additional past and future economic damages only.	Upheld. *Garhart ex rel. Tinsman v. Columbia/Healthone, L.L.C., 9* 5 P.3d 571 (Colo. 2004); *Scholz v. Metro. Pathologists,* 851 P.2d 901 (Colo. 1993).
10	**Connecticut**	None			
11	**Delaware**	None			
12	**District of Columbia**	None			
13	**Florida**	Invalidated - Medical liability - Noneconomic Damages	Fla. Stat. Ann. § 766.118	Limits noneconomic damages for personal injury or wrongful death arising from medical negligence against practitioners to $500,000 (or $1 million if resulting in death or permanent vegetative state), nonpractitioners to $750,000 (or $1.5 million if resulting in death or permanent vegetative state), emergency services practitioners to $150,000 per claimant (or $300,000 total for all claimants), and emergency services nonpractitioners to $750,000 per claimant (or $1.5 million for all claimants).	Invalidated under Florida Constitution. *N. Broward Hosp. Dist. v. Kalitan* , 219 So. 3d 49 (Fla. 2017); *Estate of McCall v. United States* , 134 So. 3d 894 (Fla. 2014).
14		Medical liability - Noneconomic Damages	Fla. Stat. Ann. §§ 766.207(7)(b), 766.209	Limits noneconomic damages in medical liability actions to $250,000 when the parties proceed to voluntary binding arbitration and to $350,000 where the plaintiff refuses a request for arbitration.	Upheld. *Univ. of Miami v. Echarte* , 618 So. 2d 189 (Fla. 1993); *HCA Health Services of Florida, Inc. v. Branchesi* , 620 So.2d 176 (1993).
15	**Georgia**	Invalidated - Medical liability - Noneconomic Damages	Ga. Code Ann. § 51-13-1	Limits noneconomic damages in a medical malpractice action against a health care provider to $350,000, to $700,000 against all medical facilities, not to exceed an aggregate of $1,050,000.	Found unconstitutional in *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt* , 691 S.E.2d 218 (Ga. 2010).
16	**Hawaii**	Personal injury - Noneconomic Damages	Haw. Stat. § 663-8.7	Limits damages for pain and suffering to $375,000. Does not apply to intentional torts, torts relating to environmental pollution, toxic and asbestos-related torts, torts relating to aircraft accidents, strict and products liability torts, or torts relating to motor vehicle accidents with some exceptions. Not applicable to mental anguish, disfigurement, loss of enjoyment of life, loss of consortium or other forms of noneconomic damages.	

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17	**Idaho**	Personal injury - Noneconomic Damages	Idaho Code § 6-1603	Initially limited noneconomic damages to $250,000 with adjustments based on the state's average annual wage adjustments each year since 2004. Efffective July 1, 2022 the limit is $430,740.03 (https://iic.idaho.gov/wp-content/uploads/2022/06/Benefits-Non-economic-caps-thru-2022.pdf). Not applicable to cases involving willful or reckless misconduct or acts that would constitute a felony.	Upheld. *Kirkland v. Blaine County Med. Center*, 4 P.3d 1115 (Idaho 2000).
18	**Illinois**	Invalidated - Medical liability - Noneconomic Damages	735 Ill. Comp. Stat. 5/2-1706.5; repealed by P.A. 97-1145 §15 effective Jan. 18, 2013	Limits noneconomic damages in medical malpractice actions to $1 million per hospital and $500,000 per physician or health care professional.	Found unconstitutional in *LeBron v. Gottlieb Mem. Hosp*., 930 N.E.2d 895 (Ill. 2010); *Best v. Taylor Mach. Works, Inc.*, 689 N.E.2d 1057 (Ill. 1997).
19	**Indiana**	Medical liability - Total Compensatory Damages	Ind. Code § 34-18-14-3	Limits the total amount recoverable for an injury or death of a patient to $1.25 million ($1,800,000 effective June 30, 2019). Requires any amount awarded in excess of $250,000 ($500,000 effective June 30, 2019) to be paid from the Patient's Compensation Fund. The statute does not differentiate between economic and noneconomic damages.	Upheld. *Johnson v. St. Vincent Hospital, Inc*., 404 N.E.2d 585 (Ind. 1980); *Indiana Patient's Compensation Fund v. Wolfe*, 735 N.E.2d 1187 (Ind. Ct. App. 2000).
20	**Iowa**	Medical liability - Noneconomic Damages	Iowa Code § 147.136A (as amended by HF 161 (2023) to cap damages in cases of catatrophic injuries and add an inflation adjustment, among other changes)	Limits the total amount recoverable for noneconomic damages in an action against a healthcare provider for the injury or death of a patient to $250,000 regardless of the number of plaintiffs, derivative claims, theories of liability, or defendants in the action. If the jury finds there is a substantial or permanent loss of a bodily function, substantial disfigurement, loss of pregnancy, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained, the cap is $1 million or $2 million if the action includes a hospital. The limit is adjusted for inflation by 2.1% beginning 1/1/2028 and each January 1 thereafter. The Commissioner of Insurance publishes the adjusted limit on the agency's website. Clarifies that loss of dependent care, includiing the loss of child care, is considered economic damages (not subject to the cap). The limit does not apply if the defendant acted with actual malice. Prohibits punitive damages in healthcare liability actions.	
21	**Iowa**	Motor vehicle accidents - Noneconomic Damages	Iowa Code § 613.20	A person may not recover noneconomic damages in an action arising out of the operation of a motor vehicle, if the injured person was the operator of a motor vehicle, a passenger in a motor vehicle, or a pedestrian and the person's injuries were proximately caused by the person's commission of any felony, or immediate flight therefrom, and the injured person was duly convicted of that felony. This limit does not apply if the person is found to have no fault in the accident.	
22	**Kansas**	Invalidated - Personal injury - Noneconomic Damages	Kan. Stat. Ann. § 60-19a02(b)	In any personal injury action, the total amount recoverable by each party from all defendants for all claims for noneconomic loss shall not exceed $250,000 (as enacted in 1988). Cap increased to $300,000 for causes of action accruing after July 1, 2014 and to $325,000 for causes of action accruing after July 1, 2018. The cap will rise to $350,000 on July 1, 2022.	Found unconstitutional in *Hilburn v. Enerpipe, Ltd*., 442 P.3d 509 (Kan. 2019).
23	**Kentucky**	None			State constitution prohibits enacting a limit. Ky. Const. § 54 ("The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.").
24	**Louisiana**	Medical liability - Total Compensatory Damages	La. Rev. Stat. Ann. § 40:1299.42	Limits the total amount recoverable in medical malpractice cases to $500,000, exclusive of future medical care and related benefits. Requires any amount awarded in excess of $100,000 plus interest to be paid from the Patient's Compensation Fund. The statute does not differentiate between economic and noneconomic damages.	Upheld. *Butler v. Flint Goodrich Hosp. of Dillard Univ.,* 607 So. 2d 517 (La. 1992); Monistere v. Engelhardt, 896 So.2d 1105 (La. Ct. App. 2005); *see also Owen v. United States*, 935 F.2d 734 (5th Cir. 1991); *Oliver v. Magnolia Clinic*, 85 So.3d 39 (La. 2012); *Arrington v. ER Physicians Group, APMC,* 940 So.2d 777 (La. Ct. App. 2006), *vacated* 947 So.2d 719 (La. 2007).
25	**Maine**	Medical liability - Noneconomic Damages	24-A Me. Rev. Stat. Ann. § 4313(9)(B)	Limits noneconomic damages against a carrier of a health plan in claims alleging negligence in treatment decisions to $400,000.	
26		Wrongful death	Me. Rev. Stat. tit. 18-C, §2-807 (as amended 2023)	Limits noneconomic damages (for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress) in wrongful death actions to $1,000.000.	
27		Seller of alcoholic beverages	28-A Me. Rev. Stat. Ann. § 2509	Limits noneconomic damages related to negligent or reckless service of liquor to $350,000.	Upheld. *Peters v. Saft,* 597 A.2d 50 (Me. 1991).
28	**Maryland**	Medical liability - Noneconomic Damages	Md. Cts. & Jud. Proc. Code Ann. § 3-2A-09	In health care malpractice claims, noneconomic damages may not exceed $890,000 (as of Jan. 2024). This amount increases by $15,000 on January 1 of each year. This limit applies in the aggregate to all claims for personal injury and wrongful death arising from the same medical injury, regardless of the number of claims, claimants, plaintiffs, beneficiaries, or defendants. In wrongful death actions involving two or more claimants or beneficiaries, the noneconomic damage limit is 125% of the limit established above ($1,112,500 in 2024).	Upheld in *Burks v Allen,* 238 *Md.App. 418, 192 A.3d 847 (2018), finding the statutory cap on noneconomic damages in actions for medical malpractice does not violate the federal equal protection clause or state due process clause.*

	A	B	C	D	E
29		Personal injury - Noneconomic Damages	Md. Cts. & Jud. Proc. Code § 11-108	In any action for damages for personal injury noneconomic damages may not exceed $935,000.00 (as of Oct. 2023). This limit increases by $15,000 on October 1 of each year. In wrongful death actions involving two or more claimants or beneficiaries, the noneconomic damage limit is 150% of the limit established above ($1,380,000). In addition, in a wrongful death action, the decedent can receive noneconomic damages through a survival action up to the individual limit ($1,402,500.00) which makes the combined limit in a wrongful death and survival action $2,782,500.	Upheld. *DRD Pool Serv., Inc. v. Freed* , 5 A.3d 45 (Md. 2010); *Green v. N.B.S., Inc.* , 976 A.2d 279 (Md. 2009); *Murphy v. Edmonds* , 601 A.2d 102 (Md. 1992); *see also Simms v. Holiday Inns, Inc.* , 746 F. Supp. 596 (D. Md. 1990); *Franklin v. Mazda Motor Corp* ., 704 F.Supp. 1325 (D. Md. 1989); *see also Crouell v. Turner* , 2020 WL 1303621 (Md. Ct. Spec. App. Mar. 18, 2020), *cert. denied* , 232 A.3d 260 (Md. 2020) (rejecting equal protection, right to jury trial, and separation of powers challenges to the cap).
30	**Massachusetts**	Medical liability - Noneconomic Damages	Mass. Gen. Laws Ann. ch. 231, § 60-H.	The plaintiff shall not be awarded more than $500,000 for pain and suffering, loss of companionship, embarrassment and other items of general damages unless the jury determines that there is a substantial or permanent loss or impairment of a bodily function or substantial disfigurement, or other special circumstances in the case which warrant a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained.	
31	**Michigan**	Medical liability - Noneconomic Damages	Mich. Comp. Laws § 600.1483	Limits noneconomic damages to $280,000 in medical malpractice cases. The limit is increased to $500,000 when the plaintiff is "hemiplegic, paraplegic or quadriplegic resulting in total permanent functional loss of 1 or more limbs" due to "injury to the brain" or "spinal cord," or has "permanently impaired cognitive capacity rendering [the plaintiff] incapable of independent, responsible life decisions and permanently incapable of independently performing the activities of normal, daily living," or has "permanent loss of or damage to a reproductive organ resulting in the inability to procreate." Limit is adjusted annually based on the consumer price index. In 2023, the limit is $537,900, rising to $960,500 in catastrophic injury cases.	Upheld. *Estate of Needham ex rel. May v. Mercy Mem. Nursing Ctr., 2013 WL 5495551 (Mich. App. Oct. 3, 2013), appeal denied, 846 N.W.2d 55 (Mich. 2014); Johnson v. Henry Ford Hosp.,* 2005 WL 658820 (Mich. App. Mar. 22, 2005), *appeal denied,* 729 N.W.2d 515 (Mich. 2007); *Jenkins v. Patel, 6*88 N.W.2d 543 (Mich. App. 2004); *Green v. Knozik, 2*003 WL 21771268 (Mich. App. July 31, 2003), *remanded in part, appeal denied in part,* 688 N.W.2d 80 (Mich. 2004); *Zdrojewski v. Murphy, 6*57 N.W.2d 721 (Mich. App. 2002); *see also Smith v. Botsford Gen. Hosp* ., 419 F.3d 513 (6th Cir. 2005).
32		Product Liability - Noneconomic Damages	Mich. Comp. Laws § 600.2946a	Limits noneconomic damages to $280,000 in product liability cases, unless the defect caused death or permanent loss of a vital bodily function, in which case noneconomic damages shall not exceed $500,000. Limit is adjusted annually based on the consumer price index. In 2022, the limit is $497,000, rising to $887,500 in catastrophic injury cases.	Upheld. *Wessels v. Garden Way, Inc* ., 689 N.W.2d 526 (Mich. App. 2004); *see also Kenkel v. Stanley Works* , 665 N.W. 2d 490 (Mich. App. 2003), *appeal denied* , 674 N.W.2d 382 (Mich.), *reconsideration denied* , 679 N.W.2d 697 (Mich. 2004).
33	**Minnesota**	None			
34	**Mississippi**	Medical liability - Noneconomic Damages	Miss. Code Ann. § 11-1-60(2)(a)	In any cause of action for injury based on malpractice or breach of standard of care against a provider of health care, including institutions for the aged or infirm, in the event the trier of fact finds the defendant liable, they shall not award the plaintiff more than $500,000 for noneconomic damages.	Upheld by federal court in *Learmonth v Sears, Roebuch & Co* ., 710 F.3d 249 (5th Cir. 2013); held unconstitutional in *Tanner v. Eagle Oil & Gas Co.,* No. 111-0013, 2012 WL 7748580 (Miss. Cir. Oct. 22, 2012)
35		Personal injury - Noneconomic Damages	Miss. Code Ann. § 11-1-60(2)(b)	In any civil action other than those based on medical malpractice, the plaintiff may not receive more than $1 million for noneconomic damages.	Upheld by federal court in *Learmonth v. Sears, Roebuck & Co* ., 710 F.3d 249 (5th Cir. 2013).
36	**Missouri**	Medical liability - Noneconomic Damages	Mo. Rev. Stat. §§ 538.205, 538.210 (enacted 2015)	In any action against a health care provider for damages for personal injury arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than $400,000 ($450,098 in 2022) for noneconomic damages irrespective of the number of defendants. The limit rises to $700,000 ($787,6711 in 2022) in cases meeting the definition of catastrophic personal injury and in wrongful death claims. The law also replaces the common law action for medical liability with a statutory action. There is an annual 1.7% annual adjustment for inflation. https://insurance.mo.gov/industry/medmal.php	Upheld. *Ordinola v. Univ. Physician Assocs.* , 625 S.W.3d 445 (Mo. banc 2021).
37	**Montana**	Medical liability - Noneconomic Damages	Mont. Code Ann. § 25-9-411	In a malpractice claim against one or more health care providers based on a single incident of malpractice, an award for past and future damages for noneconomic loss may not exceed $250,000.	
38	**Nebraska**	Medical liability - Total Compensatory Damages	Neb. Rev. Stat. § 44-2825	The total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed $1.75 million. A health care provider shall not be liable to any patient who is covered by the act for an amount in excess of $500,000 for all claims or causes of action arising from any occurrence during the period that the act is effective with reference to such patient. Subject to the overall limits from all sources above, any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers shall be paid from the Excess Liability Fund. The statute does not differentiate between economic and noneconomic damages.	Upheld. *Gourley v. Neb. Methodist Health Sys., Inc* ., 663 N.W.2d 43 (Neb. 2003); *Schmidt v Ramsey, 860 F.3d 1038 (8th Cir. 2017)*
39	**Nevada**	Medical liability - Noneconomic Damages	Nev. Rev. Stat. Ann. § 41A.035	In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages not to exceed $350,000. Effective January 1, 2024, the cap will increase by $80,000 per year until it reaches $750,000 in 2028, then the Nevada Supreme Court will increase the cap annually by 2.1% for the next 20 years. A.B. 404 (Nev. 2023) (awaiting Gov. signature as of June 7, 2023).	Upheld. *Tam v. Eighth Judicial Dist. Court,* 358 P.3d 234 (Nev. 2015).

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40	**New Hampshire**	Invalidated - Medical liability - Noneconomic Damages	N.H. Rev. Stat. Ann. § 507-C:7	In any action for medical injury, compensation for non-economic losses shall in no event exceed the sum of $250,000.	Found unconstitutional in *Brannigan v. Usitalo* , 587 A.2d 1232 (N.H. 1991); *Carson v. Maurer* , 424 A.2d 825 (N.H. 1980).
41	**New Jersey**	None			
42	**New Mexico**	Medical liability - Total Compensatory Damages	N.M. Stat. Ann. § 41-5-6 (as amended by H.B. 75 in 2021).	Except for punitive damages and medical care and related benefits, the total recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall not exceed $750,000 per occurrence (effective January 1, 2022), increasing annually for inflation beginning in 2023. The statute does not differentiate between economic and noneconomic damages. Sets a $4 million statutory limit per occurrence for claims against hospitals. This amount will increase by $500,000 annually to $6 million in 2026, then adjust annually for inflation.	Upheld. *Siebert v. Okun* , 485 P.3d 1265 (N.M. 2021).
43	**New York**	None			The state constitution prohibits statutory limits on damages in wrongful death cases. N.Y. Const. art. I, § 16 ("The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.")
44	**North Carolina**	Medical liability - Noneconomic Damages	N.C. Gen. Stat. § 90-21.19	In any medical malpractice action, the total amount of noneconomic damages that can be awarded against all defendants may not exceed $500,000. The cap is adjusted for inflation on January 1st of every third year, beginning in January 1, 2014. The indexing formula shall be $500,000 multiplied by the ratio of the Consumer Price Index (CPI) for November of the prior year to the CPI for November 2011. (The 2020-22 adjusted level is $562,338, https://files.nc.gov/ncosbm/documents/files/memo20191217_LiabilityLimitOnDamagesForMedicalMalpractice.pdf). No limit if the "plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death," AND the defendant's "acts or failures, which are the proximate cause of the plaintiff's injuries, were committed in reckless disregard for the rights of others, grossly negligent, fraudulent, intentional, or with malice."	
45	**North Dakota**	Medical liability - Noneconomic Damages	N.D. Cent. Code § 32-42-02	With respect to a health care malpractice action or claim, the total amount of compensation that may be awarded to a claimant or members of the claimant's family for noneconomic damage resulting from an injury may not exceed $500,000, regardless of the number of health care providers and other defendants against whom the action or claim is brought or the number of actions or claims brought with respect to the injury.	Upheld. *Condon v. St. Alexius Med. Ctr.,* 926 N.W.2d 136 (N.D. 2019).
46	**Ohio**	Personal injury - Noneconomic Damages	Ohio Rev. Code Ann. § 2315.18	Noneconomic damages recoverable in a tort action for injury or loss to person or property shall not exceed the greater of $250,000 or an amount that is equal to three times the economic loss, as determined by the trier of fact, of the plaintiff in that tort action to a maximum of $350,000 for each plaintiff in that tort action or a maximum of $350,000 for each occurrence that is the basis of that tort action. The limit does not apply in cases of (a) permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system; or (b) permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities.	Upheld. *Simpkins v. Grace Brethren Church of Delaware* , 75 N.E.3d 122 (Ohio 2016); *Arbino v. Johnson & Johnson* , 880 N.E.2d 420 (Ohio 2007). Found unconstitutional as applied to a plaintiff and similarly situated plaintiffs (who were child victims of intentional criminal conduct and who bring civil actions to recover damages from the persons who have been found guilty of those intentional criminal acts) to the extent that the cap fails to include an exception for plaintiffs who have suffered permanent and severe *psychological* injuries. *Brandt v. Pompa* , Sliip Op. No. 2022 Ohio 4525, --- N.E.3d -- (Ohio 2022).
47		Medical liability - Noneconomic Damages	Ohio Rev. Code Ann. § 2323.43	In a civil action upon a medical, dental, optometric, or chiropractic claim to recover damages for injury, death, or loss to person or property, noneconomic damages shall not exceed the greater of $250,000 or an amount that is equal to three times the plaintiff's economic loss, as determined by the trier of fact, to a maximum of $350,000 for each plaintiff or a maximum of $500,000 per occurrence. A plaintiff may recover up to $500,000 per plaintiff or $1 million per occurrence if the noneconomic losses are for "permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system" or for "permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life sustaining activities."	
48	**Oklahoma**	Invalidated - Personal injury - Noneconomic Damages	23 Okla. Stat. § 61.2	In any civil action arising from a claimed bodily injury, noneconomic damages may not exceed $350,000 regardless of the number of parties against whom the action is brought or the number of actions brought. There is no limit on noneconomic damages if the judge and jury finds by clear and convincing evidence that (1) the plaintiff or injured person has suffered permanent and substantial physical abnormality or disfigurement, loss of use of a limb, or loss of, or substantial impairment to, a major body organ or system; or (2) the plaintiff or injured person has suffered permanent physical functional injury which prevents them from being able to independently care for themselves and perform life sustaining activities; or (3) the defendant's acts or failures to act were in reckless disregard for the rights of others, grossly negligent, fraudulent, or intentional or with malice.	Found unconstitutional in *Beason v. I.E. Miller Servs., Inc.* , 441 P.3d 1107 (Okla. 2019).

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49	**Oregon**	Unconstitutional - Personal injury* - Noneconomic Damages (prior version of statute)	Or. Rev. Stat. Ann. § 31.710 - eff. 1/1/2022, again with $500,000.00 cap and not yet challenged in appellate courts	In any civil action seeking damages arising out of bodily injury, including emotional injury or distress, death or property damage of any one person including claims for loss of care, comfort, companionship and society and loss of consortium, the amount awarded for noneconomic damages shall not exceed $500,000.	Found unconstitutional as applied to common law claims in *Busch v. McInnis Waste Sys., Inc.*, 468 P.3d 419 (Or. 2020). The limit violates the Oregon Constitution's remedy clause. The court provided three reasons for invalidating the statute: (1) While the legislature can limit common law remedies without a quid pro quo in exchange for the limitation, the failure to do so "strikes a real blow to the defense" of the statute; (2) The statutory limit did not "advance the state's interest in sovereign immunity or any other interest with constitutional underpinnings"; and (3) The cap was not set at a level "capable of restoring the right that had been injured in many, if not all, instances, and would remain capable of doing so over time," particularly since it does not account for inflation since 1987. The court distinguished rulings permitting limits on damages in the context of claims against the state permitted under the Oregon Tort Claims Act or in statutory wrongful death
50			Or. Rev. Stat. Ann. § 31.715	Precludes uninsured drivers from recovering noneconomic damages for injuries sustained in an action arising out of the operation of a motor vehicle	Upheld. *Lawson v. Hoke,* 119 P.3d 210 (Or. 2005).
51	**Pennsylvania**	None			State constitution prohibits enacting a limit. Pa. Const. Art. III, § 18 (authorizing workers' compensation law, "but in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to person or property. . . ."
52	**Rhode Island**	None			
53	**South Carolina**	Medical liability - Noneconomic Damages	S.C. Code Ann. § 15-32-220	In an action on a medical malpractice claim against a single health care provider or institution, noneconomic damages shall not exceed $350,000 for each claimant. When final judgment is rendered against more than one health care institution or provider, the limit for each health care institution and provider is $350,000 for each claimant, and the noneconomic damage limit for all health care institutions and providers is $1,050,000 for each claimant. These limits do not apply if the defendant was grossly negligent, wilful, wanton, or reckless, and such conduct was the proximate cause of the claimant's noneconomic damages, or if the defendant has engaged in fraud or misrepresentation related to the claim, or if the defendant altered or destroyed medical records with the purpose of avoiding a claim or liability to the claimant. The amounts above were enacted in 2005 and are adjusted annually based on the Consumer Price Index. The 2022 adjusted level is $512,773 per claimant against a single health care provider and $1,538,319 for all health care providers for each claimaint. https://rfa.sc.gov/sites/default/files/2022-03/Medical%20Malpractice%20-%20Inflation%20Memo.pdf.	
54	**South Dakota**	Medical liability - Noneconomic Damages	S.D. Codified Laws § 21-3-11	In any action for damages for personal injury or death alleging malpractice against any physician, chiropractor, optometrist, podiatrist, dentist, dental hygienist, dental assistant, hospital, critical access hospital, registered nurse, licensed practical nurse, certified registered nurse anesthetist, clinical nurse specialist, nurse practitioner, nurse midwife, or physician's assistant, or against the practitioner's corporate, limited liability partnership, or limited liability company employer based upon the acts or omissions of the practitioner, total general damages may not exceed $500,000. There is no limitation on the amount of special damages which may be awarded.	Upheld. *Knowles v. United States*, 544 N.W.2d 183 (S.D. 1996) ($500,000 limit on noneconomic damages "remains in full force and effect").
55	**Tennessee**	Personal injury - Noneconomic Damages	Tenn. Code Ann. § 29-39-102	Compensation for noneconomic damages suffered by each injured plaintiff may not exceed $750,000. If an injury or loss is catastrophic in nature, the limit increases to $1 million. "Catastrophic loss or injury" is defined as "spinal cord injury resulting in paraplegia or quadriplegia," amputation of two hands, two feet or one of each, "third degree burns over forty percent (40%) or more of the body as a whole or third degree burns up to forty percent (40%) or more of the face," or "wrongful death of a parent leaving a surviving minor child or children for whom the deceased parent had lawful rights or custody or visitation" but does not apply if the defendant had "a specific intent to inflict serious bodily injury" or the defendant "intentionally falsified, destroyed, or concealed records containing materials evidence with the purpose of wrongfully evading liability in the case at issue" or the defendant was "under the influence of alcohol, drugs or any other intoxicant or stimulant" resulting in the defendant's judgment being "substantially impaired," the defendant's	Upheld. *McClay v. Airport Management Services, LLC* 596 S.W.3d 686(Tenn. 2020); *see also Yebuah v. Center for Utological Treatment*, PLC, 624 S.W.3d 431 (Tenn. 2021) (holding that the statute creates a single cap that includes those awarded to the primary injured spouse as well as those awarded to the other spouse for a derivative loss of consortium claim, and allowing both plaintiffs to recover only $750,000 in the aggregate for noneconomic damages).
56	**Texas**	Medical liability - Noneconomic Damages	Tex. Civ. Prac. & Rem. Code Ann. § 74.301	Liability for noneconomic damages against a single health care institution or provider may not exceed $250,000 per claimant. For actions against more than one defendant, noneconomic damages for all health care institutions are capped at $500,000, but no single institution is liable for more than $250,000 noneconomic damages cap per claimant.	Upheld with respect to wrongful death claims prior to constitutional amendment. *Rose v. Doctors Hosp.*, 801 S.W.2d 841 (Tex. 1990); *Watson v Hortman, 844 F. Supp.2d 795 (E.D. Tex. 2012)*

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57		Medical liability / wrongful death	Tex. Civ. Prac. & Rem. Code Ann. § 74.303	In any wrongful death or survival action against a physician or health care provider, total damages, including punitive damages, are limited to $500,000 regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based. The limit does not apply to necessary medical, hospital, or custodial care received before the judgment or required in the future. The limit is adjusted annually for inflation and is approximately $2.1 million (2019).	
58	**Utah**	Medical liability - Noneconomic Damages	Utah Code Ann. § 78B-3-410	In a malpractice action against a health care provider, an injured plaintiff may recover noneconomic losses to compensate for pain, suffering, and inconvenience. The amount of damages awarded for noneconomic loss may not exceed $450,000 for actions arising after May 15, 2010.	Upheld in non-wrongful death cases. *Judd v. Drezga* , 103 P.3d 135 (Utah 2004). Unconstitutional as applied to wrongful death cases pursuant to an Utah constitutional provision protecting the recovery of damages for wrongful death. *Smith v. U.S* ., 356 P.3d
59	**Vermont**	None			
60	**Virginia**	Medical liability - Total Compensatory Damages	Va. Code Ann. § 8.01-581.15	In any verdict returned against a health care provider in an action for malpractice, the total amount recoverable for any injury to, or death of, a patient shall not exceed $2,550,000 (as of July 1, 2022). This amount rises by $50,000 each year until it reaches $3 million in 2031. The statute does not differentiate between economic and noneconomic damages.	Upheld. *Pulliam v. Coastal Emer. Servs. of Richmond, Inc.* , 509 S.E.2d 307 (Va. 1999); *Etheridge v. Med. Ctr. Hosp.,* 376 S.E.2d 525 (Va. 1989).
61	**Washington**	Personal injury - Noneconomic Damages	Wash. Rev. Code § 4.56.250 - repealed by 2023 c. 102 §5, effective 7/23/23	In no action seeking damages for personal injury or death may a claimant recover a judgment for noneconomic damages exceeding an amount determined by multiplying 0.43 by the average annual wage and by the life expectancy of the person incurring noneconomic damages. For purposes of determining the maximum amount allowable for noneconomic damages, a claimant's life expectancy shall not be less than fifteen years. (Enacted 1986)	Found unconstitutional in *Sofie v. Fibreboard Corp.* , 771 P.2d 711 (Wash. 1989).
62	**West Virginia**	Medical liability	W. Va. Code § 55-7B-8	In any professional liability action brought against a health care provider, noneconomic damages shall not exceed $250,000 per occurrence. The plaintiff may recover noneconomic damages in excess of this limitation, but not in excess of $500,000 for each occurrence, where the damages for noneconomic losses suffered by the plaintiff were for: (1) wrongful death; (2) permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or (3) permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life sustaining activities. The noneconomic damage limit increases annually for inflation based on CPI but cannot exceed 150% of the set amounts, $375,000 generally, $750,000 for catastropic injuries or death. The 2022 levels are near the statutory maximum.	Upheld. *MacDonald v. City Hospital* , N715 S.E.2d 405 (W. Va. 2011); *Estate of Verba v. Ghaphery* , 552 S.E.2d 406 (W. Va. 2001); *Robinson v. Charleston Area Med. Center* , 414 S.E.2d 877 (W. Va. 1991).
63	**Wisconsin**	Medical liability - Noneconomic Damages	Wis. Stat. § 893.55	Total noneconomic damages recoverable for bodily injury, including any action or proceeding based on contribution or indemnification and any action for a claim by a person other than the injured person for noneconomic damages recoverable for bodily injury, may not exceed $750,000 for each occurrence from all health care providers and all employees of health care providers acting within the scope of their employment and providing health care services who are found negligent and from the injured patients and families compensation fund.	Upheld. *Mayo v. Wisconsin Injured Patients & Families Comp. Fund* , 914 N.W.2d 678 (Wis. 2018).
64		Medical liability / wrongful death - Noneconomic Damages	Wis. Stat. § 895.04(4)	Judgment for damages for pecuniary injury from wrongful death against a healthcare provider may be awarded to any person entitled to bring a wrongful death action. Additional damages not to exceed $500,000 per occurrence in the case of a deceased minor, or $350,000 per occurrence in the case of a deceased adult, for loss of society and companionship may be awarded to the spouse, children or parents of the deceased, or to the siblings of the deceased, if the siblings were minors at the time of the death.	Upheld. *Czapinski v. St. Francis Hosp* ., *Inc.* , 613 N.W.2d 120 (Wis. 2000).
65	**Wyoming**	None			State constitution prohibits enacting a limit. Wyo. Const. Art. 10, § 4 ("No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person.").
66	**Virgin Islands**	Medical liability - Total Damages	27 V.I.C. § 166b	The total amount recoverable for any injury of a patient may not exceed $250,000 per occurrence, including economic and noneconomic damages. The total amount awarded for noneconomic damages for any injury to a patient as a result of a single occurrence in an action under this subchapter may not exceed $75,000. No punitive damages may be awarded in an action filed under this subchapter.	Upheld. *Davis v. Omitowoju* , 883 F.2d 1155 (3d Cir. 1989). The constitutionality of the statute is now in question due to *Balboni v. Ranger Am. of the V.I., Inc.* , 70 V.I. 1048, 1096 n.45 (V.I. 2019), cert. denied, 140 S. Ct. 651 (finding *Davis* "unpersuasive," reasoning that the Virgin Islands applies a heighened standard of rational basis review under its own constitution than the "significantly more deferential rational basis standard" applied under the U.S. Constitution); *see also Gumbs v. Schneider Regional Med. Ctr.* , 2020 WL 6261273 (V.I. Super. Ct. Oct. 19, 2020) (unholding statute and finding cap in *Balboni* distinguishable from limit on medical liability).
67		Auto accident liability - Noneconomic Damages	20 V.I.C. § 555	Limited noneconomic damages in actions arising out of motor vehicle accidents to $100,000.	Invalidated as violating equal protection under the Virgin Island's *Constitution. Balboni v. Ranger Am. of the V.I* ., *Inc.,* 70 V.I. 1048 (V.I. 2019), cert. denied, 140 S. Ct. 651.
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