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Illinois Supreme Court Strikes Blow to State's Already Ailing Health Care System

High Court Rules Medical Lawsuit Reforms Unconstitutional

Chicago — Today the Illinois Supreme Court dealt a huge blow to Illinois patients and doctors, overturning the state's medical lawsuit reform law which had been challenged in the court case *Lebron v. Gottlieb Memorial Hospital*. Enacted in 2005, the law has dramatically improved Illinois' medical liability climate and patient access to health care. According to the court-produced summary, the law was struck because the "damage limitation violates the constitutional principle of separation of powers by interfering with the authority of the judicial branch to reduce verdicts."

Decision is at <http://www.isms.org/NewsRoom/newsreleases/Documents/LEBRON-2-4-2010.pdf>.

"It's profoundly disappointing that the wishes of millions of Illinois citizens have been ignored," said Illinois State Medical Society President James L. Milam, M.D. "And it's highly ironic the decision comes at the very time national lawmakers are searching for ways to expand patient access to care and contain unnecessary costs. Medical liability reform is a proven solution on both these fronts. The non-partisan Congressional Budget Office estimates medical liability reforms would save at least 54 billion health care dollars over the next decade. More than half of all states have had similar laws upheld by their courts and benefited from improved patient access to medical care and reduced litigation costs."

"Overturning this law further strains our state's already-ailing health care system," Dr. Milam noted. "Our Medicare and Medicaid programs, and unreasonable demands from private health insurers, impose significant burdens on doctors' medical practices," he said. "Losing medical lawsuit reform heaps even greater pressure on patients and doctors. Something has to give."

“Since passage of the Illinois reform law, patient access to health care has expanded, frivolous lawsuits have ebbed and malpractice rates have leveled off or decreased for many doctors. This is practical proof the law is working,” said ISMIE Mutual Chair Harold L. Jensen, M.D. “Not only has competition among insurers grown but doctors have begun returning to Illinois,” he explained. “We vehemently disagree with the court’s decision and are extremely disappointed. We’ve been down this path before and will actively continue the fight for fairness in Illinois courts.”

Background on Medical Lawsuit Reforms:

Before 2005, non-economic damage awards in medical liability lawsuits were steadily rising and wreaking havoc on the state’s medical liability insurance climate – driving doctors to retire early or leave Illinois for states with better legal environments. Non-economic damage awards are largely unpredictable and unquantifiable sums awarded by juries for emotional issues such as pain and suffering.

Among a comprehensive list of reform provisions aimed at preserving patient access to medical care (attached), the Illinois legislature capped non-economic damage awards at \$500,000 for doctors and \$1 million for hospitals. Under the reform law, patients injured through medical negligence continue to receive full, unlimited compensation for all economic damages such as lost wages, medical expenses and future earning potential.

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ISMS is a professional membership association representing 12,000 physicians practicing in all medical specialties statewide. Dr. Milam is an OB/GYN practicing in Vernon Hills.

ISMIE Mutual Insurance Company is the largest insurer of medical liability for Illinois physicians. Dr. Jensen is an internal medicine specialist from Frankfort.

Highlights of the 2005 Medical Litigation Reforms

Judicial Reforms

- \$500,000 cap on non-economic damage awards for physicians and \$1 million cap for hospitals. Firm cap, not indexed for inflation and no exceptions.
- Improvements to the affidavit of merit, requiring disclosure of consulting physician's name, and that the physician be an expert in the area of medicine that is the subject of the lawsuit.
- Stronger standards for expert witnesses. Witnesses must be board certified or board eligible in the same specialty as the defendant. The expert must also devote a majority of time to the practice of medicine, teaching or research. Retired experts must be current with continuing medical education.
- Allow the use of annuities for the payment of portions of the award for medical costs.
- Good Samaritan immunity extended to retired physicians providing free care and for free care provided in the home.
- Allow physicians to say "I'm sorry" or other expressions of grief and apology without the statement being used against them.

Medical Discipline

- Medical Disciplinary Board expanded from nine to eleven members. Four members must be members of the public.
- Doubles the number of IDFPR investigators.
- Extends the statute of limitations from five to ten years for IDFPR to investigate allegations of a pattern of practice.
- IDFPR disciplinary fine increased to \$10,000 maximum.
- Good faith immunity for persons reporting to peer review committees alleged violations of Medical Practice Act.
- Internet profiling of physicians' professional credentials, and disciplinary and medical litigation histories.

Insurance Regulation Reform

- More power for the Division of Insurance to call hearings to determine whether rates are excessive or inadequate. Hearings are to be held at the request of 1 percent of insureds within a specialty, or at the request of 25 insureds (whichever is greater). Department will call for a hearing when an increase is over 6 percent.
- Encourages insurers to offer policies with deductibles and premium discounts for risk management programs.
- Requires submission of claims statistics and other data to the DOI. All information will be made available to the public.