

LEGISLATIVE UPDATE:

PENDING LEGISLATION TO REINSTATE CAPS ON NONECONOMIC DAMAGES IN FLORIDA MEDICAL MALPRACTICE CASES

After having their decade-old caps on noneconomic damages in medical malpractice cases stricken down by the Florida Supreme Court in the case of *McCall v. United States*, the Florida legislature is fighting back in working through a bill in the legislative process that would bring back those caps and also make some other changes to Florida's medical malpractice tort law. The bill specifically notes in its legislative findings that *McCall* was wrongly decided and that there is a need for medical malpractice caps in Florida due to the fact that malpractice cases affect insurance premiums and the availability of healthcare. In *McCall*, the Supreme Court said that these reasons that were the justification for the initial caps were no longer valid and, therefore, the statutory caps must fall. This legislature rejects the Supreme Court's reasoning and once again specifically finds that caps on damages would help the overall healthcare system.

The caps are very similar to the previous caps. For all actions, there is a cap of \$500,000.00 per claimant, regardless of the number of practitioners who are liable. For non-practitioners, the cap is \$750,000.00.

Practitioners include medical doctors, osteopathic doctors, chiropractors, podiatrists, naturopathy practitioners, optometrists, dentists, midwives, physical therapists, and advanced nurse practitioners. Curiously absent from this list are registered nurses and occupational therapists. However, it seems that at a minimum they would have the \$750,000.00 cap as a non-practitioner. A corporate entity that is vicariously liable for a practitioner enjoys the same cap as a practitioner. It appears that since the cap is "per claimant," you do not get to stack the caps.

There is an important expansion of liability in this bill. Previously, for children to sue for



certain noneconomic damages for the wrongful death of a parent or the parent to sue for certain noneconomic damages for the wrongful death of a child, the child had to be under 25 years old. That restriction has now been eliminated so that adult children and parents of adult children can recover those damages.

Emergency room practitioners are capped at \$150,000.00, with the non-practitioners involved in the rendering of medical services capped at \$750,000.00. The cap on Medicaid patients of \$300,000.00 remains in effect. This has never been challenged.

Overall, we think the caps on damages will stabilize insurance premiums and afford healthcare providers greater predictability with regards to outcome. It will also allow healthcare providers to be more aggressive in the defense of cases where they feel strongly that they were not negligent without fear of a nuclear verdict.

Questions

We will keep you updated as to when this new legislation goes into effect. Should you have any questions about how these caps may affect your business in Florida, please contact your local Wicker Smith office.