

December 4, 2007

Dear Senator,

I'm writing to express the Wisconsin Medical Society's strong opposition to Senate Bill 138, which relates to expanding the group of claimants who can file claims for loss of society and companionship in medical malpractice cases. SB 138 adds: adult children of a parent, and parents of an adult child, injured by medical malpractice, to the list of claimants that includes spouse, parent, minor sibling and minor children, who are able to sue for a derivative claim for injury or death on account of malpractice. Attached is our memo presented to the committee at the public hearing on October 17, 2007.

While this might seem like a small change to Wisconsin's medical malpractice statutes, Wisconsin's current medical malpractice environment, once the envy of the nation, is in a current state of volatility and fragility because of recent developments. Last legislative session saw the Wisconsin Supreme Court declare the state's 10 year-old noneconomic damage cap, of roughly \$445,000, unconstitutional. In response, it took the two different attempts at a legislative fix to get a bill signed into law that imposed a new \$750,000 cap on noneconomic damages. The result was not only an almost 70 percent jump in the amount recoverable, but the affect of the process and legislation mean there is technically an unlimited amount of noneconomic damages that can be awarded for an incidence of medical malpractice before April 6, 2006. Just recently, an appellate court let stand an \$8.4 million judgment against the IPFCF, of which more than half of the verdict was awarded for noneconomic damages. This case is just one of many that addresses an incident before the cap was reinstated. With the long-tail nature of discovery in these cases, it will be years before the full ramifications of the new cap will be realized.

This legislative session has seen the raiding of \$200 million from the Injured Patients and Families Compensation Fund (IPFCF). This was the Governor's third attempted raid that he included in his Executive budget to use IPFCF funds for a reason other than its intended purpose. The \$200 million represents a quarter of the IPFCF's total assets, lowering its reserves below its potential liabilities, and forcing the fund into a deficit accounting balance. This deficit will likely force the IPFCF's Board of Directors to raise rates on physicians, who make up 85 percent of the IPFCF's payers. The raid has also forced the Society to file suit against the State for an illegal taking from the IPFCF.

With all the recent actions that have significantly impacted Wisconsin's medical malpractice environment, the Society hopes that the legislature will exercise caution by not further degrading this environment. We hope to see a stabilizing effect of the \$750,000 cap on noneconomic damages, but this will take time to address and analyze. We hope to be successful in our attempt to recover the \$200 million raided from the IPFCF, but this too will take time to have the action proceed through the courts. Advancing SB 138 will only further degrade and add volatility to an already fragile medical malpractice environment by expanding the number of claimants eligible in an action. Again, we ask for you to oppose SB 138.

Thank you for consideration regarding this issue. Please feel free to contact Society staff at any time with questions you have on this or any other issue.

Sincerely,

Clarence Chou, MD, President