

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 13

DANE COUNTY

WISCONSIN MEDICAL SOCIETY, INC.,
and DAVID M. HOFFMANN, M.D.

Plaintiffs,

vs.

Case No.: 07-CV-4035

2008 JUN -6 AM 8:50
DANE COUNTY
CIRCUIT COURT

MICHAEL L. MORGAN,

Defendant.

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

TO: Michael L. Morgan
c/o Christopher J. Blythe, Esq.
Wisconsin Department of Justice
17 W. Main Street
Madison, WI 53707

PLEASE TAKE NOTICE that plaintiffs, Wisconsin Medical Society, Inc. and David M. Hoffman, M.D., by their attorneys Whyte Hirschboeck Dudek S.C., hereby move the Court, pursuant to Wis. Stat. § 802.08 and Local Rules 115 and 307, for summary judgment on the basis that there is no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter of law on any of the causes of action set forth in Plaintiffs' February 29, 2008 Amended Complaint. The grounds for this motion are as follows:

1. To help meet a budget shortfall and avoid political consequences that would inevitably follow from overtly raising taxes, Defendant Department of Administration Secretary Michael Morgan implemented legislation enacted by Governor James Doyle and the Wisconsin

Legislature (2007 Wis. Act 20, § 9225) and raided \$200 million from the Injured Patients and Families Compensation Fund (the "Fund").

2. No public or state monies fund the Fund.

3. The full net worth of the Fund, funded entirely by contributions from health care providers and investment earnings, is held in an "irrevocable trust" for the express purpose of "financing part of the liability incurred by health care providers as a result of medical malpractice claims and to ensure that proper claims are satisfied." Wis. Stat. § 655.27(6).

4. The raid of \$200 million from the Fund for non-Fund purposes is:

- (a) an unconstitutional taking of health care providers' property rights without just compensation;
- (b) an unconstitutional impairment of health care providers' contractual rights;
- (c) a disguised tax on health care providers and injured patients and families, which was not properly promulgated as a tax and, thus, is void;
- (d) an unconstitutional denial of health care providers' rights to equal protection;
- (e) a violation of the statutorily-required provisions for withdrawal of monies from the Fund; and
- (f) a deprivation of health care providers' constitutional rights under color of state law in violation of 42 U.S.C. § 1983.

5. For these reasons, Plaintiffs are entitled to judgment declaring the raid invalid, an order that all monies raided from the Fund be returned with interest and an award of their attorneys' fees under 42 U.S.C. § 1983 or under the common fund principle.

Further grounds for this motion are set forth in the accompanying brief and affidavits of Cynthia L. Buchko, George Quinn, Melissa Breen, and David M. Hoffman, and all exhibits attached thereto.

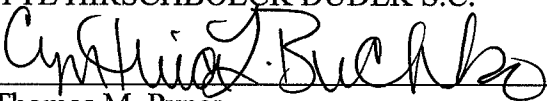
Pursuant to the Court's schedule, this Motion shall be heard in the Brach 13 courtroom of the Dane County courthouse on August 25, 2008 at 1:15 p.m.

Dated this 6th day of June, 2008.

P.O. ADDRESS:

33 East Main Street, Suite 300
Madison, WI 53703
Tel: 608-255-4440
Fax: 608-258-7138

WHYTE HIRSCHBOECK DUDEK S.C.

By: 

Thomas M. Pyper
State Bar No. 1019380
Cynthia L. Buchko
State Bar No. 1036102
Kelly M. Dvorak
State Bar No. 1049549
Attorneys for Wisconsin Medical Society,
Inc.