

Court considering fate of noneconomic damages cap

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(HealthDay)—The Wisconsin Supreme Court is considering whether it

will hear a case that will determine the fate of the state's \$750,000 cap on noneconomic damages, according to an article published by the American Medical Association (AMA).

The cap has been nonexistent since a state appellate court panel ruled it unconstitutional on July 5. The ruling stemmed from *Mayo v. Wisconsin Injured Patients and Families Compensation Fund*, which involved a woman who visited two hospital emergency departments within two days and ultimately suffered organ failure plus gangrene in all her limbs, which were then amputated. A trial court jury found that neither the emergency physician nor the physician assistant who treated the patient were negligent but that both failed to provide proper informed consent on diagnosis and treatment options. The patient was awarded \$15 million in noneconomic damages, and her husband was awarded \$1.5 million for the loss of his wife's companionship. When the defendants moved to have the award reduced to match the cap, the three-judge appellate court panel ruled the cap unconstitutional, saying that it was "arbitrary" and that it denied some victims equal protection.

The Wisconsin Medical Society (WMS) and the Litigation Center of the AMA and State Medical Societies filed an amicus brief, arguing against that opinion and urging the state Supreme Court to review the case. The [court's](#) decision on whether it will review the case is expected by Thanksgiving.

"The cap is critical to attracting physicians to the state and retaining them," John Rather, WMS general counsel, said in the article. "It affects the cost of health care, a physician's willingness to engage in complex care. It affects physician decision-making. And it affects the patient-[physician](#) relationship."

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