



# "Code Blue"

**MEDICAL LIABILITY CRISIS RELIEF PLAN**

Illinois House Republican Caucus

**TOM CROSS**

House Republican Leader



## EXECUTIVE SUMMARY

The medical liability crisis facing Illinois is a complex problem. While frivolous lawsuits and unreasonable jury awards for pain and suffering are significant contributing factors to the medical liability crisis, the real victims are Illinois patients facing decreased access to quality medical care because our physicians are fleeing Illinois.

This is not more fuel for the medical liability crisis debate, but recognition of the problem at the legislative level and a set of reasonable solutions. Patients, physicians, and medical liability insurance providers are urging legislative reform and our judicial system is showing signs of being compromised with excessive and frivolous litigation and run-away jury verdicts.

In order to combat the current problem of soaring medical liability insurance costs, physician flight and poor access to quality health care, especially high-risk specialties, the House Republican Caucus proposes the following comprehensive solutions to the complex problem in the **2004 "Code Blue" Medical Liability Crisis Relief Plan**, which includes both short-term and long-term solutions:

### **A \$500,000 cap on non-economic damages in medical malpractice actions (HB 7278)**

- Reasonable \$500,000 cap on non-economic damages; defines non-economic damages; creates a 10-year study to review the effects of the caps in Illinois on the medical profession, medical liability insurance providers, and the judicial system; allows for changes in the amount of the cap based on the consumer price index; adds a guaranteed minimum economic award for lost wages for patients that earn less than the average weekly wage; and plaintiff's attorneys' fees may not be paid out of any amounts awarded for economic or non-economic damages in the case – instead, fees shall be paid out as a separate item of damages.

*Rationale: States which have implemented caps have seen increased market stability and more consistency in insurance premium increases.*

### **Pre-Trial Review for Medical Malpractice Actions (HB 7279)**

- Requires all potential medical malpractice claims to be submitted to a pre-trial review for medical malpractice actions which is non-binding, but admissible at trial to root out frivolous claims versus those with merit.

*Rationale: Improve the elimination of claims that lack merit at the onset of the litigation process and to encourage parties to agree on a settlement for meritorious claims.*

## **PHYSICIAN RELIEF LEGISLATION INCLUDING:**

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### **Physician Insurance Premium Relief Fund (HB 6553)**

- Requires the Department of Public Health to award grants to all practicing physicians (instead of only to physicians offering obstetrical medical services in rural areas) for the purpose of reimbursing the costs of obtaining malpractice insurance.

*Rationale: To provide Illinois physicians with some amount of financial relief towards their skyrocketing medical malpractice premiums during this crisis, and to prevent physician flight to other states.*

### **Student Loan Re-Payment Assistance (HB 6552)**

- Provides that for each year that a qualified applicant practices full-time as a physician, the Department shall, subject to appropriation, award a grant to that person in an amount equal to the amount in educational loans that the person must repay that year. Provides that the total amount in grants that a person may be awarded shall not exceed \$25,000.

*Rationale: Encourage new physicians, who are turned off by the medical liability crisis in Illinois, to practice in our state.*

### **Shielding of Physician's Assets (HB 7280)**

- Limits recovery in medical and healing arts malpractice cases to the amount that is covered by the physician's medical malpractice insurance or liability insurance. Provides that, in no event shall a physician be liable in an amount that would cause him or her to forfeit any of his or her personal assets (provided they carry a "reasonable amount" of medical malpractice insurance).

*Rationale: Protects a physician's personal assets in medical liability suits.*

## **TORT REFORM LEGISLATION INCLUDING:**

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### **Venue Shopping Limitation (HB 7281)**

- Requires a med mal/healing art mal practice action to be filed against a health care provider in a county where the cause of action occurred.

*Rationale: Curtails venue shopping to find the most sympathetic set of jurors.*

### **Stronger Affidavit of Merit (HB 6546)**

- Requires that the Certificate of Merit contain the name and address of the reviewing health professional and also that the professional meet higher standards than exist in current law in order to qualify as a reviewing physician.

*Rationale: Improve the elimination of claims that lack merit at the onset of the litigation process.*

### **More Stringent Expert Witness Standards (HB 6547)**

- Raises the standards for physicians to qualify as expert witnesses to ensure that they are actively practicing and are knowledgeable within the particular specialty.

*Rationale: Improve the assessment of liability claims.*

### **Prohibiting Apologies or Other Expressions of Grief from being Considered Admissions of Liability (HB 6548)**

- Expands Illinois law to prohibit that any expression of grief or apology for the outcome of services be considered an admission of liability.

*Rationale: Similar to the current Illinois law which allows for the payment of an injured patient's medical bills without such payment being construed as an admission of any liability, this allows physicians to comment on unexpected outcomes in any situation.*

## **REGULATORY REFORMS:**

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### **Increase in the Medicaid Provider Rate (HB 6554)**

- Provides for an increase in the rates paid to every vendor of goods or services under the Medicaid program so that those rates are equal to the rates paid to such vendors under Medicare. Provides for implementation of the rate increase over a 3-year period.

*Rationale: Advocating for an increase in the Medicaid rates to providers achieves more equitable payments for services provided and relieves some of the burden placed upon physicians.*

## **CONSTITUTIONAL AMENDMENTS:**

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### **Authorizing Caps on Non-Economic Damages (HJRCA 36)**

- Provides that the General Assembly may determine by statute the limit of liability for all damages and losses other than economic damages of a provider of medical or health care with respect to treatment, lack of treatment, or other claimed departure from an accepted standard of medical or health care or safety that is or is claimed to be a cause of or that contributes or is claimed to contribute to the disease, injury, or death of a person. Requires a majority vote to pass legislation to limit liability on non-economic damages and requires that the legislation cite this section.

### **Authorizing Pre-Trial Screening Review in Medical Malpractice Actions (HJRCA 37)**

- Provides that the General Assembly may authorize by statute a pre-trial review of all medical malpractice actions filed in Illinois by a panel, whose determination is non-binding, but admissible at trial, to root out frivolous claims versus those with merit. Requires a majority vote to pass legislation for a mandatory pre-trial screening review on all medical malpractice actions filed in Illinois.



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## **WHY WE NEED MEDICAL MALPRACTICE REFORM IN ILLINOIS**

- Illinois' health care system is in a serious crisis, worsening each and every day and demands immediate attention.
- The cause of the crisis - an out of control legal system allowing excessive, non-meritorious litigation and skyrocketing awards for medical liability lawsuits.
- Harsh excesses of medical liability lawsuits force doctors to leave the state, force them to stop offering complex, necessary and often times life-saving medical procedures, retire early and limit their practices.
- Run-away jury awards to a lucky few plaintiffs cause medical malpractice insurance premiums to rise to a level that physicians simply cannot afford to continue to practice in their chosen professions and pay the bills.
- 34.1% of obstetricians have stopped practicing because of fear of litigation, a negative experience with litigation or they could not afford or obtain liability insurance. *(American College of Obstetricians and Gynecologists – 2003 Survey)*
- Excesses of the Illinois health care system have caused most malpractice insurers to abandon the Illinois market because of huge losses despite costly premiums.
- Insurance companies willing to insure physicians in Illinois is at an all time low.
- When doctors are forced to leave, the victims of the crisis are the citizens of the state of Illinois whose access to health care is diminished.

## **LOSING DOCTORS MEANS LOSING ACCESS TO QUALITY HEALTH CARE**

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- Physicians are leaving Illinois in droves to practice where the litigation systems have been reformed, where the excesses of the Illinois judicial system do not exist, and where the insurance premiums are manageable, such as Wisconsin. *(Chicago Tribune, March 12, 2004)*

- Physicians in specialties such as neurosurgery, orthopedics, anesthesiology, general surgery and obstetrics/gynecology who remain in Illinois are no longer performing high-risk procedures, leaving patients who need their skills with few, if any, options. Trauma providers in Illinois are closing down everywhere.
- South of Interstate 64 there are no neurosurgeons. As of the beginning of March 2004, the only two remaining in Carbondale have announced they are closing their practices because they cannot afford the costs. (*The Southern Illinois, February 25, 2004*). A head injury will have to be air-lifted to St. Louis, Evansville, Paducah or Cape Girardeau – and depending on severity could die en route.
- Attracting new physicians to Illinois is virtually impossible because of the current legal climate. If doctors with deep roots in the community (and state) can no longer afford to stay, it is unlikely that outsiders will be interested in coming to Illinois to practice. (*Bellefonte News-Democrat, March 1, 2004*)
- Physicians completing formal training have debt that often approaches \$250,000. By locating in Wisconsin, (and other neighboring states that have some form of caps), an OB/GYN, for example, can save \$75,000 to \$100,000 per year in medical malpractice costs. (*Chicago Tribune, March 12, 2004*)
- A new practicing physician has much more to be concerned about if he or she chooses to practice in Illinois, especially when they face the kind of malpractice costs that doctors in other states do not.
- If this crisis is not addressed immediately, it will no longer be a crisis, but a catastrophe. Patients will be forced to “head to St. Louis, Dubuque or Madison” to find quality medical care in high-risk specialties.

## **LITIGATION LOTTERY: HIGH AWARDS FOR A FEW: FISCAL RUIN FOR THE MAJORITY**

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- Physicians in Illinois are not the only parties who risk financial loss as a result of the current crisis: In some counties over 70% of those plaintiffs who file a claim never receive any money for their damages. (*Illinois State Medical Society Report – February 19, 2004*)
- The ISMIE Mutual spent over \$150 million over the last five years defending claims.
- Frivolous lawsuits are expensive to defend, and take physicians away from their practice, soil reputations and make every patient a potential litigant rather than someone who needs medical care, with the plaintiff often getting nothing. (*Illinois State Medical Society Report – February 19, 2004*)

- Jury verdicts in Illinois medical malpractice claims continue an upward spiral. In 2003, non-economic damage awards, averaged \$3.12 million. States that cap non-economic damages at \$250,000 - \$500,000 have significantly lower malpractice premiums and have become a magnet to relocating physicians. (*Illinois State Medical Society Report – February 19, 2004*)

## **NEIGHBORING STATES WITH CAPS ON NON-ECONOMIC DAMAGES**

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- Indiana - \$250,000 limit for each provider and a \$1,250,000 for all providers
- Wisconsin - \$350,000 cap adjusted annually for inflation
- Missouri - \$547,000 cap adjusted annually for inflation
- Illinois doctors are fleeing to these and other states to practice

## **NOW IS THE TIME TO ACT**

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- Neighboring states of Illinois understand that excesses of the judicial system for medical malpractice cases have a harmful effect on health care to all citizens.
- Excessive, non-meritorious litigation and unreasonable awards drive the cost of malpractice insurance for physicians to unaffordable levels. The system is driving physicians out of Illinois and causing a major health care threat in Illinois.
- Today's litigation crisis is more severe than ever. It demands immediate action by the legislative, executive and judicial branches of Illinois government. Failure to act immediately will put Illinois' health care system in serious jeopardy, as physicians continue to leave Illinois for judicial climates that offer protection from the excesses of Illinois' litigation system.



## **MEDICAL MALPRACTICE CRISIS – ECONOMIC IMPACT**

- The economic impact when an average physician leaves a state is \$1.1 million per physician (source: “Sample Talking Points,” U.S. Chamber of Commerce data sheet).
- When a physician leaves Illinois, 12 other jobs disappear (source: Arnold Wyrick, “Economic Impact of Doctor Exodus”, KFVS-TV, Carbondale, Ill., March 2004).
- According to another study, when a family physician leaves a state, 50 full-time jobs disappear (source: U.S. Chamber of Commerce).
- Communities cannot attract businesses to relocate if they lack medical facilities. (source: U.S. Chamber of Commerce)
- Hospitals and physicians not only are providers but also are employers-often an area’s largest employer-and critical leaders.
- Jobs that disappear when physicians leave are high-paying jobs. Many ancillary workers in the health-care-provider field are professionals in their own right. Examples of these highly skilled jobs are physicians’ assistants, registered nurses (RNs), advanced practice nurses (APNs), medical secretaries, and medical receptionists (source: Department of Employment Security).
- According to the Department of Professional Regulation, there are 39,307 actively licensed doctors in Illinois as of December 31, 2003. Staff has requested information pertaining to the number of actively licensed physician assistants and advanced practice nurses (APNs) who, by nature of their professions, work directly for licensed physicians.
- The Illinois Department of Employment Security (DES) compiles information regarding typical wages earned by 770 classifications of jobs in the Illinois labor market. The latest wage information compiled by DES can be found in the “Wage Data 2003”

which reports, among other things, median and experienced wages earned during the fourth quarter of 2002. The following wages are reported:

<b>Occupation</b>	<b>Median Salary</b>	<b>Experienced Salary</b>
Family & General Pract.	\$147,215	\$140,637
General Internist	NA	\$144,734
OBGYN	NA	\$131,111
Surgeon	NA	\$146,849
Physician Assistant	\$46,706	\$57,981
Reg. Nurses (and APNs)	\$47,021	\$53,782
Medical Secretaries	\$29,714	\$40,279
Receptionists (general)	\$21,201	\$25,355



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## MEDICAL MALPRACTICE REFORM FACTS

- Illinois has dropped 10 places in the last two years – from 34<sup>th</sup> to 44<sup>th</sup> among the states in the fairness of their legal systems.  
State Liability Systems Ranking Study – U.S. Chamber of Commerce Institute for Legal Reform
- Illinois' Malpractice insurers faced \$1.47 in claims for every \$1 they collected in premiums in 2002, putting Illinois among the nation's leaders in malpractice insurance losses, state insurance department data indicate.
- Medical malpractice suits add \$60 billion to \$108 billion per year to the cost of health care in the United States and reduce access to health care for millions of people.  
American Medical Association
- In Wisconsin, juries currently can award up to \$423,000 for pain and suffering. In Indiana, total awards for both economic and non-economic damages cannot exceed \$1.25 million, according to medical societies in those states.
- In 2003, obstetrician/gynecologists in Wisconsin paid up to \$30,304 for malpractice insurance. In Indiana's Lake and Porter counties, the premium was \$58,020. In Illinois' Cook, Madison, St. Clair and Will counties, the bill was \$139,696.  
Chicago Tribune – March 12, 2004.
- A Saline County family practitioner is closing his office March 31 because of high malpractice insurance premiums. His premium for this year would have been \$40,000. It would be between \$5,000 and \$6,000 in Indiana, where he practiced before relocating in Illinois. Indiana has a cap on the award a person can get because of pain and suffering.  
Southern Illinoisian – March 3, 2004.
- The remaining two brain surgeons in southern Illinois will be gone by July, 2004. That will require the patient needing a neurosurgeon to go to either Cape Girardeau or St. Louis, or Indiana.  
Southern Illinoisian – March 3, 2004.

- Fourteen physicians, including four obstetricians, left Maryville's Anderson Hospital last year because of high malpractice insurance premiums. Maryville is in the Metro East area. Other physicians who left in 2003 for the same reason: three surgeons, two internists, two family practice doctors, an ear-nose-throat specialist, a neurosurgeon and an anesthesiologist.
- Also, St. Elizabeth's Hospital in Belleville announced that all six of its anesthesiologists will leave in May – again because of high malpractice premiums.  
Belleville News-Democrat – Feb. 28, 2004
- Two doctors left Danville, Illinois and moved to Indiana in the last 10 months and cut their malpractice insurance premiums in half.  
State Rep. Bill Black
- Decatur's three neurosurgeons paid \$230,000 in malpractice insurance premiums in 2003. In 2004, the quote for insurance was \$906,000.  
Decatur Herald & Review editorial Jan. 20, 2004.
- On average, Madison County physicians are twice as likely to be sued as doctors anywhere else in the state – with more than one in four facing litigation at any given time.
- The Metro East area has lost 70 doctors in the last few years because of rising malpractice insurance premium rates.
- ISMIE Mutual Insurance Company, the state's largest medical malpractice insurance carrier has stopped writing new insurance policies. It says Madison County doctors face a 27 percent chance of being sued as compared to 13 percent statewide. ISMIE insures approximately 14,000 physicians.
- ISMIE's average payments to plaintiffs rose by 22 percent between 2001 and 2002. In Madison and St. Clair counties, the company paid out \$33.5 million in verdicts and settlements over the last five years, while taking in just \$29.6 million in premiums.  
St. Louis Post Dispatch – Feb. 14, 2004.
- ISMIE says 80 % of all claims against its insureds result in no payment to the plaintiff. Yet, ISMIE spent more than \$150 million over the last five years defending the claims.
- In 2003, the average jury verdict in Cook County was \$4.45 million – a 23 % increase from 2002.  
Illinois State Medical Society
- Over the last five years (from 2004) the average Cook County total jury verdict rose 61 percent. During the same period, the average non-economic (pain and suffering) award skyrocketed to 132 percent.  
ISMIE analysis of *Cook County Jury Verdict Reporter*



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## 26 STATES DIRECTLY CAP NON-ECONOMIC DAMAGES AND LIMITS ACCORDING TO THE NCSL

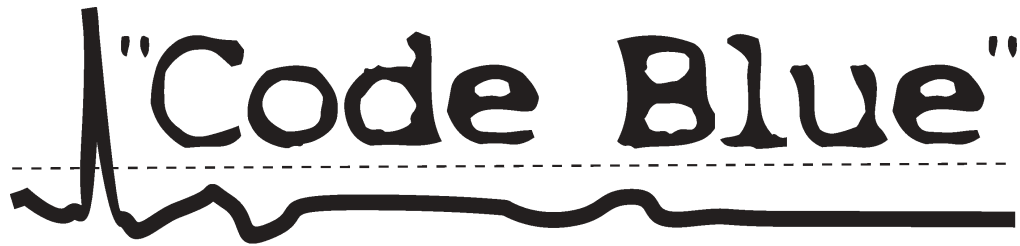
Note: Each state has variations in its own law regarding the following caps. However, the following are base amounts.

### 6 STATES IMPOSE TOTAL DAMAGE CAPS

1.	Colorado	\$1,000,000 against hospital/physician \$250,000 for non economic damages
2.	Indiana	\$1,250,000 cap on total damages
3.	Louisiana	\$500,000 cap on total damages
4.	Nebraska	\$1,000,000 cap on total damages
5.	New Mexico	\$600,000 cap on total damages; excluding punitive damages and past and future medical care.
6.	Virginia	\$1,750,000 cap on total damages

### 20 STATE LIMIT ONLY NON-ECONOMIC DAMAGES:

1.	Alaska	\$400,000
2.	California	\$250,000
3.	Florida	\$500,000
4.	Hawaii	\$375,000
5.	Idaho	\$250,000
6.	Kansas	\$250,000
7.	Maryland	\$650,000
8.	Massachusetts	\$500,000
9.	Michigan	\$349,700
10.	Mississippi	\$500,000
11.	Missouri	\$547,000
12.	Montana	\$250,000
13.	Nevada	\$350,000
14.	North Dakota	\$500,000
15.	Ohio	\$350,000
16.	South Dakota	\$500,000
17.	Texas	\$1,300,000 – (for wrongful death damages only)
18.	Utah	\$250,000
19.	West Virginia	\$1,000,000
20.	Wisconsin	\$350,000



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## COMPARISON ANNUAL RATES PAID BY PHYSICIANS FOR MALPRACTICE INSURANCE BETWEEN 2000 - 2003 ILLINOIS AND WISCONSIN

**Illinois:** For leading insurers in Cook, Madison, St. Clair and Will Counties.

**Wisconsin:** Highest number from a range of leading insurers

### OBSTETRICIANS/GYNECOLOGISTS

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#### Illinois

2000: \$78,880                      2003: \$139,696                      Percentage change: (up) +77.1 %

#### Wisconsin

2000: \$27,466                      2003: \$30,304                      Percentage change: (up) +10.3 %

### GENERAL SURGEONS

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#### Illinois

2000: \$52,364                      2003: \$92,576                      Percentage change: (up) +76.8 %

#### Wisconsin

2000: \$16,661                      2003: \$19,641                      Percentage change: (up) +17.9 %

### INTERNISTS (INTERNAL MEDICINE)

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#### Illinois

2000: \$19,604                      2003: \$35,756                      Percentage change (up) +82.4 %

#### Wisconsin

2000: \$5,993                      2003: \$5,612                      Percentage change (down) -6.4 %

*Sources: American Medical Association and the Medical Liability Monitor  
Published in Chicago Tribune, March 12, 2004.*