



ILLINOIS STATE  
BAR ASSOCIATION

# THE CATALYST

The newsletter of the ISBA's Standing Committee on Women and the Law

## The lawyer as peacemaker and healer

By Sandra Crawford, J.D.

*Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.*

—Abraham Lincoln, 1850

As we in the western hemisphere in winter in recognition of the season of lights, peace and brotherly love, it seems appropriate to explore the role of the lawyer as peacemaker and healer and give thanks for the opportunity the practice of law gives each of us to “bring peace into room”. Although the idea of lawyer as peacemaker is by no way new in our legal community here in Illinois (good old Abe was promoting that paradigm shift over 150 years ago), the idea does not seem to be one that was actively subscribed to or formerly

promoted until fairly recently. In this article I would like to: (1) share with you information regarding emerging international and local professional organizations dedicated to the active promotion of the concept of lawyer as peacemaker and healer, and (2) give thanks for the great opportunity the ISBA recently afforded us through the “Don’t Just Survive, Thrive” forum.

Internationally and nationally the following organizations are of note: the International Alliance of Holistic Lawyers (IAHL) and, the International Academy of Collaborative Professionals. <<http://www.collaborativepractice.com>>.

IAHL membership is committed to “PEACELAW” as defined below:

- P**romote peaceful advocacy and holistic legal principles.
- E**ncourage compassion, reconciliation, forgiveness, and healing.
- A**dvocate the need for a humane legal process.
- C**ontribute to peace building at all levels.
- E**njoy the practice of law.
- L**isten intentionally and deeply in order to gain complete understanding.
- A**cknowledge the opportunity in conflict.
- W**holly honor and respect the dignity and integrity of each individual.

In looking at this organization commitments, the one that attracted me most was the specific commitment to “enjoy the practice of law.” When law is your profession, any avenue which promotes enjoyment should be worthy of consideration. For more information regarding this organization go to

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<[www.iahl.org](http://www.iahl.org)>. The exploration of organizations such as this one, would seem to be in alignment with the ISBA’s mission and vision for its members, as was embodied in the many wonderful lectures recently presented by the ISBA’s Solo and Small Business Committee’s forum “Don’t Just Survive, Thrive.” This type of coming together of with fellow lawyers for dialogue and quiet reflection on the role of the lawyer in the community is a must. This forum should be a must on all ISBA solos calendars for next year.

I would also like to introduce you to the International Academy of Collaborative Professionals (IACP), <<http://www.collaborativepractice.com>>, which in October hosted the 6th annual networking and educational forum in Atlanta, Georgia. This forum attracted legal and other professionals from all over the globe, including 22 professionals from the State of Illinois. The opening keynote speech was given by Justice Robert Benham. Justice Benham was the first African-American to serve as Chief Justice of the Georgia Supreme Court (1995 to 2001). He noted that the first professions in society were, the clergy—who healed the spirit, the doctor—who healed the body, and the lawyer—who healed the community. IACP professionals (lawyers, accountants, mental health specialist) are actively engaged in their respective communities in the promotion of the concept as the professional as healers and peace maker. The various professions work using the interdisciplinary collaborative practice model of dispute resolution. The advocacy under this model of dispute resolution is respectful,

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timely and cost effective for clients. It is client centered advocacy which shifts the focus to what are the clients needs and interests are and to helping clients articulating those needs and interests so as to develop enduring and sustainable solutions to the family and business issues. For more information regarding the practice model and the organization go to <[www.collablawil.org](http://www.collablawil.org)> or <[www.collaborativepractice.com](http://www.collaborativepractice.com)>.

The local organization of trained interdisciplinary collaborative professionals is the Collaborative Law Institute of Illinois (CLII). <<http://www.collablawil.org>>. On December 1 and 2, 2005, CLII will join other local groups at the Museum of Science and Industry, in Chicago, to promote the concept of "Coming Together for Peace." This joint conference is sponsored with the Association of Conflict Resolution

(Chicago Chapter), the International Academy of Dispute Resolution, the Mediation Council of Illinois. I personally am honored and privileged to sit on the Board of CLII. I am grateful to have been trained in the collaborative practice model of dispute resolution developed by and evolving through the leadership and organization of the IACP. CLII is dedicated to the "transformation of the culture of conflict in Illinois." Its mission is to increase the public acceptance of collaborative practice by encouraging and supporting excellence among the Illinois community of collaborative professionals through education, training and standards. There are currently about 150 professionals (attorneys, accountants, and mental health professionals) trained statewide and there is an active membership of Fellows dedicated to bringing "peace to

the room." (For reading regarding this concept see, Erica A. Fox, Negotiation Journal, July, 2004, pp 461- 469, "Bringing Peace Into the Room" <[www.pon.harvard.edu/hnii](http://www.pon.harvard.edu/hnii)>. CLII will host its next basic and advanced trainings in collaborative practice in January, 2006. Registration and other information about training can be found at <[www.collablawil.org](http://www.collablawil.org)>.

I hope in future installments to keep Catalyst readers updated on the development and growth of the paradigm shift in conflict resolution and to report on the organizations and activities which actively promotes the lawyer as peacemaker and "healer of the community." I hope to advise on more opportunities available to lawyers to excel in the opportunity Abe envisioned that the practice of law allows us—that of being good "man" and women.



← **Pictured at left (From left to right):** Meredith Ritchie, Irene Bahr, Patrice Ball-Reed, Tom Clancy and Letitia Spunar-Sheats attending the ISBA program at the Chicago Regional Office about how to get elected to positions in the ISBA.

↓ **Pictured below (From left to right):** ISBA Women in the Law Committee Chair, Meredith Ritchie and Michele Latz, Director of the IL Department of Financial and Professional Regulation. Ms. Latz spoke to the Committee about pay day loans and the adverse impact upon women in need.



← **Pictured at left (From left to right):** Women in the Law Committee members (left to right) Yolaine Dauphin, Patrice Ball-Reed, Kimberly Anderson, Meredith Ritchie and Sharon Eiseman. These members worked at the Illinois Bar Foundation Gala where it has been a long standing tradition for our Committee to actively support this event.

# Senate Bill 475 – Cause for concern or self-generated crisis?

By Laninya A. Cason, Associate Circuit Judge, 20th Judicial Circuit, St. Clair County, IL

On August 25, 2005, at St. Anthony's Hospital in Alton, Illinois, Governor Rod Blagojevich signed into law, Senate Bill 475 (SB475) which, among other things, effectively places statutory limitations (caps) on noneconomic damages (e.g. pain and suffering) for plaintiffs who file lawsuits against physicians and hospitals. The legislation limits the amounts paid for noneconomic damages in an action against doctors to \$500,000 and \$1 million for hospitals. According to the General Assembly's findings, the caps were necessary due to the increasing costs of medical liability insurance and its resulting financial burdens on doctors and hospitals.<sup>1</sup> The increased insurance premiums have also led to reductions in the availability of medical care in portions of the State, and is believed to have discouraged some medical students from choosing an Illinois medical school and pursuing their careers in Illinois.<sup>2</sup> This law, with its possible constitutional repercussions, has sent victims of medical malpractice and trial lawyers alike into great despair. Conversely, physicians and hospitals are breathing a sigh of relief. With extremely viable arguments for and against caps, one wonders whether this new legislation is actually cause for concern or merely a self-generated crisis.

Although the entire State of Illinois has been affected by rising insurance premiums for doctors, St. Clair and Madison Counties have felt the brunt of criticism for the increased malpractice lawsuits they yield and the exodus of doctors leaving the area. The American Tort Reform Association (ATRA) has dubbed these counties as the 2004 top 2 ranked judicial hellholes in the country.<sup>3</sup> Judicial hellholes, as defined by ATRA, are places that have a disparate and harmful impact on civil litigation.<sup>4</sup> Purportedly, plaintiffs seek these venues because they harvest excessive verdicts and settlements.

Recently, the St. Louis Post Dispatch reported that tort reform advocates estimate that about 160 physicians,

most of them specialists, have fled the Metro East area for states with lower malpractice insurance rates.<sup>5</sup> However, the verdicts yielded in both St. Clair and Madison County in recent years do not directly explain the departure of so many doctors. For instance, in St. Clair County, between 1999 and 2004, there were 295 medical malpractice actions filed. Of those 295 cases, only 10 went to trial where a verdict was rendered. Of those 10, eight yielded verdicts for the defendant. One of those verdicts was against a doctor for \$760,000 and was not appealed. Of note is the fact that ISMIE Mutual Insurance Co., the state's largest provider of malpractice insurance, has maximum insurance coverage of \$1 million for doctors. Hospitals are self-insured. Nevertheless, the other verdict was against a hospital, and that case had nothing to do with whether malpractice was committed in that it concerned a dispute over whether a patient had been dropped. Similarly, in Madison County, it has been reported that between 1992 and 2005, the average verdict in medical malpractice actions was \$523,333.<sup>6</sup>

Based on this information, these counties do not appear to be worthy of the judicial hellhole title, at least as it pertains to medical malpractice litigation. If precedent is any indicator of forecasted outcomes, it appears that this new legislation may not be as troublesome as expected. Of important relevance however, is that some contend that the cap on damages still may adversely affect settlements.

Prominent Belleville, IL, plaintiff's attorney, Bruce Cook agrees that the new law is virtually harmless. "Caps will have little to no effect," he said. "It will mainly affect very few cases and those will be the truly catastrophic ones. The only thing that this new legislation has done is quelled the complaints of insurance companies. Other than that, no substantial repercussions as it pertains to affecting lawsuits will result."

Dr. Reginald Allen, a urologist at

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Gateway Regional Hospital in Granite City, Illinois, stated that he has been in Southern Illinois for approximately a year now. He indicated that the primary reason for him coming to this region is because all of the specialists in his area had exited. Dr. Allen opined that the new legislation really does not matter. "Right now, insurance companies only pay \$.30 of every premium dollar for claims. With time, maybe premiums will decrease, but not soon. The new legislation is a step in the right direction, but it is not a magic bullet." Surprisingly, it was recently reported that this past spring, ISMIE kept level or lowered premiums for most of its policyholders.<sup>7</sup>

All legal practitioners, including judges and professors of law, can agree with the general concept that injured parties should be compensated for their injuries. After all, that is what the system of justice is designed to promote. However, some express that this new legislation, although it sounds fastidious at first glance, really may prove to be beneficial in some aspects. Former Fifth District Appellate Court Judge, Clyde Kuehn, opined that the uproar about this new law is out of line with reality. "A lot of doctors complain because they may have little to no liability in a case but are named in the complaint anyway and have to bear the burden of obtaining counsel. Caps, along with the additional policing that the statute provides, will reduce that from happening and limit the number of frivolous lawsuits that are filed across the board."

Amongst other matters that SB475 addresses is the policing and curbing of frivolous medical malpractice lawsuits filed. The legislation makes it a bit more laborious to file these suits by increasing the qualifications of the certifying physician to be in accordance with the expert standards set forth in 735 ILCS 5/8-2501, which was also amended by the bill.<sup>8</sup> It also requires identification of said physician where previously he or she remained anonymous. In addition, 735 ILCS 5/2-622 was amended to include language requiring that a separate written report, as opposed to just an affidavit, be filed for each defendant named in a lawsuit. The statute maintains that if the defendant is an individual, the report must come from a physician licensed in the same profession and be within the same class of license as the named defendant.<sup>9</sup> However, the statute was amended to reflect that if

the defendant is not an individual i.e. hospital, the report must be made by a physician qualified, by experience, with the standard of care, methods, procedures and treatments relevant to the allegations stated in the complaint.<sup>10</sup> Moreover, there shall not be an extension for filing the affidavit and report beyond the 90 days given after filing the complaint, except when there has been a withdrawal of the plaintiff's attorney.<sup>11</sup>

Notwithstanding the aforementioned additional safeguards instituted by Senate Bill 475, the main attraction remains the statutory limitations on noneconomic damages. Some scholars have expressed vehement discontentment regarding caps. Professor Lucinda Finley, a professor of law at the University of Buffalo Law School and author of "The Hidden Victims of Tort Reform: Women, Children and the Elderly," indicated that noneconomic damages are misunderstood, and it is easy to misinterpret them and categorize them as a windfall.<sup>12</sup> Finley says that "damage caps are de facto discrimination, ...and we are moving toward a society where the worst types of harm such as a loss of a child, loss of fertility, or loss of ability to engage in meaningful activities are those least likely to be compensated and toward a society that dispenses justice according to a person's wage-earning ability, not his or her individual circumstances."<sup>13</sup>

Still, proponents of caps assert that they are necessary to ensure that citizens have a sufficient supply of physicians available in their respective regions, and caps would assist in maintaining quality medical care for patients. Fred J. Hellinger, Ph.D. and William E. Encinosa, Ph.D., of the U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, examined the impact of state legislation that caps damages in malpractice cases on the decisions of doctors about where they practice medicine.<sup>14</sup> The authors claim that they are the first to research and examine this correlation. According to the study, the following factors unique to a state, affect the decisions of physicians to settle in a particular state: personal incomes, state unemployment rates, the number of citizens per square mile in a state, state population over the age of 65, and the market for medical malpractice insurance.<sup>15</sup> Analyzing these variables using both statewide and county-level data, it was found that

states with caps on noneconomic damages have 12 percent more physicians than states that do not have caps.<sup>16</sup> It may be some time, however, before Illinois can determine if SB475 will indeed be instrumental in retaining and attracting physicians based upon the aforesaid variables.

Given the intense opposition to SB475, it is certain to be challenged. If so, the fact-finding of the General Assembly will be accorded great deference by the judiciary. A constitutional challenge will not prevail just by showing that the legislature was mistaken in its findings.<sup>17</sup> Illinois State Senator James F. Clayborne, one of the sponsors of SB 475, asserts that the legislation was an extraordinary effort to ensure that everyone has access to the same quality of healthcare. "The problem that was facing our citizens is that a lot of the healthcare providers were leaving Illinois, especially in those cities and towns in the Southern region," he stated. "For example, there were specialists in Belleville and Granite City who left and went to St. Louis area hospitals as a result of either high premiums, or the intense litigious environment. Quality healthcare and specialists need to be readily accessible and available to the residents." With regard to critics of caps and the opinions of some that presume that these limitations unjustly discriminates against victims of malpractice, Clayborne added that the legislation was a balance. "The bill is not perfect and proponents and opponents of the bill did not get everything that they wanted, but it was a compromise. That is how laws are perfected." Moreover, he indicated that there is much more to this legislation than simply the limitations placed on noneconomic damages. "This law also provides for certain economic damages to be awarded to those plaintiff's who are unemployed and don't have income by imputing to them an Average Weekly Wage (AWW) as determined by the Illinois Workers' Compensation Commission. So, there are many facets to this legislation that have been overshadowed by the cap proviso."

As a comparison, California enacted the California Medical Injury Compensation Reform Act (MICRA) in 1975. This law placed caps on noneconomic damages at \$250,000. It has been cited as a model and example of how caps on damages can lower insurance premiums and thus retain

fleeing physicians. It was held to be constitutional in 1985 in the case of *Fein v. Permanente Medical Group*.<sup>18</sup> *Fein* was a medical malpractice action where, plaintiff, a 34-year-old attorney was improperly diagnosed with having chest muscle spasms and sent home.<sup>19</sup> It was later determined that he was actually suffering from a heart attack.<sup>20</sup> As a result of the delayed diagnoses, it was opined, through expert testimony, that the plaintiffs' life expectancy was reduced by one-half.<sup>21</sup> After trial, the jury returned a verdict compensating the plaintiff for medical expenses, lost wages, future medical, and future wages lost as a result of the reduction in his life expectancy.<sup>22</sup> The jury also awarded non-economic damages for pain and suffering and other intangible damages in the amount of \$500,000.<sup>23</sup> The case ultimately reached the California Supreme Court, where it was asserted that the cap on noneconomic damages, as set forth in the MICRA, was unconstitutional.

The Supreme Court in *Fein* championed brevity in its analysis of the constitutional arguments presented by the plaintiff. The argument claiming that the statute denied due process to medical malpractice victims because it limits their recovery without giving them an adequate quid pro quo, or something in exchange for the limitation, failed to persuade the court. The court reasoned that there was no vested property right in a particular classification of damages and the "constitutionality of measures affecting such economic rights under the due process clause does not depend on a judicial assessment of the justifications for the legislation or of the wisdom or fairness of the enactment."<sup>24</sup> The court further added that the right to recover noneconomic damages is not immune from reduction by the legislature. Having iterated that fact, the court held that the legislation was rationally related to the legitimate state interest of reducing the cost of medical malpractice litigation and restraining the increase in malpractice premiums.<sup>25</sup> Similar to SB475, the court noted that there were numerous provisions in MICRA that affected doctors, insurance companies, and malpractice plaintiffs in the government's attempt to reduce malpractice premiums.

In addition, constitutional arguments were presented on the grounds of equal protection violations because the law discriminated between malpractice victims and other tort victims by limit-

ing their recovery. It was further contended that the law denied a complete recovery of damages to malpractice victims with noneconomic damages in excess of \$250,000.<sup>26</sup> These arguments were found to be equally unavailing. The court reiterated that the legislation was rationally related to a legitimate government purpose. The court did not question the reasonableness of the legislature in obtaining cost savings via a reduction in noneconomic damages. The court added that, "just as the complete elimination of a cause of action has never been viewed as invidiously discriminating within the class of victims who have lost the right to sue, the \$250,000 limit which applies to all malpractice victims does not amount to an unconstitutional discrimination."<sup>27</sup>

In any event, there has been a lot of discussion and contention amongst members of the legal community and even some doctors about the "real" reasons why insurance premiums are so exorbitant. Bad investments made by insurance companies and elevated defense costs are speculated to be two of the primary reasons for the increase in premiums. Critics maintain that if caps are instituted, decreased insurance premiums can only be realized if there is some accompanying insurance regulations. In fact, premiums rose in California by 450 percent in the first 13 years after enactment of MICRA and only decreased when voters passed the insurance reform initiative.<sup>28</sup> Judge John Baricevic of the 20th Judicial Circuit acquiesced. "The key is that there be caps on damages in conjunction with insurance regulation," he stated. Dr. Stephanie Kelly, a Waterloo OB-GYN expressed the same sentiment. Her annual premium has risen to \$99,700 up from \$55,000 in 2000.<sup>29</sup> She indicated that in order for the caps to be effective, "it's got to be a combination of regulation of the insurance industry, and the reform."<sup>30</sup>

Senate Bill 475 does in fact have provisions for increased insurance regulation. 215 ILCS 5/155.18 entitled "Medical Liability insurance; rates; standards" was amended by the bill to reflect increased supervision by the Secretary of Financial and Professional Regulation (Secretary), of insurance companies and their decisions to increase premiums. The additional language states in part:

(2) If ...1 percent of a company's insureds within a specialty

or 25 of the company's insureds (whichever is greater) request a public hearing, (ii) the Secretary at his or her discretion decides to convene a public hearing, or (iii) the percentage increase in a company's rate is greater than 6 percent, then the Secretary shall convene a public hearing in accordance with this paragraph (2). The Secretary shall notify the public of any application by an insurer for a rate increase ...The Secretary may, by order, adjust a rate or take any other appropriate action at the conclusion of the hearing....(5) The Secretary may request any additional statistical data and other pertinent information necessary to determine the manner the company used to set the filed rates and the reasonableness of those rates. This data and information shall be made available, on a company-by-company basis, to the general public.<sup>31</sup>

This power to review and override rate increases is unprecedented in Illinois. Moreover, if there is a determination that any violation of the statute was wilful or the company has repeatedly violated any provision of the statute, certain penalties will apply including payment of \$1,000 per day by the company for each day the violation endures.<sup>32</sup>

In addition, there are a plethora of regulations as it pertains to insurance company reporting of malpractice claims, including verdicts, settlements, dismissals of cases and even the dissemination of the outcome of post trial motions and the types of damages awarded.<sup>33</sup> All of the aforesaid information is to be made available to the general public via a Web site, with the exclusion of the names and addresses of parties to suits. Certain actuarial information of the insurance company is also to be provided to the Secretary.<sup>34</sup> This oversight of physicians and liability insurance carriers is certain to make doctors more cautious and attentive of their actions and hinder avaricious behavior on the part of insurance companies.

Despite the new rules and regulations provided for in this legislation, there are still a myriad of expressions and opinions harbored within the legal profession regarding the feasibility of caps. The intellectualization of this subject is quite enchanting in that

it invites various schools of thoughts including the idea to have medical malpractice litigation operate similar to workers compensation. Roy Dripps of the Lakin Law Firm in Wood River, Il, suggests that compensating only for medical expenses incurred and any resultant disability, and eliminating pain and suffering in its entirety, will contain this litigious tort system. The intensity of opinions held by proponents and opponents of caps is quite compelling and there is plausibility and validity to both arguments. While both sides are staunch contenders of their respective positions, there remains the question of whether Senate Bill 475 will indeed pass constitutional muster.

If fidelity to precedent is the measure, opponents of caps are predicting that the new legislation will be held unconstitutional by the high court in Illinois. The Supreme Court in *Best v. Taylor Machine Works et al.*,<sup>35</sup> a product liability case, struck down the Civil Justice Reform Act (Public Act 89-7), which placed caps on compensatory damages for noneconomic injuries in common law actions for death, bodily injury, and property damage. The Court held that the cap violated the special legislation (equal protection) clause of the state constitution in that it was arbitrary and not rationally related to a legitimate government interest.<sup>36</sup> The Court further held that capping noneconomic damages was a legislative remittitur, which unduly infringed upon the power of the judiciary to reduce excessive verdicts and thus violated the separation of powers clause of the state constitution.<sup>37</sup> The overhaul of the **entire** tort system was the purpose behind Public Act 89-7 and not just the medical and health care industry. Public Act 89-7 intended to promote consistency in jury awards for all negligence and product liability claims, promote and protect the economic climate of the state, and reestablish the credibility of the civil justice system.<sup>38</sup> Revamping medical malpractice litigation was not the foremost concern as is in the instant case, but the reduction of the systemic costs of tort liability, which covers a wide array of litigation as it pertains to negligence and product liability claims.

In its defenses to the constitutional challenges presented in *Best*, proponents of this new legislation most certainly will discern the issues and concentrations of Public Act 89-7, with the findings and purpose behind

Senate Bill 475, which is directed solely toward renovating medical malpractice litigation and keeping quality health-care in Illinois. However, there are still other constitutional challenges to capping noneconomic damages that were not addressed in *Best*, which may render SB475 unconstitutional, such as the right to trial by jury and the right to remedy and justice. But even these challenges could yield a different result than that in *Best* if the high court deems that the new law is indeed rationally related to the legitimate state interest of retaining an adequate supply of quality healthcare in Illinois by lowering insurance premiums for doctors.

The proclivity of the Illinois Supreme Court is uncertain at this juncture. The court, for its perusal, has the impacting persuasive authority of the Supreme Court of California ruling in favor of the constitutionality of medical malpractice caps. There is also the recent decision of the Supreme Court of Wisconsin ruling against the constitutionality of its \$350,000 cap. In *Ferdon v. Wisconsin Patients Compensation Fund et al.*,<sup>39</sup> the plaintiff was injured at birth, which resulted in him suffering from a partially paralyzed and deformed right arm. After trial, the jury awarded \$700,000 in noneconomic damages. The defendant later moved to have the award reduced in accordance with a Wisconsin statute that placed limitations on noneconomic damages at \$350,000.<sup>40</sup> The trial court reduced the award and the appellate court subsequently affirmed. On appeal to the Supreme Court, the plaintiff challenged the statute on several constitutional grounds, specifically to-wit, violation of equal protection, violation of right to trial by jury violation of due process, violation of separation of powers, and violation of the right to a remedy.<sup>41</sup> The court only addressed the violation of equal protection challenge and performed a thorough dissection of the legislation and found the statute to be unconstitutional.

The court noted that caps on damages were not per se unconstitutional, as it had previously upheld a cap on noneconomic damages for wrongful death in medical malpractice actions.<sup>42</sup> In its review of the statute using a rational basis standard, the court intensely scrutinized, and "probed beneath the claims of the government," to decide if the law was rationally related to the legitimate government interest of maintaining professional liability insurance,

reducing the medical costs of consumers, maintaining adequate medical services and ensuring physician availability in the state.<sup>43</sup> The court determined that the greatest impact of the statute fell on the most severely injured victims. Unlike California, where there was a complete deference to legislative findings, Wisconsin did not yield to the legislature as vigorously and conducted an independent review of the documents submitted to the legislature. In doing this, the court found that malpractice claims did not affect insurance premiums and did not reduce overall health care costs for consumers.<sup>44</sup> Moreover, after conducting its own inquiry, the court concluded that caps did not adversely affect the economic status of the respondent insurance company, and was not related to physician migration. As such, it was held that the legislation was arbitrary and not rationally related to a legitimate government interest, and thus unconstitutional.

The prevailing opinion around courthouses is that Senate Bill 475 will be held unconstitutional. Although the Supreme Court, in *Best*, has already ruled that a cap on noneconomic damages in all tort cases is not rationally related to a legitimate government interest, Senate Bill 475 is much more isolated in topic. If Southern Illinois is any indicia of the statewide medical crises, it would be unwise to summarily rule out the possibility that the bill may in fact be held constitutional. In any event, SB475 will, for a long time, be a savagely debated topic. Justice Holmes once described judges as interstitial legislators, not promulgating the law, but making certain that it does not offend well-settled maxims. As learned in grade school, the legislative branch makes the laws, the executive branch enforces the laws, and the judicial branch interprets the laws. Scholars have noted that the role of judges is not to legislate, but to function as historical investigators who administer law according to the intent of those who make it.<sup>45</sup> Accordingly, the Court in *Best* has already ruled that it will not judge the skill and good judgment of the legislature and it will not balance the advantages and disadvantages of an enactment. It will instead determine the meaning and effect of the constitution in light of this new legislation.<sup>46</sup> Once this is done, then and only then will we know whether Senate Bill 475 is a dagger to the heart of the citizens or

just a glancing blow that will ultimately benefit them.

1. An Act Concerning Insurance, (2005), SB0475, Section 101, available at, <<http://ilga.gov/legislation/billstatus.asp?DocNum=0475&GAID=8&GA=94&DocTypeID=SB&LegID=17262&SessionID=50>>.
2. id.
3. ATRA, Judicial Hellholes 2004, available at <<http://www.atra.org/reports/hellholes/>>.
4. id
5. William Lamb, Malpractice award caps likely will face high court challenge, *St. Louis Post Dispatch* (August 24, 2005).
6. See, Neil Vidmar, Medical Malpractice and the Tort System in Illinois, *Illinois Bar Journal* (July,2005).
7. Mike Fitzgerald, Doctors' insurance premiums stabilize, tort reform may help recruitment, *Belleville News Democrat* (September 18,2005).
8. SB475 amended 735 ILCS 5/2-622 to provide that reviewing physician be board certified or board eligible or has completed a residency in the same medical specialties as the defendant and is qualified with significant experience with the standard of care, methods, procedures and treatments relevant to the same problem presented. The physician must have devoted 75 percent of his or her time to the practice of medicine, teaching or conducted University based research regarding the subject in question and state licensed.
9. See, SB0475 amending 735 ILCS 5/2-

- 622.
10. id.
11. id
12. 53 Emory Law Journal 1263 (2004) cited in When 'priceless' becomes 'worthless.' Trial, Journal of the Association of Trial Lawyers of America (September, 2005).
13. Id.
14. Fred J. Hellinger, Ph.D and William Encinosa, Ph.D., Impact of State Laws Limiting Malpractice Awards on Geographic Distribution of Physicians, <<http://www.ahrq.gov/research/tortcaps/tortcaps.pdf>>.
15. The authors presumed that states with higher personal incomes have a higher demand for health services and states with higher unemployment rates have a lower demand. It was assumed that rural areas are hardest hit by large malpractice claims. It was also hypothesized that elderly persons need more medical treatment and thus more doctors. State domestic product is the measure of the value of goods and services produced in a state by farm workers who are presumed to have low wages and little income to spend on healthcare.
16. See, Fred J. Hellinger.
17. See generally, *Best v. Taylor Machine Work.*, 179 Ill.2d 367(1997)
18. 38 C3d 137(1985).
19. id.
20. id.
21. id.
22. id.
23. id.
24. id.
25. id.
26. id.

27. id.
28. Mythbuster, Specific State Examples Showing "Caps" Don't Work, available at <[http://www.centerjd.org/free/mythbusters-free/MB\\_CapsDontWork.htm](http://www.centerjd.org/free/mythbusters-free/MB_CapsDontWork.htm)>.
29. See, Mike Fitzgerald.
30. id.
31. See, SB0475, Section 310.
32. id
33. See, SB0475, (215 ILCS 5/155.18a new).
34. See, SB0475, amending 215 ILCS 5/1204.
35. 179 Ill.2d 367 (1997).
36. id.
37. id.
38. An Act to amend certain Acts in relation to civil actions, \*\*\* The Civil Justice Reform Amendments of 1995" ,Public Act 89-7 (eff. March 9,1995).
39. *Ferdon v. Wisconsin Patients Compensation Fund*, Case No. 2003AP988 (July 14,2005).
40. id.
41. id.
42. *Maurin v. Hall*, 274 Wis.2d 28 (2004).
43. See *Ferdon*, citing *Doering v. WEA Ins. Group*, 193 Wis.2d 118 (1995).
44. id.
45. L. Scott Smith, Law, Morality, and Judicial Decision-Making, 65 *Tex.B.J.*400 citing, Benjamin Cardozo, *The Nature of the Judicial Process* 98 (1921) (rules are a means to an end).
46. See, *Best v. Taylor Machine Work*,179 Ill.2d 367 (1997).

## Ending domestic violence one family at a time

By Jennifer Djordjevic

Domestic violence does not discriminate. It doesn't care if you're white or black, Asian or Hispanic or how much money you have (or don't). It doesn't care about your sexual preference or what high school you went to. It doesn't care if you are the smartest person in the world or if you have blond hair or red. Domestic violence happens to many people and is devastating to anybody who witnesses or experiences it.

Those most affected by this issue are women and children—a population that seems to be growing. Physical, mental and verbal abuse creates

emotional and physical strain and in some cases, death. But the problem of domestic violence goes well beyond the human aspect—society is affected too. Alarming statistics taken from the Family Violence Prevention Fund, (FVPF), Web site, <[www.endabuse.org/resources/facts/](http://www.endabuse.org/resources/facts/)>, propels us to take another look at a problem that some don't want to believe exists:

According to FVPF:

- Estimates range from 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend per year to three million women who are physically abused

by their husband or boyfriend per year.

- Around the world, at least one in every three women has been beaten, coerced into sex or otherwise abused during her lifetime.
- Nearly 25 percent of American women report being raped and/or physically assaulted by a current or former spouse, cohabiting partner, or date at some time in their lifetime, according to the National Violence Against Women Survey, conducted from November 1995 to May 1996.
- Intimate partner violence is primarily a crime against women. In 2001,

women accounted for 85 percent of the victims of intimate partner violence (588,490 total) and men accounted for approximately 15 percent of the victims (103,220 total).

- As many as 324,000 women each year experience intimate partner violence during their pregnancy.
- Women are much more likely than men to be killed by an intimate partner. In 2000, intimate partner homicides accounted for 33.5 percent of the murders of women and less than four percent of the murders of men.
- In 2001, 41,740 women were victims of rape/sexual assault committed by an intimate partner.

In response to these tragic statistics and in an effort to prevent the cycles of domestic violence and homelessness from re-occurring, agencies like WINGS, (Women In Need Growing Stronger), have been established.

WINGS was incorporated in 1985 as a housing and shelter program. Once established, the organization began serving women and their children with some housing and valuable resources. By 1990, the agency began offering additional shelter in a transitional living environment for up to two years. Counseling, job training and other support services were also implemented.

Today, thanks to volunteers, donors and dedicated staff members, WINGS operates 23 Transitional Living residences and a 15,000 square foot Safe House, the first and only domestic violence shelter in Chicago's northwest suburbs.

The Safe House, which has the capacity to serve 500 women and children each year, provides extensive services, including an on-site healthcare facility. Due to lack of promised State of Illinois funding however the Safe House is only open at half capacity. Since opening in January of 2005 this location has sheltered 124 clients (women and their children).

In the last fiscal year Transitional Living residences provided 21,306 nights of shelter to 42 women and 118 children. In addition, to housing comprehensive services, described below, are offered to each woman and child who passes through WINGS doors.

Battered women who live in poverty are often forced to choose between abusive relationships and homelessness. Before coming to WINGS, our residents may be staying in emergency shelters,

hospitals, churches, public buildings, automobiles, outdoors, or facing eviction. Families first enter WINGS with inadequate or no income, little or no support system, and no access to affordable housing.

With Transitional Living and the Safe House combined, WINGS provides short and long-term support to empower women and children with strategies and opportunities needed to rise above their situations of homelessness or violence. Within Transitional Living women have a chance to experience Shared Living homes (Two or three families live in each of these homes, and the approximate length of stay is six months), available at no cost to unemployed women and their children, and/or Apartment Living for employed women and their children, for up to two years. (These residents pay 30 percent of their net income, after their current debt is subtracted, to offset expenses.) During this time of stabilization, WINGS' residents are expected to work with our Career Services manager to identify job skills, develop a resume and seek employment.

While in Transitional Living, WINGS residents receive supportive services from highly trained staff to help them:

- Assess strengths
- Develop a plan
- Improve life skills
- Increase income
- Reduce debt
- Refine parenting skills
- Learn crisis management
- Increase conflict resolution skills

Services provided by the Safe House include:

- Legal advocacy
- Links to medical care
- Counseling
- Community referrals
- Transitional living options

Programs shared by both Transitional Living and the Safe House include:

**Children and Family Services** – this is a program that provides counseling and recreational and therapeutic activities for the children living to address the issues of homelessness, hunger, family violence, shame and anger. |

**Career Services** – Increased income and employability are key factors in achieving independence and self-confidence. WINGS launched a Career Development Program in March 2002 utilizing a combination of classroom

exercises, guest speakers, job shadowing experiences, basic computer training, and on-the-job experience in our Resale Store. In May 2003, WINGS hired a Career Services Manager (CSM) to work individually with WINGS residents and graduates to complete testing and assessment, resume preparation, and employment placement. The Career Services' staff work closely with colleges, government agencies, and employment organizations to identify sources of employment preparation and skills based training. The staff also maintains a high regard for the importance of sharing ideas and developing best practices without duplicating services and preserves informal networking relationships with a variety of vocational, resource and trade associations.

Additional support services include:

**Project Lifeline** – a service that gives women at WINGS, including graduates, the opportunity to pair with a mentor who provides, support, stability and advocacy.

**Graduate Follow-Up** – WINGS offers graduates the opportunity to link with staff members, access situational support, participate in agency events and receive household supplies and furnishings as needed.

**Outreach Services** – These services are available to any community member who doesn't live in WINGS housing. Referrals and information to other social service agencies are provided.

**Homeless Prevention and Housing Assistance Referrals** – this program provides men, women and families at risk of homelessness, access to short term financial assistance to help cover rent or utility expenses. Housing and or other supportive service referrals are also given.

In addition to housing and services WINGS also operates two resale stores in the northwest suburbs of Chicago. The first store, based in Palatine, was opened in 2000 and the second store in Niles opened in 2005. These locations resulted as a direct response from the outpouring of donations WINGS received from the community. Both 9,000 square foot stores house men's, women's, and children's clothing, housewares, gently used furniture, books, toys, collectibles, and much more. These facilities allow WINGS to process donations and gives women and children who live in WINGS hous-

ing to get items they need at no cost. The items not utilized by the program are then sold to the public with the proceeds feeding into the general operating fund for WINGS.

Between comprehensive housing, valuable resources, and our resale stores, WINGS is moving forward to making a difference for families and women and children seeking assistance. Throughout the years we've grown from one suburb to offering help throughout suburban Cook County. All of this could not be possible however

without the dedication of staff members, volunteers and donors. As WINGS continues to move forward in the fight against domestic violence and homelessness we will need more help and additional resources. Volunteering is a key factor in making our programs possible. From working in our resale stores to becoming a mentor to wrapping gifts during the holidays or purchasing school supplies for children there are many ways to become involved and to make a difference.

Maybe, with each of us pulling

together, statistics like ones above will begin to diminish. The chance of a woman and her child needing a service like WINGS will lessen. Maybe, together, we can end domestic violence on family at a time.

The mission of WINGS is to provide a continuum of integrated services in an effort to end homelessness and domestic violence one family at a time. For more information on WINGS services, to volunteer or to make a financial donation please visit [www.wingsprogram.com](http://www.wingsprogram.com) or call 847-908-0910.

## The new MCLE rules: An overview

By Michele M. Jochner

After several years of discussion and debate, the Illinois Supreme Court, on September 29, 2005, adopted new and amended rules requiring all active practitioners licensed in Illinois to comply with a "Minimum Continuing Legal Education" (MCLE) requirement. The new MCLE rules are found in Part C of the Supreme Court Rules on Admission and Discipline of Attorneys (SCR 790 through 797), and the full text of these rules is available online at <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2005/MRAMend092905.htm>.

The preamble to Part C of the new rules sets forth the court's rationale for establishing these new MCLE requirements. The MCLE rules "are intended to assure that those attorneys licensed to practice law in Illinois remain current regarding the requisite knowledge and skills necessary to fulfill the professional responsibilities and obligations of their respective practices and thereby improve the standards of the profession in general."

The following is a brief outline discussing the application and content of the new and amended Supreme Court rules.

### To Whom Do the MCLE Rules Apply?

Supreme Court Rule 791 provides that the MCLE requirement applies to all lawyers "admitted to practice law in

the State of Illinois." However, certain exemptions from the requirement are provided in Rule 791 for the following attorneys:

- attorneys on inactive or retirement status;
- attorneys on disability inactive status;
- attorneys serving in the office of justice, judge, associate judge or magistrate of any federal or state court;
- attorneys who are on active military duty;
- attorneys who, in addition to being licensed in Illinois, are members of the bar of another state which has a MCLE requirement, who are regularly engaged in the practice of law in that state, and who are in compliance with the MCLE requirements of that state;
- attorneys who, in "rare cases," are granted a temporary exemption from the MCLE requirement based upon a showing of "good cause." "Good cause" may exist in the event of illness, financial hardship, or other "extraordinary or extenuating circumstances beyond the control of the attorney."

### What Do the MCLE Rules Require?

Supreme Court Rule 794 provides the following MCLE requirements:

- 20 hours for the first two-year reporting period (which begins July 1,

- 2006, and ends June 30, 2008 for lawyers with last names ending A-M and begins July 1, 2007 and ends June 30, 2009 for lawyers with last names ending N-Z);
- 24 hours in the second period (ending '10 and '11); and
- 30 hours every two years after that.
- Credit hours are actual time (60-minute hours, as opposed to the 50-minute hours used in some states).

In addition, please note that Rule 794(d) also mandates what is called a "professional responsibility requirement." As part of (not in addition to) their total MCLE hours, attorneys must have four hours of training in "professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics" during each two-year period.

For brand-new attorneys, Supreme Court Rule 793 provides special requirements. A basic skills course is required for all lawyers admitted after January 1, 2006, unless they have practiced in another jurisdiction. The basic skills course must be a 15-hour course, taken within a year of admission and including training in practice, ethics, and office management. New lawyers are exempted from other MCLE requirements during their first year, and start their first reporting period on July 1 of the next even numbered year for lawyers whose last names begin with A-M and July 1 of the next odd numbered

year for lawyers whose last name begin with N-Z.

Rule 794(c) provides that CLE hours can be carried forward. Starting with programs presented January 1, 2006, attorneys who are not newly admitted can carry 10 hours into any subsequent reporting period. Newly admitted lawyers can carry 10 hours earned after completing their basic skills training into any reporting period.

### **In What Ways Can Attorneys Obtain CLE Credit?**

Supreme Court Rule 795 sets forth the criteria which eligible CLE courses and activities must meet in order for attorneys to obtain credit for attendance. The course or activity:

- must have “significant intellectual, educational or practical content”;
- must deal “primarily with matters related to the practice of law”;
- must be offered by “a provider having substantial, recent experience in offering CLE or demonstrated ability to organize and effectively present CLE”;
- must be conducted by “an individual or group qualified by practical or academic experience”;

- must have “[t]horough, high quality, readable and carefully prepared written materials”; and
- must be “conducted in a physical setting conducive to learning.” Please note that the rule allows the CLE course or activity to be presented by remote or satellite television transmission, telephone or video-phone conference call, videotape, film, audio tape, or over a computer network. However,
- the content and provider of the CLE course or activity must be approved by the nine-person MCLE Board; and
- the Board must find that the method of delivery of the program or activity has “interactivity” as a key component.
- “Interactivity” may be shown by the opportunity for the viewers or listeners to ask questions of the course faculty, either in person, by telephone, or on-line; or through the availability of a qualified commentator to answer questions directly, electronically, or in writing; or through computer links to relevant cases, statutes, law review articles or other sources.

In addition, Rule 795 sets forth “non-

traditional courses or activities” which may receive CLE credit:

- attendance at “in-house” seminars, courses, lectures or other CLE activity presented by law firms, corporate legal departments, governmental agencies, or similar entities;
- attendance at J.D. or graduate level law courses offered by American Bar Association (ABA) accredited law schools;
- attendance at bar association meetings at which substantive law, matters of practice, professionalism, diversity issues, mental illness and addiction issues, civility or legal ethics are discussed;
- attendance at courses or activities that cross academic lines, such as accounting-tax seminars, or medical-legal seminars;
- teaching CLE courses;
- part-time teaching of law courses at an ABA-accredited law school, or teaching a law course at a university, college or community college;
- writing law books and law review articles;
- pro bono training; and
- Capital Litigation Trial Bar training.

## **Save the date – Women & Lung Health Conference and Luncheon**

### **The statistics on women and lung disease are staggering:**

- African American women have the highest asthma death in the U.S., more than 2.5 times higher than Caucasian women.
- In the past five years, more women died of COPD than men. In 2002 alone, more than 61,000 women died of COPD.
- Over the past 30 years, the cases of lung cancer among women have increased by 143 percent, compared to a 9 percent increase among men. In 1987, lung cancer surpasses breast cancer to become the leading cause of cancer deaths in women.

**Together we can change the numbers.**

**Join us on Thursday, December 1, 2005  
9:00 a.m. to 2:00 p.m.,  
Chicago Marriott Hotel, 540 N. Michigan Avenue.**

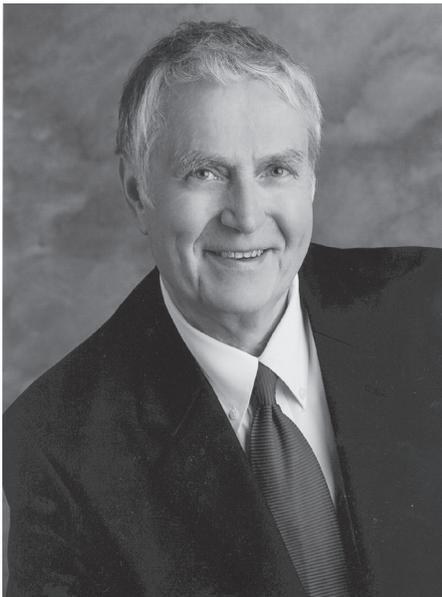
**For more information, please call (312) 243-2000 or visit [www.lungchicago.org](http://www.lungchicago.org) and click on Catch Your Breath.**



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**Effective** - Law Ed programs will continue to be tailored to your practice needs and interests. We offer different tiers of programming to address your specific needs at different stages of your career – “Back to Basics” courses for those starting out, “Updates” and “Hot Topics” courses for more experienced practitioners, and “Masters Series” courses that draw on the knowledge of nationally and internationally recognized presenters.

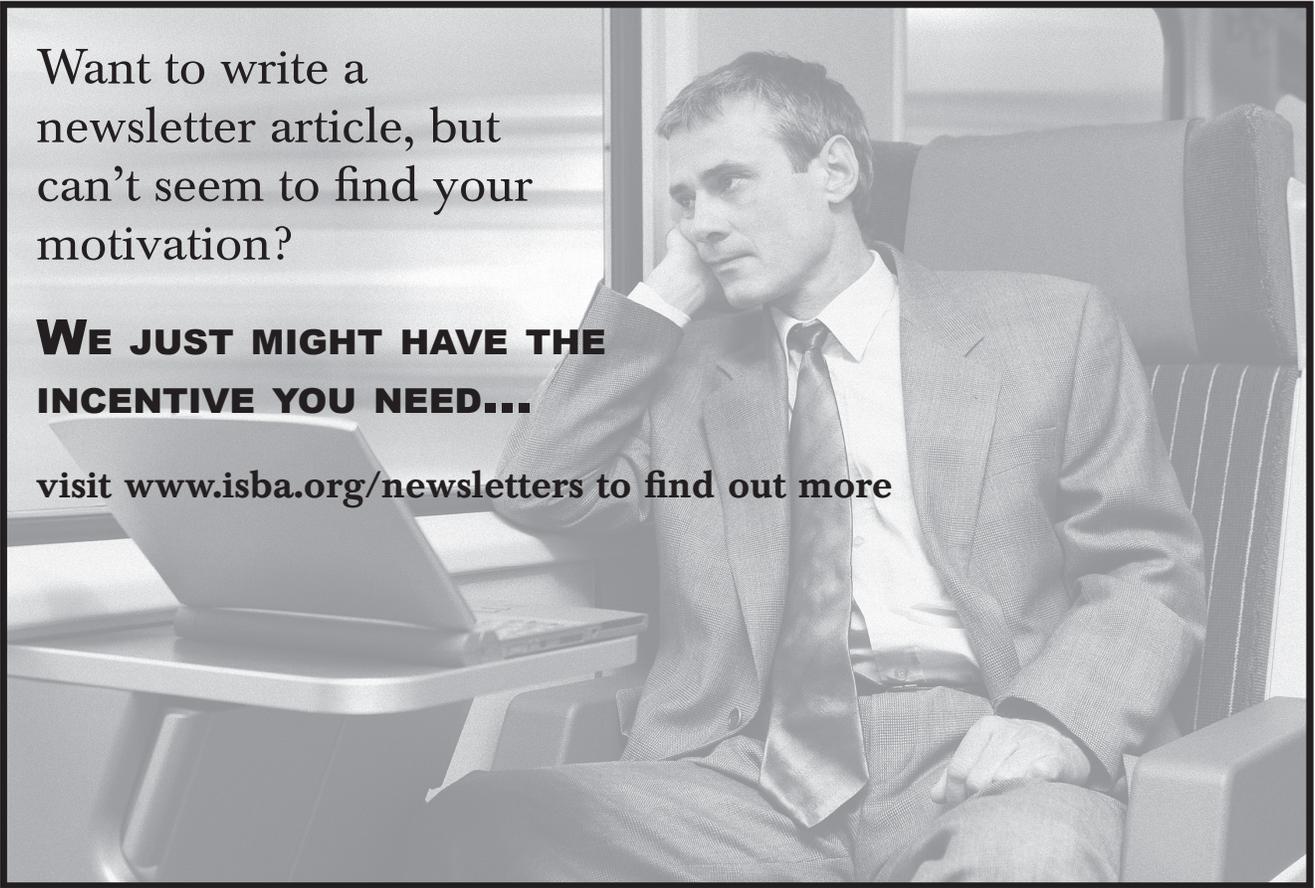
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