



The Judiciary Review

Report from the Senate Judiciary Committee (D)

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SPECIAL EDITION

Senate Adopts Damage Caps in Medical Malpractice Actions Supreme Court Reports Medical Malpractice Filing and Verdict Information

■ Senate Bill 9 Printer's No. 1416

The Senate adopted a joint resolution and sent it to the House of Representatives that would apply damage caps to medical malpractice actions only. After hours of debate, the Senate adopted the amendment offered by Senator James Rhoades (R-Schuylkill) by a vote of 28-22. The amendment would authorize the General Assembly to enact caps on non-economic damages in medical malpractice actions.

During the debate, the Senate rejected an effort to expand damage caps to all civil actions. The amendment offered by Senator Jake Corman (R-Centre) was defeated by a vote of 23-27. This amendment had incorporated the language of House Bill 1326 that was adopted by the House of Representatives on June 19, 2003 by a vote of 119-76.

Two amendments offered in the Senate attempted to provide certain exceptions to the caps. The first, offered by Senator Stewart Greenleaf (R-Montgomery), Majority Chairman of the Senate Judiciary Committee, limited caps to medical malpractice actions, provided a floor of \$350,000 for non-economic damages from a licensed health care professional and \$1,250,000 for non-economic

damages from a licensed health care facility and indexed both for inflation. Further, Greenleaf's amendment excepted the following cases from such damages:

- Injury resulting in death, substantial increase in the risk of death, serious and permanent impairment of an important bodily function, paralysis, blindness, or serious and permanent disfigurement.
- Intentional concealment of the injury by the health care professional.
- Surgery that was not reasonable and necessary.
- Reckless conduct or gross negligence.

Greenleaf's amendment was defeated by a vote of 24-26.

After the introduction of the Rhoades amendment, Senator Jay Costa (D-Allegheny), Democratic Chairman of the Senate Judiciary Committee, offered an amendment to the Rhoades amendment that provided exceptions for the following cases:

- Reckless, willful or wanton misconduct.
- Failure to diagnose that increases the risk of injury.
- Serious impairment of a bodily function.
- Serious disfigurement.
- Death.

This amendment was rejected

by a vote of 21-29. Both Greenleaf and Costa urged that it was important to provide certain exceptions in the language of the constitution to insure fairness and to fully inform the voters, who are ultimately responsible for adopting damage caps, that important exceptions exist in such cases. Ultimately, Senator Rhoades' amendment was adopted as proposed by a vote of 28-22. Thereafter, the Senate adopted Senate Bill 9 by a vote of 30-20. The bill was sent to the House of Representatives and referred to the House Judiciary Committee Chaired by Representative Dennis O'Brien (R-Philadelphia).

Supreme Court Med/Mal Statistics

On Thursday, March 18, Chief Justice of Pennsylvania Ralph J. Cappy released preliminary data regarding medical malpractice case filings and verdicts in Pennsylvania's Courts of Common Pleas. As noted in the Court's information, the collection and release of the information "fulfills a commitment for swift inter-governmental collaboration on liability reform."

The preliminary information, published by the Supreme Court and the AOPC, detailed the

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number of medical malpractice filings in Pennsylvania Courts between January 2000 and July 2003 by county. Further, the efforts of county court administrators and staff produced significant preliminary statistical information regarding verdicts in those counties over the same time period.

The preliminary findings show the number of filings in Philadelphia for 2003 was cut in half from a comparable period in 2002. Further, in Allegheny County, case filings declined by more than one-third over the same period.

Statewide, there was a 28.6 percent decline in medical malpractice filings in 2003 when compared to the previous three-year period. Further, the Court's preliminary data demonstrates that of the 1143 medical malprac-

ice actions filed during the period studied, 73% resulted in defense verdicts. In addition, only 10.4% or 119 cases resulted in verdicts of more than \$1 million.

In the information provided to the General Assembly the Supreme Court noted "In assembling the current data, counties were asked for malpractice lawsuit claims filed in the past four years and to monitor new cases as they come in under a directive that went out from the chief justice in January. The move came at the urging of Gov. Ed Rendell who sought more information to address malpractice reforms with the General Assembly." This information is available at the courts website at www.courts.state.pa.us.

As noted by the Court, data collection is just the latest in a series of significant steps

Pennsylvania's Supreme Court has taken over the past year to address concern over medical malpractice liability reform. The information further supports the contention that the extensive reforms enacted by the General Assembly and adopted by the Supreme Court in 2002, have had an immediate and dramatic affect on medical malpractice litigation.

Additionally, the Pew Charitable Trust is completing a comprehensive study of Pennsylvania's medical malpractice insurance crisis. One focus of the study is the link between non-economic damages and the rising costs of malpractice insurance for which little data has been made available to lawmakers. The information can be accessed through the Pew website at www.pewtrusts.com.

Pennsylvania Medical Malpractice Case Filings 2000-2003

Total Med/Mal Case Filings	2000	2001	2002	2003	Percentage Change
Allegheny	392	372	427	272	(-31.5)
Philadelphia	1085	1162	1365	577	(-52.1)
Statewide	2686	2714	2957	1989	(-28.6)

Medical Malpractice Verdicts January 2000-July 2003

Judicial District	Defense Verdicts and %	Verdicts Under \$500,000 and %	Verdicts \$500,001 - \$1.0M and %	Verdicts \$1.0M - \$5M and %	Verdicts \$5M - \$10M and %	Verdicts over \$10M and %	Total Jury Verdict Cases
Allegheny	119 81%	14 9.5%	8 5.4%	5 3.4%	1 0.7%	0 0.0%	147
Philadelphia	241 59.2%	54 13.3%	29 7.1%	58 14.3%	16 3.9%	9 2.2%	407
Statewide	834 73.0%	130 11.4%	60 5.2%	87 7.6%	18 1.6%	14 1.2%	1143



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