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## **Medical Malpractice in Illinois - Caps Gone but Debate Continues**

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In the nearly two years since the Illinois state Supreme Court struck down caps on noneconomic damages in medical malpractice suits, there's been no explosion in medical malpractice suits, payouts nor any evidence that they have been a [major component of rising healthcare costs](#). Yet given the highly politicized fight over medical malpractice caps, the debate between insurers, medical professionals and lawyers continues to be heated.

Now, however the US House is set to consider on the Republicans' Jobs Through Growth Act, which contains a section aimed at reforming medical malpractice by imposing caps on economic and non-economic damages similar to those in place in Texas. Texas limits non-economic and exemplary (punitive) damages in all cases, and limits what relatives can get in cases of wrongful death.

In 2005, Illinois passed a law to cap noneconomic damages in medical malpractice suits. In 2010, the court struck down the law, saying that established caps — \$500,000 in cases against doctors, and \$1 million in cases against hospitals — violated the separation of powers clause in the state's constitution. Two previous laws imposing malpractice caps had previously been struck down by the state's high court/state lawmakers had tried to narrow the law this time, to give it a better shot of withstanding judicial scrutiny. The court struck down the previous caps law in 1997.

"Without a cap on non-economic damages from 1997 to 2005, Chicago physicians saw their liability premiums increase an average of 10 to 12 percent each year," the president of the AMA said in a statement at the time. "When the cap was reinstated in 2005, premiums for Chicago physicians stabilized and even began to shrink."

Supporters of damage caps argue that these caps are necessary to keep health care costs from soaring and to prevent doctors from leaving the state to practice elsewhere. Opponents say that medical malpractice awards have very limited effects on overall health care costs, and that Illinois has not actually experienced any shortage of doctors.

Chicago lawyer [Craig Tobin](#) of the law firm Tobin & Munoz has tried a number of medical malpractice cases and has strong beliefs in how the American tort system should work. "We trust the jury system except when it comes to doctors?" he asks. "I believe in the jury system and that juries know best how to award damages in every type of case. We ask juries to impose the ultimate sanction in capital punishment. Yet it makes no sense to say we trust juries except in cases related to doctors and medical issues."

"Our system of justice is based on the concept of fairness – that we are all treated alike as litigants. When damages are capped in any situation, it creates an advantage for one group over another. Put another way, why should it be harder to sue a doctor for damages than it is to sue a truck driver?" Tobin says.



Craig Tobin

Tobin's logic is echoed by Tim Baker, author of The Medical Malpractice Myth, whose research in the industry provides some compelling information for the debate:

1. There's a lot more genuine medical malpractice than you think. A long string of studies has shown that about 1 out of 100 hospitalized patients are victims of negligent malpractice. These studies were supervised by doctors and used a very strict definition of "negligent."
2. Most victims never sue. Less than 5% of patients who are victims of negligence file a claim.
3. Patients who bring weak claims usually do so only because hospitals refuse to disclose information about their quality of care unless they are taken to court. Patients who learn that their care was reasonable usually drop their claims.
4. What's more, contrary to myth, insurance companies very seldom pay off weak claims even if patients continue to pursue them.
5. Rising malpractice awards are not responsible for skyrocketing insurance premiums. The insurance cycle is.

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6. In any case, the evidence that fear of malpractice suits produces significant amounts of defensive medicine is pretty thin — although a small amount of defensive medicine does exist. Likewise, the evidence that malpractice payouts are driving doctors out of practice is low and mostly restricted to doctors in rural areas — which have been losing doctors for decades for financial reasons anyway.

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