



# Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Wisconsin State Legislature

FROM: Mark Grapentine, JD – Senior Vice President, Government Relations

DATE: June 2, 2009

RE: Medical Liability Change in the 2009-2011 Biennial Budget

As a member of the Wisconsin Civil Justice Council, the Wisconsin Medical Society is very concerned about the numerous civil liability changes proposed in Governor Jim Doyle's 2009-2011 biennial budget, 2009 Assembly Bill 75. In particular, changes to joint and several liability and the thresholds to which damages can be awarded could have significant effects on the medical liability environment. **We ask that these policy provisions be removed from the budget.**

Here's an example:

A patient sues three physicians as a result of an injury. After trial, a jury determines that physician A was 30 percent negligent, physician B was 25 percent negligent and physician C was 45 percent negligent. Under current law, each physician and his or her insurer would be liable to pay based on the percentage of negligence because each physician was less than 51 percent negligent. In this example, none of the three physicians would be required to pay the entire award.

The proposed change in the law, as amended by the Joint Committee on Finance, replaces the 51 percent negligence threshold for joint and several liability to apply to 20 percent. Therefore, under the new proposal any of the physicians could be required to pay the entire award because of joint and several liability. This could be especially problematic depending on where the physicians are employed. If a medical liability case involves physicians who pay into the Injured Patients and Families Compensation Fund and some who do not, this creates the scenario where "deep pockets" become the primary incentive for a suit rather than the amount of negligence involved in a case. For example, if a physician who pays into the IPFCF is found to be 20 percent negligent while a non-paying physician is found to be 80 percent negligent, the plaintiff could recover the entire amount of the liability from the physician who pays into the Fund despite that physician's low level of negligence.

Wisconsin's medical liability insurance laws require that the Fund pay for claims that exceed the primarily level of medical liability coverage, which could mean more money coming out of the Fund in cases described in this example. If the Fund has greater liability because of the joint and several liability issue, then Fund fees could increase dramatically. The potential for increased liability for the Fund based on changes to the comparative negligence statute might be something that the actuaries consider in calculating the financial risk to the Fund. Private medical liability insurers might also increase insurance premiums for primary coverage if they believe there is a risk of paying more in claims because of the proposed change.

**Please work to remove these provisions from the budget.** If you have any questions, please feel free to get in touch with me at any time.