

Illinois State Medical Society



May 30, 2004

RE: Amendments # 3 and # 4 to SB 2241

Dear Representative

On Friday, Amendment # 3 (Davis,S.) to SB 2241 passed committee and was sent to the Floor. The amendment provides for a \$500,000 limit on non-economic damages in medical malpractice litigation. We commend members of the General Assembly for putting this important issue back on the table. Your support of a **CONSTITUTIONAL** cap tells physicians and patients that you are sincere about solving the current medical liability and litigation crisis.

Much of Amendment # 3, however, may have difficulty meeting constitutional standards. This amendment:

- Amends language that has already been held unconstitutional by the Supreme Court. The language, while still in the statutes, has no legal effect.
- Does not have a mechanism to provide parity for lost wages for injured individuals who do not have an income, such as stay-at-home mothers and children, which is one reason the 1995 law was deemed unconstitutional.
- Fails to establish legislative findings to support the compelling public interest that demands civil justice reform to ensure the stability and quality of Illinois' health care infrastructure.

The 12,000 physician members of the Illinois State Medical Society urge you to demand the consideration of and request your "YES" vote on Amendment # 4, which was drafted to correct the fatal flaws of Amendment # 3.

Amendment # 4's language is constitutional and offers even greater protections for patients and their families. This amendment:

- Increases the amount of payments to injured individuals by proposing a cap of \$750,000 for hospitals and \$500,000 for physicians.
- Protects injured patients who do not work by allowing the court to award those individuals an amount equal to the annualized average weekly wage as determined by the Industrial Commission. This provision allows non-wage earners to collect adequate economic and non-economic damages in comparison to a paid, working individual.
- Provides explicit legislative findings that there is a legitimate and existing threat to the public's health, safety, and welfare, necessitating changes to the civil justice system.
- Includes a non-severability clause, which means that the entire law must be thrown out if one portion is found unconstitutional. *If Amendment # 3 were passed into law, the Supreme Court would no doubt rule the cap on non-economic damages unconstitutional, but leave other, unrelated provisions as law. The remaining provisions would include extensive regulation of medical liability insurers. Without a cap, the insurance regulation alone would raise premiums for 75% of Illinois physicians, forcing more physicians to give up their practice.*

WE URGE YOU TO SHOW THE DOCTORS AND PATIENTS THAT LIVE IN YOUR DISTRICT A GENUINE EFFORT TO SOLVE THE MEDICAL LITIGATION CRISIS BY VOTING "YES" AND WORKING TO GET AMENDMENT # 4 SIGNED INTO LAW.

Sincerely,

James E. Tierney
Vice President

Robert John Kane
Legal Counsel

Alison A. Burnett
Director

Erin O'Brien
Director

600 South 2nd Street, Suite 200 Springfield, Illinois 62704 Web site: www.isms.org
Telephone: 217-528-5609 Toll Free: 800-782-1SMS Fax: 217-525-3923