



PRESS RELEASE

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For Immediate Release

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Statement of the West Virginia State Medical Association (WVSMA) on the
West Virginia Supreme Court of Appeals' Decision in **MacDonald v. City Hospital**
Upholding the State's Cap on Non-Economic Damages

CHARLESTON - The West Virginia Supreme Court of Appeals issued a decision today in **MacDonald v. City Hospital** upholding the state's cap on non-economic damages in medical liability lawsuits.

"The State Supreme Court has given its stamp of approval to the legislature's effort to preserve access to quality, affordable health care in West Virginia. The cap was the cornerstone to the reforms passed in 2003 that have worked amazingly well for the patients we care for. I applaud the Court's well reasoned decision. From the moment the legislation was signed into law almost a decade ago, we knew the State Supreme Court would have the final word. Today is that day and the word we've received from the court is a very good one indeed," said John H. Schmidt, III, MD President of the West Virginia State Medical Association.

The non-economic damages cap upheld by today's decision was passed by the state legislature and signed into law by Governor Wise in 2003 in an effort to improve the affordability and accessibility of health care for West Virginians. Rising medical liability damage awards had contributed to a spike in medical liability insurance costs causing physicians to leave the state or limit their medical practices to avoid high-risk procedures. The 2003 law set the limit that can be awarded for non-economic damages at \$250,000 in most cases. In certain circumstances (as in the present case) the cap is increased to \$500,000. The cap is also indexed to rise with inflation.

"The problem was clear and the evidence overwhelming back in 2003 that reform was needed. The cap received overwhelming support from the legislature and governor because they knew then it was the right action to take to preserve our health care system. The evidence is clear that the cap and the package of reforms put into law have worked.

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The West Virginia Board of Medicine reports record numbers of new doctors being licensed in the state in recent years and the Office of the Insurance Commissioner reported that there has been a 50 percent drop in the number of lawsuits being filed. Fewer meritless lawsuits are clogging the courts and more physicians are coming to the state, reform has been the right prescription for West Virginia,” said Evan Jenkins, WVSMA Executive Director.

In **MacDonald v. City Hospital**, the jury had ruled Mr. James D. MacDonald was due \$129,000 in damages for his economic losses to cover medical expenses and lost wages resulting from the care he received from his treating physician and hospital in 2004. There is no limit on those damages and Mr. MacDonald will receive the full amount. In addition to the economic damages, the jury awarded Mr. MacDonald and his wife non-economic damages totaling \$1.5 million. The circuit judge reduced the non-economic award to \$500,000 per the statutory cap. The MacDonald’s appealed the reduction in their jury award to the West Virginia Supreme Court of Appeals claiming the 2003 law was unconstitutional.

This is not the first case challenging the constitutionality of the legislature’s authority to place a cap on non-economic damages in medical liability lawsuits. In 1986, a \$1 million cap was approved by the legislature and signed into law. The State Supreme Court has twice ruled the \$1 million cap constitutional. This is the first case, however, reviewing the constitutionality of the reduced cap approved in 2003.

The WVSMA actively participated in the **MacDonald v. City Hospital** case encouraging the Court to uphold the 2003 non-economic damages cap. An *Amicus Brief* was filed on behalf of the WVSMA, West Virginia Academy of Family Physicians, West Virginia Hospital Association, American Medical Association and many other health care organizations by Evan Jenkins, WVSMA Executive Director and attorneys Mark Behrens and Cary Silverman with the firm Shook, Hardy & Bacon, L.L.P in Washington, D.C.

Founded in 1867, the WVSMA is the state’s largest physician advocacy organization with over 2,500 members. John H. Schmidt, III, MD is an actively practicing Neurosurgeon in Charleston, West Virginia.

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