

Comments of Max Brown Regarding the Medical Liability Crisis  
Illinois House of Representatives-Judiciary Committee (Civil Law)  
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Good morning, Chairman Fritchey and members of the committee. My name is Max Brown. I am the Vice President and General Counsel at Rush University Medical Center in Chicago.

The medical malpractice crisis in Illinois is forcing doctors to move out of state, leave the practice of medicine or curtail the performance of certain high-risk procedures. The public is not aware of the impact this crisis is having on not-for-profit hospitals in Cook County.

Today there is no major medical center in Cook County that has commercial insurance coverage under \$15 million per claim. Some are already at \$20 million per claim. And others expect to be bumped in the near future to \$25 million per claim. And this is without aggregate protection. What does this mean?

This means that every claim brought by a patient has to be paid out of the hospital's own pockets. If a hospital gets hit with a \$20 million verdict, that hospital has to come up with that money, not an insurance company. And, if it gets hit with another \$20 million verdict or another or another, all of that has to be paid by the hospital from its own operating funds. Even hospitals with endowment funds are legally barred from using restricted funds to pay off medical malpractice claims.

It works like the deductible on your car insurance. But instead of a \$500 deductible, wouldn't you be horrified to learn that your deductible had risen to \$50,000? What would you do? What if you had a large family? What if you had teenagers learning to drive? What would happen if you were in an automobile accident? Could you come up with the \$50,000? What if one of your children were involved in an accident? Could you come up with another \$50,000? Or another? At what point would you have to reduce access to the family car? Or stop driving altogether?

Cook County now bears the shame of being known as the "worst" county in the nation for defendants in medical malpractice actions. Jury awards in this county are four to five times what they were just a few years ago. Each year doctors and hospitals have paid out huge amounts of money to settle cases in order to avoid being hit by juries for even larger amounts of money. The non-economic loss awards given by juries have been staggering and punitive.

Last year in Cook County, the jury awards of more than \$5 million against hospitals and doctors amounted to a total of \$123 million. Eighty percent of that amount was for non-economic losses. In one of the awards (which was for \$30 million), the non-economic losses represented 100 percent of the verdicts. This means that in this case the plaintiffs suffered no economic loss as a result of their injury. Can there really be any question that

there is a need for caps on non-economic awards? Or why a majority of U.S. states have already imposed such caps to save their hospitals from being sued out of business?

No one is suggesting that injured patients do not have the right to sue or have their suits submitted to juries -- or that they should not be fairly compensated. They should. Or that they are not entitled to compensation for the pain and suffering they may have endured. They are. However, the crucial question for the citizens of Illinois is this: "How can we see to it that hospitals offer fair compensation to injured patients and survive in order to take better care of us and our families in the future?"

The hospitals in Cook County are among the very best in the country. Some are large academic medical centers and others are small community hospitals, but we all have one thing in common. We are not-for-profit. That means that we have no shareholders and we make no profit. Any money that is left over after paying expenses goes right back into improving facilities and patient care. This difference is called an "operating margin." Operating margins of not-for-profit hospitals are relatively small, sometimes no more than 2 or 3 percent of revenues. As not-for-profit hospitals in Cook County we also have one more thing in common. Our operating margins are quickly disappearing and being consumed by medical malpractice costs. Today area hospitals are left with fewer and fewer dollars to improve facilities and patient care.

But we have not yet suffered the full impact of the medical malpractice that is headed toward Cook County. When will that happen? It will occur when all the lawsuits that have been filed during these past three years of high deductibles proceed to trial. That will happen in 2007 and 2008. That is when we will witness the full brunt of this destructive force. In the absence of tort reform, some hospitals may have no alternative but to curtail services, limit access or stop care altogether. The system will not stand under the strain. It will buckle and collapse. Some hospitals may not survive. It will take decades for us to recover what will be lost.