

# MISSOURI SUPREME COURT OPINION ESTABLISHES PRECEDENT FOR MEDICAL MALPRACTICE DAMAGES CAPS

On July 22, 2021, the Missouri Supreme Court handed down its opinion in *Velazquez v. University Physician Associates, et al.*, No. 98977. The Court's ruling establishes precedent on two key issues related to the noneconomic damages caps set forth in § 538.210, RSMo. for actions against health care providers for damages for personal injury arising out of the rendering or failure to render health care services.

First, the Court's opinion **affirmed** the noneconomic damages caps in their entirety, holding that the Missouri Legislature's amendment of certain statutes in 2015 replacing a common law cause of action for medical malpractice with a statutory cause of action was constitutional. The Court stated that the General Assembly possesses the power to abolish common law causes of action, and in keeping with the Court's prior decision in *Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. banc 2021), a cap on noneconomic damages for the *statutory* cause of action does not violate article I, § 22(a) of the Missouri Constitution. As a result, the noneconomic damages caps are no longer susceptible to constitutional challenges by plaintiffs.

Second, the Court clarified that calculation of the applicable noneconomic damages cap is based on the **time of trial**, not the **time of injury**. The Court expressly stated that the noneconomic damages cap applies to the award at trial, not the underlying malpractice, confirming that the caps apply to *damages* awarded on or after its effective date, even if the malpractice took place prior to the effective date. Such an application, the Court ruled, was consistent with the General Assembly's clear legislative intent to protect a plaintiff's noneconomic damages award from inflation, and that the "practical effect of that subsection" requires applying the cap at the time of trial, not at the time of alleged malpractice. This clarification should serve to prevent plaintiffs from asserting the noneconomic damages caps do not apply where the date of injury is prior to the effective date of the statute.

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