



The Florida Justice Reform Institute Opposes HB 6003 and Expanded Medical Negligence Liability

The Florida Justice Reform Institute opposes HB 6003, which would increase the classes of individuals eligible to recover noneconomic damages in wrongful death cases premised on claims of medical negligence.

Specifically, HB 6003 would repeal subsection (8) of section 768.21, Florida Statutes, which presently states that certain noneconomic damages recoverable by adult children and parents in other negligence actions may not be recovered in medical negligence actions. Once subsection (8) is repealed, where a wrongful death is caused by medical negligence, a decedent's adult children may recover noneconomic damages if there is no surviving spouse, and the parents of an adult decedent may recover noneconomic damages if there is no surviving spouse or surviving children.

Escalating healthcare costs are already a significant challenge in Florida before expanding medical negligence liability as HB 6003 proposes to do. Exorbitant medical negligence claim payouts contribute substantially to this problem, financially burdening the state's healthcare system. They also reduce the affordability and accessibility of healthcare for all Floridians, as more physicians retire and fewer physicians come to Florida, particularly in high-risk specialties, due to the existing conditions of the state's medical malpractice regime. While HB 6003 may be well-intentioned, without any guardrails on the expansive liability it proposes, the legislation will only worsen the existing problems in the state's healthcare system. Thus, the Institute opposes HB 6003.

A. Background on Florida's Existing Medical Negligence Liability Laws

For more than 30 years, Florida suffered out-of-control medical negligence claims that produced huge windfalls for trial attorneys without fairly resolving fault or compensating victims. Beginning in the 1980s, the Florida Legislature passed several tort reform packages that slowly stopped litigants from taking advantage of the court system.

Meanwhile, the Legislature saw fit to expand wrongful death liability but did so in a careful way that would not exacerbate the existing medical negligence insurance crisis. This is illustrated by the enactment of section 768.21, Florida Statutes. Before 1990 in Florida, parents had no common law or statutory right to recover noneconomic damages for pain and suffering, grief, or emotional loss associated with the wrongful death of their adult child. Likewise, adult children had no common law or statutory right to recover damages for pain and suffering, grief, or emotional loss for the wrongful death of their parent.

In 1990, the Florida Legislature elected to expand the Wrongful Death Act to allow recovery of noneconomic damages by parents and children in these actions through section 768.21, Florida Statutes. At the same time, the Legislature chose to impose an exception, prohibiting such damages where the wrongful death arose from a claim of medical negligence. This exception to

expanded wrongful death liability was a prudent legislative decision, as Florida was and continues to be in a medical negligence crisis, with Florida possessing the highest medical negligence insurance premiums in the country for physicians and hospitals. Without the exception for wrongful death claims in the medical malpractice context, the expansion of liability under the Wrongful Death Act would have disproportionately impacted the healthcare community. Hence, the Legislature's approach was well-founded.

As the medical negligence insurance crisis continued, additional tort reforms were introduced in 2003, including, among others, limitations on noneconomic damages. Under these reforms, noneconomic damages were limited to \$500,000 in most cases, with awards of \$1.5 million permitted in some cases depending on the defendants and the plaintiffs involved. While these caps are still on the books, they are largely unenforceable under Florida Supreme Court decisions striking them as unconstitutional. The invalidation of the 2003 reforms thwarted the Legislature's attempt to alleviate the medical negligence insurance crisis in Florida, and all signs indicate that the crisis is growing.

B. HB 6003 Threatens to Exacerbate an Existing Healthcare Crisis in Florida

Florida is and has been in a medical negligence crisis, as illustrated by the numerous \$5 million-plus nuclear verdicts issued since the Florida Supreme Court struck the caps on noneconomic damages and the resulting increased costs of medical negligence insurance coverage.

Florida's medical negligence law as it stands today—which does not allow adult children and parents of adult children decedents to recover noneconomic damages in medical negligence wrongful death actions—has already led to a significant number of exorbitant, “nuclear” verdicts, often propelled by large noneconomic damages awards. *See, e.g., Crohan v. Furman*, Case No. 2019-CA-009248 (Fla. 13th Cir. Ct. 2022) (jury awarded a staggering \$50 million in noneconomic damages, on top of \$18 million in economic damages). Just this past spring, an Orange County jury found in favor of a patient's estate on a claim that Orlando Health, Inc. failed to transfer the patient quickly enough to a different hospital for treatment of a heart attack. The jury delivered a \$45 million verdict against Orlando Health, Inc., encompassed entirely of noneconomic damages. *See Sada v. Orlando Health, Inc.*, Case No. 2021-CA-010737-0 (Fla. 9th Cir. Ct. 2025).

In addition to nuclear verdicts, medical and hospital professional liability claims costs have been increasing. A key finding of a benchmark study conducted by Aon and the American Society for Health Care Risk Management determined that, although the frequency of hospital and physician professional liability or medical professional liability claims has remained relatively stable in recent years, the severity of claims—including indemnity and defense costs per claim—is steadily increasing. In 2023, 10% of claims closed in Florida exceeded \$1 million as compared to 7.5% nationwide. Losses exceeding \$1 million are growing at a faster rate in Florida than nationwide. With increasing claims costs comes increasing medical negligence insurance premiums. According to a 2024 Medical Liability Monitor survey, Florida has experienced a notable 4.7% increase in premiums, surpassing the regional average increase of 2.1%. This surge in premiums, coupled with the rising costs of claims, presents a significant challenge, before even considering the potential impacts of HB 6003.

Increased claims costs and increased premiums have very real and significant implications for physicians' decisions regarding their ongoing practice of medicine in Florida, particularly for physicians in high-risk specialties like obstetrics and gynecology who face greater exposure than other specialties. As the Florida Department of Health reported in 2023, over 21% of the 2,340 OB/GYNs in Florida who responded to specialty survey questions planned to discontinue providing obstetric care within two years—i.e., by this year—with “[t]he most frequently selected reasons pertain[ing] to retirement, liability exposure, [and] high medical malpractice litigation,” among others. While the supply of practicing OB/GYNs decreases, demand will only increase, with one report finding that Florida needs 500 more obstetricians by 2035 to keep up with the growing population—a staggering statistic that does not account for the fact that approximately 512 obstetricians already indicated their intent two years ago to leave their practice. But OB/GYNs are only one example. As an IHS Markit report forecasted, “[s]igns indicate that a significant shortage [of physicians] is looming,” despite efforts to increase programs designed to incentivize the creation of new residency slots.

Now is not the time to open the door to even more medical negligence litigation and even larger damages awards. For these reasons, the Institute opposes HB 6003.