

Rewrite Michigan Constitution to Preserve Tort Reform

Physicians in Michigan should be concerned about what was reported in *Michigan Medicine* March/April 2010-Volume 109-No.2, page 5, *Illinois Supreme Court Rules Non-Economic Damages Cap Unconstitutional*, by Daniel J. Schulte, J.D. Mr. Schulte pointed out that the Illinois and Michigan constitutions contain very similar language concerning the separation of powers of the legislative, executive, and judicial branches of state government. In Illinois the *Cap* was declared unconstitutional because the Illinois Supreme Court ruled that the determination of economic damages resided with the judiciary.

Tort reform in Michigan appears safe at this time. However, the same article stated that the constitutionality of the *Cap* has not been tested in the Michigan Supreme Court, only the appellate court. The Michigan Consumer Protection Act was enacted in the 1970s. The Act was an effective law in Michigan for more than twenty years. Then the composition of the Michigan Supreme Court changed, and the Court ruled that most of the provisions of the Michigan Consumer Protection Act were invalid. The Court was criticized for not honoring precedent. Tort reform laws, especially the *Cap* could meet the same fate when the composition of the Michigan Supreme Court changes.

Michiganders will have the opportunity this November to vote to rewrite the Michigan Constitution. A rewritten Michigan Constitution could contain clauses that would make it difficult for the Michigan Supreme Court to rule *Tort Reform* unconstitutional based on separation of powers.

Michigan's current Constitution states in Article III, Section 2,

§ 2 Separation of powers of government.

Sec. 2. The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch **except as expressly provided in this constitution.**

(Note: Bold Highlight Applied.)

At this time Michigan's Constitution does not expressly give the legislature authority to establish many conditions concerning civil cases. Article IV, Sec. 44 states:

Article IV, Section 44

§ 44 Trial by jury in civil cases.

Sec. 44. The legislature may authorize a trial by a jury of less than 12 jurors in civil cases.

History: Const. 1963, Art. IV, §44, Eff. Jan. 1, 1964.

Former Constitution: See Const. 1908, Art. V, §27.

Article IV, Section 44 should be expanded as follows:

§ 44 Laws concerning civil cases.

Sec. 44. The legislature may authorize conditions in order to bring forth civil cases. The legislature may authorize a trial by a jury of less than 12 jurors in civil cases. The legislature may authorize procedural rules in trials of civil cases. The legislature may authorize laws concerning monetary or non-monetary outcomes in civil cases. The legislature may authorize laws concerning legal fees in civil cases.

Michigan House Candidate

I am running as a Democrat for the Michigan House, District 45, Rochester Hills, and adjacent communities. My website www.tagolden.com contains my legislative agenda.

My medical agenda includes:

The current medical legal climate must be maintained and improved in order to contain medical costs. Physician fear of medical malpractice suits must be alleviated in order to reduce the expensive practice of defensive medicine.

Physician privacy should be protected concerning what they prescribe.

Health insurance benefits should be stated to subscribers in a standard easy to read format that can be presented to health care providers.

Health insurance companies should not be allowed to formulate their own interpretations of medical billing codes in order to avoid paying claims.

Individuals may deduct their privately paid health insurance premiums from income subject to state income tax. The state should treat all health insurance premiums equally, which is currently not done.

The scope of chiropractic practice should not be expanded.

The state must do more to keep its citizens healthy. It costs everyone a lot of money to treat unhealthy people.

I will not support a physician tax.

I would like your support.

Thank you.

Theodore A. Golden, M.D.

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