

# Florida Supreme Court Strikes Down Cap on Medical Malpractice Damages

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The Supreme Court of Florida held that the state's [statutory](#) caps on personal injury noneconomic damages in medical negligence actions violate the Equal Protection Clause of the Florida Constitution. The statute, section 766.118, set noneconomic damages caps of \$500,000 per claimant in personal injury or wrongful death actions arising from medical negligence. If the negligence resulted in a permanent vegetative state or death, noneconomic damages were capped at \$1 million. In cases not involving death or permanent vegetative state, the patient injured by medical negligence could be awarded up to \$1 million, if the trial court determined that a manifest injustice would occur unless increased noneconomic damages were awarded, based on the special circumstances of the case, and a finding that the noneconomic harm sustained by the injured patient was particularly severe.

In striking down the damages caps, the Florida Supreme Court affirmed the decision of the Fourth District Court of Appeals in [North Broward Hospital District v. Kalitan](#). The Broward County lawsuit was filed after dental assistant Susan Kalitan underwent carpal-tunnel syndrome surgery and suffered a perforated esophagus during the anesthesia process. A jury awarded \$4 million in non-economic damages. The amount of the award was reduced by approximately \$2 million based on the damages caps in the statute.

The 4th District Court of Appeals ruled that the damage caps were unconstitutional, noting the Supreme Court's 2014 decision in [Estate of McCall v. United States](#), finding that the caps in section 766.118 are unconstitutional in wrongful-death malpractice cases. The [McCall](#) Court found that the statute "arbitrarily diminished noneconomic damage awards based on the number of survivors and lacked a rational relationship to addressing the medical malpractice crisis."

Based on the plurality opinion in [McCall](#) finding that there is no evidence of a continuing medical malpractice insurance crisis justifying the arbitrary application of the statutory cap in wrongful death cases, the Court reached the same conclusion with regard to the application of caps in medical negligence cases. The Court found that the statutory caps in section 766.118 "unreasonably and arbitrarily limit recovery of those most grievously injured by medical negligence."

The Court concluded that "because there is no evidence of a continuing medical malpractice insurance crisis justifying the arbitrary and invidious discrimination between medical malpractice

victims, there is no rational relationship between the personal injury noneconomic damage caps in section 766.118 and alleviating this purported crisis.”

Therefore, the Court held that the caps on personal injury noneconomic damages provided in section 766.118 violate the Equal Protection Clause of the Florida Constitution.

The four-member majority included Chief Justice Jorge Labarga and Justices Barbara J. Pariente, R. Fred Lewis and Peggy A. Quince.

Justice Ricky Polston dissented, joined by Justices Charles T. Canady and C. Alan Lawson, arguing that “It is the Legislature’s task to decide whether a medical malpractice crisis exists, whether a medical malpractice crisis has abated, and whether the Florida statutes should be amended accordingly.”

While some states continue to impose damages caps, Pennsylvania does not impose caps on damages in personal injury cases unless the case is brought against a Commonwealth agency. In fact, damages caps are otherwise unconstitutional under the Constitution of the Commonwealth of Pennsylvania.

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