

February 28, 2017

James T. Dorigan, Jr., CPCU, ARM, ARe, RPLU
Senior Vice President, Regional Operating Officer
The Doctors Company
Regional Headquarters - Lake Oswego, Oregon

To: Chairman Prozanski and Members of the Oregon State Senate Judiciary Committee

RE: SB 487 - Oppose
Increases \$500,000 Cap on Noneconomic Damages in Wrongful Death Cases to \$1,000,000 (indexed) and Eliminates \$500,000 Cap on Noneconomic Damages in Bodily Injury Cases

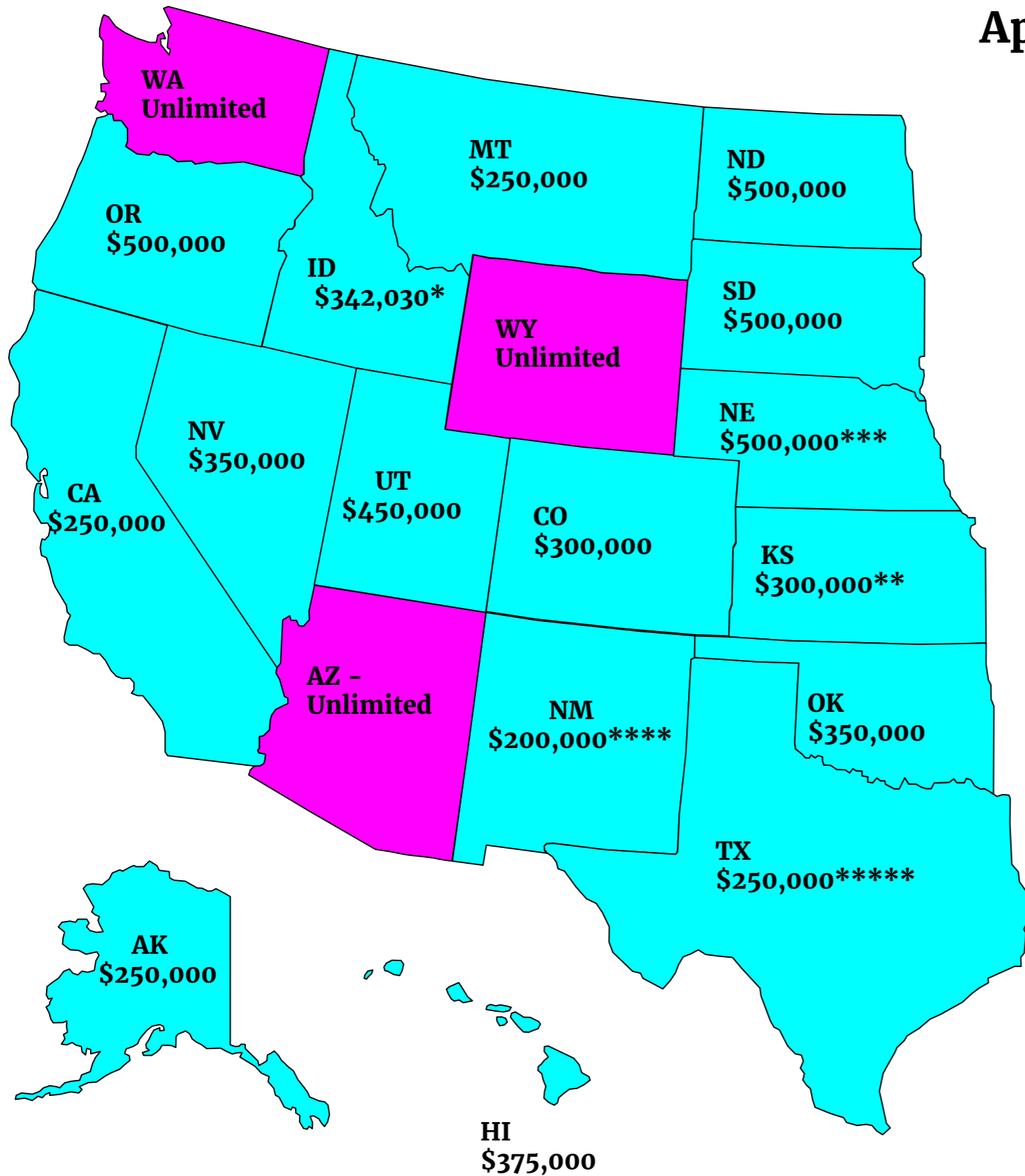
My name is Jim Dorigan. I am the Regional Operating Officer for The Doctors Company (TDC), a physician owned company which insures over 2600 Oregon health care providers. I have been engaged in insuring Oregon healthcare providers since 1983. Over the last seven years in Oregon, medical professional liability premiums have decreased and are currently at or below the premiums paid by physicians in 2002. Frequency, or the number of claims made against Oregon physicians, has decreased by over 20%. While frequency has decreased, severity or the average amount paid to resolve claims, has risen annually from 4% to 6%. There are many theories as to why claims frequency has dropped but a contributing factor is the focus of physicians and insurers on patient safety. Professional liability insurers, physicians and hospitals have invested heavily in patient safety efforts over the last decade. Severity has increased due to the increase in the components of economic damages and increasing non-economic damage awards.

The bill being proposed doubles the cap on non-economic damages for wrongful death and eliminates the non-economic damages cap for bodily injury cases in Oregon. **The Doctors Company and a large coalition of healthcare providers, insurers, businesses and hospitals oppose a change in the current law.** The reasons for our opposition are as follows:

- Under current law, all economic damages including medical expenses, future earnings and the cost of replacing services are recoverable without limitation. The current \$500,000 non-economic damage cap provides a reasonable and fair amount for pain and suffering and emotional loss. Oregon is well in line with the large majority of the western US in having a cap of \$500,000 or less. (Exhibit A, Exhibit B)
- The stable market in Oregon for professional liability insurance could be damaged. Rates have decreased and many insurers are now writing coverage in Oregon. In 2000, when the non-economic damage cap for cases other than wrongful death was eliminated, there was a 30% increase in claims filed and claim payments and costs increased substantially. This caused a rapid increase in premiums and the withdrawal of several insurers and the loss of high risk specialty physicians.
- Oregon doctors pay more for medical professional liability insurance than California doctors who retained their liability reforms. On the west coast, rates for Oregon doctors are substantially less than Washington, a state with no damages caps and Oregon rates are substantially more than the rates in California, a state with a \$250,000 damage cap on all noneconomic damages. (Exhibit C)

- Medical professional liability rates in Oregon are not affordable for rural health practitioners and have resulted in Oregon subsidizing the premiums in rural areas. This has allowed rural areas to recruit or maintain key medical services.
- The majority of cases against healthcare provider are driven by bad outcomes, not bad medical care. Over 80% of claims against physicians are closed without payment other than the expenses of defending the claims. These are cases where there was an adverse or unexpected outcome but independent medical reviewers indicated that there was no negligence. Oregon juries have found no negligence in over 80% of cases against TDC's members that have gone to trial in the last two years.
- Eliminating the \$500,000 cap on non-economic damages will create costlier litigation. Additional cases will be filed and settlements will be more difficult to obtain with the potential for unlimited damages. TDC's experience in Florida with the elimination of the wrongful death cap on noneconomic damages shows that wrongful death cases as percentage of all cases, increased by 23% after the cap was struck down by the Florida courts. The frequency of claims in Florida has risen and Florida now statistically stands out as a state with increasing frequency. The results are increased litigation costs, increasing insurance premiums for Florida doctors and increased pressure on the healthcare system.
- Oregon has created a vehicle for resolving medical professional liability claims without litigation. SB 483, Early Discussion and Resolution, has been in effect for over two years. We need to give this legislation a chance to work without creating additional incentives for litigation.
- The healthcare system is under great financial pressure, and even more so with the ACA in peril. Malpractice insurance has been a stable cost component of healthcare. Preserving stability in Oregon is critical to access, physician recruitment and affordable healthcare.
- Access to healthcare is critical in rural Oregon and for underserved populations statewide. Access to specialized care in the high risk specialties is important for all of Oregon. The cost of liability insurance is increased when non-economic damage caps are removed or not available. The economic burden impacts more severely the high risk specialties such as Obstetricians and Surgeons.
- This law will be retroactive for all wrongful death and bodily injury cases where a judgment has not been entered. The Doctors Company is currently defending 89 law suits in Oregon of which 10 are wrongful death suits. The proposed legislation makes the exposure on 79 of these cases unlimited and increases the exposure on the wrongful death claims by \$500,000 each. Economic damage amounts are established by verifiable numbers which can be quantified.
- I urge you to please vote NO on Senate Bill 487 to preserve and promote access to health care for all Oregonians. Oregon's caps on non-economic damages ensures that injured patients receive fair compensation while preserving access to healthcare by reducing costs for doctors, nurses and healthcare providers and helping them serve the most vulnerable populations.

Limits on Non-Economic Damages as Applied to Medical Professional Liability Claims as of 1/23/17



KEY

- Cap is greater than \$500,000
- Cap is \$500,000 or less

* ID - The controlling Idaho Statute sets the cap on non-economic damages at \$250,000. From July 2004, this cap will increase or decrease to reflect changes in the average annual wage as computed by the ID Industrial Commission. The figure cited represents the current cap amount.

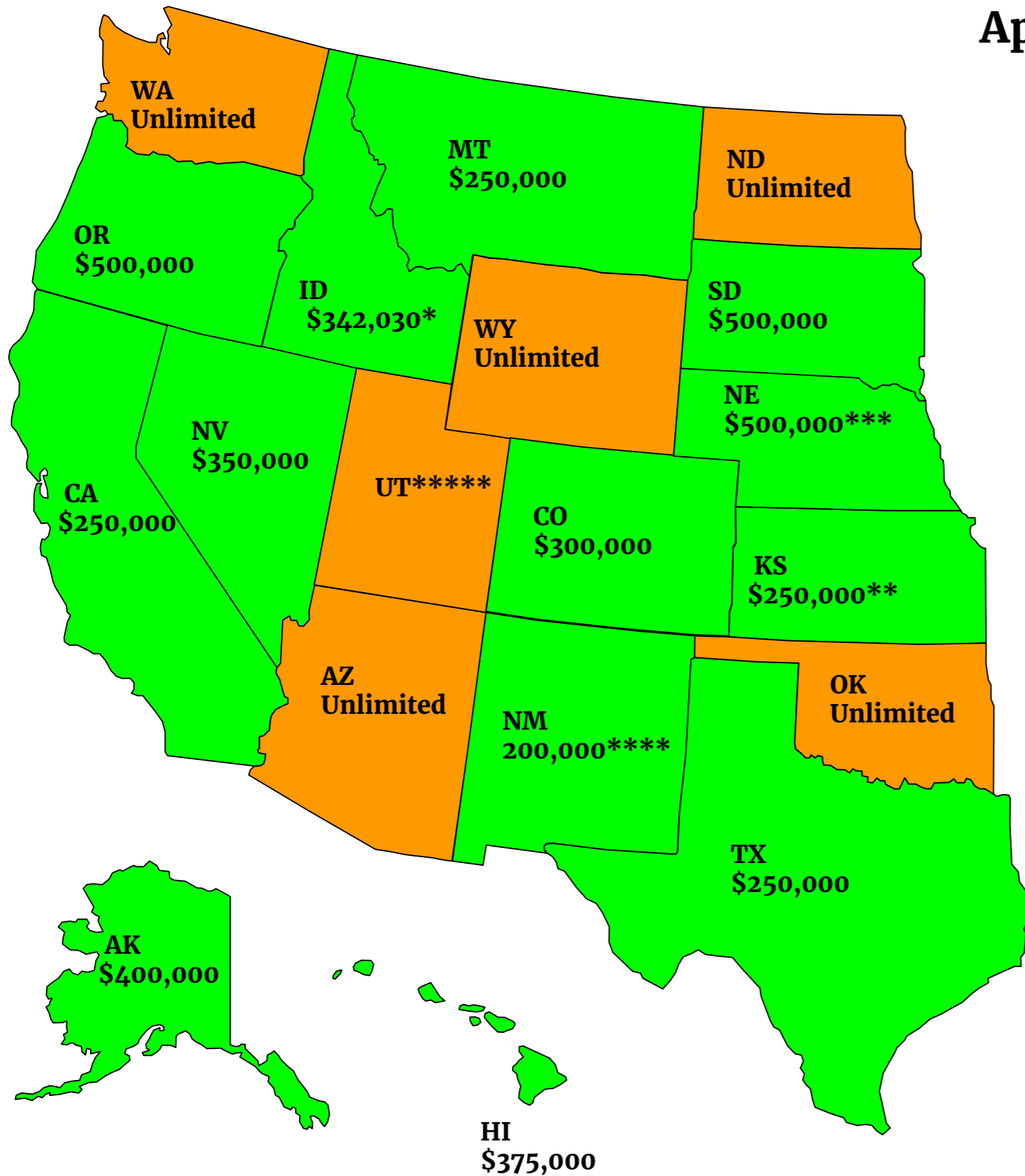
** KS - The cap will increase in steps through July 1, 2022 when it will be set at \$350,000.

*** NE - For covered physicians, any award over this amount is paid from the state patient compensation fund, with a current total cap on both economic and non-economic damages of \$2,250,000.

**** NM - For covered physicians, any award over this amount is paid from the state patient compensation fund, with a current total cap on damages of \$600,000..

***** TX - The \$250,000 is for claims against a single provider or institution. For multiple providers/institutions, the cap is \$500,000.

Limits on Non-Economic Damages as Applied to Medical Professional Liability Wrongful Death Claims as of 1/23/17



KEY

- Cap is greater than \$500,000
- Cap is \$500,000 or less

* ID - The controlling Idaho Statute sets the cap on non-economic damages at \$250,000. From July 2004, this cap will increase or decrease to reflect changes in the average annual wage as computed by the ID Industrial Commission. The figure cited represents the current cap amount.

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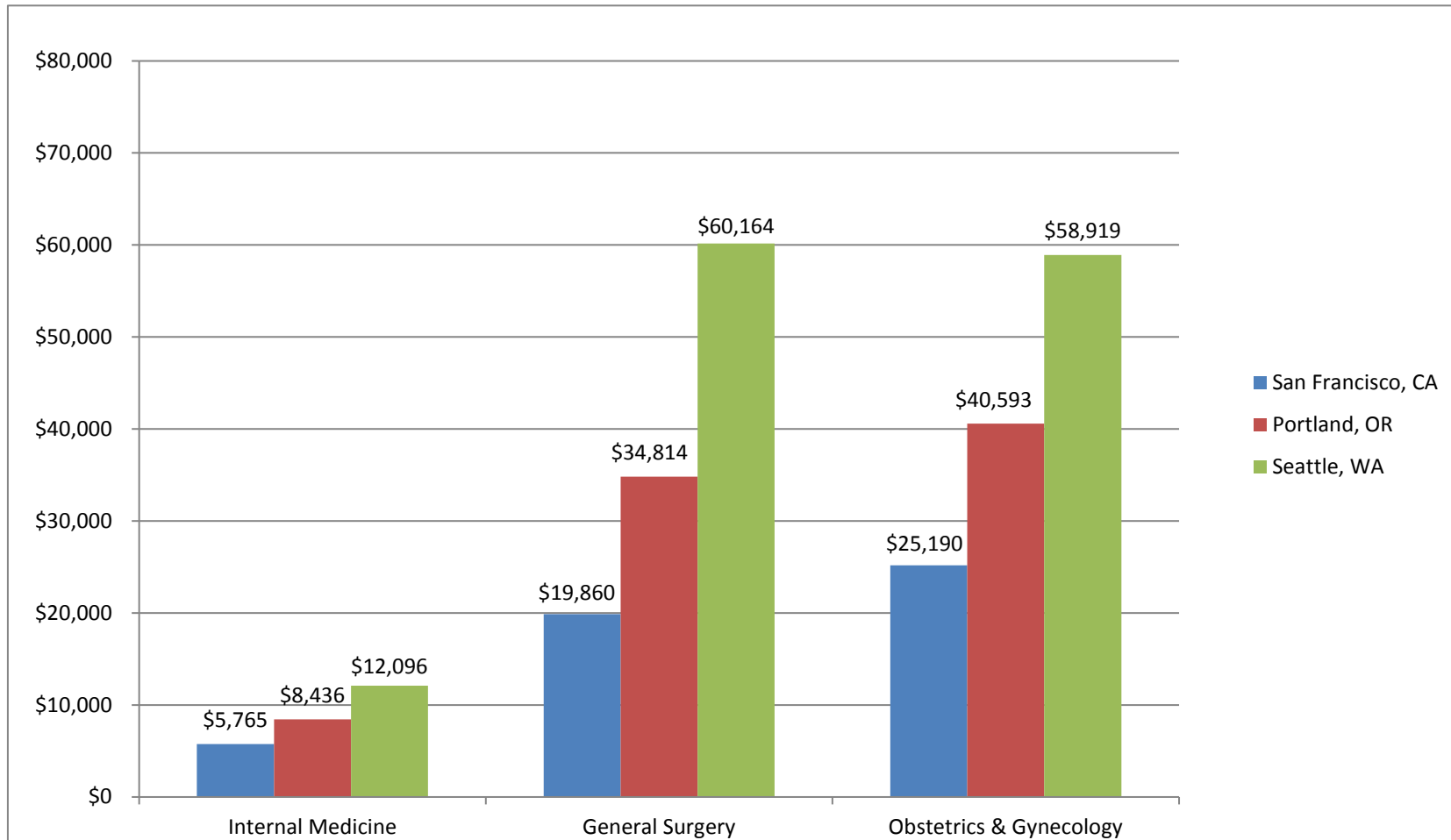
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***** UT - The \$450,000 cap for non-economic damages in wrongful death claims was held unconstitutional by UT Supreme Court in August, 2015. A \$450,000 cap on non-economic damages remains in effect for other claims.

Practice location	Internal Medicine	General Surgery	Obstetrics & Gynecology	State's cap on non-economic damages
San Francisco, CA	\$5,765	\$19,860	\$25,190	\$250,000
Portland, OR	\$8,436	\$34,814	\$40,593	\$500,000*
Seattle, WA	\$12,096	\$60,164	\$58,919	None

Source: The Doctors Company rates published in Medical Liability Monitor 2016 Annual Rate Survey Issue



*Oregon rates reflect only limits non-economic damages in wrongful death actions.