

**Washington Supreme Court Declares Medical Malpractice Certificate of Merit Statute Unconstitutional in Putnam v. Wenatchee Valley Medical Center**

In a unanimous decision released on September 17, 2009, the Washington Supreme Court ruled that the certificate of merit requirement for medical malpractice claims is unconstitutional. The certificate of merit statute required that, at the time a medical malpractice lawsuit was commenced, the plaintiff must file an expert's statement that there was a reasonable probability that the defendant's conduct did not follow the accepted standard of care. This statute, among others, was part of the tort reform legislation enacted in 2006, and which was strongly supported by the WSMA.

The court ruled that the certificate of merit statute unduly burdened a plaintiff's right of access to the courts and that the statute violated the separation of powers. Regarding the right of access, the justices stated the certificate of merit statute denied the plaintiff the right to the full discovery process which would allow the plaintiff to uncover evidence necessary to pursue his/her claim. The court held that the certificate of merit statute violated the separation of powers because it conflicted with two court rules of civil procedure, and therefore encroached upon the court's power to set court rules. To support this conclusion, the court first found that medical malpractice claims are not "special proceedings," which are exempt from the court rules, but rather common law actions which are subject to the court rules. Further, the court found that the certificate of merit statute conflicted with Court Rule (CR) 11 because it required additional verification of a claim which the rule does not allow, and conflicted with CR 8 which only requires a "short and plain statement of the claim" at the commencement of a lawsuit. The court found that such conflicts encroached on the court's inherent powers to set its procedures. The trial court's decision was reversed and the case was remanded for further proceedings.

*This decision deals a harsh blow to tort reform efforts in Washington. The full ramifications of the ruling have yet to be determined. The WSMA will monitor this situation closely and will work vigorously on behalf of all physicians on matters of medical malpractice tort reform. For further information contact Tim Layton, WSMA Director of Legal Affairs, at [tim@wsma.org](mailto:tim@wsma.org).*