

New malpractice caps will hurt children, elderly

By GLENN W. CUNNINGHAM

COMMENT

I read with interest the article "Parents' suit in limbo state: If they must refile,

award limit may affect the malpractice case" (Nov. 28). I applaud bringing this story to the public's attention. Texans need to hear

that the new caps on non-economic damages will significantly prejudice the ability of children and the elderly to receive fair compensation for their injuries and/or wrongful deaths.

Children and the elderly do

not have economic damages, things like lost wages or lost wage-earning capacity. Ten-month-old children, like Deja Simone Fuller, and 80-year-old nursing home residents do not work.

If a child or nursing home resident dies as a result of medical negligence, the only measure of damages available to them are non-economic damages, things like pain and suffering and mental anguish.

Unfortunately the Express-News broadly reports that the new law, effective Sept. 1, caps non-economic damages at \$750,000. This is an oversimplification of the new law and is,

in practicality, a misstatement of the law's true effect.

For the plaintiffs in the Deja Simone Fuller case — or any other medical negligence case — to receive an award of \$750,000 in non-economic damages, the following scenario must unfold:

1. Patient goes to Hospital (or a nursing home) "A," where the nursing staff commits medical negligence. (The maximum non-economic damage exposure of Hospital A is \$250,000).

2. Then, the patient goes to Hospital "B," where the patient is victimized by the nursing staff's medical incompetence. (The maximum non-economic damage exposure of Hospital B is \$250,000).

3. At Hospitals A and/or B, one or more doctors also commit medical malpractice on this poor patient. (The maximum non-economic damage exposure of all negligent physicians is a *collective* \$250,000.)

All totaled, an injured patient may realize \$750,000 in non-economic damages *only* if he/she is victimized by the medical malpractice of two health care institutions and one or more negligent physicians.

In 13 years of defending and prosecuting hundreds of medical malpractice cases in San Antonio and Houston, I have seen this unlikely factual scenario unfold in only two cases.

Accordingly, in the overwhelming majority of medical

negligence cases, non-economic damages will now be capped at \$250,000.

Perhaps, if a hospital and doctor are negligent, the patient may recover \$500,000 in non-economic damages. However, it will be the rarest of cases in which a victim of medical negligence recovers \$750,000 in non-economic damages.

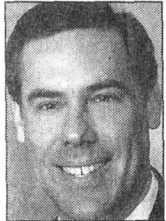
It is important for Texans to understand the full import of House Bill 4, the law the Texas Legislature passed in the 2003 legislative session that capped non-economic damages in medical negligence cases.

Incredibly, the Legislature decreed that the life of a child, the value of an elderly nursing home resident, is worth no more than \$250,000 in most

cases. A mere \$250,000 no matter how many years the victim of medical negligence will experience daily excruciating pain. A paltry \$250,000 regardless of the mental anguish that the victim endured before dying as a result of medical incompetence.

While I appreciate the exposé on the government's attempt to exploit a legal technicality in order to profit from the new non-economic damage caps, it is equally important to accurately report on the true impact that this draconian legislation will have on children and the elderly.

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