
OKLAHOMA CENTER for CONSUMER & PATIENT SAFETY

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LIMITATION TO ACCESS OF JUSTICE

A few days before Halloween 7-year-old Jessie Geyer began to feel lousy. She had a high fever and severe leg pain. It was bad enough feeling sick, but the second grader worried that she might have to miss out on the Halloween parade at her school, as well as trick or treating.

Before the week was out, Jessie was dead, a victim of sepsis that both her pediatrician and the emergency room doctor who treated her on several occasions failed to diagnose. An antibiotic could have saved her.

The effort to find accountability in Jessie's death has compounded the pain. Attorneys from major law firms declined to take her case because of California's 29-year-old Medical Injury Compensation Reform Act (MICRA). The law, an anachronism that protects doctors and insurance companies while wounding patients and their survivors, limits "pain and suffering" damages to \$250,000 - a figure that was set in 1975 and would be \$900,000 today if adjusted for inflation.

When they learned that, the Geyers embarked on their search for an attorney. They finally found one, after being rebuffed by a bunch of lawyers who would not touch it. The cap on damages does not work for children, stay-at-home Moms, the retired and others who don't have an income.

"In the world of 2004," the Geyers write on their website, dedicated to 'Jessie's Law,' "\$250,000 is often not sufficient to bring the case to trial, considering the expense of the attorney, the many depositions, the research and the high cost of expert testimony.

"This is particularly unfair to children...because they are not eligible for 'actual damages' since they are not considered wage earners. The result is that very few malpractice cases where children are the victims and parents consumed with the greatest loss of all never make it to court."

CALL TO ACTION

We have had an overwhelming response to the message we sent yesterday that outlined a small portion of the bill that would allow for discrimination of children, elderly, women, and the poor. This bill would not only be discriminatory, but would block access to justice to all but a select few. You can view a summary of the bill by clicking here: [BILL SUMMARY](#) You can also view the entire bill by clicking here: [FULL BILL TEXT](#)

This bill will be considered tomorrow in the House of Representatives. **When you as a constituent writes your legislator, they listen.** Write your legislator today and let them know how you feel about this bill that would take away your rights as an Oklahoman. We have made it very easy to write your legislator, just click below and fill in your name and address and the system will automatically pull up your legislator and a pre-printed messages which you can edit or send as is. [CONTACT YOUR LEGISLATOR](#)

FAIRNESS?

This bill not only contains the sections outlined in our e-mail yesterday, it also includes provisions that would allow for factors that should not be considered during trial such as whether or not a widow has begun to put her life together and re-married; the bill also allows for those who have obtained life insurance policies to be disclosed- the injury should have no consideration as to the financial planning of the family.

The poor are also discriminated against by this bill- it would permit a hospital to limit its total liability to an indigent for medical malpractice if the indigent signs a written statement acknowledging there are limitations on the recovery of damages from the hospital in return for receiving the care.

ACCESS TO JUSTICE?

The bill also contains serious limitations on contingency fees. While this might seem attractive to some, when you consider Jessie Geyer's story, once you take the expensive expert fees, time put into a trial, and depositions, the plaintiff's attorney would likely be losing money even on a solid case. Therefore, only those that can afford an attorney out of pocket will be able to obtain justice through the courts.

Another thing that tips the balance of justice is that this bill only calls for a limitation to plaintiff's attorney fees and does not mention the fees a defense attorney can charge. One of the fundamental abilities in tort law is for the innocent injured person to be "made whole," and compensated for their injury, under this bill, it makes it virtually impossible to take on the big corporations and their deep pockets.

TEXAS?

Texas has adopted many of the same provisions that are being proposed in Oklahoma and while they have seen a decrease in the number of lawsuits, they have seen a number of truly injured individuals who have been malpracticed on not be able to find an attorney to represent their claims. We have posted a recent article from the Texas Monthly that describes the problems innocent consumers and patients have had: [Texas Monthly Article](#).