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Product Liability - Medical Malpractice

Product liability — medical malpractice

Public Citizen

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

October 8, 1997

Dear Representative:

Tomorrow, the House of Representatives is scheduled to consider the most Draconian restrictions on the legal rights of people injured or killed by medical malpractice of any state in the nation. These restrictions are part of the D.C. Appropriations bill. The unconscionable measures attached to this appropriations bill by Rep. Charles Taylor would shred D.C.'s laws that protect us from physicians and hospitals who maim and sometimes kill because they are careless or outright incompetent. The proposal is unfair and unwise. We urge you to support any amendment to strike this extraneous provision from the bill.

The Taylor provisions would not only limit the liability of medical professionals and medical facilities, it would also limit the liability of manufacturers of defective medical devices and drugs. Even health insurance companies that deny benefits in bad faith would be protected by this bill. Many of these restrictions do not exist in any state in the country, and the injuries and deaths they will cause are untold. Rep. Taylor's hometown constituents wouldn't put up with being human guinea pigs. The residents of the District shouldn't have to put up with it either.

Among the bill's most disturbing provisions are the following:

- **Discriminatory Cap on Non-Economic Damages.** The bill would cap non-economic damages in health care liability actions at $250,000, no matter what the circumstances or how horrible the victim's suffering. Non-economic damages include damages such as lost child-bearing ability, disfigurement, prolonged pain, or loss of sight. This cap is unfair to all consumers but is particularly harmful to certain patients. A cap on non-economic damages discriminates against the elderly, poor, children and women, especially those not employed outside the home, whose injuries tend to be non-economic in nature. It hurts lower-income people more than the well-to-do. And it hurts minorities more than white Americans. By capping non-economic damages, well-paid working male adults will get more compensation for their injuries because there is no cap on damages for lost wages. Others who suffer just as much from medical malpractice get less.

- **Elimination of Joint and Several Liability for Non-Economic Damages.** In addition to the cap, the bill would eliminate joint and several liability of defendants for non-economic damages. Under current law, if more than one defendant is fully responsible for malpractice, and one of the defendants cannot pay the judgment, the other defendants must compensate the injured patient. The bill's elimination of this joint liability further erodes D.C. consumers' ability to seek a just and fair recovery. In effect, this penalizes victims and reduces the liability of wrongdoers without whom the malpractice could not have occurred.

- **Cap on Punitive Damages.** The bill caps punitive damages at $250,000 or three times economic damages, whichever is greater. In addition to discriminating against those with lower incomes, this cap will dramatically reduce the ability of D.C.'s civil justice system to deter wrongdoing by

negligent doctors. This makes no sense, given that a 1993 Public Citizen study, "Comparing State Medical Boards," showed that D.C. has one of the worst doctor discipline records in the country -- ranked 45th nationwide. Without an effective disciplinary board, punitive damages are the only means to punish physicians for egregious wrongs.

- **Bar on Punitive Damages Against Manufacturers and Sellers of Drugs and Devices.** The bill *completely* absolves from punitive damages companies that make dangerous drugs or medical devices that had approval of the Food and Drug Administration. Prohibiting punitive damages based on the excuse that the FDA has approved the product could be disastrous for D.C. consumers. FDA pre-market approval and standards are minimums. At most, they establish an acceptable current level of safety, and may only establish a lower safety floor after many concessions to powerful lobbyists. This provision could protect manufacturers of some of the most notorious FDA-approved products which have wreaked havoc on consumers, such as defective pacemakers and heart valves that have led to hundreds of deaths and injuries.

- **Limitations on Actions Against Health Insurers for Bad Faith.** The bill's broad definition of "health care liability actions" that are subject to the above limitations on damages includes civil actions against health insurers. This would make it more difficult for consumers to sue insurance companies for bad faith failures to pay legitimate claims.

- **Periodic payments for future losses over $50,000.** This provision is tantamount to enacting a "payment plan for wrongdoers." Periodic payments penalize over time victims who are hit soon after an injury with large medical costs and those who must make adjustments in transportation and housing. In addition, because these payments are not adjusted for inflation, they rapidly pay for fewer needs of innocent victims over time.

"Reform" in the area of medical malpractice should not take the form of insulating wrongdoers and punishing their victims. The epidemic of medical malpractice in this country causes an estimated 80,000 deaths each year and takes an enormous financial toll -- as much as $60 billion annually. In contrast, the costs of medical malpractice insurance are estimated to be only around $6.4 billion in a $1 trillion health care economy. This measure won't reduce health care costs in the District. It will only serve to restrict the rights of victims to hold doctors and hospitals and medical device companies accountable. It will lead to less deterrence, more injuries, more uncompensated victims, and *greater* costs to taxpayers who will have to foot the bill for people injured by malpractice and defective medical products.

The growing concern over the quality of health care in D.C. and this country demands that you reject such brutal health liability restrictions as are contained in the D.C. Appropriations bill. You should focus on enacting measures to increase patient safety, rather than enacting laws that decrease the liability of doctors and other dangerous health care providers, drug companies and medical device manufacturers.

On behalf of Public Citizen and the tens of thousands of consumers we represent in D.C. and across the country, we urge you to do all you can to defeat these unfair and discriminatory provisions.

Sincerely,

Joan Claybrook
President, Public Citizen

Frank Clemente
Director, Public Citizen's Congress Watch

SUMMARY OF HEALTH CARE LIABILITY PROVISIONS IN THE D.C. APPROPRIATIONS BILL

October 1997

SEC. 202 STATUTE OF LIMITATIONS

A District of Columbia health care liability action (defined in sec. 211) must be brought within two years from the date the injury is discovered or reasonably should have been discovered, but in no case can it be brought more than 5 years from when the injury occurred.

SEC. 203 LIMITATIONS ON NONECONOMIC DAMAGES

Total of $250,000 per plaintiff, regardless of the number of defendants.

No joint liability for NONECONOMIC damages. Defendants who are fully liable for the injury as determined by the jury are only liable for a proportional share of NONECONOMIC damages that is based on each defendant's relative percentage of responsibility for economic damages.

SEC. 204 LIMITATIONS ON PUNITIVE DAMAGES

To the extent allowed under D.C. law, punitive damages are allowed only if the plaintiff shows by clear and convincing evidence that the harm caused was either 1) intentional or 2) manifested a conscious, flagrant disregard for others' health or safety.

The amount of punitive damages is capped at $250,000 or 3 times economic damages, whichever is greater. The existence of this cap cannot be disclosed to the jury.

The cap on punitives applies to any health care liability action in D.C., except where punitive damages are already more limited.

At the request of any party, the trier of fact (judge or jury) shall consider whether to impose punitive damages in a separate proceeding. If there is a separate proceeding, evidence relevant only to the claim of punitives shall be inadmissible in a proceeding regarding actual damages.

SEC. 205. PUNITIVE DAMAGES IN DRUG OR DEVICE CASES

There shall be no punitive damages awarded against a manufacturer or seller of any drug or device if the drug or device was subject to FDA premarket approval or the labeling was approved by FDA, or the drug or device is generally recognized as safe and effective according to FDA standards.

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PUNITIVE DAMAGES IN DRUG OR DEVICE CASES, cont.

The bar on punitive damages does not apply against the manufacturer or seller of a drug or device subject to premarket approval which intentionally withheld information from FDA that is relevant to the claim of injury or made an illegal payment to a FDA official.

If the claim is related to packaging that is required to be tamper resistant under HHS regulations, no punitive damages can be awarded unless the packaging is found by clear and convincing evidence to be substantially out of compliance with such regulations.

SEC. 206 **PERIODIC PAYMENTS FOR FUTURE LOSSES**

If a plaintiff is awarded damages for future economic and noneconomic losses of more then $50,000, no person shall be required to pay the judgment in a single lump sum; instead, payment shall be made on a scheduled based on when the court determines the damages are likely to occur.

A judgment regarding periodic payments cannot ever be reopened, absent fraud.

SEC. 207 **EVIDENCE OF COLLATERAL SOURCE PAYMENTS**

A defendant may introduce evidence of collateral source payments made to the plaintiff (e.g., health insurance, welfare, pension benefits). If a defendant does so, a plaintiff may introduce evidence of any amount the plaintiff paid or is likely to pay in order to secure rights to any collateral source payments (e.g., premiums).

SEC. 208 **ALTERNATIVE DISPUTE RESOLUTION**

The provisions on statutes of limitation, punitive damages, noneconomic damages, collateral sources and periodic payments apply to claims resolved through ADR mechanisms.

SEC. 211 **GENERAL PROVISIONS; DEFINITIONS**

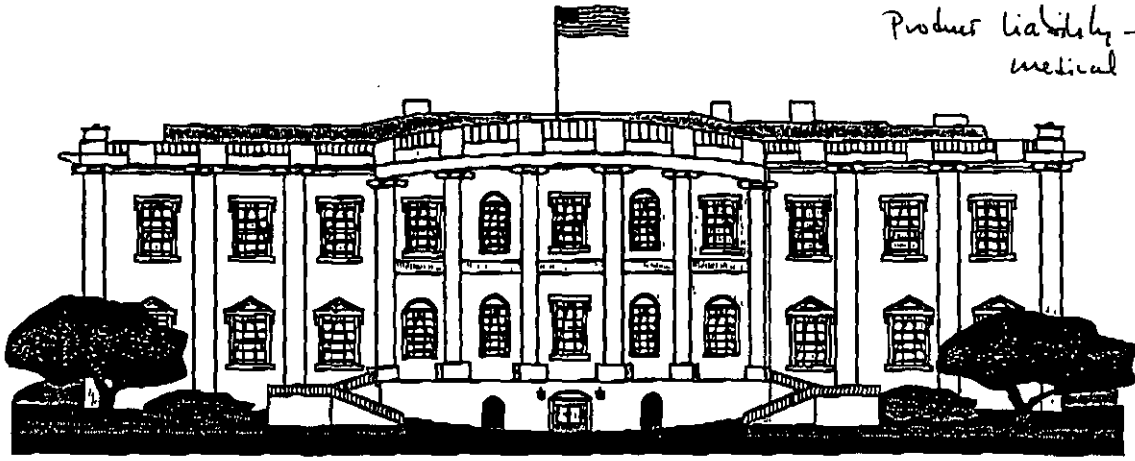
The term "District of Columbia Health Care Liability Action" includes civil actions brought against health care providers (e.g., medical malpractice claims), entities obligated to provide or pay for health benefits under any health benefit plans (e.g.,bad faith actions against health insurers), or the manufacturer, seller, or promoter of a medical product (e.g., product liability actions).

SEC. 212 **NONAPPLICATION TO CERTAIN CLAIMS**

These provisions do not apply to actions related to a vaccine-related injury covered by the Public Health Service Act, or to claims made under ERISA.

These provisions preempt D.C. law, except they do not preempt D.C. law that places greater restrictions on a consumer's ability to hold a plaintiff liable.

Product liability - medical malpractice



The White House

National Economic Council

To: Elena Kagan 62878
Gene Sperling 62878
Bruce Lindsey 62083
Chris Jennings 63557

Phone:_____ Fax:_____

From: Ellen Seidman

DC Appropriations - Medical Malpractice

Phone: (202) 456-6630 Fax: (202) 456-2223

Pages including cover sheet:_____

Comments: We should ~~not~~ care about this for all sorts of reasons.

El

Public Citizen

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

October 7, 1997

Contact: Joan Mulhern (202) 546 4996 ex.384
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STATEMENT OF FRANK CLEMENTE
Director, Public Citizen's Congress Watch

On the Medical Malpractice Provisions in the D.C. Appropriations Bill

We are here today because once again a member of Congress wants to impose his personal priorities on the residents of the District of Columbia. Charles Taylor of Brevard, North Carolina, wants to turn us into guinea pigs. He seeks to shred our strong laws that protect us from physicians and hospitals who often maim and sometimes kill because they are careless or outright incompetent. His hometown constituents wouldn't put up with being guinea pigs. And we won't either.

He seeks to impose the most Draconian restrictions on the legal rights of people injured or killed by medical malpractice of any state in the nation. His proposal is unfair. It is discriminatory. It is life threatening. And it must be stopped.

This bill not only limits the liability of medical professionals and medical facilities. It also limits the liability of manufacturers of defective medical devices. Even health insurance companies that deny benefits in bad faith would be protected by the Taylor bill.

No matter how you cut it -- this legislation discriminates. It hurts women more than men. It hurts children more than adults. It hurts lower-income people more than the well-to-do. And it hurts minorities more than white Americans. By capping non-economic damages at $250,000 for harm such as lost child-bearing ability, disfigurement or loss of sight, well-paid working male adults will be better able to get just compensation for their injuries than others who suffer just as much from medical malpractice. And it will have a particularly discriminatory impact on women who don't work outside the home, children, the elderly and the poor, whose damages tend to be non-economic in nature.

The bill's cap on punitive damages will dramatically reduce the ability of D.C.'s civil justice system to deter future wrongdoing by negligent doctors or manufacturers of defective drugs and devices. Punitive damages are awarded by juries to punish wrongdoers for egregious misconduct.

But this bill caps punitive damages at $250,000, or two times compensatory damages,

Public Citizen

HEALTH CARE LIABILITY RESTRICTIONS IN THE HOUSE D.C. APPROPRIATIONS BILL --

AMONG THE CRUELEST IN THE COUNTRY

The House Appropriations Committee has targeted the District of Columbia with some of the cruelest liability restrictions in the country. The House D.C. Appropriations bill would severely weaken the legal rights of all D.C. consumers who are injured by malpracticing doctors, manufacturers of defective medical products, and even health insurance companies that deny insurance benefits in bad faith. No state in the country has enacted such Draconian and discriminatory measures.

These provisions will not reduce the costs of health care or medical malpractice insurance. They will be detrimental to efforts to improve the quality of health care, and will penalize some of the most vulnerable members of our community -- the sick and the injured. They would also dramatically reduce the ability of the civil justice system to deter future wrongdoing that threatens consumers' health and safety. Less deterrence will lead to more injuries, more uncompensated victims and greater overall costs to taxpayers.

Among the most damaging provisions are:

- **Cap on non-economic damages at $250,000 and elimination of joint and several liability for non-economic damages.** Awards for non-economic loss (injuries such as lost child-bearing ability, disfigurement, and loss of sight) compensate for the human suffering accompanying injuries caused by medical malpractice. An arbitrary cap on such damages would be devastating to those who suffer most. Moreover, the bill makes an unfair distinction between economic damages (e.g. medical expenses and lost wages) and non-economic damages. By limiting non-economic damages, this legislation makes a value judgment that high wage-earners are more deserving of compensation than are low-wage workers, seniors, children and women who work in the home.

- **Cap on punitive damage awards at $250,000 or three times the amount of economic loss, whichever is greater.** In recent times the media has reported on doctors amputating the wrong leg; removing the wrong breast; removing a healthy lung; and killing a patient by negligently administering a lethal dose of a cancer-fighting drug. In these kinds of cases, the availability of punitive damages should not be restricted. Moreover, 68% of punitive damage awards in medical malpractice cases are awarded to women, most often in cases of sexual misconduct by health care providers. According to a Public Citizen study "Physicians Disciplined for Sex-Related Offenses," released this June, approximately four of every 10 physicians disciplined for sex-related offenses continue to practice medicine because of overly-lenient actions by regulatory agencies. Without adequate regulatory enforcement, the availability of adequate punitive damages is critical to holding such doctors accountable.

Public Citizen

CONGRESS IS THREATENING D.C. RESIDENTS' HEALTH

The District of Columbia is not immune to medical disasters. In fact, a 1993 Public Citizen Book, Comparing State Medical Boards, found that D.C. had one of the country's lowest rates of disciplining doctors, ranked 45th compared with the 50 states. The medical liability caps proposed in the D.C. Appropriations bill will further reduce accountability of doctors and hospitals, endangering the health and safety of the District's most vulnerable residents. The District has enough medical horror stories without giving doctors, hospitals and insurers immunity from people who are injured by negligence.

- Cynthia Wichelman, 38, has just *two years to live* because a doctor failed to detect her breast cancer. Early in 1990, she went to a specialist at Georgetown University Medical Center after detecting lumps on one breast. The doctor did a biopsy on one lump and found it to be benign. However, the doctor failed to biopsy another suspicious lump. Concerned, Wichelman returned to the Center in January 1991, *but the doctor failed to order an ultrasound or mammogram*. Two months later, she saw another Center doctor, who told her to return in a year. In October 1991, Wichelman went to a non-Center doctor who biopsied the area and *diagnosed her with breast cancer. By that point, the cancer had spread to her lungs.* (National Law Journal, 8/4/97).

- In December 1993, Patricia Lawson underwent the *amputation of her right ring finger* at George Washington University Medical Center after the Center's doctors diagnosed a growth on it as cancerous. It was later discovered that the growth wasn't malignant and that Lawson *never had cancer*. (Legal Times, 7/22/96).

- Costella Prince Thompson, a 53-year-old District teacher, died after undergoing surgery on her arm in 1992. Complaining of a sore throat, chills and vomiting, Thompson returned to the medical center a week after the operation. She was examined by an assistant, who prescribed medicine and bed rest. *She died the next day*. An autopsy revealed *massive internal complications from her surgery that were completely missed by the assistant*. (Washington Post, 8/7/95).

- In October 1991, D. C. resident Lilia Reyes, 44, complained to her physician of abdominal pains, bleeding and other problems. Her doctor did not refer Reyes' for a sigmoidoscopy, a normal test for colon cancer, and instead diagnosed her problem as irritable bowl syndrome. In August 1992 when Reyes underwent emergency surgery for a blocked colon, she was then diagnosed with colon cancer. *Her life expectancy is greatly shortened as a result of the earlier misdiagnosis.* (Washington Post, 8/7/95).

- District resident Damon Briggs, 19, has cerebral palsy and *is confined to a wheelchair for the rest of his life because doctors at Columbia Hospital for Women botched his difficult birth.* (Washington Times, 2/6/92).

- In December 1986, Julie Surland arrived at the Washington Hospital Center for an abortion. While performing the procedure, *the doctor failed to detect a one-inch gash that he had made in Surland's uterus*, and discharged her upon completion. Almost immediately, Surland began to suffer massive internal bleeding and was in critical condition. *Rendered "surgically menopausal" at age 19, Surland is permanently unable to bear another child.* (Washington Post, 12/19/89).

Improving medical care in D.C. should be a top priority of Congress. Instead, the House Appropriations Committee is trying to ram through a measure that would arbitrarily restrict District residents' rights to hold bad doctors, hospitals and insurance companies accountable for the harm they cause.

Her ability to understand, think and remember has been permanently damaged. She knows that her anticipated career will never happen. She no longer is able to participate in the recreational activities that she once did. She knows that her normal life was taken away from her because of the medical industry's negligence. Cynthia brought a lawsuit, which was settled, against the negligent health care providers to hold them accountable.

If this bill had been law when Cynthia filed her case, she could have recovered no more than $7,150 per year for her pain and suffering (assuming she lives until about age 70).

EVONNE BARBER

In 1992, Evonne Barber lived and worked in Washington, D.C. She enjoyed trips with her husband and family and was active at work, traveling to conferences and meetings. Because of medical malpractice, Ms. Barber is now a double amputee, unable to work or enjoy many of the activities she used to share with her family and colleagues.

Ms. Barber went to a physician in Washington, D.C. with complaints of leg pain. Following some tests, including an aortogram, the doctor determined that Ms. Barber had problems with her circulation. Surgery was performed to implant prosthetic grafts to improve her circulation. After the surgery, complications arose. Ms. Barber had to be hospitalized more than once for infections where the grafts were placed. Ms. Barbers doctor failed to recognize the seriousness of the infection and did not remove the grafts quickly enough. As a result, Ms. Barber's legs became severely infected. She was forced to have her right leg amputated above the knee and her left leg amputated below the knee.

The bill caps punitive damages at $250,000 or three times economic losses. This means Evonne Barber could not ask a jury to assess more than $250,000 in punitives no matter how careless the jury found the defendants in causing her tragic amputations. A jury could not award more even if it believed that more than $250,000 was needed to punish the defendants and deter them from making the same mistake in the future.

KALIL WRIGHT

Kalil Wright, now four, was born in August 1993 at the Columbia Hospital for Women in Washington, D.C. Kalil's mother, Tonya, received regular prenatal care and had an uncomplicated pregnancy with Kalil, her first and only child.

After Tonya's due date passed, she was admitted to the hospital to induce labor. The nursing notes documented adverse signs on a fetal monitor, but they did not respond quickly enough. In addition, the attending physician was not told quickly enough that there were warning signals from the fetal monitor. When Tonya's doctor finally was notified, she recognized that a caesarean section was necessary. However, the doctor did not arrive at the hospital until it was too late to deliver Kalil without his suffering severe brain damage from a loss of oxygen.

Kalil is a beautiful and active boy, but is unable to speak or dress himself or do any of the activities that a normal 4-year-old boy might do. He suffers from severe mental retardation, which was caused by the health care providers' negligence. Kalil will need constant care all of his life. But just as importantly, he has been deprived forever of his chance to lead a normal life.

If the bill was law, children like Kalil could get only nominal payments for pain and suffering. Their families would be able to recover medical expenses but, if he lives to age 60, Kalil could only recover about $4,000 per year for losing the chance to life a normal life.

product liability - medical malpractice

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Joan Claybrook, President

October 7, 1997

Contact: Joan Mulhern (202) 546 4996 ex.384
Joanne Doroshow (202) 546 4996 ex. 315
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But this bill caps punitive damages at $250,000, or two times compensatory damages,

reducing the incentive for hospitals and physicians to exercise the utmost caution. This is particularly absurd given that a 1993 Public Citizen study, "Comparing State Medical Boards," showed that D.C. has one of the worst doctor discipline records in the country -- ranked 45th nationwide. And it protects the misbehavior of the biggest companies or hospitals.

Even worse, the bill completely absolves from punitive damages companies that manufacture defective drugs or medical devices that had the stamp of approval of the Food and Drug Administration. There are many harmful FDA-approved products that have caused medical disasters in the past. This bill should be renamed the Wrongdoers Protection Act, as it would let off scot-free companies that manufacture such products that maim or kill.

It will also be very harmful to women, many of whom suffer each year from sex-related offenses by physicians. According to a Public Citizen study released this year, approximately four of every 10 physicians disciplined for sex-related offenses continue to practice medicine because of overly-lenient actions by regulatory agencies.

There is an epidemic of medical malpractice in this country. It causes 80,000 deaths each year and takes an enormous financial toll -- as much as $60 billion a year. The costs of medical malpractice insurance are estimated to be only around $4 billion in a $1 trillion health care economy. That's why this measure won't reduce health care costs. It will only serve to restrict the rights of medical malpractice victims to hold doctors and hospitals and medical device companies accountable. It will lead to less deterrence, to more injuries, to more uncompensated victims, and to greater overall costs to taxpayers.

Members of Congress enjoy the best health care in the world -- delivered to them at taxpayer expense in the confines of Maryland's Bethesda Naval Hospital or in their home town. As they sit in the comfort of their plush Capitol Hill offices they should remember that tomorrow Congress is not about to experiment with taking away the legal rights of its own members. Only the rights of average citizens are quashed.

The growing concern over the quality of health care in this country demands that Congress reject such brutal health liability restrictions as are contained in the D.C. Appropriations. Congress should focus instead on enacting measures to increase patient safety in Washington, such as beefing up the underfunded and understaffed Board of Medicine, rather than enacting laws that decrease the liability of doctors and other dangerous health care providers, drug companies and medical device manufacturers.

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These provisions will not reduce the costs of health care or medical malpractice insurance. They will be detrimental to efforts to improve the quality of health care, and will penalize some of the most vulnerable members of our community -- the sick and the injured. They would also dramatically reduce the ability of the civil justice system to deter future wrongdoing that threatens consumers' health and safety. Less deterrence will lead to more injuries, more uncompensated victims and greater overall costs to taxpayers.

Among the most damaging provisions are:

- **Cap on non-economic damages at $250,000 and elimination of joint and several liability for non-economic damages.** Awards for non-economic loss (injuries such as lost child-bearing ability, disfigurement, and loss of sight) compensate for the human suffering accompanying injuries caused by medical malpractice. An arbitrary cap on such damages would be devastating to those who suffer most. Moreover, the bill makes an unfair distinction between economic damages (e.g. medical expenses and lost wages) and non-economic damages. By limiting non-economic damages, this legislation makes a value judgment that high wage-earners are more deserving of compensation than are low-wage workers, seniors, children and women who work in the home.

- **Cap on punitive damage awards at $250,000 or three times the amount of economic loss, whichever is greater.** In recent times the media has reported on doctors amputating the wrong leg; removing the wrong breast; removing a healthy lung; and killing a patient by negligently administering a lethal dose of a cancer-fighting drug. In these kinds of cases, the availability of punitive damages should not be restricted. Moreover, 68% of punitive damage awards in medical malpractice cases are awarded to women, most often in cases of sexual misconduct by health care providers. According to a Public Citizen study "Physicians Disciplined for Sex-Related Offenses," released this June, approximately four of every 10 physicians disciplined for sex-related offenses continue to practice medicine because of overly-lenient actions by regulatory agencies. Without adequate regulatory enforcement, the availability of adequate punitive damages is critical to holding such doctors accountable.

- **Prohibiting punitive damages in cases involving drugs or medical devices that are approved by the Food and Drug Administration.** Prohibiting punitive damage based on the excuse that the FDA has approved the product could be disastrous for D.C. consumers. FDA pre-market approval and standards set by the agency are minimum safety standards. At most, they establish an acceptable current level of safety, and may only establish a lower safety floor bred by many concessions to powerful lobbies. Manufacturers can discover product dangers after a drug or device is marketed and resist modification or recall without being guilty of withholding or misrepresenting information. This provision could protect manufacturers of some of the most notorious FDA-approved products which have wreaked havoc on consumers, such as defective pacemakers and heart valves that have led to hundreds of deaths and injuries.

- **Periodic payments for future losses over $50,000.** This provision is tantamount to enacting a "payment plan for wrongdoers." Periodic payments penalize over time victims who are hit soon after an injury with large medical costs and those who must make adjustments in transportation and housing. In addition, because these payments are not adjusted for inflation, they rapidly pay for fewer needs of the innocent victim as time goes on.

These provisions will do nothing to address the problem of health care costs in the District. Medical malpractice insurance costs make up a minuscule part of overall health care costs. For example, in 1991, total health care costs in the United States were about $750 billion; medical malpractice premiums that year were about $4.8 billion, or .6 percent of total health care costs. Moreover, according to a recent study by former Federal Insurance Administrator and Texas Insurance Commissioner Robert Hunter of the Consumer Federation of America, over the last 10 years, medical malpractice premiums, when calculated in constant dollars, have fallen from $9.5 billion to $6.4 billion -- a 31% drop in cost relative to general medical costs.

Rather than limiting victims' rights, Congress should consider instead reforms to reduce medical malpractice and improve the quality of health care in the District. According to Public Citizen, the board which licenses doctors in D.C. has one of the worst records for disciplining malpracticing doctors. Better doctor discipline is essential to reducing the incidence of medical negligence. In addition, reform of the insurance industry would ensure sensible underwriting and thereby lower costs in the health care system. Insurance companies should charge rates based on a physician's experience, so that the small number of doctors responsible for the most malpractice would pay higher premiums, and the majority of good doctors would pay less.

Approximately 80,000 deaths occur annually due to doctor negligence in the country -- more than twice the number of motor vehicle occupants killed each year. With the growing concern over health care quality in this country, Congress should enact measures to increase patient safety in Washington, DC, not, as this bill would do, decrease the liability of dangerous health care providers, drug companies and medical device manufacturers.

For more information, contact Joanne Doroshow or Joan Mulhern, Public Citizen Congress Watch, (202) 546-4996.

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- In December 1993, Patricia Lawson underwent the *amputation of her right ring finger* at George Washington University Medical Center after the Center's doctors diagnosed a growth on it as cancerous. It was later discovered that the growth wasn't malignant and that Lawson *never had cancer*. (Legal Times, 7/22/96).

- Costella Prince Thompson, a 53-year-old District teacher, died after undergoing surgery on her arm in 1992. Complaining of a sore throat, chills and vomiting, Thompson returned to the medical center a week after the operation. She was examined by an assistant, who prescribed medicine and bed rest. *She died the next day.* An autopsy revealed *massive internal complications from her surgery that were completely missed by the assistant.* (Washington Post, 8/7/95).

- In October 1991, D. C. resident Lilia Reyes, 44, complained to her physician of abdominal pains, bleeding and other problems. Her doctor did not refer Reyes' for a sigmoidoscopy, a normal test for colon cancer, and instead diagnosed her problem as irritable bowl syndrome. In August 1992 when Reyes underwent emergency surgery for a blocked colon, she was then diagnosed with colon cancer. *Her life expectancy is greatly shortened as a result of the earlier misdiagnosis.* (Washington Post, 8/7/95).

- District resident Damon Briggs, 19, has cerebral palsy and *is confined to a wheelchair for the rest of his life because doctors at Columbia Hospital for Women botched his difficult birth.* (Washington Times, 2/6/92).

- In December 1986, Julie Surland arrived at the Washington Hospital Center for an abortion. While performing the procedure, *the doctor failed to detect a one-inch gash that he had made in Surland's uterus*, and discharged her upon completion. Almost immediately, Surland began to suffer massive internal bleeding and was in critical condition. *Rendered "surgically menopausal" at age 19, Surland is permanently unable to bear another child.* (Washington Post, 12/19/89).

Improving medical care in D.C. should be a top priority of Congress. Instead, the House Appropriations Committee is trying to ram through a measure that would arbitrarily restrict District residents' rights to hold bad doctors, hospitals and insurance companies accountable for the harm they cause.

BACKGROUND ON DISTRICT OF COLUMBIA PATIENTS INJURED BY MEDICAL MALPRACTICE

MARK SCOTT

Mark Scott, now seven years old, will never be able to walk, talk or take care of himself. Mark is catastrophically brain damaged as the result of medical malpractice.

Mark was born February 26, 1990, at the Greater Southeast Community Hospital in Washington, D.C. During the course of Mary Scott's pregnancy, her doctor determined that she was a high-risk patient who required close monitoring. When Mary Scott began to experience labor pains, her private attending physician was contacted by telephone. He advised Mary to report to the hospital.

The hospital's notes show that Mary arrived at the labor and delivery suite at 8:05 a.m. on February 26. Between 8:05 a.m. and 4 p.m. -- when Mary's doctor came to the hospital -- no medical doctor saw, consulted, examined or had any contact with her, despite the fact she was a high-risk patient. The only people who came into contact with Mary Scott were nurses. When the doctor finally arrived, the decision was made to perform a caesarean section for "fetal distress and cephalopelvic disproportion." In other words, Mary's pelvis was too small and her doctor anticipated a difficult delivery. Notwithstanding the decision to go to delivery because of "fetal distress," Mark Scott was not born until 6:37 p.m.

After birth, Mark was severely compromised and depressed and had aspirated meconium (a condition that occurs when a baby has a bowel movement in utero and inhales this toxin.) As a result of this botched -- and clearly negligent -- delivery, he suffers from seizure disorder, cerebral palsy and mental and motor retardation. At age seven, Mark cannot talk, walk or feed himself. He has no self-help skills. However, he is aware of his environment and enjoys stimulation. The Scotts' medical malpractice lawsuit against the hospital and health care providers settled out of court.

If the bill was law, children like Mark Scott could get only nominal payments for pain and suffering. Their families would be able to recover medical expenses but, if he lives to age 60, Mark could only recover about $4,000 per year for losing the chance to life a normal life.

CYNTHIA PADDOCK

In 1990, Cynthia Paddock of Washington, D.C., was studying for a career in international affairs when she developed the medical condition known as hydrocephalus. This condition is accompanied by an abnormal increase in the amount of spinal fluid within the cranial cavity.

Cynthia went to a D.C. hospital for what was to be a fairly routine procedure, the placement of a shunt to drain the excess fluid. Patients who have shunts generally can lead normal, active lives. However, after the surgery Cynthia developed intracranial bleeding while in the intensive care unit. The hospital staff negligently failed to recognize symptoms of the bleeding for an extremely long period, and as a result Ms. Paddock was severely -- and permanently -- injured.

Ms. Paddock underwent emergency surgery to repair the hemorrhage. After the surgery she was completely incapacitated, like a baby. Only after months of rehabilitation did she regain her ability to speak and walk, albeit with a limp and cane and partial, permanent paralysis.

Now 34, Ms. Paddock also has permanent neurological injuries as a result of this negligence.

Her ability to understand, think and remember has been permanently damaged. She knows that her anticipated career will never happen. She no longer is able to participate in the recreational activities that she once did. She knows that her normal life was taken away from her because of the medical industry's negligence. Cynthia brought a lawsuit, which was settled, against the negligent health care providers to hold them accountable.

If this bill had been law when Cynthia filed her case, she could have recovered no more than $7,150 per year for her pain and suffering (assuming she lives until about age 70).

EVONNE BARBER

In 1992, Evonne Barber lived and worked in Washington, D.C. She enjoyed trips with her husband and family and was active at work, traveling to conferences and meetings. Because of medical malpractice, Ms. Barber is now a double amputee, unable to work or enjoy many of the activities she used to share with her family and colleagues.

Ms. Barber went to a physician in Washington, D.C. with complaints of leg pain. Following some tests, including an aortogram, the doctor determined that Ms. Barber had problems with her circulation. Surgery was performed to implant prosthetic grafts to improve her circulation. After the surgery, complications arose. Ms. Barber had to be hospitalized more than once for infections where the grafts were placed. Ms. Barbers doctor failed to recognize the seriousness of the infection and did not remove the grafts quickly enough. As a result, Ms. Barber's legs became severely infected. She was forced to have her right leg amputated above the knee and her left leg amputated below the knee.

The bill caps punitive damages at $250,000 or three times economic losses. This means Evonne Barber could not ask a jury to assess more than $250,000 in punitives no matter how careless the jury found the defendants in causing her tragic amputations. A jury could not award more even if it believed that more than $250,000 was needed to punish the defendants and deter them from making the same mistake in the future.

KALIL WRIGHT

Kalil Wright, now four, was born in August 1993 at the Columbia Hospital for Women in Washington, D.C. Kalil's mother, Tonya, received regular prenatal care and had an uncomplicated pregnancy with Kalil, her first and only child.

After Tonya's due date passed, she was admitted to the hospital to induce labor. The nursing notes documented adverse signs on a fetal monitor, but they did not respond quickly enough. In addition, the attending physician was not told quickly enough that there were warning signals from the fetal monitor. When Tonya's doctor finally was notified, she recognized that a caesarean section was necessary. However, the doctor did not arrive at the hospital until it was too late to deliver Kalil without his suffering severe brain damage from a loss of oxygen.

Kalil is a beautiful and active boy, but is unable to speak or dress himself or do any of the activities that a normal 4-year-old boy might do. He suffers from severe mental retardation, which was caused by the health care providers' negligence. Kalil will need constant care all of his life. But just as importantly, he has been deprived forever of his chance to lead a normal life.

If the bill was law, children like Kalil could get only nominal payments for pain and suffering. Their families would be able to recover medical expenses but, if he lives to age 60, Kalil could only recover about $4,000 per year for losing the chance to life a normal life.