

Patient Access Crisis: The Role of Medical Litigation

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Witness:

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Testimony:

First, I want to thank Chairman Gregg, Chairman Hatch, and Senators Kennedy and Leahy. I greatly appreciate the opportunity you have given me. My name is Linda McDougal and I am a victim of medical malpractice.

I am 46 years old. I live with my husband and sons in Woodville, a small community in northwestern Wisconsin. My husband and I are both veterans of the United States Navy. This is my story.

About 8 months ago, in preparation for my annual physical, I went to the hospital for a routine mammogram. I was called back for additional testing and had a needle biopsy. Within a day I was told that I had breast cancer.

My world was shattered. My husband and I discussed the treatment options and decided on the one that would give me the best chance of survival, and maximize my time alive with my family. We made the difficult, life-changing decision to undergo what we believed was the safest, long-term treatment - a double mastectomy.

Forty-eight hours after my surgery, the surgeon walked in my room and said, "I have bad news for you. You don't have cancer."

I never had cancer. My breasts were needlessly removed. The pathologist switched my biopsy slides and paper work with someone else's. Unbelievably, I was given another woman's results.

I was in shock. My husband was with me in the room and we were reduced to tears.

Today, I am still in shock. To some extent, it was easier to hear from the doctor that I supposedly had cancer, than to hear - after both my breasts were taken from me - the fact that I never had cancer. How could the doctors have made this awful mistake?

The medical profession betrayed the trust I had in them.

It's been very difficult for me to deal with this. My scars are not only physical, but emotional. After my breasts were removed, I developed raging infections requiring emergency surgery. Because of my ongoing infections, I am still unable to have reconstructive surgery. I don't know whether I will ever be able to have anything that will ever resemble breasts.

After I came forward publicly with my story, I was told that one of the pathologists involved had a ten-year exemplary performance record, and that she would not be reprimanded or punished in any way until a second "incident" occurred. Should someone else have to suffer or even die before any kind of disciplinary action is taken?

While there are no easy answers, apparently now the insurance industry is telling Congress it knows exactly how to fix what it believes to be the "problem" caused by malpractice - by limiting the rights of people, like me, who have suffered permanent, life-altering injuries.

Arbitrarily limiting victims' compensation is wrong. Malpractice victims that may never be able to work again and may need help for the rest of their lives should be fairly

compensated for their suffering. Without fair compensation, a terrible financial burden is imposed on their families.

Those who would limit compensation for life-altering injuries say that malpractice victims still would be compensated for not being able to work, meaning, they would be compensated for their economic loss. Well, I didn't have any significant economic loss. My lost wages were approximately \$8,000, and my hospital expenses of approximately \$48,000 were paid for by my health insurer. My disfigurement from medical negligence is almost entirely non-economic.

As you discuss and debate this issue, I urge you to remember that no two people, no two injuries, and no two personal situations are identical. It is unfair to suggest that all victims should be limited to the same one-size-fits-all, arbitrary cap that benefits the insurance industry at the expense of patients. Victims deserve to have their cases decided by a jury that listens to the facts of a specific case and makes a determination of what is fair compensation based on the facts of that case.

Recently, I heard a politician on the news argue in favor of limiting patients' compensation. He said insurance companies need the predictability of knowing, in advance, the maximum amount they might have to pay to injured patients. He said lack of predictability makes it hard for insurance companies to run their businesses profitably.

We'd all like to be able to count on the predictability that this politician wants for insurers. But life doesn't work that way. My case is a perfect example.

I could never have predicted or imagined in my worst nightmare that I would end up having both my breasts removed needlessly because of a medical error. No one plans on being a victim of medical malpractice. But it happened, and now, proposals are being discussed that would further hurt people like me...all for the sake of helping the insurance industry.

I'm not asking for sympathy. What happened to me may happen to you or someone you love. When it does, maybe you will understand why I am sharing my story. The rights of every injured patient in America are at stake. Limiting victims' compensation in malpractice cases puts the interests of the insurance industry ahead of patients who have been hurt, who have suffered life-altering injuries like loss of limbs, blindness, brain damage, infertility or sexual dysfunction, or the loss of a child, spouse or parent.

Instead of taking compensation away from people who have been hurt and putting it in the pockets of the insurance industry, we should look for ways to improve the quality of health care services in our country to reduce preventable medical errors like the one that cost me my breasts; part of my sexuality; and part of who I am as a woman.

Medical malpractice kills as many as 98,000 Americans each year and it permanently injures hundreds of thousands of others. We must make hospitals, doctors, HMOs, drug companies and health insurers more accountable to patients. A good start would be to discipline health care providers who repeatedly commit malpractice. We should make the track records of individual health care providers available to the general public, instead of protecting bad doctors at the expense of unknowing patients.

Limiting victims' compensation will not make health care safer or more affordable. All it will do is add to the burden of people whose lives have already been shattered by medical errors. Every patient should say no to any legislation that does not put patients first. I urge you to do the same.

Thank you for your time and consideration.