

LOBBY WATCH



★ TEXANS FOR PUBLIC JUSTICE 609 W. 18TH ST., SUITE E, AUSTIN, TX 78701 PH: (512)472-9770 FAX: (512)472-9830

April 9, 2003

Jessica & Jeanella:

Med-Mal Cap Questions Arise Out of the Mouths of Babes

“Out of the mouths of babes and infants you have founded a bulwark.”
–Eighth Psalm

Few politicians questioned the push to cap state and federal malpractice legal liabilities until some of the medical industry’s youngest and most tragic victims raised posthumous questions about the wisdom of this policy.

Botched transplants

In February the world watched as 17-year-old Jessica Santillan’s life slipped away after Duke University Hospital implanted her with organs from donors with fatally wrong blood types.

Last month, the East Texas Aranda family filed a lawsuit against Dallas’ Children’s Medical Center and Baylor University Medical Center alleging that a blood-type mismatch last August killed their one-year-old baby, Jeanella. Baylor has blamed the mismatch on the Parkland Medical Center lab that issued two conflicting reports on the blood type of Jeanella’s organ-donor father. Unfortunately, without seeking independent confirmation, Baylor relied on the second blood report, which was dead wrong.

Jessica and Jeanella’s senseless deaths raise troubling questions about proposals in Washington and Austin to cap non-economic malpractice damages for pain and suffering at a maximum of \$250,000. To wit:

- If medical practitioners make a painfully avoidable mistake that kills a child, why

should their legal liability be artificially capped at no more than \$250,000?

- If grossly negligent practitioners took the life of *your* child, would \$250,000 be an adequate penalty for their recklessness?
- Is it fair to limit the legal damages that negligent practitioners pay without capping the amount of damage that they inflict? And
- Do the best societies make the destruction of human life cheap or dear?

Christian soldiers

Too few politicians have answered such tough questions posed by silenced children. Apparently, this is how the medical industry likes it. Washington lobbyist William Nixon, dismissed the Aranda families’ lawsuit in the *New York Times* as a cynical effort to turn Congress against malpractice caps. Nixon lobbies for the Washington-based Coalition for Affordable and Reliable Health Care (CARH), which hospital and insurance interests formed to push malpractice caps. CARH Chairman John Thomas is also the general counsel of the Baylor Health Care System, which has promised to “vigorously defend this [Aranda] lawsuit.” It was Baylor University Medical Center that harvested a piece of liver from Jeanella Aranda’s dad (blood Type A) and sent it to Children’s Medical Center to transplant into his baby daughter (Type O). Although Jeanella took 19 painful

days to die, and subsequent tests revealed the blood mismatch, her medical staff never discovered the problem. Instead, Jeanella's mother discovered the blood-type error herself--one day before her baby died.

Acting on the maxim that offense is the best legal defense, Baylor's Thomas issued a January press release lauding President Bush's support of malpractice caps. "The President understands the pain and fear being inflicted on patients...by a system that allows trial lawyers to seek outrageous jury verdicts, drive health care liability costs out of sight and force doctors and health care facilities to close their doors or move out of state," Thomas observed. But both he and the president neglected to say what botched transplants

and other deadly malpractices do to liability costs, much less the "pain and suffering inflicted on patients."

Although CARH is Washington-based, a disproportionate number of its members are Christian-based hospitals in Texas. These include Baylor Health Care System, the Methodist Hospital of Houston and Texas Health Resources (formed from the 1997 merger of Presbyterian Healthcare and Harris Methodist Health System). Besides backing CARH, these Christian hospitals are paying eight Texas lobbyists up to \$460,000 to lobby in Austin this session. Pray that they do not leave the families of future Jessicas and Jeanellas without a prayer.

Christian CARH Hospitals Proselytize for Med-Mal Caps

CARH Board Member	Current Lobbyist	Max. Value of Contract	Min. Value of Contract
Baylor Health Care System	Gordon D. Arnold, Jr.	\$100,000	\$50,000
Texas Health Resources	David John Tesmer	\$100,000	\$50,000
Texas Health Resources	Bryan P. Eppstein	\$50,000	\$25,000
Texas Health Resources	John Chris Gavris II	\$50,000	\$25,000
Texas Health Resources	Tonya Jackson	\$50,000	\$25,000
Texas Health Resources	David A. Marwitz	\$50,000	\$25,000
Texas Health Resources	John T. Shults	\$50,000	\$25,000
Methodist Hospital (Houston)	J. Richard Cheney	\$10,000	\$0
TOTAL		\$460,000	\$225,000