

What's a life worth?

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Martha McClure kept a dozen "sweet sixteen" frames in a box.

This family matriarch and doting mom from Germantown planned to fill them with photographs for her 12 grandchildren when each turned 16.



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Martha McClure died after several surgeries and months of pain. Her family, left with photographs and memories, sued her doctors. The lawsuit has since been settled.

Her four children will have to do it for her.

McClure died in March 1999 after doctors allegedly made a serious surgical error, according to the lawsuit filed by the family.

Doctors at Temple University Hospital allegedly removed the wrong side of McClure's colon, which the family says triggered three more surgeries, months of excruciating pain and her death at the age of 51.

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Former president of the
Pennsylvania Trial Lawyers
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Executive Director of Citizens
for Consumer Justice

Attorneys representing Temple and the doctors have argued that her treatment was appropriate. They contend her death was due to prior operations and preexisting illnesses unrelated to her surgery at Temple.

The suit was settled last week. Details of the settlement have been sealed by the court; neither side is now allowed to comment on the case. In most cases, a settlement means that neither side has admitted responsibility.

Still, heart-wrenching cases like McClure's, in which doctors are alleged to have committed serious, preventable errors, are used as examples by those who oppose caps on jury awards and restrictions on lawsuits.

Why shouldn't wounded patients or grieving family members be allowed to sue for lost wages and medical costs — as well as for unlimited punitive damages?

Victims of medical errors — those that have been proven in a court of law — should be compensated for what they lost, many say. And doctors and hospitals should be punished for serious lapses in patient care.

"The law has always recognized that parties must be responsible for mistakes or errors regardless of whether the person who caused the harm is a mechanic, a truck driver or physician," said Tom Kline, attorney for the McClure family, in an interview before the suit was settled.

"The only real accountability for physicians is the civil justice system, where a family like the McClure family can come to the courthouse and have their claim heard for the wrongful death of their deceased mother," Kline said.

The family — also interviewed before the settlement — says their lawsuit was not about money, but about justice. For months they watched their mom fight a slow agonizing death.

"My mom gave up her whole life to take care of us," said her youngest son, Stacey McClure. "For her to be taken away like that is wrong. You can't put a price tag on that."

Daughter Pamela McClure said, "We wish we could have her back. Oh my God, anything to have her back. She was the leader. She was the queen. She lived for us. After she was gone, we emotionally reverted back to being little kids without a mommy."

The right to damages

Laws to cap big malpractice judgments are not the way to solve this crisis, argue both consumer advocates and trial lawyers. For one thing, limiting awards may deter some people with legitimate claims from the cost and hassle of suing — and could deter some lawyers from taking cases.

And why should lawmakers issue blanket rulings deciding what life or health is worth?

"Should legislation decide the value of your baby's life or your legs or your eyesight when taken from you by a negligent doctor?" asked Lauren Townsend, executive director of Citizens for Consumer Justice.

Yes, verdicts have increased, experts acknowledge. But there are good reasons for that — including the rising cost of medical care. Many victims use the money from malpractice verdicts to pay for medical care or living expenses.

"Part of that is due to inflation and the cost of caring for victims," said Gerald A. McHugh, who lectures on the issue and is past president of the Philadelphia Trial Lawyers Association.

"But some of it is due to the fact that many people feel alienated from the health care system because of changes like managed care. I think we've recently seen that anger reflected in some of the verdicts."

Any solution to soaring malpractice premiums must respect patients rights, say Townsend and others.

"Medical mistakes are the fifth-leading cause of death in the country," Townsend said. "People should have the ability to sue if they were made worse off than when they went in."

"The civil justice system and access to the courts is vital because of the victims," she said. "This is the only way they can be made whole again."

To really solve this crisis, they say, bad doctors should be disciplined. Less than one-half of 1 percent of the nation's doctors face any serious state sanctions each year, according to Public Citizen, a watchdog group.

Medical review boards should examine cases and issue strong sanctions when they are warranted, consumer groups and lawyers say.

"Patents deserve to be protected from chronic offenders who continue to make avoidable, costly mistakes,' Townsend said.

Said Schwartz: "Two percent of doctors are responsible for 42 percent of claims made in Pennsylvania. It's staggering."

Yet medical boards often fail to discipline negligent doctors, he said. "Its the old conspiracy of silence. They want to protect their own."

Consumer groups and lawyers also blame insurance companies for this mess.

"Much of the pressure on malpractice premiums is the result of irresponsible price wars by insurance companies, followed by the decline in the stock market," McHugh said.

"Doctors are being asked to cover the investment losses of the insurance industry, and they cannot bear that load."

Townsend argues that malpractice insurance rates are high because insurance companies are "picking the pockets" of doctors and hospitals.

"Like everybody else, the insurance companies lost a boatload of money in their investments because of the stock market," said Ted Schwartz, former president of the Pennsylvania Trial Lawyers Association, "How does that translate to punishing victims?"

"The real villains are the insurance companies," said Mark Mendel, former president of the Philadelphia and Pennsylvania Trial Lawyers Associations.

Mendel and Schwartz contend that the insurance companies should face mandatory disclosure of their investment policies, including income and losses. At least six insurance companies are no longer in business because of poor investment decisions and/or improper conduct — not because of claims, they say.

They suggest that all Pennsylvania insurers be required to write medical malpractice insurance to spread the risk, create more competition and lower premium costs.

To address the issue of frivolous lawsuits, they say, attorneys should be required to file an affidavit of merit executed by a physician who has reviewed the records and is competent and qualified to testify.

A painful odyssey

Martha McClure used to love to work New York times crossword puzzles and could read a novel a day.

"She'd read the dictionary when there was nothing left to read," said her daughter, Pamela.

She always cooked Sunday dinner for the entire family and was a mother figure for her block on Price Street in Germantown.

In the past, she had worked various jobs to raise her children — including as a coder in medical records.

"She always wanted to make sure we all did something with our lives," Pamela McClure said. "We were her whole world."

On August 28, 1998, she was admitted to Temple University Hospital with severe abdominal pain and was diagnosed with ischemic colitis. Tests showed a thickened left colon.

But the next day, surgeons removed the right side of the colon instead of the left, according to court documents.

She grew sicker, and doctors decided to surgically re-explore her abdominal cavity on September 5. The problem, however, was not detected, and McClure underwent two more surgeries.

She had several episodes of respiratory failure and needed a tracheostomy.

Temple has argued that McClure had other serious medical conditions that could have led to her death.

The hospital did not return calls for comment. But in a pretrial memo, the hospital argued that McClure's problems included asthma, emphysema, glaucoma, hypertension and sarcoidosis, a disease in which small round bumps are found in the tissue around the organs.

Apparently the right side of her colon had been displaced to the far left during one of the surgeries before August 1998, the memo said, "...the result being the diseased right colon was removed instead of the left colon."

Despite "a complicated postoperative course," she had a successful convalescence at Temple, the memo said.

"At the time of the first surgical procedure, her overall prognosis would have been guarded at best," it said.

Her death, it continued, was due to significant prior medical problems unrelated to her surgery at Temple University Hospital.

In late October, the McClures transferred their critically ill mother to Thomas Jefferson University Hospital. She remained a patient there until her death from massive abdominal sepsis, Kline said.

'She was so messed up from the surgeries, it led to a downward spiral," he said.

For months, her family watched her struggle.

"We'd never seen her like that. She shook uncontrollably because she was so scared," Pamela McClure said.

Son Stacey said, 'She was trying to stay focused. She was struggling to stay alive. She was doing it for us.

"I remember one time I told her, 'Mom, I really need you'. And she told me, 'I need you more than you need me.'

"She was always a fighter, but this time she couldn't fight anymore."

Early the morning of March 6, 1999, all of her children were at her bedside. Her eldest daughter, Bobbie Cardwell, said a prayer for her. "I told her it was OK. 'You can go home now,'" Cardwell said.

'As soon as I said that, I could see a tear roll down her face. She wasn't ready to go unless one of us told her it was OK.

"Then she was gone."