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Louisiana appeals court rejects malpractice cap in tragic case of child cancer victim

The Third Circuit Court of Appeal in Louisiana has ruled the state's \$500,000 malpractice cap to be unconstitutional.

Joe and Helena Oliver had sought relief from the Louisiana Medical Malpractice Act, which shrank the damage award their daughter received for disfiguring injuries from \$6.2 million to \$500,000.

Their daughter, Taylor, developed severe injuries after she was treated by a "grandfathered" nurse practitioner who was practicing with only a high school diploma.

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Susan Duhon, a registered nurse practitioner and sole owner of the Magnolia Clinic, treated Taylor for vomiting, nausea and diarrhea. Taylor visited the clinic 32 times, and Duhon prescribed more than 30 medications. Duhon had a statutory duty to consult a physician, but Taylor never saw one during any of her visits.

When Taylor was 14 months old, another hospital diagnosed her with neuroblastoma, a childhood cancer. One of the signs is severe bruising around the eyes, a symptom Taylor had presented with at the Magnolia Clinic when she was 6 months old.

If neuroblastoma is diagnosed within the first year of life, the child has a 90 percent chance of an event-free recovery. But because of the delayed diagnosis, the quality of Taylor's life has been severely diminished. Though she survived the cancer, the tumor caused her head to become misshapen. In addition, her eyes are abnormally large and she is legally blind.

The Olivers won their medical malpractice lawsuit, but their \$6.2 million award was cut to \$500,000 under Louisiana state law. The appeals court ruled that the cap on malpractice damages is unconstitutional, noting that "the cap discriminates against Taylor and her parents by limiting their general damage recovery to a single \$500,000 payment, while allowing other less severely injured victims to fully recover their general damage awards."

In another case, the same appeals court reversed a jury decision and awarded \$400,000 in damages to a man who lost all vision in one eye after a cataract operation. The case involved cataract surgery performed in 2002 by ophthalmologist Ernesto Kufoy on Ronald Bianchi. During the surgery to remove the cataract and implant an artificial lens, the lining of the old lens was torn and a second artificial lens was implanted.

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After the surgery, Bianchi reported worsening pain and vision loss. After a malpractice suit was filed in 2002, a medical review panel found malpractice on Kufoy's part. (Kufoy did not chart his treatment of Bianchi and had no medical records to support his testimony.)

A jury trial in December 2009 determined that Kufoy had breached the standard of care, but the jury did not award damages because it did not find proof of cause. However, the Third Circuit Court of Appeal found there was no factual basis to support the jury's verdict and called it "manifestly erroneous."

The court overruled the jury's verdict and awarded Bianchi and his wife \$100,000 for past and future medical expenses and \$300,000 in general damages. The cost of the appeal also was assessed to the defendant. Sources: [Beauregard Daily News](#) for the Bianchi case.

[Courthouse News Service](#) for the Oliver case.

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