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Parents assail malpractice caps after daughter's death at UCLA hospital

Limits on payouts made it hard to find a lawyer when Olivia Cull, 17, died after a routine procedure. And the couple settled their lawsuit before all the information they wanted was revealed, her mother says.

By Molly Hennessy-Fiske, Los Angeles Times, January 22, 2011



Robert and Joyce Cull, pictured here in daughter Olivia's bedroom, say limits on damages after she died two years ago made it hard to find a lawyer and to get UCLA to fully disclose what went wrong during a routine procedure. (Rick Loomis, Los Angeles Times / January 19, 2011)

Two years ago last week, Olivia Cull, 17, was taken off life support. The standout student — who planned to study classics at Smith College — had slipped into a coma during a routine, outpatient procedure at Mattel Children's Hospital UCLA in Westwood.

The story of her death was presented to Congress a few days ago, among cases cited by patient advocates pushing to lift the caps on damages for medical malpractice lawsuits.

As lawmakers search for ways to trim healthcare costs, debate continues over the country's medical malpractice laws. Physician groups say caps limit frivolous lawsuits that can drive good doctors out of business. But patients and their families argue that limits on payouts diminish accountability, making it hard to find lawyers to take cases and force full disclosure from doctors.

UCLA officials, who said they were "profoundly saddened by the death of this young woman," said they worked with state regulators and conducted a comprehensive investigation into her death.

"It is our policy and practice in all cases, including this one, to communicate honestly with patients and their family members regarding their care and treatment," officials said in a statement.

But Olivia's parents said going to court was the only way for them to learn the truth about their daughter's death.

As a baby, Olivia had surgery to correct a defect that left one side of her heart smaller than the other. A second surgery was delayed as she grew into a teenager who juggled violin practice, robotics club and theater rehearsals.

On Jan. 9, 2009, Joyce "Joy" Cull walked her daughter up the steps of the hospital for a procedure to prepare for the final corrective surgery. Doctors wanted to perform the operation before Olivia left for college on the East Coast in the fall.

Olivia was nervous, but her mother reassured her. The catheterization procedure would take only a few hours. Olivia had been through it several times before. Doctors said she would be home before dinner.

In black marker on her left heel Olivia had written the ancient Greek letters for Achilles, a reminder to stay strong.

Used to consent forms

In the years Olivia was treated at UCLA, her parents became accustomed to consent forms. Waiting with Olivia before the procedure, Joy Cull, 52, had signed the standard surgical consents without a second thought. She never imagined they would have to cope with what seemed like pro forma warnings.

By the time a cardiologist brought the bad news to the recovery waiting room, Cull had a feeling something was wrong. There had been an "incident" in the lab, Cull remembers being told, and Olivia had been deprived of oxygen for 40 seconds.

"OK, 40 seconds — my kids can hold their breath in the pool that long," Cull thought.

In the catheterization lab, Olivia was still on the table. She looked as if she were asleep — except for the breathing tube in her mouth. On the floor near Olivia's head, Cull noticed a pool of blood.

She touched Olivia's short brown hair, her arm and heart-shaped face. Olivia's skin was cool. Behind her, Cull said, she heard a nurse sobbing.

A week after they came to the hospital, the Culls held a wake in Olivia's hospital room. Classmates visited from Brentwood's Archer School for Girls, leaving notes at the foot of her bed.

Eight days after Olivia arrived at the hospital, her parents had her removed from the ventilator. Olivia's 13-year-old sister crept into the bed beside her. Her 11-year-old brother stood with his parents, watching Olivia's chest rise and fall.

Olivia's heart went on beating for three days. On the third day, the Culls removed an internal breathing tube, and Olivia died.

Distraught, the Culls sought answers from their daughter's doctors. An autopsy conducted at UCLA showed Olivia suffered brain damage as a result of a heart attack she suffered at the end of the catheterization, due in part to her congenital heart defect.

The Culls did not believe the heart defect alone caused Olivia's death. They suspected something had gone wrong in the catheterization lab. Olivia's longtime cardiologist told them her weak heart was to blame, the Culls said, but to them that made no sense. Olivia was not an invalid; she had been a healthy, active teenager, a Girl Scout camp counselor.

Dissatisfied, they pushed harder, requesting Olivia's medical records. When they demanded answers from hospital officials, the Culls said, they were told to review the records and, if they found a problem, to contact a lawyer.

Robert Cull, 56, was an accomplished architect who helped design Ronald Reagan UCLA Medical Center. Joy, a homemaker, had a master's degree in fine arts. As they sifted through records, they wondered how others in similar situations made sense of it all.

"It's confusing," Joy Cull said. "I could imagine this happening over and over again because families don't have the resources to find out how their loved one passed away. We had to claw our way through the system."

To get more information, the Culls decided to sue the hospital. But like others, they had trouble finding a lawyer willing to take the case. Given the state cap on damages, they said, many lawyers did not consider their case worth pursuing.

Although doctors groups complain of frivolous malpractice lawsuits, the number of malpractice claims has actually decreased in recent years as families have had difficulty pursuing claims, Joanne Doroshov, executive director of the Center for Justice & Democracy, a New York-based advocacy group, told Congress at a hearing Thursday, the second anniversary of Olivia's death.

Wrongful death suit

In July 2009, weeks after first seeking counsel, the Culls filed a wrongful death lawsuit after lawyer Jin Lew at Los Angeles-based Michels & Watkins agreed to take the case pro bono. The suit alleged that the University of California Board of Regents, which runs the hospital, and everyone who cared for their daughter that day were "negligent, careless and unskillful."

The lawyers found that Olivia's medical records were incomplete, the Culls said, and filed more requests until the hospital supplied hundreds of additional pages.

In addition to the lawsuit, the Culls filed a complaint with Los Angeles County health officials that triggered an investigation by the state Department of Public Health. In February, state investigators reported that a postdoctoral fellow who treated Olivia removed her catheters without a doctor's supervision. Investigators also found that a second fellow who treated Olivia had not been cleared to treat patients.

That information was new to the Culls.

In the corrective plan required by the state, hospital officials defended both fellows, saying they were trained to remove catheters. The hospital made one change in response to the state investigation: It added another disclaimer to the consent form, warning patients they might be treated by doctors in training.

Joy Cull wanted more. She attended each legal deposition with Olivia's doctors and nurses, filing additional complaints with state regulators based on what she heard. She called and wrote to state legislators, arguing against caps on medical settlements.

Through depositions, the Culls learned the identity of the two fellows the state faulted for mistreating Olivia. Joy Cull recognized one: He was the clean-cut young doctor who had handed her the medical release forms that day.

In June, Shirley Watkins, a partner at the law firm representing them, urged them to settle. She said they were unlikely to learn more about how their daughter died.

On Nov. 16, after months of reluctance, the Culls agreed. Hospital officials would pay them \$250,000, the maximum allowed under the cap. They also promised to make at least eight improvements in how they supervise doctors, remove catheters, document patients' heart rates and inform parents that trainees will be treating their children.

"UCLA Medical Center deeply regrets the death of Olivia Cull and takes responsibility for the care and treatment provided to her," hospital officials said in a statement the Culls insisted they release as part of the settlement, as close to an apology as they could get.

The Culls plan to use the settlement to fund scholarships in Olivia's memory.

Joy Cull remains dissatisfied. She thinks the threat of a larger settlement would have forced the hospital to reveal mistakes by doctors and staff, and to review and improve its policies.

"You just have to wonder how many other families are told, 'There was just nothing more we could do'."

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