

JOE'S STORY

A real case demonstrating
the unfairness of damage caps.

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Unlike most fathers, Joe, who is dying of cancer, will not be able to take care of his family or watch his young son grow up. Joe's mouth cancer was treatable, but his doctor misdiagnosed his condition—allowing the cancer to grow for two years. Even worse, the doctor later changed Joe's medical records to cover up his mistakes.

Joe was 28 years old that July. As he told everyone that he knew, he had a “wonderful wife,” Joanna, and a smart, handsome and loving four-year-old son. Joe worked hard to support his family. He worked by day in construction and then worked some nights bartending at a local pub, where he loved to talk sports with the patrons. Every spare moment that he had was spent with Joanna and their son.

That July was the turning point in Joe's life. One morning Joe noticed a lump under his tongue. He was worried about it because it was purple and was very painful. He made an appointment immediately with his family physician. During the office visit, Joe explained about the lump and expressed his concern to his doctor. The doctor asked Joe to open his mouth and then peeked in. He never touched the area where the lump was and quickly declared that Joe had “trenchmouth,” which he explained was caused by a bacteria that Joe probably got from drinking beer. He gave Joe a ten-day course of antibiotics and sent him on his way. At no time did Joe's doctor ever palpate the lump or suggest to Joe that he should see an ENT, a specialist who would be more familiar with conditions of the mouth. Joe's doctor also never recommended any further testing to determine what the lump might be, and he never referred Joe to a surgeon for a biopsy.

Joe took his antibiotics, finishing them all. The lump did not go away, although the pain would temporarily improve. Joe thought that the pain worsened when he drank beer because of what the doctor had told him during his visit. Joe's life went on, with occasional flare-ups of pain. After two years, the lump under Joe's tongue became very painful prompting him to return to his family physician's office. During this visit, Joe was seen by his regular doctor's partner, who again gave him a ten-day course of antibiotics, but also recommended an evaluation by an ENT.

Before Joe's appointment with the ENT, his pain became so unbearable that he went to the emergency department at a local hospital. The emergency department physician noted a submandibular mass. A biopsy was performed, which revealed cancer. The cancer was so far advanced that it had totally obliterated Joe's submandibular gland and had already spread to his lymph nodes and beyond. If the lump had been properly diagnosed two years earlier, Joe would have undergone a small incision to remove the localized tumor. Instead, because of the delay, Joe lost 75% of his tongue and a good portion of his jaw in an attempt to rid his body of the cancer.

Since his surgery, Joe's life has radically changed. He is now unable to eat any solid foods. He gets all of his nutritional requirements from fortified supplement shakes. He misses real food! Joe would love to bite into a hot, gooey slice of pizza. He would love to share a hot dog with his son at a baseball game. He hates summer holidays now. What is the fun of a cookout if you can't eat any of the food? Joe would love to eat a piece of his son's birthday cake. He would love to be able to eat any of his wife's home-cooked meals or take her out for a nice dinner for her birthday or their anniversary. Joe would just love to be able to eat!

Being unable to eat is not the only change in Joe's life. Following his surgery, Joe had to undergo radiation therapy. He lost over 40 pounds. He lost all of his hair. He lost his energy and his stamina. He became a shell of his former self. Joe cannot work to support his family. He doesn't have the energy to play with his son. It hurts him to see his son, with whom he used to roughhouse and wrestle, treat him carefully and protectively. Joe should be protecting his young son from injury, not the other way around! Joe is totally dependent on his wife for all of his needs now. He cannot do anything himself. He cannot help her take care of their home or his son.

The radiation treatment was not successful. Joe's cancer has metastasized to his lungs. The cancer cannot be treated surgically. It cannot be treated with chemotherapy or more radiation. Joe is living with a death sentence. He is just waiting to die. He does not have much time left to spend with Joanna or his precious son. Each morning he awakens thankful that he has been granted another opportunity to see his small, but beloved, family. Each night he goes to bed terrified that the day that he just had was his last.

Joe is angry. He is angry that his cancer was not discovered when it was still treatable. He is angry that his physician changed his medical records in an attempt to cover-up his mistakes. He is angry that his family doctor, in whom he placed all of his trust, in whom he placed his life, lied in his office records to protect himself instead of taking full responsibility for the mistake that will cost Joe his life. He is angry that physicians, like his own family doctor, are trying to walk away from their responsibilities and duties to their patients instead of accepting responsibility for their errors and being accountable for them. He is angry that victims of medical negligence, like him and his family, are being blamed for a crisis not of their making. Joe will die with his anger.

How is a limit on non-economic damages fair to Joe and his family? Why should Joe's doctor, who failed to treat Joe correctly, who admitted that he lied about his treatment of Joe, and later acknowledged that it was wrong to do so, benefit from his conduct?



Joe won't be able to see his son grow up because he is dying from cancer. Perhaps even more painful to Joe is knowing that his cancer could have been treated, but Joe's doctor misdiagnosed his condition. Joe's doctor then lied in his office records to protect himself instead of taking full responsibility.