

# ***KAITLYNN'S STORY***

A real case demonstrating  
the unfairness of damage caps.

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Kaitlynn was welcomed into the world on a blustery October day by her parents and her older sister after an uncomplicated pregnancy and delivery. She was a happy and healthy baby who seemed to progress normally, although she did not begin walking until she was 15 months old. By the age of 32 months, Kaitlynn was walking and running, but she often stumbled when she ran. Her parents brought this to the attention of her pediatrician, who referred Kaitlynn to a pediatric neurologist at a major children's hospital.

During her first visit with the pediatric neurologist, after an MRI of her brain was performed, Kaitlynn was diagnosed with "static encephalopathy," or mild cerebral palsy, a brain dysfunction that is fixed, unchanging, and non-progressive. At no time during this visit was an MRI of her spine performed. Kaitlynn had regular check-ups with this pediatric neurologist, as well as a pediatric orthopedist, over the course of the next 21 months. She also attended physical therapy on a regular basis.

After about nine months of physical therapy, Kaitlynn's condition had not improved and, in fact, had progressively worsened. She suffered a noticeable deterioration in her ability to walk and began to suffer changes in bowel habits. Her physical therapist, who had experience in treating children with static encephalopathy, contacted Kaitlynn's doctors by both letter and telephone, expressing her opinion that Kaitlynn's progressive decline was inconsistent with their diagnosis of her condition. Kaitlynn's deteriorating condition was more consistent with a progressive spinal cord disease than a static brain condition. The physical therapist suggested that the physicians perform additional tests to further investigate Kaitlynn's condition. She informed the physicians that it was her belief that Kaitlynn had a progressive disorder. No further tests were ordered for Kaitlynn, and the physicians stubbornly refused to reconsider their diagnosis.

Twenty-one months after she was diagnosed with static encephalopathy, Kaitlynn was paralyzed from the chest down. Finally, her physicians ordered an MRI of her spinal cord. This test revealed a benign tumor of her spinal cord. Surgery was immediately performed, and the tumor was removed. Unfortunately, irreversible damage had already occurred. As the tumor had grown on Kaitlynn's spinal cord, it cut off the blood supply to the nerves that supply the function and sensation below the location of the tumor. Without blood, those nerves died. Kaitlynn is now paralyzed below her chest. She is totally incontinent of bowel and bladder. Had the tumor been discovered and removed when Kaitlynn's physical therapist questioned her physicians about her diagnosis, she would have suffered no paralysis, no bowel dysfunction, no bladder incontinence.

Kaitlynn is now a pre-teen, a pre-teen confined to a wheelchair, a pre-teen different from all of her friends. She cannot stand, walk, or run. She will never ride a bicycle. Trips to the mall or the movies or a school sporting event with her friends are not the carefree events that they should be. These trips involve planning every step of the way. Kaitlynn cannot just jump into a friend's mom's car and drive away. Her parents must always drive her and pick her up. At the mall, she has to plan how to maneuver around store displays, how to find the elevators since she cannot ride the ever-present escalators, and how to reach for items on shelves and racks that no one else thinks are high. At the movies, she must always sit in the back row, usually the only wheelchair accessible location. It is the same at school and professional sporting events. She often cannot sit where her friends are. Concerts are out of the question. She cannot play any school or intramural sports. She doesn't go to school dances. None of the boys want to dance with her. She will never enjoy a slow dance at her prom.

Kaitlynn is a pre-teen who will grow into an adult who will forever be confined to a wheelchair. She is hoping to find a man who will love her despite her condition, who will overlook the wheelchair, the catheter, and the diapers. Even if she does find such a man, Kaitlynn will miss out on many of the simple pleasures of love. She will never stroll along a moonlit beach, with her feet splashing in the water and her hand in the grasp of her love's. She will never run laughingly into his arms or wander along a forest path with him. She will not walk proudly down the aisle at her wedding, with the train of her dress billowing behind her. She will not experience the pleasure of her wedding night. She will have to struggle to board the plane that will whisk her and her new husband off to their honeymoon. She will have to hope that the beach that they go to has hard packed sand so that her wheelchair doesn't get stuck.

Kaitlynn's life has become, and will always be, an endless struggle to find a ramp, an elevator, an accessible location. Her struggles and her time in a wheelchair are not limited. Why should her recovery against the physicians who put in her that chair be limited by a cap on non-economic damages?





