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How S. 23 Discriminates Against Women

S. 23, the Santorum-Gregg medical malpractice bill, would treat many female victims of medical malpractice differently from male victims. The bill has a Texas-style “stacked” cap that limits non-economic damages for medical negligence cases relating to obstetrical and/or gynecological goods and services. By definition, these services are only provided to women. This means that similarly situated injured patients would be treated quite differently in the determination of their damage awards based solely on gender. Consider these scenarios:

Restricts damages for women with cancer, but not for men.

Imagine that a woman showing signs of cervical cancer visits her doctor – a gynecologist – and the doctor fails to properly diagnose her condition, delaying treatment and causing a lingering death. Under S. 23, she would be limited to \$250,000 in non-economic damages for her pain and suffering. Now imagine that a man showing signs of prostate cancer visits his doctor – a urologist – and the doctor fails to properly diagnose the condition, delaying treatment. S. 23 would not apply to the man’s malpractice lawsuit, and there would be no cap on the amount of non-economic damages the male patient could receive for his pain and suffering.

Restricts damages involving women’s reproductive health, but not men’s.

Imagine that two patients, a man and a woman, are concerned about their sexual or reproductive health. The man visits his doctor and is prescribed Viagra. The woman visits her gynecologist and decides to have an intrauterine device inserted. Both experience severe complications – the man develops heart problems and the woman develops a pelvic infection leaving her unable to have children. There would be no artificial limits on the amount of non-economic damages the man could receive. But the woman would be limited to a maximum of \$250,000 for her pain and suffering because the bill applies to medical devices prescribed by a gynecologist.

Restricts damages for expectant mothers and their children, but not for fathers.

Imagine that two expectant parents, one male and one female, visit their doctors with complaints about the toll the pregnancy is taking on them. The father-to-be is given a sedative for his anxiety, while the future mother is given medication to treat her morning sickness. If the sedative were defective, causing injuries to the man, under S. 23, he would remain eligible to recover all his damages. If the morning sickness medication injured the mother or caused the child to be born with a severe birth defect, either would be limited in what they could recover because the bill applies to drugs prescribed by an obstetrician.

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