

Medical-negligence awards contested

Ballot measure aims to raise limit on such damages

By Josh Richman

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A Danville man whose two children were killed by a drugged driver in 2003 wants voters to raise California's nearly 40-year old limit on medical-negligence awards and force doctors to check a statewide database before prescribing narcotic drugs.

Bob Pack, supported by the Consumer Watchdog advocacy group, says his proposed ballot measure would prevent other families from suffering as his has. "It's a simple and reasonable step forward that the Legislature should have taken decades ago," Pack, 58, wrote in a news release.

But medical organizations staunchly opposed the measure.

"We see this initiative as a very stark, trial-lawyer-sponsored attempt to increase their ability for a payday," Dr. Paul Phinney, the California Medical Association's president and CEO, said Thursday. "It will

increase medical costs for everybody in the state without doing a thing to improve care... We think policy now should be directed toward lowering health care costs, not increasing them to benefit trial lawyers."

Jimena Barreto in 2005 was convicted of two counts of second-degree murder in the deaths of Troy and Alana Pack, 10 and 7, and she is serving 30 years to life in prison. Already thrice-convicted of drunk driving, she had consumed a mix of alcohol, the painkiller Vicodin and muscle relaxants before driving that day.

In the weeks before the crash, Barreto had been given six Vicodin prescriptions by six different Kaiser Permanente doctors, who had failed to corroborate the injuries for which she claimed she needed the pills. The Pack family contends those doctors were never held accountable.

The Packs helped push the state to create a new prescription drug monitoring system that would prevent the kind of "doctor shopping" that let Barreto amass her pills. Pack's



JOSE CARLOS FALARDO/STAFF ARCHIVES

Danville's Bob Pack sits at his home in Danville. Pack's children, Alana and Troy Pack, were killed in 2003 in a hit-and-run accident involving a Walnut Creek driver.

new measure would make it mandatory for all California doctors to use that system and also would tighten requirements for doctors to detect and report substance abuse among their peers.

But those aren't the controversial parts. The measure is contentious mainly because it would raise the \$250,000 cap on damages for the loss of a child's life in medical negligence cases, and for other losses that don't involve medical bills

or loss of wages.

The Packs were entitled to recover only the \$250,000 limit for each of their children's lives; they note that \$250,000 in 1975, when the cap was enacted, would be worth \$58,000 today. The measure would adjust the cap for inflation, putting it at \$1.1 million this year.

"For 37 years, injured patients in California have been denied access to justice and strong patient safety protections," Pack

said. "This ballot measure begins to even the balance of power for innocent patients who are victimized by medical negligence and protects against dangerous and drug-abusing doctors."

Critics say it's a money-grab that will harm Californians even as the state tries to rein in health costs and insure more residents by implementing the national health care reforms. The measure "could not come at a worse time," said Kim Stone, president of the Civil Justice Association of California, in a news release.

The state is working to accommodate millions of new patients under the Affordable Care Act, Stone said. "The worst thing we could do is create greater incentives to sue medical providers and drive up their liability costs when there is already a shortage of providers to care for these new patients."

A Planned Parenthood leader also took issue with changing the award limit. There's no cap on economic damages, such as lost wages and medical bills, in such cases, said Kathy Kneer, president and CEO of the

Online extra

Read the full text of the Troy and Alana Pack Patient Safety Act at www.mercurynews.com/extra.

Planned Parenthood Affiliates of California.

Raising the noneconomic damages cap would reduce women's access to health care, especially obstetrics, she said. Before the cap was enacted, Kneer said, many doctors could not afford the skyrocketing insurance premiums.

"Private OBs reduced practice, some even left the state," she said. "It impacted women regardless of their ability to pay."

After the state attorney general has prepared a legal title and summary for the measure, the secretary of state's office will clear Pack and Consumer Watchdog to start circulating petitions. At that time, they'll have 150 days in which to gather valid signatures from 504,760 registered voters — 5 percent of the total votes cast for governor in 2010 — in order to put the measure on the next statewide ballot.

Josh Richman covers politics.