

# Industry Watch

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## Crusading Against Medical Malpractice — With or Without Legal Fees

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**L**OS ANGELES — It was the photograph that got to him.

As soon as the family showed attorney Philip Michels the picture of their 17-year-old daughter, a vibrant high school senior who died during a routine, outpatient medical procedure, he knew his firm would sign on to take the case pro bono.

The photo showed a smiling Olivia Jane Cull standing beside her younger brother and sister. She had just been accepted into Smith College.

### Small Firm Focus

"Small Firm Focus" is a twice-monthly series looking at small firms that are thriving in this down economy.

Born with a congenital heart defect, the teen had gone into UCLA Medical Center in January for the insertion of a catheter in preparation for a June surgery. But something went terribly wrong. Olivia went into cardiac arrest, and there was a delay in resuscitating her. She suffered irreversible brain damage and died two days later with her family at her bedside.

To this day, Olivia's parents Robert Cull and Joyce Cull said, the hospital has not explained to them what happened.

"It really was the picture that sold me," Michels said. "I thought: What a terrific looking family, a great girl, and to think that in only a few months after the picture was taken she would lay in bed dying."

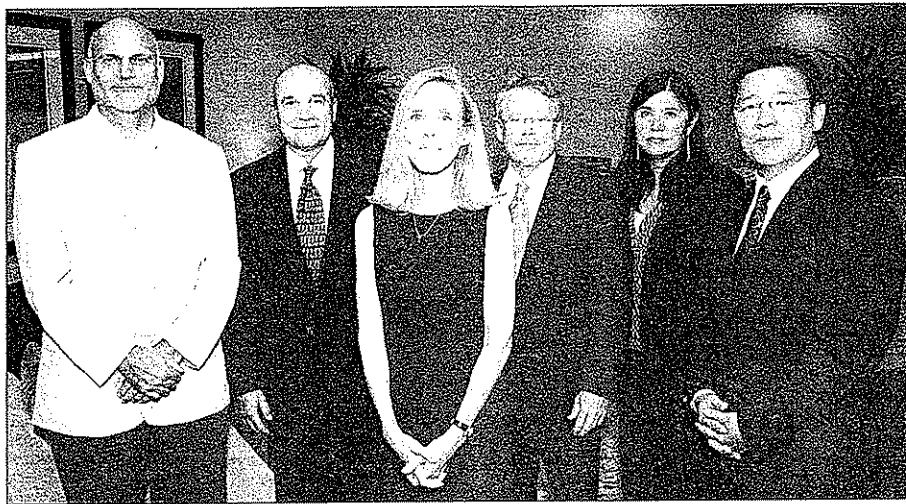
Last week, Michels & Watkins, a plaintiffs' personal injury firm that specializes in medical malpractice cases, filed a wrongful death claim in Los Angeles County Superior Court. *Cull v. Regents of the University of California, SC104172* (L.A. Super., filed July 29, 2009).

A spokeswoman for the medical center said hospital policy prevents it from commenting on pending litigation.

Under state law, the cap on such claims stands at \$250,000 when it involves only noneconomic damages, such as pain and suffering arising from physical injury and emotional distress. That amount has remained the same since 1975 when the Medical Injury Compensation Reform Act, known as MICRA, went into effect. Over the years, there has been a push to raise the cap, but it is unlikely to change, Michels said, especially during the current state administration.

Michels said his firm takes on four to five pro bono cases a year, typically ones like this because the \$250,000 cap and the expense of working them up make it nearly impossible to find other lawyers to take them on.

"Generally, we don't take cases under \$1 million," Michels said. "We try to find a home for these other cases, but it's difficult. People don't want to take them. If that's all



ROBERT LEVINS / Daily Journal

Los Angeles personal injury firm Michels & Watkins, which employs a physician on staff, specializes in medical malpractice cases. The physician, Dr. Bradford S. Davis, stands second from left, between clients Robert Cull and Joyce Cull. Fourth from left are Philip Michels, founding partner of the firm, litigators Shirley K. Watkins and Jin Lew.

you did, you wouldn't be in business."

But sometimes, senior litigator Shirley K. Watkins said, a case comes along that is so egregious that the firm has to sign on. Nor are the pro bono matters always confined to medical malpractice claims. Michels, who favors jeans and sport shirts when not in court, said he once took on a case for a man he met on an elevator, who told him about being swindled by Bank of America. "I just felt bad for him," Michels said.

Except for the pro bono work, all the firm's cases are handled on a contingency fee basis. The firm has 60 active cases throughout the state and a few nationwide. Additionally, it is evaluating another 20 to 30 potential claims. It has resolved 25 cases this year.

The majority of the cases are for medical malpractice, many involving children, but include claims for economic damages that are not capped by MICRA, such as special therapy, future medical expenses or, with adults, loss of earnings.

A smaller percentage of cases involve personal injury stemming from school accidents, sexual abuse, drownings, auto accidents and police beatings. It is these cases, particularly the high-value personal injury ones, that afford the firm the opportunity to take on the medical malpractice claims that are capped at \$250,000.

Michels, 65, began his own practice in 1980, seeing a need to help an underserved and largely poor population. From a solo practice, he has grown the firm over the years. It currently employs five lawyers, including himself, and 12 support staff, including an administrative assistant,

bookkeeper, client services coordinator, secretary, medical records collector and administrative director. Many of them have a medical background and are bilingual in Spanish and English.

Watkins, 52, a senior associate, came from a plaintiffs' medical malpractice firm in San Diego. She devotes 75 percent of her work to medical malpractice cases and handles all the firm's mediations.

Associate Jin N. Lew, 46, was at a medical malpractice defense firm before joining Michels & Watkins and switching to plaintiffs' work.

Steven Stevens, an appellate specialist, also comes from his own plaintiffs' medical malpractice firm, and new hire Alyssa K. Schabloski received her undergraduate degree in public health from UCLA.

The firm also is one of the few — and possibly the only one — in the nation to employ a full-time, in-house physician.

Dr. Bradford S. Davis joined Michels in 1997, after spending 11 years at St. John's Hospital in Santa Monica, where he was clinical director of emergency room services.

When clients are referred to the firm, Davis is usually the first person they talk to. He reviews and evaluates the case, then meets with the lawyers to discuss the merits. When a case is accepted, the team determines what medical records to order and arranges for the client to come in to be evaluated.

"We have a lot of people come here who are very ill," Michels said, "people on ventilators, with seizure disorders. We basically set up our own clinic, cater lunch, serve cookies, set aside rooms with toys, wheelchairs."

Davis' office contains an examination table and an X-ray viewer so he can go over records and reports and send them out to the appropriate expert for evaluation. For instance, if a mammogram looks like it was misread, he sends it to a radiologist.

Once in a while, Davis is even called on to be a doctor. A few weeks ago a woman went into hypoglycemic shock while in the office and passed out. He cared for her until paramedics arrived. Another time, a client fell and hit his head.

Michels & Watkins also may be the only firm to have its own automated external defibrillator, a computerized medical device that checks a person's heart rhythm, and which the entire staff has been trained to use.

Plaintiffs' medical malpractice firms are divided into two categories, Michels said: solos and small firms with few lawyers, like his; or larger firms that market aggressively statewide.

Because medical malpractice cases are so expensive to work up, most lawyers must, out of necessity, be very selective in the ones they take. Some cases cost \$500,000 to prepare, and the firm has to carry that cost, sometimes for two years, until it is resolved. Medical malpractice claims also carry a cap on attorney fees. For any award above \$600,000, the contingency is set at 15 percent.

There's also the reimbursement to Medi-Cal that cuts into the award. The attorneys at Michels & Watkins are particularly proud of a recent appellate decision they won, which says in effect that Medi-Cal can't take the entire award, even if its bill exceeds the

amount of the award, and that the court gets to decide how to divide up the money proportionately so everyone gets a fair share. *Lima v. Voss*, 2009 DJDAR 7543, (Cal. App. 2nd Dist. May 29, 2009).

Many of the cases are heartbreaking, but the results can be rewarding for the lawyers who work on them. The day after the lawyers met with the Culls, the firm had arranged for a group of disabled children — some clients and some whose cases are still being considered — to meet in their office with a pediatric neurologist.

The firm arranges these visits twice a year to have a specialist go over the cases, talk to the parents and children and write a report, which often can be used by the family to get additional services.

"One of the great things about this is often the parents have not had that amount of time with their own treating doctors," Watkins said. "He gives them the straight story."

The recession has not affected Michels' practice. Although the firm isn't actively recruiting, he said, he looks for young lawyers who are smart, energetic, creative and fearless. Experience isn't that necessary, he said, because people get trained on the job.

A sampling of cases on the firm's Web site include a \$120 million jury award in economic damages for future medical expenses in a birth injury case. Hospital officials had told parents of a 3-year-old who was unable to walk that she had a rare muscle disease, the firm said, but, through its investigation, the firm found the child's spine had been severed in a breech birth.

In another case, a young girl with an aggressive cancer who had only a few years to live was blinded after receiving a dose of chemotherapy 10 times higher than the proper amount because the doctor wrote the prescription with the decimal point in the wrong place.

Because of the state limits on damages for suffering, the defense offered a nominal amount. The defense told the firm the child would die soon anyway, the lawyers said. The staff was so offended by the remark that the firm pushed for an early trial date. The defense reluctantly admitted the error and eventually paid triple its initial offer.

In the Cull case, the lawsuit also alleges a coverup. The complaint alleges UCLA Medical Center did not reveal to the parents the gravity of the situation and neglected to administer resuscitation measures in time to prevent their daughter's brain damage.

In its lawsuit for damages, the parents also are asking that a scholarship fund be set up at Los Angeles' Archer High School for girls in their daughter's name.

"What a tragedy," Michels said, "and to know from our analysis of the case that this shouldn't have happened."

"She should have been in college," he added, "not in a grave."

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