



## From the President

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# Patient safety vs. corporate profits

## MICRA - A slap on the wrist; a slap in the face

One of the benefits of being president of Consumer Attorneys Association of Los Angeles is the opportunity to share with you my thoughts on issues that are important to me and, hopefully, important to you.

One of the most important for me is MICRA, which imposed a cap on general damages in medical malpractice that has remained the same \$250,000 that it was in 1975 – thirty-five years later! As I wrote in *Advocate* last October, MICRA is one of the most unconscionable abuses committed against victims of medical negligence.

I know that not all members of CAALA handle medical malpractice cases, but even if you don't, you ought to be interested in the following quiz.

### What do the following cases have in common?

•A young woman comes to a hospital in the middle of the night for delivery of her first baby. The doctor delays coming in, despite repeated calls by the nurses. The baby is severely brain damaged as a result of the delay in delivery.

•A 45-year-old woman with back pain is operated on by a neurosurgeon. He attempts an unnecessary disc removal which results in permanent paralysis.

•A 40-year-old businessman comes with his wife to a hospital for breathing difficulty. A trauma surgeon on call for the hospital puts in a chest tube to drain fluid from the pleural space. During his insertion of the tube he punctures the lung; blood fills up the entire chest cavity and pours from his mouth. He drowns in his own blood with his wife holding him.

### The tip of the iceberg

The answer is two-fold: (1) each of the doctors in these cases had previously been forced to resign from a hospital for

gross negligence and incompetence; (2) they are all still practicing here in Southern California.

The three patients, of course, knew nothing about the doctor's background. The hospitals they attended did nothing about it.

Sound bad? They are just the tip of the iceberg.

A study just published in the *New England Journal of Medicine* reviewed six years of inpatient hospital admissions in North Carolina. It found that 18 percent of patients were harmed by medical care they received in those hospitals, some more than once. Sixty-three percent of those injuries were found to have been preventable. The Department of Health and Human Services Office of the Inspector General just published a study of inpatient hospitalizations of Medicare beneficiaries. It found that in just one month 134,000 patients with Medicare suffered at least one adverse medical event, including 15,000 preventable deaths. Preventable events were attributed mainly to medical errors, substandard care and lack of patient monitoring and assessment. The added cost to Medicare was \$324 million in one month. Projecting that out for 2009 indicates an expense to us all of \$4.4 billion.

Preventable medical mistakes are the *sixth largest cause of death in the United States* each year; more than auto accidents, diabetes, Alzheimer's disease or breast cancer. Where are the pink ribbons, the wrist bands, the walkathons, the petitions to government for more research money, the sponsorships for events to raise awareness of this scourge? The insurance and healthcare industries frame these issues as exploitation by greedy attorneys, as frivolous lawsuits, as unworthy patients hoping to hit a "litigation jackpot." Hardly. As a University of Pennsylvania professor put it – "there is

an epidemic of medical malpractice not of malpractice lawsuits."

Our system of surveillance of the medical profession provides some safeguards for the public, but they are too few and often too late. Two-thirds of doctors with 10 or more mistakes are never disciplined. One-half of all hospitals never report physician disciplinary action to the National Practitioner Databank.

The civil justice system's deterrent effect functions only if it imposes the real cost of malpractice on those responsible for it. Caps on damages in malpractice cases impose a large part of those costs on the victim and the public and do little to deter future malpractice, improve quality of care and protect patient safety. Studies have shown that health care in states with caps lowers the quality of that care. A Rand study has shown a correlation between better patient safety and fewer malpractice lawsuits. What is the deterrent effect of the 35-year-old MICRA cap that has lost 80 percent of its value and continues to diminish; where now whole classes of victims with little or no economic damages are effectively barred from recovery? The alleged crisis is long gone; the insurance companies are profitable; a fair return on their money is now guaranteed by Proposition 103.

There is a constitutional challenge to MICRA going on now in the Fifth Appellate District, California Court of Appeal, *Stinnett v. Tam*, organized by Consumer Attorneys of California, our state association. It is a challenge we all can support.

MICRA is a slap on the wrist to the corporate organizations involved in the three cases described at the beginning of this column. It is a slap in the face to the families of these victims and thousands of others. It is time to think of patients, not profits.