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Quick Facts: SB 558 (Simitian) is about Elder Abuse and *not* MICRA.

Opponents to SB 558 have raised questions about the bill, alleging it is an end-run on MICRA. Unfortunately, these misguided arguments have steered the conversation astray from prevention of elder abuse to a completely unrelated topic! While changes to MICRA remain a top Consumer Attorneys of California priority, those changes are not being pursued in SB 558.

The laws on elder abuse and medical negligence are found in separate codes and have different defendants.

SB 558 amends the Elder and Dependant Adult Civil Protection Act (EADACPA or Elder Abuse Act) which is found in the Welfare and Institutions Code. These actions are typically brought against the nursing facility. On the other hand, actions for medical negligence are brought against a healthcare provider (like a physician). MICRA, which limits a patient's damages for pain and suffering, is found in Civil Code, a completely different code section.

The California Supreme Court has recognized that abuse carries a much higher degree of culpability and is different than negligence.

MICRA specifically applies to medical negligence. Medical negligence is defined as the failure to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful medical practitioners would use in the same or similar circumstances. CACI No. 500 (2011). On the other hand, EADACPA requires a finding that the abuser has acted with "recklessness, oppression, fraud, or malice in the commission of abuse." By definition, these are two mutually exclusive theories under which a person can be sued, and do not simply go hand-in-hand, as the opponents suggest. Abuse is not negligence. The California Supreme Court has twice ruled that that claims under EADACPA and medical negligence are two separate areas of law with two completely different legislative intents. *See Delany v. Baker* (1999) 20 Cal.4th 23; and *Covenant Care Inc. v. Superior Court* (2004) 32 Cal.4th 771. The California Supreme Court made it clear that under EADACPA the plaintiff must show "conduct which involves 'intentional,' 'willful,' or conscious wrongdoing of a 'despicable' or 'injurious' nature... [and] can therefore be read as making clear that the acts proscribed by [the Elder Abuse Act] do not include acts of simple professional negligence performed with some state of culpability greater than mere negligence."

Fears of "lawsuit explosion" are unfounded.

In 2004, the standard of proof necessary to prove a financial abuse under EADACPA was lowered from clear and convincing evidence to a preponderance of the evidence, just as SB 558 proposes to do. At the time, the opponents cried out that lowering the standard would result in an explosion of litigation which simply hasn't occurred. In fact, tort lawsuit filings decreased 30 percent between 1999 and 2009 (according to statistics provided by the Judicial Council).

Legislative Department

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