



# CONSUMER ATTORNEYS OF CALIFORNIA

*Seeking Justice for All*

## An Rx for Patients: The Need to Reform MICRA

California's Medical Injury Compensation Act of 1975 has handcuffed the rights of patients while failing to stem soaring medical costs.

Every 80 seconds in America, a patient dies because of medical negligence – by some estimates nearly 400,000 each year. Another 300,000 a year are injured, sometime irreparably, by the actions of their own doctors. But in California, a formidable and fundamentally unfair legal barrier has for more than a generation blocked victims of medical negligence from effectively seeking justice.

For the past 35 years, California's Medical Injury Compensation Reform Act of 1975 has locked in a strict \$250,000 cap on non-economic damages suffered by patients victimized by medical negligence. Through five governors, four recessions and a more than 300% boost in the consumer price index, MICRA has survived unchanged.

Today, many patients wronged by their doctors can't even find an attorney to take their case. Between 2004 and 2008, malpractice payouts plummeted nearly two-thirds in California. At the same time the number of preventable medical errors is on the rise, growing by one percent a year in California and the rest of the nation, according to a 2008 report by the U.S. Health and Human Services Department.

A recent study in the New England Journal of Medicine, authored by a Harvard Medical School professor, found that almost one in five hospital patients were harmed by medical care – some more than once. Almost two-thirds of those injuries were preventable. Meanwhile, health care spending has skyrocketed 83 percent, making a mockery of arguments that medical malpractice is driving an increase in the cost of health care.

We are suffering a crisis in care, not of litigation.

### **WHAT IS MICRA?**

- A state law signed in 1975, the Medical Injury Compensation Reform Act prohibits victims of medical negligence from collecting more than \$250,000 for pain, suffering, emotional distress and other non-economic damages. Judges must impose this cap no matter how badly injured the victim or how outrageous the act of medical negligence.

- In the face of intense lobbying by the powerful insurance lobby and a manufactured insurance crisis, California lawmakers set the damages cap at \$250,000 in 1975 when they approved the law. They included no provision to adjust the cap for inflation. If the \$250,000 were adjusted for inflation, that limit would be more than \$1 million today. At today's rate, \$250,000 is the equivalent of about \$60,000 in 1975.
- MICRA limits the amount of damages that can be awarded for injuries that are devastating but don't involve ongoing medical costs, such as loss of fertility, blindness or severe disfigurement.

### **HOW DOES MICRA IMPACT VICTIMS OF MEDICAL NEGLIGENCE?**

- Victims of medical negligence can collect the estimated cost of actual economic damages, such as loss of income resulting from their injuries. On the surface, that may seem fair. But the law has a disproportionate impact on people who have little or no income, including children, the elderly, stay-at-home parents, and working class Californians. The reason is that these citizens have little or no economic losses resulting from lost income.
- Because of its restrictions, the MICRA limits access to the justice system for people injured by medical negligence, especially for the disabled as well as the youngest, oldest and poorest victims who receive little, if any, compensation for lost income. Attorneys who represent victims of medical negligence work on a contingency-fee basis. Those lawyers spend long hours and incur tens of thousands, and sometimes hundreds of thousands, of dollars in costs to fully investigate cases. The attorneys have no prospect of being repaid unless the victim prevails against the teams of insurance industry lawyers who defend negligence cases. Because of the tight caps on potential judgments, many victims are unable to find an attorney who can afford to take their cases.
- California's malpractice law draws an arbitrary distinction between causes of injury. If a doctor were to run through a stoplight and run over a mother and child, the victims would be able to sue without limits. But if that same doctor were to commit an act of malpractice that maims a patient, damages are capped.

### **THE ONLY ONES WHO BENEFIT FROM THE LAW ARE INSURERS**

- One of the nation's largest health insurance companies, WellPoint, has issued a report that says "medical malpractice is not currently driving the rate of increase" in health care costs. ("What's Really Driving the Increase in Health Care Premiums?" May 2009) And overall health care costs continue to rise in states that have caps on damages, even where the number and average size of awards has decreased. ("Insurance Company Handout: How the Industry Used Tort Reform to Increase Profits While Americans' Premiums Soared," American Association for Justice, December 2009)

- California medical malpractice insurance companies have racked up record surpluses. Those companies expect to pay less than 17 cents out of every dollar in premiums that doctors and others paid in 2008. Companies that offer other types of insurance in California pay out nearly 60 cents in claims for every dollar in premiums. (“2008 California P&C Market Share Report,” California Department of Insurance) In short, what we have is an “insurance crisis,” as big firms rake in big profits.
- Medical negligence premiums paid in California were 18.9% lower in 2008 than they were in 2004. But expected claims payouts fell 66.5% over that same period, leaving insurers with more money to apply to profit despite the drop in premiums. (“2008 California P&C Market Share Report,” “2004 California P&C Market Share Report,” California Department of Insurance)
- National studies have shown no difference in changes in medical negligence premiums between states such as California that have caps on damages and states that don’t. (“Insurance Company Handout: How the Industry Used Tort Reform to Increase Profits While Americans’ Premiums Soared,” American Association for Justice, December 2009)
- Medical malpractice insurance companies maintain a large lobby force to make sure the malpractice law remains unchanged. Those insurance companies and closely affiliated lobby allies have handed out more than \$13 million in campaign contributions to California politicians since 2000.