

Protecting Patients

Medical negligence is the third leading cause of death behind heart disease and cancer. One thousand Americans die every day due to medical mistakes. This has been compared to two fully loaded 747 airplanes crashing and killing everybody on board on a daily basis. What is even less widely known is that at least one in ten doctors suffers from substance abuse at some point throughout their career. One-third of hospital admissions experience medical error and, according to the Journal of the American Medical Association, physician impairment may be a contributor to these errors. Doctor impairment can lead to misdiagnosis, surgery performed in an unsafe or unprofessional manner, and improper prescription leading to the injury or death of patients.

A small percentage of doctors, among them those who have substance abuse problems, are responsible for most of the injury to patients. The over-prescription of prescription drugs is another area of great concern as the Centers for Disease Control report that the leading cause of fatal injury is drug overdose, which is primarily caused by prescription drugs. The State of California runs an electronic database known as Controlled Substance Utilization Review and Evaluations System ("CURES"), which sets forth a patient's prescription history. However, few doctors check a patient's prescription history before prescribing addictive narcotics.

The Troy and Alana Patient Safety Act

In November of 2014, Californians will have the opportunity to change the law and ensure greater protections for patients with the ballot measure known as the Troy and Alana Pack Patient Safety Act of 2014 ("Pack Patient Safety Act"). Troy Pack, a ten-year-old, and his sister Alana, a seven-year-old, were killed when a drug addict driver high on drugs ran them over while they were walking on the sidewalk. Troy and Alana's mother, Carmen Pack, who was with them at the time and was pregnant survived the accident but lost her unborn twins. The driver had received prescription drugs from doctors who had not checked her prescription history to learn that she had accumulated thousands of pills. Ever since, Bob Pack, Troy and Alana's father, has been pushing to change state law and ensure greater protections for victims of medical negligence.

Random Drug and Alcohol Testing

The Pack Patient Safety Act would require random drug and alcohol testing of doctors. Modeled after the federal guideline for airline pilots, hospitals would be required to conduct random drug and alcohol tests of doctors. Hospitals would also be required to test all doctors providing care to a patient in the preceding twenty-four hour period leading to the patient's death or injury due to medical error. This provision would be reflected as new Business & Professions Code, Section 2350.25. A test of positive for drugs or alcohol would be reported to the Medical Board and would lead to the suspension of that doctor pending an investigation. Doctors would be required to report suspected drug or alcohol abuse by other doctors and disciplinary action would be required if an investigation concluded that a doctor was impaired by drugs or alcohol while treating patients. This would provision would be reflected as new Business & Professions Code, Section 2350.20.

by Raul Cadena, CASD President



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Preventing Prescription Drug Abuse

The Pack Patient Safety Act would also require a crack down on prescription drug abuse and overprescribing of addictive medications. Under this provision, before prescribing addictive painkillers to a patient doctors would have to consult a statewide database before prescribing addictive painkillers. A doctor who overprescribed painkillers would be subject to disciplinary action. This provision would be reflected as Health and Safety Code, Section 11165.4.

Adjusting the Cap on Non-Economic Damages

Next, the Pack Patient Safety Act would require fair compensation for injured patients and their families and would allow them to hold negligent doctors accountable. Under this provision the \$250,000 cap on non-economic damages would be adjusted for inflation and would require annual adjustments for inflation based on the Consumer Price Index. The Pack Patient Safety Act would amend Section 3333.2 of the California Civil Code to so provide. The cap has been in effect since 1975 with no adjustment for inflation in 38 years and in today's dollars would be the equivalent of approximately \$58,000.

A bit of history on MICRA: The early 1970s saw a substantial decline

in the stock market. As a result, insurance companies lost millions in investments and had to make up for these losses by increasing premiums. Malpractice insurance premiums skyrocketed, one of the primary malpractice insurance providers in California pulled out entirely and a crisis was born. The approach strongly advocated by the insurance industry to solving this crisis was the passing of the Medical Injury Compensation Reform Act of 1975 or MICRA, which capped claims pay out in medical malpractice lawsuits. MICRA set the non-economic damages cap at \$250,000.

The \$250,000 cap was viewed as an amount that if properly invested would improve a person's quality of life following their injury. However, there was no research undertaken to back up such a view. In addition, there was no provision indexing the cap to inflation. Further, MICRA limited attorney fees and abolished the collateral source rule for malpractice actions. Notably, there was no guarantee that the cap would reverse the increase in malpractice insurance premiums.

In fact, premiums did not decrease but continued to rise more than 190 percent. The cap had no impact on the alleged crisis and offered no relief to the medical profession. In 1988, the passage of Proposition 103 finally gave doctors assurances that malpractice insurers would not overcharge them

on premiums. On the other hand, the cap has had a severely negative impact on people who do not have economic damages such as wage loss. For instance, the value for the loss of a child or a retired elderly parent remains at only \$250,000 thirty-eight years later. Moreover, because medical malpractice cases are challenging and expensive and require attorneys who have the financial backing to litigate against well-financed defense attorneys, many of these types of cases are never filed. In the end, the only beneficiaries of the cap have been the insurance companies. Remarkably, Barry Keene, the California Assemblyman who originally sponsored MICRA, now also believes that the law should be changed.

The Fight Is Underway

The Pack Patient Safety Act will protect patient safety and restore the right of injured patients and their families to be fairly compensated. It is a common sense approach whose time has finally come. Not surprisingly, the California medical insurance industry has committed millions to defeat this ballot measure by the usual tactic of bashing trial lawyers. It will be up to us to educate the public on why we need the Pack Patient Safety Act and why it's time to restore the rights taken away from consumers more than 38 years ago. Stay tuned. **TBN**

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