

January 22, 2018

Governor Jerry Brown
State Capitol
Sacramento, CA 95814

Dear Governor Brown,

When I met you in November 2014, at a Consumer Attorneys of California meeting in San Francisco, I briefly shared the story of my twenty-year old son's tragic death due to medical negligence. I told you of my frustration with the Medical Board of California and how the Medical Injury Compensation Reform Act (MICRA) was denying me fair access to the legal system. You kept my son Alex's photo button and told me to let you know how the case went. I later sent you a handwritten letter asking to meet with you to further discuss the details of the injustices I was facing, but you did not respond.

My civil case is long since over, and the complaint I filed with the Medical Board more than four year ago was just finalized last month. Because of MICRA and the high cost of litigating a malpractice case, I was forced to settle my case out of court. The doctor was not deterred. There was no incentive for him to change.

When I turned to the Medical Board, I fully expected them to fulfill their mission and protect the public from this dangerous doctor. However, after waiting four long years, even after the Attorney General had filed an Accusation for Repeated Negligent Acts resulting in Alex's death, the Medical Board only handed down a Public Reprimand...little more than a slap on the wrist. Again, there was no incentive for the doctor to change.

On Friday, my husband and I stood before the Medical Board of California and confronted them about their lack of appropriate discipline against the doctor. They had no answers, others than "red tape" and "bureaucracy" had stopped them from protecting the public.

Forty-three years ago, you created this problem when you signed the Medical Injury Compensation Reform Act of 1975, which strictly limits legal remedies for injured patients, unjustly locking too many out of the courts, and entrusting doctor discipline to the Medical Board. That agency is failing miserably in their mission to protect the public.

We ask you to consider our family's story, one similar to thousands of others across our state, and we implore you to make changing doctor discipline and injured patients' rights a priority before you leave office. You have ignored this issue far too long, and families like ours have paid the price. As fellow Democrats, we believe in "justice for all", and you have the opportunity, Governor, to adjust this discriminatory cap and allow fair access to justice for all victims of medical negligence.

Below is my testimony, which I shared with the Medical Board on Friday, and I urge you to consider it as you prepare for your State of the State Address:

The mission of the Medical Board is to protect health care consumers, but in the case against Dr. Daniel J. Headrick, you have failed miserably.

Your website states that death cases are given priority, but the complaint I filed against Dr. Headrick took more than 4 years to reach a decision, and it took Medical Board investigators two years after I filed my complaint to even interview Dr. Headrick.

My son, Alex Smick, went to Dr. Headrick's facility to "safely" detox off of prescription pain medications, however, within two hours of arriving at Dr. Headrick's facility, Alex was started on a lethal combination of 11 medications. Dr. Headrick wrote an order to check Alex's vitals "only while awake", so the first night under Dr. Headrick's care, Alex was left unmonitored for more than seven hours, without even one blood pressure check.

When he was finally checked on during morning rounds, Alex was found dead. He was already in rigor mortis.

My son had been seizing, vomiting, and fighting for his life after being given Dr. Headrick's poisonous medications, but no one came to help him...because of Dr. Headrick's orders.

Nearly three years after I filed my complaint, an Accusation was filed against Dr. Headrick for Repeated Negligent Acts resulting in Alex's death.

Dr. Headrick's license on the MBC website even said... Accusation Filed/Petition to Revoke.

I was relieved thinking the MBC would revoke Dr. Headrick's license and prevent him from killing another innocent patient.

However, in a confidential settlement hearing, a "bargain" was reached. I was told the stipulated settlement was confidential, and I would only be told the terms of the settlement once the Medical Board approved it.

I was certain, that at minimum, Dr. Headrick would be put on probation, and have to take classes to learn about medications and monitoring, so that other patients would be safe from his dangerous practice.

But, on December 21st, just a few days before this last Christmas, I received an email from the MBC saying a decision had been reached. I had to weed through a 16-page legal document to find the Board's decision.

I was shocked/outraged, literally brought to my knees. I felt as if a knife were piercing my heart when I read the words PUBLIC REPRIMAND.

How could you allow a doctor accused of overmedicating a patient to death get away with a slap on the wrist?

Your job is to protect the public, not protect dangerous doctors.

43 years ago, the Governor signed MICRA, the cap on pain and suffering, into law with the promise that the Medical Board would be there to protect the public. Because of MICRA, you have an extra duty to protect us, and you are failing terribly!

Shame on you! Shame on all of you!!

My husband also testified before the Board, and these are the words he shared with them:

We entrusted Dr. Headrick with Alex's care, and his negligent acts killed our precious son.

Do you have any idea what it's like to be taken to your son's hospital bed, and to see his purple body with his arms above his head? Do you know what it's like to feel your child's cold flesh...to try to move his arms down, only to discover they are frozen stiff. That's what Headrick did to our son.

I cannot begin to tell you how appalled I am with the Medical Board's handling of our complaint. We trusted you to do the right thing, and you, too, have failed us.

We went to the police, and we were told the Medical Board would take care of it. We filed a lawsuit but our access to justice was blocked by MICRA, the outdated cap on pain and suffering. A CMA Board Member told us the Medical Board would handle it.

So, for more than 4 years, we waited for you to take action against Dr. Headrick, and you did nothing more than give him a Public Reprimand.

The Attorney General's Accusation included sufficient allegations to revoke his license, or least rehabilitate him so he couldn't kill another patient. But you chose to do a confidential, secret deal.

Where is the accountability? Where is the incentive to change?

Headrick is not deterred by any law in California, and because of that, patients continue to be put at risk.

You had the chance to stop him, and you didn't. The next time Headrick kills a patient, the blood is on your hands.

Governor, no parent should be denied access to justice because of MICRA, and no parent should have to watch the doctor accused in their child's death go unpunished because of an inept Medical Board. You have the power to change this injustice. The time is now. Do not let Californians look back on your governorship and remember that you did nothing to stop the discriminatory law called MICRA.

Sincerely,

A handwritten signature in black ink that reads "Tammy Smick". The signature is written in a cursive, flowing style.

Tammy Smick
Mother of Alex Smick
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