

August 15, 2013

Planned Parenthood Federation of America
Planned Parenthood Affiliates of
California
Pasadena and San Gabriel Valley
Pacific Southwest
Los Angeles
Santa Barbara
Ventura & San Luis Obispo Counties
Shasta Pacific
Six Rivers
Mar Monte
Orange & San Bernardino Counties

Dear Mss. Richards, Kneer, Bonner, DiGiorgio Johnson, Dunlap, Rollings, Saunders Estes, Vanden Bos, Williams and Mr. Dunn:

As women, we applaud the services provided by Planned Parenthood to improve the lives of women, but we are appalled by the recent position you have taken against the rights of women who are innocent victims of medical negligence.

We are women whose lives have been shattered by medical negligence. Our families' stories are enclosed. We take issue with Planned Parenthood's leading role in opposition to "The Troy and Alana Pack Patient Safety Act," a pending California ballot measure that would simply update for inflation the state's 38 year old cap on compensation in medical malpractice cases. The outdated cap is unfair to many who have suffered medical harm, regardless of gender. But it has a disproportionate impact on women.

The cap limits compensation for noneconomic damages to just \$250,000, an amount that has not changed since the law was passed by the legislature in 1975. Since then, the value of everything has skyrocketed with inflation – except the value of a woman's lost quality of life.

How does this 38 year old California law disproportionately hurt women?

1. In much the same way that the glass ceiling continues to undercut the income of working women, the malpractice cap on noneconomic damages means compensation for those harmed by medical negligence is largely determined by the income of the person who was injured. The calculus is simple and sexist. While damages for pain and suffering are strictly limited, the law allows compensation for lost future income for people killed or injured by medical negligence. With women still earning only 77% of what men earn, our economic damages are less for the exact same injuries. A university professor who studied the issue concluded that non-economic damage caps "amount to a form of

discrimination against women and contribute to unequal access to justice or fair compensation for women.”

2. A stay-at-home parent with no income or a parent who works only part-time to be able to spend more time with the children will be treated very differently under the cap than someone who is working full-time at a high-paying job. Even with today’s growing female workforce, those stay-at-home parents and parents working only part-time outside the home are overwhelmingly women.

3. Of course, economic damages are a factor only if the person harmed loses income. A woman whose child was killed by medical negligence, or who lost her ability to have children due to medical negligence, or who underwent an unnecessary mastectomy due to medical negligence, is not likely to lose income. But she has clearly suffered a grievous injury. Her compensation for her loss is limited to an amount below what anyone would consider fair in 2013.

The arguments against indexing the cap for inflation are fallacious.

Planned Parenthood’s public statements suggest that adjusting the cap for inflation would lead to a significant increase in medical malpractice insurance premiums, and that would lead to a significant decrease in the number of doctors providing care to pregnant women. The facts say otherwise.

There is no evidence that doctors flee states without caps to practice in states with caps. In 2011 states without caps had 22% *more* doctors per capita than states with caps. Here on the West Coast, both Oregon and Washington have more doctors per capita than California, and neither has a cap on medical malpractice damages. The state of New York has no cap on damages and has 30% more doctors per capita than California.

States with caps on damages in medical malpractice cases do not have lower insurance premiums. In 2009, states with such damage caps actually had, on average, *higher* medical malpractice insurance premiums than states without caps.

During the 13 years after California’s cap was approved by the legislature, malpractice insurance rates shot up another 450%. Only when California voters passed Proposition 103 in 1988, and required malpractice insurance companies to open their books and publicly justify rate hikes, did malpractice insurance premiums drop and stabilize for doctors.

Just last year California’s insurance commissioner ordered \$52 million in rate reductions for physicians from malpractice insurers who were overcharging doctors. Because of rate regulation, California doctors are protected from the sudden, dramatic, unjustified rate increases that were seen in 1975.

Indexing the cap for inflation will not harm women's access to health care.

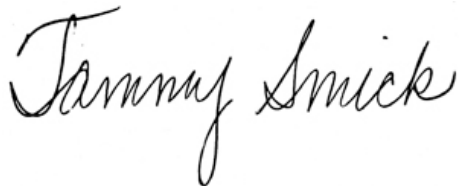
California's federally funded community health centers and free clinics are eligible for extensive free medical malpractice coverage from the federal government. Most Planned Parenthood clinics are self-insured, because the services they provide seldom lead to malpractice liability. The need for clinics or Planned Parenthood to purchase malpractice insurance is minimal. Even if malpractice premiums were to rise as the result of a change in the cap, an extremely unlikely outcome, the impact on clinics' budgets would be quite small.

Neither will health care costs overall rise dramatically in California. The Los Angeles Times' Michael Hiltzik has exposed the fuzzy math behind those claims, reporting that the Congressional Budget Office says that medical malpractice accounts for just a fraction of one percent of health care costs.

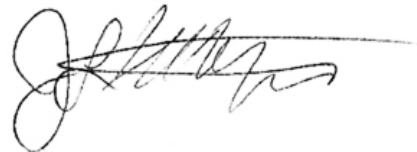
Planned Parenthood's opposition to the Troy and Alana Pack Patient Safety Act is against the interests of women in this state – your core constituency. The unfair, antiquated and sexist cap perpetuates an injustice against women that must be remedied. As a group that has been so deeply impacted by medical negligence and this outdated law, we would welcome the opportunity to meet with you in hopes you will reconsider your position on the ballot measure and support a reasonable index of the cap for inflation to bring California's patient safety laws and women's access to justice into the 21st century.

Sincerely,

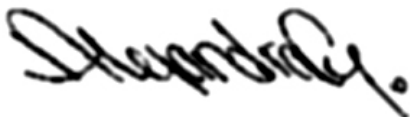
Tammy Smick



Jennifer Westhoff



Alejandra Gonzalez



Linda Wilkinson



Carmen Pack

Carmen Pack

Jessica Chan

Jm Chan

Sharon Tavares

Sharon Tavares

Betty Brown

Betty A Brown

Joy Cull

Joyce E. Cull

Robyn Frankel

R.F.

Sarah Hitchcock-Glover

Sarah Hitchcock-Glover

Patty MacInnes

Patricia MacInnes

Kathy Olsen

Kathy Y. Olsen

Shanna Alvarado

Shanna Alvarado

Aviva Frenkel

Aviva Frenkel

Alex Smick (Tammy Smick)



Alex Smick had a wonderful life mapped out for himself. At 20, he was studying to be a surgical technician. He was athletic, played a mean guitar, treasured his tight-knit family and had a lifetime of friends growing up in the suburban L.A. community of Downey. He couldn't wait to graduate and get a job to start saving money for an engagement ring for his longtime girlfriend. As his mom puts it, Alex was "living the American dream."

But in February 2012, this happy future dove into a bizarre death spiral when Alex sought help for prescription drug dependency. In a twisted mix of tragedy and irony, Smick died of prescription medications given at the hospital where he sought relief.

Losing a son is difficult enough. But when Alex's parents sought answers and accountability, they felt victimized again by a California law that has frozen the value of a human life taken by grievous health care mistakes at the same level for 38 years.

Alex Smick's life, his parents learned, was worth just \$250,000.

His odyssey began in May 2010 when he was riding a skateboard being towed by the family bulldog, Scar. After a bad tumble, Alex couldn't get up, his back screaming in pain, and his parents rushed him to the hospital.

When an MRI was finally performed after 10 months of haggling with his health insurance company, it revealed serious damage – a stress fracture to his back and five bulging discs. But doctors held off surgery. Alex was too young, they said, let's try therapy instead. And they prescribed more pain meds. Ultimately, nearly two years into his ordeal, Alex could take no more, and pushed for surgery. But his pain management doctor had one final prescription – morphine tablets.

Alex took one and felt relief. He was overjoyed, so he took another. More relief. And another. By the third, he began to lose track of how many pills he had taken. He grew worried and drove himself to the nearest hospital. When he arrived, ER staff assumed he was a suicide case trying to overdose. They called in a mental health evaluator, who quickly concluded that Alex was a danger to himself.

It was like a nightmare, his mom recalls. Authorities carted the young man off to a mental health hospital ward in Long Beach awash with a sea of psychotic people. They kept him there nearly a week. In yet another in a series of tragic

mistakes, health workers mixed up his chart with that of a woman in the ward suffering from post-partum depression. Doctors told Alex they believed he had a problem with his pain meds. He needed to break his dependency on the drugs, they said, recommending he enter a hospital in Laguna Beach. They would treat his back with acupuncture and wean him off the pain killers.

Within two hours of arriving, Alex was back on a new regimen of medications. By the next morning, he was dead.

His distraught parents and extended family struggled with a mix of grief and disbelief. How could this happen?

Answers were slow to come. Ultimately, a toxicology report determined the cause: Alex had died of a poisonous mix of prescription drugs administered in a hospital he entered to get off such medications.

Then, when his family sought accountability and justice, they discovered their quest would be hamstrung by a California law that – unadjusted for inflation in the 38 years since its passage – put the value of Alex's life at just \$250,000. That law is an outdated, one-size-fits-all measure known as MICRA – the Medical Injury Compensation Reform Act of 1975.

"Our son's life isn't worth \$250,000 to us," his mother says today. "Alex was priceless."

Morgan “Shayna” Westhoff (Jennifer Westhoff)



Morgan Westhoff and her identical twin sister were each born with one of the more common congenital heart defects. Morgan’s twin had a successful procedure to correct the defect when the girls were 18 months old. The same procedure was performed Jan 18, 2013 on Morgan, even though her doctor knew Morgan had abnormally high blood pressure readings in the area where the procedure would be done. That indicated the procedure would be risky for her, as the instructions for the device that was placed in Morgan’s heart clearly stated the device should not be used in patients with her blood pressure readings. Perhaps the fact that Morgan’s twin had no problem with the same procedure made the doctor less careful in determining whether Morgan should have had the procedure. Morgan could have been treated to bring down her blood pressure before the procedure was done, but was not. There was also a more common, tried and true surgical ligation procedure, not involving a medical device. Unfortunately, that safe and effective option was not offered to her parents. Morgan’s device initially seemed to have been inserted successfully, but while she was in the recovery room the device migrated and became lodged in a major artery, most likely because the device was too small. The doctor also said Morgan’s high blood pressure, which was known before the procedure, could have caused the problem. The attempt to retrieve the device was unsuccessful, and the obstruction of her artery caused cardiac arrest and catastrophic brain damage that led to Morgan’s death. Because MICRA’s unjust cap values Morgan’s life at just \$250,000, her parents have been unable to find an attorney to hold Morgan’s doctor accountable for what happened.

Mia Chavez (Alejandra Gonzalez)

The death of a six-week-old child from an illness that could have been easily diagnosed and successfully treated is tragic enough. For the life of that child to be valued at no more than \$250,000 is unforgivable.

Six-week-old Alexandra Mia Chavez, the third child of Alejandra Gonzalez and Mario Chavez, began coughing and wheezing one warm day in July 2010. Her mother shuttled little Mia to the clinic near their home in the Los Angeles County community of La Puente but was told to keep an eye on the girl's condition and sent home. When the newborn failed to improve over the course of the next three days, her mom took the girl to an emergency room. An X-Ray was shot, and the mom was assured her tiny, swaddled infant did not have pneumonia.

The next day, Mia's regular doctor treated her with a nebulizer. A day later he prescribed an antibiotic and Tylenol. When her mom called the following day to report no improvement, the physician seemed unconcerned that something more might be amiss. Finally, still spiraling downhill a week after her illness first surfaced, Mia was taken to the emergency room.

And the next day she died.



The tiny infant was ultimately diagnosed with pertussis, or whooping cough, a highly contagious disease known to be potentially fatal in infants. Her doctor later admitted he was aware that California, and Los Angeles County in particular, was in the midst of a pertussis epidemic, although he had not seen a case himself. Warnings had been issued to the medical community before Alexandra became ill. Be on guard, they warned, because the initial symptoms of pertussis in infant can resemble those of a common cold – right along the lines of what Alexandra showed when she first went in for care. Infants under three months old, like Alexandra, were most at risk.

Her doctor could have run a blood test or done a nasal swab that could have established the presence of pertussis. He did not. The standard treatment would almost certainly have prevented Mia's death. But the physician never ordered any lab work or cultures. And the antibiotic he prescribed may have reduced the infant's ability to fight her infection. The normal standard of care would have required Mia's doctor to refer her to a hospital given her continuing cough and lack of nutrition resulting in weight loss. He did not.

Mia's mom knew it was not normal for a child to be as ill as her baby became in the week leading up to her death. She did everything she could to help little Mia, taking her to medical facilities five times in eight days once her daughter showed symptoms, as well as calling on another occasion.

Under California's 38-year-old MICRA damage cap, Alexandra Mia Chavez's life – with all the potential it held, all the joy she brought to her parents and all the agony they went through as the result of her death – was worth no more than \$250,000.

Brittany Wilkinson (Linda Wilkinson)

Around the Fresno area, she was something of a minor celebrity, an upbeat teen beating the odds against a rare illness. Brittany Wilkinson had pushed hard to raise awareness of mitochondrial myopathy, a disorder that had left her largely confined to a wheelchair. She had helped raise money for a cure, and even received a citation from the state Legislature for her efforts. But her life of promise ended right around her 18th birthday, when Brittany went to Children's Hospital in Fresno for a procedure to test whether doctors should remove two shunts implanted to drain fluid in her skull that caused bad headaches. The plan was to plug one shunt and then monitor the pressure in her skull. But right after the procedure, Brittany began experiencing horrific pain. As she lay writhing in her hospital bed, clutching her head in agony, she told her mom the pain was so bad she no longer wanted to live. By morning, she was showing symptoms of neurological injury. But her doctor was at a barbecue that day and did not check on Brittany. By 5 p.m., it was too late to save her. The young woman sat up in bed, screamed and lost consciousness. It was only then the hospital staff realized the monitor to gauge cranial pressure was disconnected. The pressure in Brittany's head was so extreme it pushed her brain stem through the base of her skull. When her family sought answers, they learned about the state's \$250,000 MICRA cap on non-economic damages for medical malpractice. Undeterred, Brittany's parents are pushing for a trial to hold the hospital accountable for the preventable death of their daughter. It's not about the money. It's about preventing a hospital's callous disregard for its patients from happening again.



Troy & Alana Pack (Carmen Pack)

It could have been a Norman Rockwell scene. Troy and Alana Pack, ages 10 and 7, were walking with their mom and two other neighborhood kids the half mile to a Baskin Robbins ice cream store near their home in the comfortable Northern California community of Danville. It was a warm Indian summer night in October 2003. The kids had been out playing all afternoon. They had enjoyed a family barbecue and looked forward to their favorite after-dinner treat. That calm picture along a leafy parkway was shattered when a late-model Mercedes came screaming toward them.

The car squealed across three lanes of traffic, jumped the curb and roared along the sidewalk with no sign of stopping. Troy and Alana were hit head-on, their tiny bodies catapulted into the fading sunlight. Their mom, Carmen, five months pregnant with twins, pushed Alana's friend out of the way, then was herself smacked by the car. A friend of Troy's escaped serious injury by diving out of the way.

By the time Bob Pack rushed to the scene after a neighbor called with the awful news, it was too late for both his children. His wife lay gravely injured. She would survive, but lost the twins. The driver of the car fled.



Pack, a man of calm fortitude who had helped co-found the internet firm NetZero, grappled with his grief by launching a search for answers.

The task of securing criminal accountability proved relatively swift. Police and the FBI within days caught up to the driver, a Columbian immigrant and neighborhood nanny named Jimena Barreto, as she attempted to flee the country. A judge sentenced her to 30 years in prison.

Equally vexing to Pack was the matter of the health care system's role in the accident. Through the police investigation, he came to find out that Barreto was stoned on prescription drugs chased by vodka. She told investigators she had fallen asleep at the wheel.

Police determined that she had been working the health care system for several years, scoring thousands of pills, all through Kaiser doctors. In the two weeks before the accident, she had "doctor shopped" half a dozen Kaiser physicians in the area to score 340 pain killers and half again as many muscle relaxers. She took them all before the accident.

Pack knew the brunt of the blame rested squarely on Barreto, but he also felt that Kaiser bore a measure of culpability for failing to maintain any sort of safeguard to prevent the sort of abuse that had, like a cascading row of dominos, led to the deaths of his children. How in the age of the Internet, an era Pack and so many others had mastered, could the big HMO let such abuse occur without warning?

He would launch what for the past decade has been a quest to ensure that California put safeguards in place, a quest that continues to this day. Pack also would run headlong into the limits of California law presented by MICRA, the Medical Injury Compensation Reform Act of 1975 that caps damages for non-economic suffering to \$250,000. Pack wanted to hold Kaiser accountable, to use the sting of the civil courts to prod the HMO giant to make changes that would protect other innocent victims that could fall afoul of doctor shoppers as his children had. But in the end, he would secure no such victory. Because of MICRA, the lives of Troy and Alana Pack – the birthdays never to be celebrated, the first car and college and adulthood never to be experienced – were worth just \$250,000.

Michele Woo (Jessica Chan)

She was a 59-year-old bagel shop manager in San Francisco with a heart problem. Eager to fight her health troubles, Michele Woo underwent heart surgery at prestigious Stanford Hospital in July 2009. Though the surgery seemed to go well, the aftermath quietly turned into trouble. Her cardiologist – the prominent president of the San Francisco Medical Society – prescribed daily doses of the drug Coumadin to thin Woo's blood and prevent clotting. An initial test of her blood a few days after her hospital discharge found it in the normal range, but the cardiologist didn't do the test again when Woo returned to his office for treatment of a rash. In the days that followed, Woo grew lethargic and lost her appetite. Barely a month after the surgery, her family found Woo one day unconscious and bleeding. She died the next morning. Seeking accountability for what they viewed as medical negligence, the family took the case to court. They argued that the blood-thinning drug Woo's cardiologist prescribed posed a serious risk of side effects and needed to be more closely monitored. The jury agreed, awarding Woo's family \$1 million in non-economic damages. But then California's MICRA law reared up to reduce it to \$250,000. The family is now challenging MICRA's limits in court, an appellate case that could set precedent in the months to come.

Pauline Tavares (Sharon Tavares)



Pauline Tavares, 79, was admitted to a hospital with encephalitis and was given medication to help control her anxiety. The next morning a nurse fed Pauline, but when her doctor came by at noon he said the nurse “probably shouldn’t have done that” because of Pauline’s condition and the medication she had taken. At 1 p.m. family members noticed something was wrong with Pauline’s breathing and repeatedly asked that she be evaluated by a doctor, but it was more than eight hours before a respiratory technician saw her, and by then Pauline was in respiratory failure. A piece of food was found in her throat and Pauline was in the process of choking to death. She needed a tracheotomy and a feeding tube and was placed on a ventilator and life support. Pauline spent 32 days in the intensive care unit and ten weeks in the hospital before she was able to go home, and she would not have had to undergo a tracheotomy or be placed on a ventilator if not for the negligence of the medical staff. But with MICRA’s outdated cap on compensation making it impossible for her family to pursue legal action, the hospital and staff will not be held accountable for their actions.

Tamara Walter (Betty Brown)



Tamara Walter underwent successful lap-band surgery at an outpatient surgery center, but her recovery was another story. Five hours after Tamara's surgery her sister received a call from a panicked person at the surgery center. They told her Tamara wasn't breathing, was foaming at the mouth and had been transferred to a hospital. The anesthesiologist had apparently removed Tamara's breathing tube before giving her the drugs to reverse her anesthesia, leaving her partially paralyzed and struggling to breathe. The clinic's records are unclear about exactly what happened after that, but she eventually went into cardiac arrest, never regained consciousness and died three days later. The coroner ruled Tamara died as a result of her inadequate care under anesthesia. An independent anesthesiologist who examined the record for the coroner questioned whether, as an obese woman with sleep apnea, Tamara should have been accepted for outpatient surgery to begin with. But the report said Tamara could have survived even after her postoperative problems developed if she had been transferred to a hospital for appropriate care in time. Tamara died a needless death, but since she was not married and had no children her life was worth no more than \$250,000 under MICRA's outdated cap, and her surviving siblings were unable to pursue a medical malpractice suit.

Olivia Cull (Joy Cull)



Olivia Cull was born with a defect that left one side of her heart smaller than the other. She had surgery to correct it as a baby but needed a second operation as a 17-year-old senior in high school. During a catheterization procedure to prepare for that second operation, there was an “incident,” as Olivia’s mother Joy was told, that left Olivia without oxygen for 40 seconds. Olivia never regained consciousness, and two weeks later she died after her parents gave the hospital permission to remove her breathing tube. An autopsy determined Olivia suffered brain damage as a result of a heart attack she had at the end of the catheterization. An investigation by the state Department of Public Health found a postdoctoral fellow who treated Olivia removed her catheters without a doctor’s supervision and a second fellow who treated Olivia had not been cleared to treat patients. But since MICRA determines the value of the life of a child at just \$250,000, that was all the compensation her parents could receive for her death – and only then after they found a law firm that took the case essentially on a pro-bono basis because of the hefty costs of preparing for medical malpractice trials, including the fees of expert witnesses and other professionals to make the case. More importantly, Olivia’s parents felt if the hospital had been at risk of greater financial liability they would have been forced to do more to reveal errors and improve procedures.

Robyn Frankel

After talking to a neurosurgeon about her history of migraine headaches, Robyn Frankel was told to undergo an invasive cerebral angiogram requiring the injection of contrast dye into a vein in an attempt to try to find what was causing her headaches. When the dye was injected, Robyn immediately suffered a stroke and went into a coma. She regained consciousness six weeks later, but she was unable to speak or move for months. Robyn is still unable to use her right side and has only limited use of her left side, requiring around-the-clock care. She is unable to return to her career and is unable to participate in the activities of her two young children. Robyn had not been told the procedure would be invasive, nor was she informed of the potential risks.



And the procedure wasn't necessary in the first place, as it would not have found anything that had not already been seen in the non-invasive procedures Robyn had gone through. After hearing evidence presented by both sides, a jury awarded her \$6 million for her suffering and for the loss of her quality of life, but under MICRA's one-size-fits-all cap that makes no allowance for the degree of harm, that amount was reduced to just \$250,000.

Adam Glover (Sarah Hitchcock-Glover)



In 2008, while on a hiking trip at Yosemite National Park with his father, 12-year-old Adam Glover developed stomach pain and began vomiting. He wound up at a hospital in Modesto, where his appendix was removed. The surgeon also removed two liters of blood-tinged fluid from Adam's abdominal cavity, which should have rung alarm bells, but she did not order any follow-up work. When she examined Adam 12 hours after surgery she still did not see any need for action even though Adam had an elevated heart rate, lowered blood pressure, vomiting, a distended stomach and no urinary output. A pediatrician would have known fluid loss was killing him. Just 18 hours after surgery — after the surgeon had assured Adam's mother, "Don't worry, he'll be fine" — Adam went into full cardiac arrest and died after eight hours on full life support. His parents were able to find a lawyer who was outraged enough to take their case, despite the \$250,000 MICRA cap, but after the defense dragged out the case for more than a year the lawyer had to drop the case because of the cost. With the value of Adam's life reduced to just \$250,000 by MICRA, his parents were unable to receive justice.

Ruth MacInnes (Patty MacInnes)



Ruth MacInnes, 72, was diagnosed by her doctor as having an inner ear infection and was sent home with pills for dizziness. That same night she was hospitalized with acute congestive heart failure after she woke up gasping for air. When Ruth became semi-comatose, the HMO doctors urged her family to disconnect her feeding tube. Only through her daughter's efforts was that decision reversed, after which Ruth regained consciousness and lived another seven months. The state agency that regulates HMOs told Ruth's daughter that the HMO had provided unacceptable care for three years, failing to test for or diagnose Ruth's degenerative heart disease, but no fine was issued. Likewise, the HMO was not held accountable in court, as the family was unable to pursue legal action. Because of Ruth's age and the fact she was primarily a homemaker with little income, MICRA valued her life at no more than \$250,000, the same as it would have 38 years ago even as the value of everything else has risen. "The issue of pain and suffering died when my mother died," Ruth's daughter said. "The pain and suffering of our family was not a legal factor."

Steven Olsen (Kathy Olsen)



To look at him now you might assume he was always so: Steven Olsen is blind and brain damaged, cared for by his parents. But he wasn't born this way. Steven was a victim of medical negligence. It began with a walk in the woods. As a toddler, he fell on a stick while hiking near his aunt's cabin in the mountains near his family's San Diego County home. The hospital pumped Steven up with steroids and sent him away with a growing brain abscess, although his parents had asked for a CAT scan because they knew Steven was not well. The next day, he came back to the hospital comatose. Medical experts later concluded that had he received the \$800 CAT scan, he almost certainly would have been successfully treated. He would have been a normal young man today.

Now in his early 20s, Steven instead depends on his loving parents for care in every aspect of his life as well as state taxpayers help, through government subsidized medical care and other assistance. Those costs are considerable. In one recent year, Steven had 74 doctor visits, 164 physical and speech therapy appointments, and three trips to the emergency room. His parents' attempts to secure accountability were stymied in part by California's \$250,000 cap on medical malpractice damages. A jury awarded \$7.1 million in non-economic damages for Steven's avoidable life of darkness and suffering. But that award fell to the wayside. Because of the state's 1975 damages cap, the judge was forced to reduce the amount to \$250,000. The jurors only found out that their verdict had been reduced by reading about it in the newspaper. Most express outrage upon learning of a law they had never heard of. It is a law that remains largely in the shadows today, much like the victims of medical malpractice like Steven Olsen.

Shanna Alvarado



Nagging pain in her abdomen sent Shanna Alvarado to a Kaiser hospital in Southern California in October 2010. An ultrasound showed the origins of that pain – a complex cyst that prompted worries about cancer. A radiologist at Kaiser noted in the hospital’s medical records that Shanna should follow up in six weeks, which is the standard protocol in such medical situations.

The hospital staff, however, never communicated any of these critical facts to Shanna and never followed up, despite having a report indicating Shanna would die if not treated. Two years later, Kaiser finally followed up with a second ultrasound and Shanna was diagnosed with Stage IV cancer. She was given a year at most to live. Shanna is a homemaker, a wife and mother to seven children. But she is not the family breadwinner, so the loss of her life – though a tragedy for the entire family – doesn’t involve the loss of future wages or other economic costs. Without such demonstrable future losses, California’s nearly 38-year-old MICRA law limits the value of her life to no more than \$250,000. In California, the penalty for medical negligence that will cause the death of this mother is valued the same as it was in 1975, because MICRA’s cap on “noneconomic damages” has been frozen against the effects of inflation for 38 years.