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A Tale of Two States

Rivalries between universities are an ongoing "bragging rights" institution in our country. Army-Navy, UCLA-USC, and Cal-Stanford are a few of the well-established competitive conflicts we monitor on a continuing basis. On a culinary note, there is continual competition as to who has the best oranges: Florida or California? And while the question of oranges may never be resolved, there are some very significant differences we can see in these two states.

Florida recently enacted a constitutional amendment similar to our own Three Strikes Law. Unfortunately, it did not deal with the punishment of criminals. Rather, it provided that if a physician loses three medical malpractice suits, they automatically lose their license to practice. This amendment does not apply to dentists, but consider the implications of such regulation. Malpractice suits are not necessarily based on malfeasance or incompetence but may occur when there is a bad result and the patient seeks someone to blame. Additionally, the loss of a lawsuit by the practitioner does not reflect on their competence or ability necessarily but may be a result of trial by "peers," who rarely are peers at all. Couple this with the fact that certain practitioners (specialists and those in teaching institutions) tend to treat the more difficult patients and might inure a higher tendency to be sued, and a significant problem is created. If an individual has a loss or two on their record, they become cannon fodder for the plaintiff attorneys, who will be more likely to sue for minimal cause or justification in that the individual will be quick to settle even the most egregious of inappropriate lawsuits to avoid an additional loss. To ponder the financial implications for the insurers and the purchasers of insurance boggles the mind.

On our coast, we have the Medical Injury Compensation Reform Act, enacted in 1975, to combat difficulty in obtaining malpractice insurance at reasonable rates. The insurance companies were driving premiums in an upward spiral in response to large jury awards and other factors, and many physicians, notably obstetricians and neurosurgeons, were leaving the state for more friendly locales. While dental malpractice premiums generally pale when compared to our medical colleagues, the implications of the law have far-reaching impact on our practices. Noneconomic damages, the "pain and suffering" part of any alleged malpractice, are limited to a maximum of $250,000. The law specifies a limit on contingency fees that plaintiff attorneys could collect. That the plaintiff attorneys should be enjoined in the financial gains of their clients and not charge by the hour or on a case-by-case basis is counterintuitive. After all, the allegation is that the plaintiff, not the attorney, suffered the alleged damage and seeks remedies.

Other portions of the law require advance notice on filing of claims, allow for payout over a long-term schedule, provide a

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statute of limitation on claims and several other user-friendly stipulations. The law has been in effect for 30 years and works well with relative stabilization of malpractice premiums and helps to create a better environment in which we can practice. It is estimated that federal health insurance spending would be reduced by $14 billion, and state and local spending would be reduced by $6 billion over 10 years if similar laws were enacted nationally.[1] President Bush recently used the California model as an example of how the pervasive medical malpractice problem can be managed appropriately.

Periodically, the trial lawyers seek to raise the limit for noneconomic damages to greater than the $250,000 limit ostensibly to help their clients but clearly to increase their earnings on a successful suit. Health care providers have fought these attempts successfully over the years and must continue to do so. In an effort to provide collaboration and unification of these groups to deal with trial attorneys, a consortium of health care providers including physicians, dentists, hospitals, and other facilities formed Californians Allied for Patient Protection. The group is funded from each of the interested organizations and continually monitors legal and legislative efforts aimed at altering MICRA as it presently exists.

The CDA is fortunate to be a participant in CAPP as it represents all of our members. We have contributed to the costs of enabling the activities of CAPP and should continue to do so. Next year, Peter DuBois, our executive director, will chair the group putting dentistry to be in the forefront of this important organization and activity. Support of the activities of CAPP, on both the administrative and financial ends, is an excellent member benefit that is not always clearly understood.

While the controversy as to who has the best oranges may never and need not ever be resolved, it is clear that in the medical malpractice arena, the two states have an apples and oranges relationship. The thought process of the people of Florida is far from clear, though. On a positive note, a judge has temporarily enjoined the law pending additional legislative investigation. The bad news is that the Legislature is crafting enabling language to put the amendment into effect. It is apparent that we have through the provisions of MICRA, a controlled practice environment conducive to good patient care without undue fear of lawsuits.

The continuation of the MICRA program, as it has been designed and is functioning, is critical to a healthy practice location. The MICRA legislation in our state is an equitable means of assuring an environment for user-friendly health care delivery. Our participation in CAPP is essential to continue the efforts to maintain a crucial law to our practices. We must contribute the resources necessary to sustain our involvement in this worthwhile organization and endeavor, and we must continue to support such legislation because it is good for our membership. CDA

References / 1. Congressional Budget Office estimate, the Health Act, 2003.

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