



Medical Malpractice – The Dirty Secret

By: Christopher E. Russell, Attorney at Law

In California, if a medical doctor negligently and haphazardly drives a car and kills someone, the doctor is held responsible for the value of that person's life. We, as a society, value life more than anything else, and our judicial system appears to support this belief, with recent wrongful death jury verdicts in the range of two million dollars to 15 million dollars in compensation to the surviving family. However, if that same doctor kills a child or other non-income earning adult (such as a grandparent or non-working spouse) on the operating table because he was negligent and haphazard with his scalpel, the compensation to the family is capped at \$250,000 -- thanks to a law that was signed in 1975, by then and now Governor Jerry Brown.

The dirty little secret here is that the doctor (or his insurance company) will never even pay the \$250,000 amount because they know that is the most damage that can be done to them at trial -- so why offer the innocent victim worst case scenario? Even with obviously clear medical malpractice claims, such as the doctor who cuts an artery of the patient who bleeds to death or gives the wrong medication to the patient who dies of an allergic reaction when the sensitivity to the medication is known, there is never a payout of \$250,000. In reality, the \$250,000 cap turns into a \$200,000 cap or a \$190,000 cap or whatever the insurance company or doctor wants to pay. Keep in mind that thanks to inflation, \$200,000 in 1975 is about \$42,000 in today's dollars. Would that law have been passed if the amount was \$42,000 for the death of a loved one? Hardly. There would have been outrage that a human life was being valued at \$42,000. However, that is exactly what we have now and there is no outrage because the majority of the public has no clue that such a law was passed and exists today.

Why do we treat a doctor who kills somebody while driving a car differently from a doctor who kills his or her patient while practicing medicine? According to the medical community and the 'trusted' Insurance Industry, that law was necessary in order to make sure doctors did not 'flee the state.' The Insurance Industry convinced lawmakers that doctors were going to leave California as a result of high insurance rates (which were high due to stock market malaise and poor return on investment not any crises that was taking place). Unfortunately, a very young and naïve Jerry Brown believed the propaganda that was being spread and allowed the Insurance Industry to rewrite the medical malpractice laws to the detriment of the public that he was entrusted to serve. Governor Brown is now on record as saying that was the worst piece of legislation he has ever signed but yet he has done nothing to overturn it as he is busy trying to outdo his larger than life father by building his own legacy...One bullet train at a time.

According to the most recent Forbes list of highest paid professionals, medical doctors take the top 9 slots on the top 10 list. Additionally, the insurance companies that insure the doctors are some of the most profitable insurance companies in the State of California. However, if one of those highly paid medical professionals kills someone while practicing medicine, or rather by practicing shoddy medicine, the penalty for that behavior is a \$42,000 (in 1975 dollars) slap on the wrist. There is a reason why there is almost an epidemic of malpractice here in California and that is because there is no accountability. Without accountability, there is no concern about behavior and negative results -- human nature 101.

Consequently, California's medical malpractice system is a broken joke that fails to protect those it is intended to defend. Many third world countries value life more than we do here in California, at least when it comes to holding a medical doctor accountable for his or her actions. Ask any judge or even those attorneys who defend doctors, and they will confirm this (behind closed doors of course). It is clear that those we have elected to entrust our health and lives are not held accountable for their actions because of a 38 year old law, passed in a panic, which puts limits on what an offending doctor must pay, for a death they have caused, in an amount that is less than the value of the luxury car he or she drives on a daily basis. If that is not a joke of a system of "justice", I don't know what a system would have to look like to be any worse.

Christopher E. Russell is a personal injury lawyer with a practice in Newport Beach, California. His firm, Russell & Lazarus, APC, represents medical malpractice victims throughout Orange County, Los Angeles County, Riverside County, and San Bernadino County. If you or a loved one has been injured by a doctor's negligence, contact Chris and his experienced team today.