

Preparation Does Not Guarantee Perfection

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California has always found its way into the public spotlight, and 1975 was no exception. That is the year in which Jerry Brown became the state's 34th governor, Nolan Ryan started the season for the California Angels, President Ford survived an assassination attempt in Sacramento, actors Jon Voight and Marcheline Bertrand gave birth to their daughter Angelina Jolie Voight in Los Angeles, and the state's Medical Injury Compensation Reform Act of 1975 (MICRA) was passed.

At its core, MICRA was the end result of efforts to save California's

physicians from the fallout of a multitude of lawsuits, runaway jury verdicts, and draconian responses by insurance liability companies. With its \$250,000 cap on non-economic damages in medical malpractice litigation, MICRA made history as its backers trumpeted the salvation of medicine in California. Controversial from the day Governor Brown first signed it into existence, MICRA continues to face challenges these 36 years later. For better or worse, however, MICRA addressed a critical issue and assuaged what were at the time very real fears that issues of liability and catastrophic jury verdicts would bring California's medical system to a halt.

California's hospitals are not alone in their need to proactively address situations involving unforeseen events. In this present era of health care reform, providers across the nation have an even greater abundance of legal issues on which they must focus their attention. For example, in the not too distant past a new concern appeared on the horizon some 2,700 miles from Sacramento. August 2005 saw Hurricane Katrina wreak havoc throughout southeastern Louisiana, with a death toll in excess of 1,800 and an \$80 billion price tag, to say nothing of the sociological and environmental collateral damage that quickly followed.

Once the storm had passed and the dust had begun to settle, a frightening discovery at Memorial Medical Center in New Orleans captured the nation's attention anew and resonated in the hearts and minds of every hospital administrator across the nation. Forty-five Memorial Medical Center patients died from the Hurricane, a number greater than any other New Orleans hospital, and blame was quickly directed to the hospital and its failure to provide for its community in an emergency situation. When questioned, the hospital's clinical team maintained that its best efforts had been employed throughout the duration of this cataclysmic hurricane.

Six years later the hospital's owner, Tenet Healthcare Corporation, settled the resulting class action lawsuit for \$25 million, ensuring that this particular matter will never face a jury. What remains uncertain, however, is the degree to which hospitals will in the future be held accountable for the ways in which they react to natural disasters of any kind, anywhere, at any time.

Natural disasters can strike practically anywhere, and without much notice. In response to the unknown, this fear of catastrophe sets a dangerous precedent, often misdirecting the focus of hospital leaders and

staff, and at the same time funneling away precious financial resources from any health care institution in the wake of a theoretical disaster site. For years now California has been mindful of the impact a natural disaster may have on its infrastructure. Since the 1994 Northridge Earthquake, nearly every hospital across the state has embraced Senate Bill 1953 and taken steps to spend an estimated 90 to 120 billion dollars to meet state-mandated seismic safety requirements. While the 1994 disaster caused tremendous damage and the tragic loss of 72 lives, when broken down this natural disaster approached \$1.7 billion per fatality.

Indeed, these regulations are so profound that state legislators have extended the mandatory deadlines on multiple occasions to ensure that California's cash-strapped and overburdened hospitals will eventually be able to comply. But as each former deadline passes and California hospitals look toward the next one, the specter of a sizeable earthquake moves closer. As the "when"

and "where" remain unknown, hospital administrators in California as well as the rest of the nation must in good conscience ask themselves how appropriately the actions of California's lawmakers comport with the Memorial Medical Center settlement.

Mandated by state and federal authorities and required by most accreditation entities, emergency preparedness is part of every hospital's core curriculum. Even as disaster drills alternate from one horrific event to the next, the savviest of hospital safety officers is ever mindful that preparation must always focus on the unexpected in its most unimaginable form. To make trying times even tougher, the fact remains that when and where a disaster strikes may ultimately determine a hospital's ability to respond in the ensuing hours or days, no matter how much attention has been given to preparedness.

Of the many roles a hospital may serve for its community, one of the

most significant is the manner in which it can respond to an external disaster. But given the multitude of variables that come into play when disaster strikes, establishing criteria to assess liability beyond anything other than meaningful efforts to prepare in advance puts our nation's entire medical system in jeopardy. While landmark legislation like MICRA may be premature at this juncture, it is something our nation's leadership may wish to consider before it is too late.

Craig Garner is an attorney and health care consultant, specializing in issues surrounding modern American health care and the ways it should be managed in its current climate of reform. Between 2002 and 2011, Craig was the CEO at a community hospital in Los Angeles County, California. In January 2012 Craig will offer a course on Hospital Law at Pepperdine University School of Law in Malibu, California.

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