

## The Sacramento Bee

Locally owned and edited for 136 years

JAMES McCLATCHY, *editor, 1857-1883*

C.K. McCLATCHY, *editor, president, 1883-1936*

ELEANOR McCLATCHY, *president 1936-1978*

WALTER P. JONES, *editor, 1936-1974*

C.K. McCLATCHY, *editor, 1974-1989*

GREGORY FAVRE, *executive editor*

PETER SCHRAG, *editorial page editor*

FRANK R.J. WHITTAKER, *president and general manager*

# CMA vs. the right to know

Acting in a case brought by the California Medical Association, Sacramento Superior Court Judge Ronald Robie has issued a preliminary injunction barring the state medical board from telling consumers when it has forwarded a physician's malpractice case to the attorney general for disciplinary action. Robie's ruling puts the board in the untenable position of concealing vital information that could impact the public health and welfare. The board has decided to fight the preliminary injunction in a full hearing, and it should.

Under new rules recently adopted by the California Medical Board, consumers who call board offices will be told if a physician is a convicted felon, has been disciplined by a medical board, has lost a malpractice case involving a judgment of \$30,000 or more, or whether the doctor faces possible disciplinary action by the attorney general. Robie upheld all but the last in this list of new rules.

The CMA, which represents 33,000 of the state's 76,841 physicians, argues that to tell consumers when the medical board has forwarded a case to the attorney general — but before the attorney general has issued a formal accusation — violates the privacy and due-process rights of physicians. Robie agrees, calling the referral to the attorney general “much like an arrest without a conviction.” But arrests are also subject to public disclosure and, where the risk of further offenses is substantial, justify pretrial detention. “Public disclosure of disciplinary proceedings not yet resolved,” Robie continues, “is not a substitute for prompt evaluation of complaints, prompt decisions by the attorney general ... and timely imposition of discipline.”

But the ruling fails to take into account how difficult and time consuming it is to discipline doctors or to yank their licenses. Even in emergency cases, where a physician's actions are considered an immediate threat to public health and welfare, ob-

taining an interim license suspension can take a week to 10 days, during which time a physician can continue to see patients and during which the board — if the CMA wins its suit — would be barred from telling the public what it knows.

In other cases, parents who call the medical board to check on a physician scheduled to operate on their child could not be told that the physician botched a similar procedure so badly that the case has been referred to the attorney general for possible license revocation. Whatever doctors stand to gain in privacy is outweighed by what patients lose in protection against sloppy practice.

Some 600 cases of malpractice were investigated by the California medical board last year and forwarded to the attorney general; 98 percent ended in disciplinary action. In one-third, the physicians' licenses were revoked. In the other two-thirds, practice was limited in some way.

Any case that's forwarded to the attorney general has already been investigated by medical experts with the board, by two outside experts and reviewed by the board itself, a process that can take six months. Not until the board has deemed the alleged malpractice serious enough to warrant formal disciplinary action is the case forwarded to the attorney general. It's at this point that the board wants to inform the public.

The CMA demands still further delays. It wants the board to wait until the attorney general has reviewed the case and issued a formal accusation, a process that takes, on average, another 9½ months. During this time, the agency that is supposed to protect consumers would be barred from telling the public what it knows.

For years the state board was a captive of the physicians' lobby. Under its new executive director, Dixon Arnett, it has taken bold action to protect and inform consumers. The CMA lawsuit threatens that effort.