



# CALIFORNIA ASSOCIATION OF NEUROLOGICAL SURGEONS, INC. NEWSLETTER

DECEMBER 1980

VOL VII NO 4<sup>3</sup>

## **PRESIDENT'S COLUMN** **THE PROFESSIONAL LIABILITY CRISIS IS NOT DEAD**

Professional liability is still of primary concern. Although AB1xx and companion legislation contained some of the most significant tort reform provisions passed in August state, the full benefits of that legislation have yet to be realized. The passage of AB1xx into the Medical Injury Compensation Reform Act in 1975 appeared to have a temporary dampening effect on professional liability awards and did encourage some carriers back into the market. However, insurance premiums do not reflect the potential advantages of MICRA. Hoped for advantages depend upon the constitutionality of MICRA, and constitutionality has yet to be determined.

There are several cases pending in the appellate courts where constitutionality may be determined. There may be others. One of the problems is that attorneys representing physicians and hospitals frequently fail to tell interested organizations, which might come to their assistance, when important cases are pending. CANS would like to know if a member is involved in a professional liability case which is going up on appeal, in order that help can be provided in cases of general interest.

The most important case now pending in *English vs. Community Hospital of Los Gatos-Saratoga*, subsequently retitled *American Trust vs. Community Hospital*. The importance is that the Court of Appeal ruled that the periodic payment provisions of MICRA is unconstitutional. The decision was written by John Miller who was extremely hostile to AB1xx reforms in his capacity as Chairman of the Assembly Judicial Committee, at the time AB1xx was pending. He concludes that the periodic payment provision, and presumably all AB1xx reforms, grant special privileges and immunities to health providers, at the expense of injured patients, without serving any valid public purpose. The Court disagrees that affording this protection to health care providers insured the continued availability of health services to the public generally. The case involved a patient who was awarded \$200,000 for disabling burns, was granted payment of the entire sum immediately without regard to the periodic payment provision, over the hospital's objection, and died shortly thereafter of an unrelated illness. The result was to confer a windfall on her

estate, since monies were paid for future losses which were never in fact incurred. A petition for rehearing was denied and, therefore, a petition has been filed before the Supreme Court. The Supreme Court may use this case to decide the constitutionality of AB1xx or MICRA generally.

The brief of the *English* case that has been filed before the Supreme Court urges the Supreme Court to rule upon the broad aspects of MICRA tort reform and uphold MICRA provisions to avert the coming crisis. Data from 1972 through 1979 are presented to illustrate that if present trends continue, a new crisis can be expected. In 1979, the number of awards and settlements over \$50,000 was the highest ever, totaling 61. Total indemnity also reached a new peak of \$39,101,126. The cost of defending these cases can be conservatively estimated at 15% of the indemnity paid. These 61 cases in 1979, therefore, represent almost \$45 million in loss and expense payments. Thirteen of these losses exceeded \$1 million in indemnity, a new high. In 1978 there were just seven such cases. Total indemnity for these 13 cases amounted to \$23.5 million or 50% of the total paid on all 61 reported cases. Total indemnity from cases included in these reports since 1972 has grown by almost 400%. The number of \$1 million plus losses has grown from 2 in 1972 to 13 in 1979. The number of losses over \$50,000 has more than doubled since 1972. Most significantly, the trend in large cases is way up during the last three years after leveling and slightly declining during 1975 and 1976. Malpractice losses over \$50,000 are becoming more numerous, and they are costing much more in the aggregate. Total indemnity has tripled since 1976.

## **CANS ANNUAL MEETING**

**FEBRUARY 13-15, 1981**

Marriott's Rancho Las Palmas Resort

**REGISTRATION DEADLINE — JANUARY 6, 1981**

(SEE REGISTRATION FORMS INSIDE)

Historically, losses over \$50,000 represent only 2% of all malpractice claims, but comprise more than half the total amount of money spent on all cases. When this small fraction of cases experiences dramatic upswings in successive years, the ability of the insurance mechanism to spread the losses over a limited number of policyholders is severely tested. It is also important to remember that the injuries that led to these verdicts and settlements happened an average of almost five years ago. Unless there is a slackening of the upward trend, today's injuries that result in malpractice claims can be expected to cost much more when they are brought to trial or settlement five years from now. The upward spiral of large malpractice settlements and verdicts continues unabated. These trends are real, and in the present climate apparently irrevocable.

The escalating trends described above are just half of the problem. The multiple line commercial liability carriers that insured the medical community prior to 1975-76 abandoned the field as the 1975 crisis became apparent. Their departure left a vacuum. To fill the vacuum, and relying upon MICRA's passage, physicians formed the small single line companies now frequently referred to as "bed pan mutuals." The insurance provided by these companies is almost entirely "claims made." Most charged their policyholders more than a strict "claims made" rate during early years, and some have since paid dividends to those initial policyholders. However, all are now about to be buffeted by a maturing claims experience.

The *English* brief continues: "If this court should declare MICRA unconstitutional, denying even the partial benefits which have affected experience to date, the events will be catastrophic. Even those who extend no special solicitude for physicians should be concerned if resources essential to pay injured patients for their losses disappear overnight."

Also pending before the legislature is AB550, a bill that would provide for periodic payment of all types of tort awards, avoiding the constitutional objections seized upon in the *English* decision. The status of this bill at the present time is indeterminate.

The officers and directors of CANS are concerned about the real possibility of a coming crisis. We shall keep the membership informed of new developments. As always, we welcome comments and questions.

### References

1. Willett, David E. and Corcoran, Maureen E.; Hassard, Bonnington, Rogers and Huber. 44 Montgomery Street, Suite 3500, San Francisco, CA 94104. Amicus Curiae Brief of the California Medical Association in support of Petitioner, American Bank & Trust Co., as Special Administrator of the Estate of Mary Louise Thompson English, Deceased vs. Community Hospital of Los Gatos-Saratoga, Inc. defendant and petitioner.

James B. Golden, M.D., President

## BOARD OF DIRECTORS MEETING

The Board of Directors took the following actions at the June 28, 1980 meeting:

1. The Position Statement on the use of the microscope in disectomy, as adopted on March 14, 1980 was amended and now reads: "Whereas, the use of the microscope has been shown that improved neurosurgical results may be obtained, especially in procedures involving aneurysms, A-V malformations, small tumors, etc., the California Association of Neurological Surgeons, Inc., reaffirms its prior position ("That the use of the microscope for neurological procedures justifies additional payment."), and, in addition, endorses the present position statement of the California Medical Association on the use of the microscope in microlumbar disectomy. *At present, the use of the operating microscope or loupes in performing lumbar disectomy should be at the discretion of the surgeon but this modified technique should not command a higher surgical fee.*"

2. Designated Dr. Tolchin reply to the request for clarification of the screening criteria for lumbar disc excision with the following information: 1) The screening criteria referred to are not mandatory at this time; 2) The screening criteria have been approved by the American Association of Neurological Surgeons; 3) Suggest that the local PSRO may use their discretion in adopting these screening criteria. The letter should also suggest that any review beyond the "screening" review should be a genuine peer review, performed by a qualified physician, with knowledge of the procedure.

3. Adopted the following Position Statement: "That the California Association of Neurological Surgeons, Inc. supports and endorses the concept of a House of Delegates, as state in the position paper authored by Dr. Lippe, and suggests the implementation of the concept as soon as possible."

4. Adopted the following Position Statement: "The California Association of Neurological Surgeons, Inc. recognizes the American Board of Neurological Surgery, Inc. position on certification in the Specialty Neurological Surgery as the only 'Board Certification' in neurological surgery."

5. Adopted the following Position Statement: "That, although it has been brought to the attention of the California Association of Neurological Surgeons, Inc. that an organization exists which is offering certifying examinations in 'Neurological Orthopaedic Surgery', the California Association of Neurological Surgeons, Inc. continues to recognize The American Board of Neurological Surgery, Inc. as the only legitimate 'Board Certification' in neurological surgery."

6. The California Association of Neurological Surgeons, Inc. will support Dr. Philipp M. Lippe for nomination to The Board of Directors of the American Association of Neurological Surgeons.

## LETTERS TO THE EDITOR

Over the past several years we have from time to time received letters which are quite pertinent and feel that this information should be disseminated throughout the membership. Members are invited to participate in this portion of the newsletter. These letters will not necessarily represent the opinions of the editorial staff or of the CANS Board, but will reflect opinions of the membership on pertinent issues. The following letter was received from Travis H. Calvin, Jr., M.D., dated April 28, 1980:

"I read with care and interest your letter of March 31 concerning Medi-Cal reimbursements. I commend you on the job you are doing as CANS' representative to the CMA Committee on Specialty Societies. The creation of this committee was, in itself, a step in the right direction.

I'd like to make a few comments. First, the whole question of pitting specialties against one another is an obvious bureaucratic ploy. I'm just completing my first year of a two year term as President of the Imperial County Medical Society. Last fall we had as our guests visitors from England, who emphasized this point over and over again as a significant reason for their downfall. I commented on this in a County Newsletter which I am enclosing, and we have continued to emphasize it to the Society. As a matter of fact, with your permission I will use some of your comments in this month's newsletter. As a neurosurgeon and a physician practicing in California, I urge all my colleagues to support only those changes in Medi-Cal reimbursement which are to the benefit of ALL physicians — it is obvious that united we stand, divided we fall.

Second, there are unquestionably inequities in neurosurgery. My office keeps close records of allowances on all RVS numbers and if any of these would be of benefit, please let me know and they will be provided. I might point out specifically that at the present time a routine lumbar laminectomy is being reimbursed at \$1200 and a craniotomy (for tumor, trauma, aneurysm) between \$800 and a top of \$925. Remarkable.

Third, there is a strange situation which primarily affects neurosurgery, orthopedics and general surgery, and those specialties which are primarily concerned with treatment of trauma. That is the situation of third party payment.

Take the case of a patient who is injured and treated as a Medi-Cal beneficiary and later retains an attorney and files suit against some responsible third party. His attorney obtains a complete bill from the treating physician, etc., and COLLECTS the entire amount of this bill as part of the "special" damages. Medi-Cal has intervened and said it is illegal for the physician to collect the difference between Medi-Cal reimbursement and full charges at the time of settlement. That difference goes to the patient and his attorney, if Medi-Cal is to have its way.

This case was tested in the Courts in Alameda County in a case called State of California v. Winters and the trial judge upheld the rights of the physician. The case was appealed by Medi-Cal and the Court of Appeals refused to rule. So it stands in limbo at the present time. Advice of CMA has generally been to take Medi-Cal reimbursement and not attempt to obtain justice. CMA counsel is well aware of this case.

I have retained my own attorney, a former Dean of the USF School of Law and now a professor there, to continue to look into this matter on my behalf. I am sure he can provide you with more information as his study progresses: Mr. C. Delos Putz, Atty., University of San Francisco School of Law, San Francisco 94117.

This is a situation which is clearly unjust and of which many physicians are totally unaware. It has been my plan to share this situation with CANS as it obviously affects neurosurgeons profoundly.

I hope these thoughts have been of some benefit to you. I wish you the very best of luck in your endeavors. signed: Travis H. Calvin, Jr., M.D.

P.S. I might mention that we are a very heavy Medi-Cal county, and as the only neurosurgeon in the area, I never turn down these people."

Items printed in this Newsletter are for the purpose of disseminating information and stimulating discussion. The opinions and comments expressed herein do not necessarily reflect the official position of the California Association of Neurological Surgeons, Inc.

## POST-OP QUADRIPLEGIA REPORTED

Attention is called to the membership to an article by William E. Hitzelberg, M.D., and William F. House, M.D. in the archives of otolaryngology, Volume 106, February 1980, in which five cases of quadriplegia were reported following operation for acoustic tumors in the sitting position with the suggestion of apparent result of direct prolonged focal pressure on the cervical spinal cord. Whether related to the sitting position alone, the flexion and slight turning of the head, or the rigid fixation, a cause/effect relationship has not been defined. No similar reports have been obtained for sitting position complications of quadriplegia in other forms of neurological surgery. Submitted by Sidney Toichin, M.D.

## CANS MEMBERSHIP

The total number of CANS membership is 290 in the State of California including 252 active members, 33 associate members and 5 senior members.

## **EXPERT WITNESS FEES**

Interested members of CANS should request copies of AB 3215 from the Bill Room in Sacramento, 1149 State Capital, Sacramento, CA 95814, concerning expert witness fees. Members are urged that should they be requested to testify, that prior understanding between the requesting attorney and the member should be carefully stated, since in its present form expert witness fees will be paid only if the testimony is rendered *solely* as an expert. In short, if a member has taken care of the patient, he is considered percipient and is not eligible for expert fees. Submitted by Sidney Tolchin, M.D.

## **HMO REIMBURSEMENT FOR EMERGENCY SERVICES**

Many complaints from members have been received with reference to refusal of specific agencies to accept responsibility for care under emergency or other special circumstances. If problems arise related to HMO groups, Kaiser facilities, TAKE-CARE, etc., recommendation is made to address your problems to the CANS Community Relations Committee or directly the State Insurance Commissioner. In many cases, the fine print of providers of HMO type services does include compensation to the patient and certainly part of the "sales pitch" of these providers to their subscribers should be directed toward attention to such problems as these. Submitted by Sidney Tolchin, M.D.

## **PROBLEMS WITH TIMELY PAYMENT?**

The Member Services committee would like to obtain data with reference to the times of payment from the date of billing to the exact date of payment, if this occurs after three months from the billing date. Specific interest is to be generated toward Medicare and Medi-Cal payments. However, other third party delayed payments would be of interest to the committee as well. Please address your responses to Dr. Dewitt Gifford, 3300 Webster Street, Oakland, CA 94609.

## **CSC COMPLAINT LINE**

Are you having trouble with CSC billing? The complaint line is 800-852-7682. If no satisfaction, call CMA 415-777-2000.

### **DELAY IN NEWSLETTER**

Due to the recent transition in the executive office staff, the issue of the CANS Newsletter is belated. Marian O'Dell is the current Administrative Assistant.

## **MOTORCYCLE-HELMET LEGISLATION FAILS AGAIN**

Once again the State Legislature has failed to provide the citizens of California with an adequate helmet law. The spearhead of the opponents of this law is basically that of "limitation of freedom." At no time in the past has an adequate response been made to the cost of such freedom. It is requested that the membership attempt to collate data on such costs which could be presented in a reasonable fashion to the Legislature in attempting once again to enact a state law which would be in the interests of the safety of its citizens. Especially required would be information using initials of the patient, who has been admitted for neurosurgical care under Medi-Cal auspices, involved in a motorcycle accident in which a helmet was not worn. Only two other items would be necessary, length of stay in hospital and rehabilitation facility, and total cost including hospitalization and professional fees. Patients should be chosen from 1 July 1979 through 30 June 1980, whether or not their accidents occurred during this time, so long as they were hospitalized during this time. If enough information can be accrued to justify presenting this to the Legislature on a cost basis alone, perhaps some action will be forthcoming, even though our success was limited when appealing to the human aspects of this problem. Please send your replies to Emergency Medical Services Committee, CANS, 8910 Wakarusa Street, Ste. A., La Mesa, CA 92041.

## **CANS POSITION RE: CERTIFICATION FOR NEUROLOGICAL SURGERY**

Those of you who have been confused and perhaps interested in Neurosurgical-Orthopedic Societies, Orthopedic-Neurosurgical Societies, Spinal Cord Societies, etc., and certification for such will be interested in a recent action of CANS in which it is stated that the California Association of Neurological Surgeons recognizes the American Board of Neurological Surgery as the sole certifying organization for neurological surgery. Submitted by Sidney Tolchin, M.D.

## **CHRONIC PAIN SYMPOSIUM**

A one-half day program on chronic pain will be presented during the CMA meeting in March of 1981. The representation of the neurosurgical community at the prior CMA neurology-neurosurgery symposium was not good. Submitted by Sidney Tolchin M.D.

## **CNS OFFERS CERTIFICATION ASSISTANCE**

The Congress of Neurological Surgeons has appointed a committee which offers its services on an individual basis to non-certified neurosurgeons, whether or not members of the Congress, in identifying methods for successful completion of a certification process in neurosurgery. Exploration of possibilities of obtaining this assistance may be accomplished by writing to Dr. David L. Kelly, Jr., Bowman-Gray School of Medicine, Winston-Salem, North Carolina 27103.

**1981 ANNUAL SESSION — REGISTRATION DEADLINE**

**JANUARY 6, 1981**

**CALIFORNIA ASSOCIATION OF  
NEUROLOGICAL SURGEONS, INC.**

41000 BOB HOPE DRIVE  
RANCHO MIRAGE, CA. 92270

**ATTN: RESERVATIONS**

**All reservation requests must be received by: JANUARY 6, 1981**

**Requests prior to and after convention dates will be accepted on a space available basis only. Check out time is 12 noon — check in time 4 PM.**

**ALL RESERVATION REQUESTS MUST BE ACCOMPANIED BY THE FIRST NIGHT'S DEPOSIT IN ORDER FOR THE RESERVATION TO BE PROCESSED AND CONFIRMED. DEPOSITS ARE REFUNDABLE WITH 10 DAYS ADVANCE NOTICE. UPON ARRIVAL, THE DEPOSIT WILL BE APPLIED TO YOUR FINAL NIGHT'S STAY. AN EARLIER DEPARTURE WILL RESULT IN FORFEITURE OF THE DEPOSIT UNLESS WE RECEIVE 10 DAYS ADVANCE NOTICE OF THE EARLIER DEPARTURE DATE.**

NAME \_\_\_\_\_

FIRM California Association of Neurological Surgeons

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

BUSINESS PHONE \_\_\_\_\_

CALIF. ASSOCIATION OF NEUROLOGICAL SURGEONS  
FEBRUARY 13-15, 1981

I plan to arrive \_\_\_\_\_  
DAY/DATE

I plan to depart \_\_\_\_\_  
DAY/DATE

**Please Check:**

- 105.00  Delux Single Occupancy (one person)
- 105.00  Deluxe Twin Occupancy (two people)
- 120.00  Parlor
- 225.00  Parlor Suite (Parlor & Connector)
- 275.00  Deluxe Suite

Transportation to and from the Airport is available on a scheduled basis. There is an Airport Courtesy phone.

Anticipated time of arrival at the hotel \_\_\_\_\_

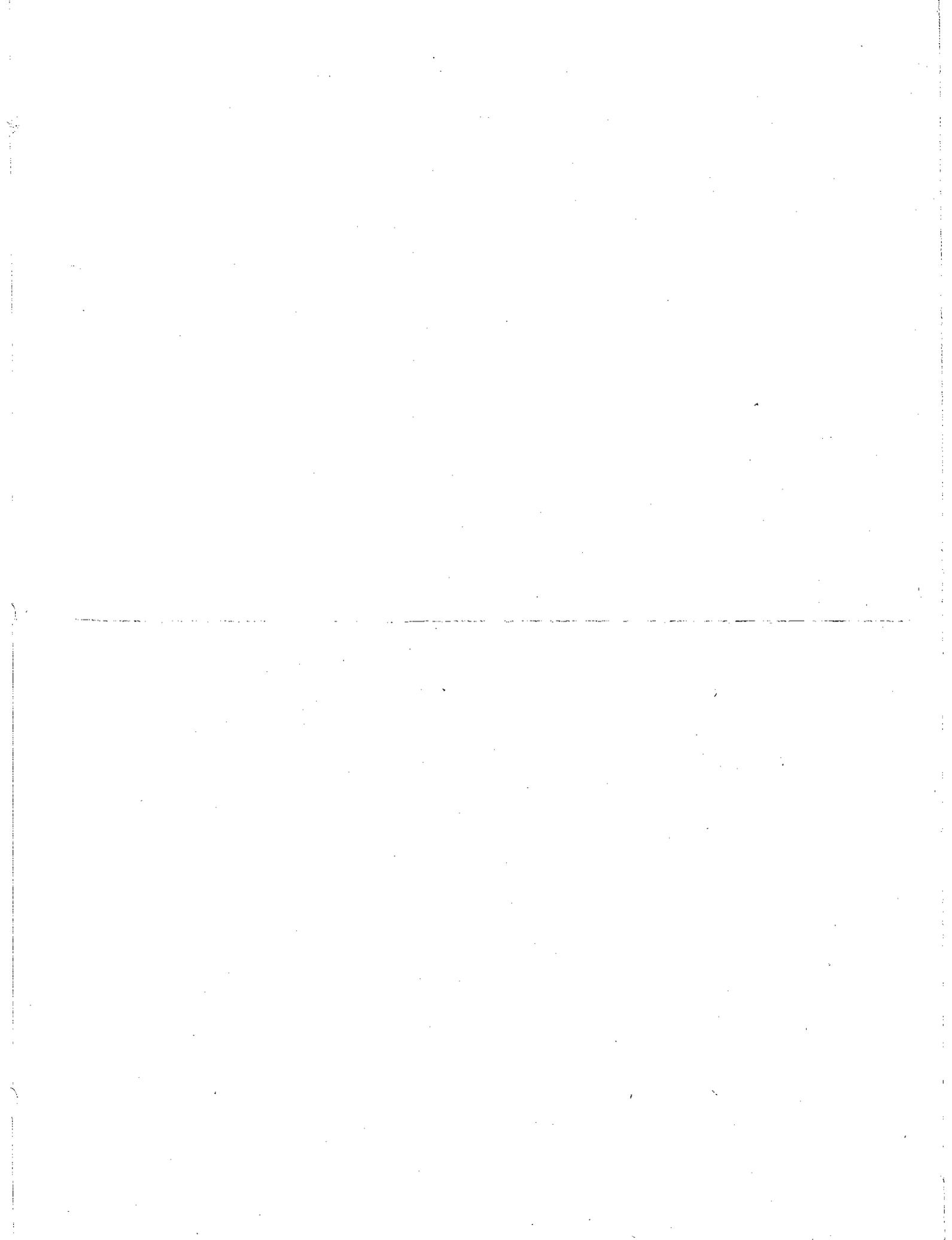
Airline \_\_\_\_\_

Flight No. \_\_\_\_\_

Sharing with \_\_\_\_\_

**EUROPEAN PLAN**

**Please note: Each bedroom has two over-sized double beds.**



Actions taken as follows:

1. Adopted the Position Statement: "That the efforts of the Sacramento Safety Council be endorsed."

2. Adopted the Position Statement: "That the Task Force on Medical Expert Witness Panel be discharged and that the program be discontinued; and that the members of the Task Force be charged to prepare a paper on this experience for publication in appropriate medical journal(s)."

3. Adopted the Position Statement: "That the California Association of Neurological Surgeons, Inc. support the concept of "cross-seating" of Specialty Delegates in the California Medical Association's House of Delegates; and that the President of the California Association of Neurological Surgeons, Inc. be authorized to communicate this support to the Chairman of the CMA Specialty Delegation."

4. Adopted the Position Statement: "That the California Association of Neurological Surgeons, Inc. work with the California Medical Association to obtain suitable modification of the Radio Logic Technology Act to exempt physicians who are using x-ray equipment under the control of a radiologist."

The Ohio State Medical Association conducted a recent study in which 1500 people at random were phoned. 84 percent rated quality of care as good or excellent and 1.3 percent as poor. 71 percent reported a high degree of confidence in their doctor. 98.6 percent rated the doctors willingness to talk with the patient about their illness the highest ranking attribute. 41 percent of people felt that "greediness" was the major reason for increase in malpractice suits, 21 percent felt that the doctors were at fault and 20 percent felt the lawyers were at fault. The findings suggested that patients under the age of 25 are more likely to bring a malpractice suit (52%) compared to less than one-third in the entire group. Patients without a family physician indicated a higher probability of bringing a malpractice suit and patients with negative feelings, verbal or non-verbal, are associated with a higher likelihood of bringing a suit.

Substantial public support was noted for lowering contingency fees (71.5 percent) agreement to a higher charge for more patient time in explaining problems (69.8%). Compulsory arbitration of claims (67.1%) a compensation board which would decide benefits (65.3%) and a state law which limited the amount collected (53.7%). Submitted by Sidney Tolchin, M.D.

The next meeting of the Board of Directors will be held on Saturday, December 13, 1980 at the Los Angeles Airport Marriott Hotel beginning at 10:00 A.M.

**CHANGE OF ADDRESS**

Please remember to notify the Executive Office of any change of address or telephone number so that we might keep our membership records up to date.

**CALIFORNIA ASSOCIATION OF NEUROLOGICAL SURGEONS, INC.  
ANNUAL SESSION, FEBRUARY 13-15, 1981  
MARRIOTT'S RANCHO LAS PALMAS RESORT**

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**ANNUAL SESSION — Deadline for Advance Registration — FEBRUARY 5, 1981**

- \_\_\_\_\_ \$30.00 Registration for CANS Members and Applicants for Membership (Saturday luncheon and two cocktails at Opening Reception included)
- \_\_\_\_\_ Complimentary Registration for Spouse of Member or Applicant for Membership (Saturday luncheon and two cocktails at Opening Reception included) Name: \_\_\_\_\_
- \_\_\_\_\_ \$30.00 Registration for all other guests (Saturday luncheon and two cocktails at Opening Reception included)

Make checks payable to:  
California Association of Neurological Surgeons, Inc.  
Mail to:  
C.A.N.S., P.O. Box 41761, Sacramento, CA 95814

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