Can a California physician be held liable for ordinary negligence for failing to supervise a student who was learning to be a physician assistant (PA)? Further, can the physician be held liable for ordinary negligence or negligent performance of a contract?

Those two claims would fall outside the well-established protections that California’s Medical Injury Compensation Reform Act (MICRA) provides to help stabilize medical liability insurance rates and keep physicians practicing in the state, including a $250,000 cap on noneconomic damage.

A California appellate court recently said no to those questions, upholding a lower-court decision.

The Court of Appeal of the State of California, Fifth Appellate District’s decision was a welcome one in the medical community. The Litigation Center of the American Medical Association and State Medical Societies filed an amicus brief with the California Medical Association, California Hospital Association and the California Dental Association that asked the court to reject arguments asking it to allow those claims to be considered in the case, Carrillo v. Alvarez.

“The Carrillos’ claims all arise from an alleged misdiagnosis and purportedly negligent treatment,” the brief told the court. “Their attempts to characterize their claims as something other than medical negligence fail under binding California Supreme Court precedent. The trial court did not err in concluding that they could not bring a separate general negligence claim under the circumstances here.”

Care standard not breeched

The case arose after Karla Carrillo, a minor, went to Valley Medical Group (VMG) in 2011 because of intense, sporadic headaches. The girl said she had intermittent headaches and a “hot forehead” for
two or three days and had been taking ibuprofen. She had no nausea, vomiting or vision problems. Her ears, eyes, nose, throat and neck were normal, court records show.

A licensed PA, Carols Flores, and a PA student, Alfred Tobias, evaluated Carrillo. Flores told Carrillo she was likely experiencing tension headaches caused by stress. He advised her to take acetaminophen for the headaches and return if they became constant or continuous. He did not order a CT scan, MRI or lumbar puncture.

For two weeks after that visit, Carrillo had an occasional headache, but she felt better after taking acetaminophen. Shortly after that, the girl experienced light sensitivity, a fever and more intense headaches. She went to Bakersfield Memorial Hospital’s emergency department with vision problems, intermittent confusion and constant headaches. While the emergency physician prepared to perform a lumbar puncture, her pupils dilated and she started convulsing. She suffered numerous strokes, resulting in permanent brain damage and leaving her functionally quadriplegic.

Carrillo and her mother, Norma Carrillo, sued Flores, VMG, and VMG physician Carlos Alvarez, MD. She also sued other defendants, who settled. The plaintiffs alleged, among other things, a negligent failure to diagnose a cocci meningitis infection. A jury determined none of the defendants were negligent in their conduct. It did not consider the failure-to-supervise claim.

The appellate court ruled that because the jury found that Flores was not negligent in the girl’s diagnosis or treatment, Dr. Alvarez and VMG could not “be held vicariously liable for medical malpractice.” It also confirmed there were no grounds for negligence based on the contract.

Well-established MICRA case law

The AMA Litigation Center brief said California courts have repeatedly rejected plaintiff attorneys’ attempts to avoid MICRA by recasting professional negligence actions as other types of claims.

“Professional negligence flows from the provision of medical care, which includes not only ‘medical diagnosis and the treatment of patients,’ but also the ancillary acts involved in rendering that care by any person who may play a role in the treatment of the patient,” the brief said, quoting an earlier California court decision.

The brief told the court that there were no facts or expert testimony in the Carrillo case that might be deemed unrelated to the examination, diagnosis and treatment of the patient.

“These are allegations of negligence in rendering professional services, plain and simple,” it said.

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn
about the Litigation Center’s case-selection criteria.