

# Equality has a good day in Raton court

## Business and Law



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*For the Journal*

Equality should be a great principle of American law. Most people think it is. However, there are exceptions to the rule.

Oftentimes, doctors have advantages, which are created by the legislature, probably at the behest of insurance companies.

Here's an example. Mike Morrow of Capulin, in northeast New Mexico, was a rancher and employee of the state engineer.

After suffering a badly-injured lower left leg, Morrow went to Gopal Reddy, M.D., who attempted to replace a crushed artery in the leg. Then, a second attempt was made. When neither surgery was successful, Dr. Reddy amputated Morrow's lower leg.

Morrow retained a physician, who testified that if Reddy had selected a different blood vessel as a replacement,

the leg could have been saved.

Morrow sued for medical malpractice. After a trial, a jury in Raton awarded him \$1.2 million. However, said Reddy and his lawyers to the judge, this isn't a car-crash case.

### THE MALPRACTICE CAP:

Some years ago, the N.M. Legislature decided that in cases where doctors are to blame for malpractice, plaintiffs like Morrow can't receive more than a "cap," now set at \$600,000. Reddy's attorney, Ben Allen of the

Hatch firm, and Morrow's attorneys, Ed Threet and Dan Shapiro, argued it out in a Raton court.

Dist. Judge Sam B. Sanchez ruled for Morrow. He found the "cap" in the New Mexico Medical Malpractice Act unconstitutional.

Trial-court decisions aren't "precedents," which must be followed by other trial courts. Trial-court decisions decide issues before the court, period.

### QUESTIONS OF

**FAIRNESS:** Nevertheless, there are many lawyers — most of whom work for plaintiffs — who believe the Medical Malpractice Act is unfair to their clients. People like Morrow perhaps would be better off if they had been injured on the highway rather than in an operating room.

This especially true when a jury verdict is large enough to trigger an appeal.

Insurance companies argued in the Legislature that

without a cap, malpractice awards would go out of sight. Resulting premiums would be so high that physicians couldn't practice in New Mexico.

### BACK TO JUDGE

**SANCHEZ:** In his ruling, Judge Sanchez found two reasons for refusing to follow the Medical Malpractice Act. One is that it is an "arbitrary and unreasonable denial" of equal protection of the law. The other reason, said Sanchez, is that the act violates the right to trial by jury.

It's not at all hard to see a violation of equal protection here. Morrow's injury, if it had occurred on a highway, would have netted twice as much as it did in an operating room. Many people have trouble accepting that. Morrow's jury certainly made a clear decision when it valued his injuries, and that value had nothing to do with the \$600,000 cap.

Still, suppose we have a child malpractice victim whose damage award must cover the rest of the child's life. This happens when children sustain an injury causing permanent brain damage. Such injuries can cost millions of dollars for lifetime care. Under such circumstances, the cap is a joke.

The N.M. Constitution, as does that of the United States, provides for trial by jury.

"This court has always held that a jury determination of the amount of damages is the essence of the right to trial by jury," said Judge Sanchez. "We must all first remember that the Legislature may not in any way attempt to abolish the right to a trial by jury."

Equality had a good day in Raton. The less inequality, the better our system.

The decision is at docket No. 99-CV-23 in the Colfax County District Court.