

# The Face of MICRA

*Steven Olsen was a bright 2-year-old when medical negligence left him profoundly brain damaged. Two decades later, his parents remain potent advocates for correcting California's \$250,000 cap on human suffering.*

By Scott Martelle

It's hard to say what brings tears to Kathy Olsen's eyes faster – talking about her son's past, or the young man's future.

Steven Olsen was a mischievous two-year-old in 1992, the kind of kid happy to lead his 3-year-old sister into trouble on a regular basis. His response when mom put up a gate to keep the kids from climbing the stairs? No problem – Steven would turn a laundry basket into a step; up and over they'd go. And when dad blocked off the ladder to the backyard slide? Steven turned a tricycle into a step stool.

"He figured this all out," she says. "He was really quite intelligent."

That all changed in late February 1992, when a freak injury followed by a downward spiral of medical errors left the boy severely brain-damaged. This tragic series of events turned the Olsens into forceful advocates in the battle to roll back California's medical malpractice caps, set in place by the watershed Medical Injury Compensation Reform Act of 1975. MICRA's \$250,000 cap on human suffering, the Olsens argue, led to an inadequate financial settlement and didn't allow the family to fully hold

accountable the people responsible for destroying their son's life.

The Olsen's ordeal began during a visit to a relative's mountain cabin outside San Diego, where Steven tripped while running and fell face-first onto a sharp stick that penetrated deep into the right front part of his mouth, face and sinus cavity. Surgeons at Children's Hospital of San Diego repaired the damage and took cultures to test for infections as a precaution, then sent the family home.



Steven Olsen with his parents

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Kathy Olsen quit her career as a store manager to become Steven's primary care-giver

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A few days later, Kathy and her husband, Scott Olsen, noticed that Steven was becoming lethargic. A fever spiked. The Olsens brought him back to the hospital. As the medical teams tried to figure out what was happening, the couple suggested the face-impalement may have caused additional problems and asked for a brain

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scan. The medical team rejected the request and diagnosed meningitis, the first in a series of errors that eventually sent Steven into a two-week-long medically induced coma.

By the time the nightmare stabilized, Steven was severely brain-damaged from

an undiagnosed and ruptured abscess inside his skull caused by the impalement. That unseen damage would have been discovered had the doctors heeded the Olsens' request for a scan. And it likely would have been treated even sooner had the medical team checked the lab results on the cultures that had been taken during the first hospital visit.

The fallout of that missed diagnosis of a treatable infection was horrific: The bright and creative problem-solving toddler was left severely brain-damaged, blind and incapable of all but the most basic tasks. As his parents look to the future, they fear for how his later years will play out, in part because MICRA had capped a jury verdict of \$7.1 million in pain and suffering damages at \$250,000.

The Olsens did receive \$4.1 million in economic damages from the jury and a pre-trial settlement with some of the defendants. That total immediately shrank by a quarter for lawyers' fees, and by another \$115,000 for the expert witnesses who testified in the trial. Other expenses, including nursing care and a private school for the disabled that helped Steven regain some of his speech and coordination, also have accounted for more than \$100,000 in costs.

Steven also receives \$718 a month disability support from Social Security, which was cut in May from \$908 a month. The Olsens say a conservator controls the money on Steven's behalf, but they fear it will run out. "I don't think his money will last as long as he will," Kathy Olsen says, tears again streaming down her cheeks. Yet she also thinks her son is lucky that they've been able to advocate for him. "We're survivors in a system that isn't really set up to help somebody," she says.

Most of the young man's medical costs have been covered by health insurance through Scott Olsen's job as an automotive technical writer, but he will soon age out of that coverage. They fear that once they pass on, responsibility for Steven's care will ultimately fall to government programs rather than to the people most responsible for his condition—the medical team that made the critical and avoidable errors when the boy was two.

Steven's medical problems have transformed the Olsen's family life. When he was injured, the family had four pre-teen children living and sharing bedrooms in a two-story house in suburban San Diego.

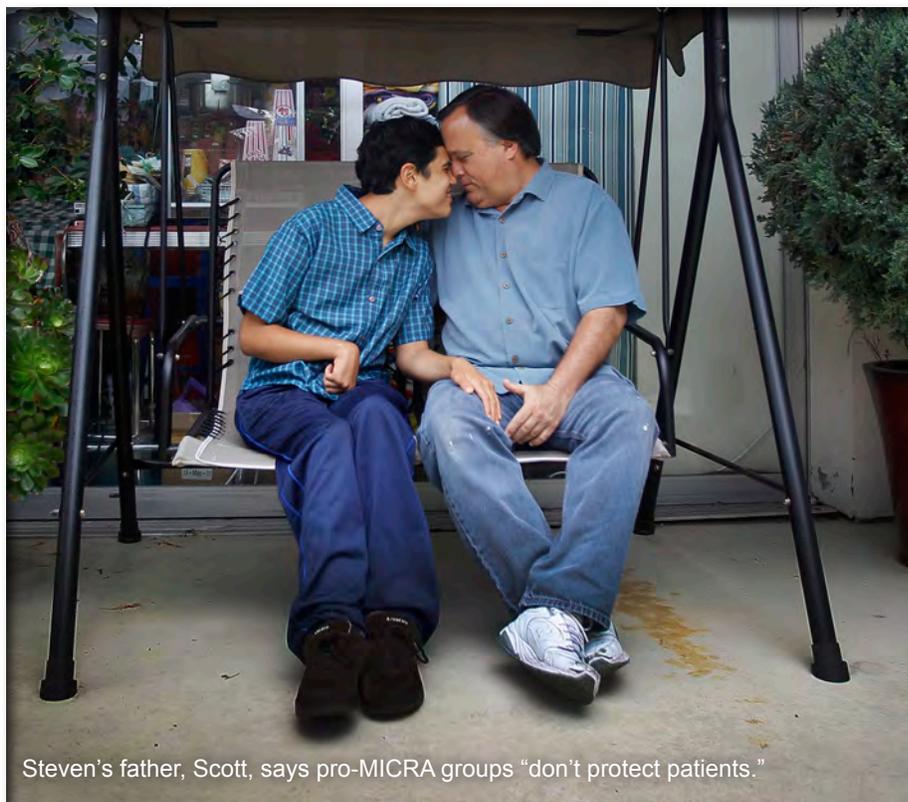
Kathy Olsen quit her career as a store manager for Sears to become Steven's primary care-giver rather than hiring aides to cover the hours when she otherwise would be working. Scott Olsen believes his career as a technical writer has suffered because of his repeated and extended absences during Steven's many medical crises – including 23 surgeries.

"Everyone's been good," he says, adding that he has appreciated the support and understanding from bosses and co-workers. "But it doesn't help when they ask, 'Can everyone come in tomorrow?' and I say I can't because my kid's in the hospital."

The Olsens had to move from their two-story home into a nearby ranch house because Steven could no longer navigate the stairs he used to scramble up like a monkey. They also needed more room – because of the constant need for care, Steven could no longer share a room with a sibling. Through the conservatorship, Steven owns half of the house, which underwent renovations to make it easier for him to maneuver, and to add a full-access bathroom off his bedroom.

Out back, the yard has a play set and a swimming pool where Steven, despite having limited control of his motion (the brain injury caused cerebral palsy), likes to swim, and gets regular exercise. Steven's a generally happy young man despite his disabilities, though he has trouble sometimes controlling emotions and impulses because of the areas of the brain that have been damaged. At the start of the interview for this story, he said he was interested in talking but after insisting on showing me his bedroom and how his favorite toys worked (we walked down the hall together, Steven kissing my shoulder most of the way until his mother persuaded him to stop) he decided he no longer wanted to talk.

**H**e requires near-constant supervision, and help. He can tend to most of his bathroom needs during the day but has to be diapered at night. For his own safety, his room – outfitted like a young boy's – has a locking door with an alarm in his parents' bedroom to keep him from wandering around at night. Leg braces help him stand and he has limited ability to use a cane for walking around.



Steven's father, Scott, says pro-MICRA groups "don't protect patients."

Lori Shepler

A circle of friends and relatives have pitched in to give the Olsens some time for themselves (a cousin stayed with Steven during the interview), but caring for their son has become the focal point of their lives. Steven has regular preventive appointments with a pediatrician, a neurologist/neurosurgeon, an orthopedic

**"If [hospitals] kill a child, there's no economic damages," Scott Olsen says.**

surgeon, an ear/nose/throat specialist, schedules that pick up when he encounters unexpected problems. A physical therapist the couple pays for privately visits the house three or four times a week to help keep Steven's limbs, over which he has limited control, as functional as possible.

"He is highly maintained," Kathy Olsen says. "We go every six months. I don't want anything else to happen to him."

Yet Steven is not coddled. "He needs to know what he can do for himself," the mother says. "Getting in our van, I put his foot there and say, 'Now, plant your

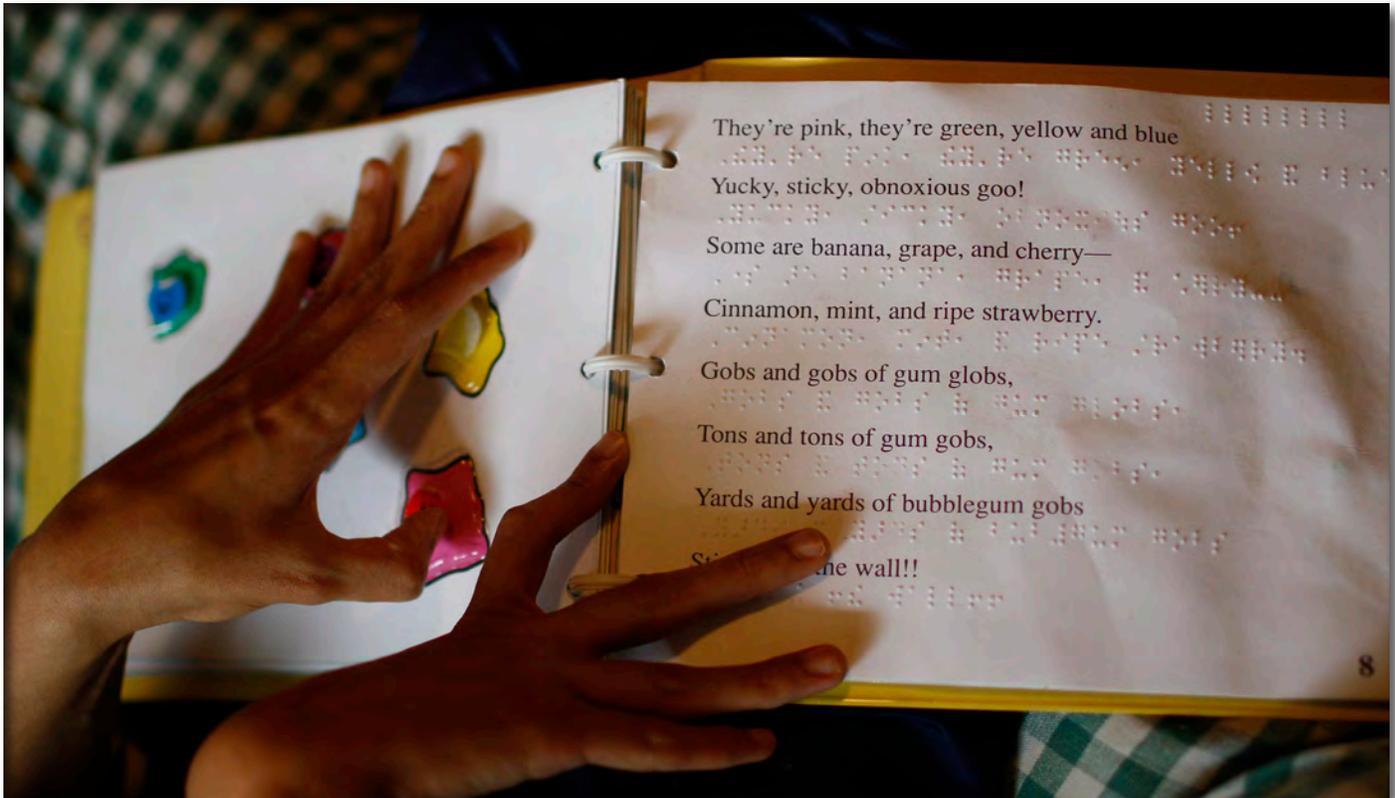
foot and get your butt up on that seat.' He has learned what I think are some of the independent skills that he has to learn. He has to function."

**T**he Olsens' experience with the legal system, and their frustration with the MICRA cap, turned them into reluctant activists. They have taken part in rallies, spoken at conferences on the issue and testified before Congress on how the MICRA cap has affected their lives. They are particularly galled by pronouncements and political spin by proponent of the caps.

"We probably wouldn't have done anything, but then we kept hearing from insurance companies and the other side about how this cap is helpful to people like us," Scott Olsen says. "If they would have just shut up, we probably would never have done anything."

The Olsens are particularly irked by the Californians Aligned for Patient Protection (CAPP) group, which is supported by insurers, doctors, hospitals and other medical care providers, and whose board of directors is composed of leaders of for-profit medical groups.

"They don't protect patients at all," Scott Olsen says. "Their whole premise



Lori Shepler

seems to be that this is helpful to the person that's been injured by malpractice. They can collect the award faster, they settle much quicker. This isn't right. If they would just say, 'We don't want to pay for it,' that's fine. Just be honest about it."

**Kathy Olsen argues that the issue is not a face-off between doctors and lawyers, but between insurance companies and doctors and their patients.**

The couple also occasionally fields calls from people who have been similarly affected by medical malpractice, but – particularly those involving the death of a child – can't find lawyers to take on the cases because the cost of going to trial exceeds the possible judgment.

"Unfortunately, if you kill a child, there's no economic damages," Scott Olsen says. "Or it's someone with no income that it happens to." The MICRA cap, the

couple says, effectively bars those families from seeking redress through the courts.

Scott Olsen says dismissive attitudes by defenders of the caps also galvanized them. He cites a comment by then-U.S. Rep. Christopher Cox (R-Newport Beach) in the mid-1990s that referred to pain-and-suffering awards as "feelings" damages. "That," Olsen says as his now-adult son struggles nearby to eat lunch without help, "just set me off."

California's MICRA law has been used as a blueprint for similar laws in other states, and in pushes for federal legislation – efforts that also brought the Olsens to witness chairs in legislative hearings, and rallies fighting the measures. They've appeared on national television talk shows and news programs, from the old "Phil Donahue Show" to NBC's "Today" show. They also are active with Consumer Watchdog (Kathy Olsen sits on the board) and the Center for Justice and Democracy, and have worked on projects with the Consumer Attorneys of California.

"There were so many things that were not right that you have to do what you can," Kathy Olsen says, arguing that the issue is not a face-off between doctors and

lawyers, but between insurance companies and doctors and their patients. She sees the MICRA cap as part of the broad power the insurance companies have amassed, which now extends to dictating to doctors how they treat patients.

For all the broad policy elements of medical malpractice caps, the full impact is on the micro level. Over the course of a nearly two-hour interview, the Olsens' dug into two decades of memories to detail the dizzying litany of treatments, complications and medical crises that their son has endured due to the medical negligence of his doctors. Finally, memory spent, Kathy Olsen went off to the family computer to print out a list.

She returned a few minutes later with four stapled sheets holding 56 separate entries listing all of Steven's serious medical encounters, from the first emergency room visit through November 2009, the last time she had updated it.

"People who are 21," she says, "shouldn't have a medical history like this." ■

Scott Martelle is an author, freelance journalist, college instructor and former Los Angeles Times reporter. His latest book is *The Fear Within: Spies, Commies, and American Democracy on Trial*.