



## PRESS RELEASE - Walkup Obtains Wrongful Death Arbitration Award Against Kaiser

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An Arbitrator has awarded the surviving family members of an Alameda County woman \$2,739,410 against Kaiser for the January 2013 death of Shauna Malone. Malone's husband and daughters were represented by the San Francisco law firm of Walkup Melodia Kelly and Schoenberger. Walkup partner Michael Kelly, lead trial counsel for the family, expressed satisfaction with the finding of fault but condemned the 40 year old damage law called "MICRA" which prevented the Arbitrator from awarding the family full compensation for what they lost.

Malone's husband, and daughters aged 6 and 4, were barred from recovering more than \$250,000 for the loss of a mother and wife's love, emotional support and guidance. "Only 42 years of age at her death, Shauna Malone was a phenomenal woman, mother, daughter, mental health professional and role model. This tragedy has left a husband who will miss 40 years of his wife's companionship, and two beautiful little girls who will miss the nurturing, mentoring, guidance and love only a mother can give" said Kelly. "The 40 year old damage cap imposed by the MICRA laws, tells this family that the attributes which made Shauna so wonderful have a value of \$250,000" continued Kelly. "This artificial limit makes death an affordable cost of doing business for Kaiser."

The Arbitrator's verdict followed five days of evidence and testimony and came after Kaiser refused to negotiate with the family or make any pre-trial offer of settlement.

At issue was Kaiser's practice of using so-called telephone advice nurses for screening. Under the Kaiser program, the health care giant keeps information obtained by the advice nurses secret from the doctors who see the patients, having decided it would take doctors too long to review the contents of the recorded calls.

Malone had twice called and spoken to an advice nurse for complaints of worsening symptoms of cough and chest pain consistent with pneumonia, but instead of an in-person appointment she was routed to a telephone evaluation with a Kaiser internal medicine physician who decided without a physical examination that she had the "flu". In fact she had a rapidly developing pneumonia which worsened over the next 24 hours. By the time she was seen in the ER on the 5th day of her illness, she was suffering from irreversible septic shock which claimed her life.

"Unbelievably, the advice nurse system is set up in a way that the Permanente Group doctors do not actually get the information that is collected by the advice nurses. The doctor who handled the final call was unaware of the symptoms previously related by Mrs. Malone, and as a result, he had no idea that she had called two times previously and had worsening symptoms consistent with pneumonia" said Kelly. "This system is supposed to be the front door to the Kaiser system - the problem is, once you're through the door, the doctors don't know what information the patient has given to the gatekeeper".

Kelly was assisted in the case by Walkup Melodia attorneys Emily Polcari and Valerie Rose. The team worked on the case for almost 2 years. The majority of the award (everything in excess of the MICRA \$250,000 limit) represented recovery of Mrs. Malone's future lost wages and the value of the household services she would have provided to her family throughout her life expectancy.