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SEEKING JUSTICE ▾

PROTECTING OUR FUTURE ▾

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RESEARCH ▾

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Who Does the Childhood Vaccine Injury Act Protect?



 Print

Hint: It isn't the kids...

By Deirdre Imus

The laws of a country are, generally, designed to protect its citizens. How this ideal is interpreted is a topic of debate in various circles, but its goal is lofty, if not quite perfect. Of specific necessity are laws aimed at protecting children, including child abuse, welfare, and labor laws. Of zero necessity, in my view, is the [National Childhood Vaccine Injury Act](#) (NCVIA), which sounds like it has the best interests of this nation's young citizens in mind, but actually serves a much different purpose.

Congress passed the NCVIA in 1986, and President Ronald Reagan signed it into law soon after. Taken at face value, the law has some admirable provisions: it established improved communication regarding vaccines across all Department of Health and Human Service agencies; required health care providers who administer vaccines to provide a vaccine information statement to the person getting the vaccine or his or her guardian; and established a committee from the Institute of Medicine to review the literature on vaccine reactions.

Dig a little deeper, however, and the NCVIA does less to protect patients than it does drug companies making vaccines. When Reagan signed the NCVIA, he also created the [National Vaccine Injury Compensation Program](#) (VICP), which allows anyone—children and adults—who have suffered an injury (or worse) following a vaccination to file a claim. To date, it has paid out [nearly \\$4 billion](#) in compensation since 1988, including the [2008 case](#) of Hannah Poling, whose family received more than \$1.5 million in a landmark court award for a vaccine-autism claim.

Lifting liability

While this might sound like a good thing, one must read between the lines. The NCVIA also sets limits on the liability of vaccine manufacturers. They don't have to pay a dime, in most cases, if someone is injured as a result of a product they make. Is there any other industry afforded such immunity? The pharmaceutical industry makes billions of dollars annually producing, promoting, and injecting a product that is known to injure people in myriad ways, and bears zero responsibility when a child—or an adult—suffers as a result.

The system is broken, and it's why the founders of the nonprofit National Vaccine Information Center (NVIC), which worked with Congress in the 1980s to get the NCVIA passed, began calling in 2015 for its repeal. In a [press release](#), NVIC co-founder Barbara Loe Fisher noted that the federal vaccine injury compensation program has become "a drug company stockholder's dream and a

parent's worst nightmare." In the same document, co-founder Kathi Williams argues that the provisions that their organization helped secure in the law are not being enforced, and most children getting government-recommended vaccines are denied vaccine injury compensation.

That zero liability rests on the vaccine manufacturers is a travesty of epic proportions.

I echo their calls for repeal. Children are given between 53 and 56 vaccine doses containing 177 to 232 antigens between birth and age 18. Vaccine reactions range from a mild fever, muscle/joint pain, and injection site swelling to seizures, trouble breathing, vomiting, and permanent brain damage. Though considered "rare" by the U.S. Centers for Disease Control and Prevention, these more serious effects admittedly occur, and people suffer. That zero liability rests on the vaccine manufacturers is a travesty of epic proportions.

And yet, is anyone truly surprised? This is the same cast of characters that knowingly inserts neurotoxins such as mercury and aluminum into its products, and uses advertising and public awareness campaigns to further enrich themselves and ensure that vaccine injury stories are never shown to the public.

Vaccines and vaccine safety are emotionally charged issues. But setting aside the history of this controversy and its consequences, the passage of NCVIA raises an overarching issue that should concern consumers of any product, vaccine or otherwise.

Perhaps not surprisingly, vaccine safety deteriorated when consumers were no longer able to sue vaccine manufacturers.

Safety vs. profit

A 2017 study published in the *Review of Industrial Organization* looked at whether removing the right to sue—called "delitigation"—affects product safety, and highlighted specifically the effects of NCVIA on the vaccine industry. Perhaps not surprisingly, vaccine safety deteriorated when consumers were no longer able to sue vaccine manufacturers.

Author Gayle DeLong, PhD, an economist at Baruch College, attributes this decrease in safety to the expanded array of vaccines allowed by NCVIA, and argues that some vaccines likely never would have been developed at all if consumers had retained the right to sue. Losing the ability to sue companies for bad products results in the production of more bad products, or maybe not as many good ones, because the companies are

inoculated from harm.

The VICP is a no-fault program designed specifically and intentionally to shield vaccine manufacturers, rather than protect the people harmed by vaccines. This system has lined the pockets of pharmaceutical companies for decades, while simultaneously giving them the green light to continue making unsafe vaccines that put people—particularly children—at risk for lifelong, serious health problems and even death.

Rewarding bad behavior

Rather than continue under an arrangement that essentially rewards bad behavior, NCVIA should be repealed and eventually replaced with more thoughtful legislation regarding vaccines. Given the sheer number of things with which we inject millions of children on a daily basis in this country, shouldn't someone be held responsible when things go awry? The knee jerk reaction of our government shouldn't be to protect the entity that is hurting people. It should be to clearly and concisely articulate how vaccines can be made safer, and penalize those who don't comply.

We all try to take personal responsibility in our lives, whether for our own actions or for those of our children. We try to teach them right from wrong, to admit when they've done something they shouldn't have, and show them how to correct it. It's unfortunate that the same standards that apply to seven-year-olds don't apply to pharmaceutical companies.

Deirdre Imus is a New York Times bestselling author.

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