

[Trouble Finding A California Medical Malpractice Lawyer?](#)

If you or a loved one has been misdiagnosed or have been a victim of medical malpractice in the State of California and would like to take the doctor or hospital to court, you may find it very difficult to get a lawyer to represent you.

There's a reason California personal injury lawyers cringe at medical malpractice lawsuits - in this state, we have a \$250,000 cap on medical malpractice awards and a cap on attorney's fees. These two factors combine to make the pursuit of a medical malpractice not worth the costs and risks for wronged patients and their attorneys.

This cap on medical malpractice awards has been in existence for more than 30 years now in California. In 1975, the state enacted legislation capping malpractice awards and lowering attorneys' fees (only for the patients' attorneys) after doctors and insurers in California protested saying oversized awards and ever-increasing insurance rates were driving physicians out of the state.

What this law known as Medical Injury Compensation Reform Act (MICRA) essentially did was limit the amount of money for "pain and suffering" - which is the physical and emotional distress caused by an injury to \$250,000. There is no limit on what patients can collect for loss of future wages and other expenses. So if a non-wage earner dies because of medical malpractice the maximum jury award would be \$250,000 no matter what.

But the big question that lingers all these years is: Has there really been a benefit to the public in terms of insurance premiums lower health care cost because of this cap? Victim advocates and experts who oppose the cap say: No. This law, they say, is increasingly preventing victims and their families from getting their day in court.

This is especially true of the most vulnerable population such as low-income families, children and seniors. Opponents of the caps also argue that this limit on pain and suffering has never been raised or affected by inflation over the last three decades.

As for attorneys, it is not a cheap proposition. They bear the out of pocket costs of putting on these trials. Those costs easily exceed \$75,000 and they have been skyrocketing over the years. Add a discount fee structure and it makes no economic sense for attorneys to represent malpractice victims, they are much better off working for the medical providers and their insurance companies.

The malpractice caps are being reconsidered in many states because of the manner in which they have been hurting poorer patients.

But California has never reconsidered these caps. A recent Los Angeles Times investigation revealed that the cap is in fact preventing many California families from getting their day in court.

Here are some of the findings listed in the Times article:

Court malpractice filings have fallen in eight out of the 10 most heavily populated counties. In Los Angeles county there was a 48 percent drop in filings since 2001 and a 29 percent drop in Orange County,

At Kaiser Permanente, where arbitration is the way rather than court, claims have fallen by 20 percent since 2001.

The number of payments to victims and their families across California had also dropped by 24 percent since 1991. The Times looked at a federal database of half a million claims to make that determination

Insurance companies have made record profits in California compared to other states. The Times article states that California insurers have only paid 39 cents of every premium dollar since 1991 while the national average was 63 cents.

In spite of these facts, proponents of MICRA paint a dire picture of a world without caps or increased caps saying that it would lead to significantly higher healthcare costs and limit patients' access to doctors.

But several studies done on the subject especially one by The Foundation for Taxpayer and Consumer Rights, say the malpractice caps have not helped doctors either. The study says that other state policymakers should learn from California's experience.

The state with its cap tried to set tort limits and voters through the passage of Prop 103 in 1988 set the stage for insurance reform.

The study concludes that while the stringent continued regulation of malpractice insurance rates lowered premiums for doctors, malpractice caps and other restrictions on the tort system failed to provide doctors the relief they sought. This study found that malpractice rates rose six-fold between 1975

and 1988, until Proposition 103 was passed, after which those rates have held steady.

One of the largest studies done on the topic was by Dartmouth College researchers, which is also cited in the Los Angeles Times article. This study concluded that malpractice payments have risen along with medical care costs, while doctors' insurance premiums grew way quickly - by double-digit percentages annually for some specialties.

The caps, above all, violate victims' constitutional rights to due process and equal protection by limiting what they can receive for their pain and suffering. How is equal protection if you suffer a particular injury because of a doctor's negligence as opposed to a traffic accident and the doctor is not held fully accountable, but the negligent driver is made to pay?

A recent decision in Cooke County, Illinois, where a judge struck down a two-year-old state law that capped compensation to victims, gives new hope. According to an article in the Chicago Tribune, Cooke County Circuit Court Judge Diane Larsen decided that caps on malpractice awards violated the Illinois Constitution's "separation of powers" clause.

She ruled that the legislature cannot interfere with the right of judges and juries to determine fair damages. Her ruling reportedly falls in line with a 1997 Illinois Supreme Court decision, which overturned a 1995 law setting caps on personal injury lawsuits.

Many California personal injury attorneys are looking for the "right case" to appeal to our state's highest court with similar arguments to overturn these caps that are neither equitable nor beneficial to doctors or patients. We hope this law changes soon so patients can actually get fair compensation for their injuries or at least the opportunity to have their day in court.

What is the Medical Injury Compensation Reform Act (MICRA)?

The law enacted in 1975 basically did the following:

Placed a \$250,000 cap on the amount of compensation paid to malpractice victims for their "non-economic" injuries

Eliminated the "collateral source rule" that forces those found liable for malpractice to pay all the expenses incurred by the victim.

Permitted those found liable for malpractice to pay the compensation they owe victims on an installment plan basis.

Imposed a short "statute of limitations" on malpractice victims (generally one year).

Established a lowered sliding scale for attorneys' fees that discourages lawyers from accepting malpractice cases.

Source: How Insurance Reform Lowered Doctors' Medical Malpractice Rates In California, The Foundation for Taxpayer and Consumer Rights

About the Author

John Bisnar is a partner at Newport Beach Personal Injury Law Firm Bisnar Chase. The Bisnar Chase law firm has dedicated their practice to victims of serious injuries due to defective products, negligence and malpractice.

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