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The MICRA Framework

Grand Park Law Group · 2026



A. Origins and Constitutional Background

The Medical Injury Compensation Reform Act (MICRA) was enacted by the California Legislature during the 1975 second extraordinary session in response to what then-Governor Edmund G. Brown Jr. and the medical-insurance industry described as a "malpractice insurance crisis." The statute represented a comprehensive legislative compromise: in exchange for capping non-economic damages, restricting attorney contingency fees, permitting periodic payment of future damages, modifying the collateral-source rule, and shortening the statute of limitations, the Legislature sought to stabilize the medical liability insurance market and preserve patient access to care.

The statute's core components were codified across multiple codes: Cal. Code Civ. Proc. § 340.5 (statute of limitations), Cal. Code Civ. Proc. § 364 (90-day notice), Cal. Code Civ. Proc. § 667.7 (periodic payments), Cal. Civ. Code § 3333.1 (collateral source), and Cal. Civ. Code § 3333.2 (non-economic damages cap), with related provisions in the Business and Professions Code governing contingency-fee limitations.

MICRA survived a sustained wave of constitutional challenges through the late 1970s and 1980s. In *Fein v. Permanente Medical Group* (1985) 38 Cal.3d 137, the California Supreme Court upheld the $250,000 cap on non-economic damages against equal-protection and due-process challenges, applying rational-basis review. Subsequent decisions confirmed the constitutionality of the periodic-payment provisions and the collateral-source modification. The statute's frozen

$250,000 cap, however, became increasingly controversial: between 1975 and 2022, inflation had reduced its real value by roughly 80%, generating recurring legislative and ballot-initiative efforts to raise or repeal the cap.

B. AB 35 (2022) and the Phased Cap Increase

After decades of stalemate, the Legislature in 2022 enacted Assembly Bill 35 (Stats. 2022, ch. 17), a negotiated compromise between consumer-attorney organizations, the California Medical Association, and the hospital lobby that averted a then-pending ballot initiative. AB 35 amended Cal. Civ. Code § 3333.2 to establish a phased increase to the cap on non-economic damages, distinguishing for the first time between cases involving death and those involving non-fatal injuries.

The phased schedule operates as follows:

- **January 1, 2023:** $350,000 (non-death) / $500,000 (death)
- **Each subsequent January 1 for 10 years:** $40,000 annual increment (non-death) / $50,000 annual increment (death)
- **January 1, 2026:** $470,000 (non-death) / $650,000 (death) — three increments above the 2023 floor
- **January 1, 2033 (final scheduled year):** $750,000 (non-death) / $1,000,000 (death)
- **Beginning January 1, 2034:** Annual 2% inflation adjustment to the $750,000 / $1,000,000 figures

AB 35 also creates a structural distinction that did not exist under the original MICRA: the cap may be applied separately against (1) one or more healthcare providers and (2) one or more healthcare institutions, and a third cap may apply where an unaffiliated institution shares liability. For practitioners, this means that in a multi-defendant case, the aggregate non-economic damages cap may be considerably higher than the single-cap figures listed above.

AB 35 simultaneously revised the contingency-fee restrictions in Cal. Bus. & Prof. Code § 6146, modestly increasing permissible attorney compensation, and modified the collateral-source rule under Cal. Civ. Code § 3333.1.

Importantly, AB 35 applies to "all cases filed or arbitrations demanded on or after, January 1, 2023" (Civ. Code § 3333.2(g)). Application is therefore keyed to the filing date, not the date the cause of action accrued or the date of injury. A case alleging pre-2023 negligence remains governed by AB 35 so long as the complaint or arbitration demand was filed on or after January 1, 2023. Practitioners with claims that could be filed on either side of December 31, 2022 must therefore weigh filing strategy carefully — a single day's difference can mean a tenfold difference in non-economic damages exposure once the schedule is fully phased in.

C. What Counts as Professional Negligence

The MICRA framework applies only to claims arising from "professional negligence," a term defined in Cal. Civ. Code § 3333.2 and Cal. Code Civ. Proc. § 340.5 as "a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is

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the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed."

The line between "professional negligence" (subject to MICRA) and "ordinary negligence" (not subject to MICRA) is heavily litigated and frequently outcome-determinative. The California Supreme Court has held that MICRA applies when the act or omission is integrally related to the medical treatment, even where the immediate cause looks like a routine premises-liability incident. A patient who slips on a wet floor in a hospital lobby presents an ordinary-negligence claim; a patient who falls because nursing staff failed to follow physician fall-precaution orders presents a professional-negligence claim. *See, e.g.*, *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75 (rail-down on hospital bed implicating patient care implicates MICRA limitations).

The "professional negligence" classification has cascading procedural consequences: it triggers the § 340.5 statute of limitations rather than the two-year general personal-injury limit; it triggers the § 364 notice requirement; and it caps non-economic damages under § 3333.2. Counsel must therefore evaluate at intake whether the gravamen of the complaint sounds in professional negligence, ordinary negligence, intentional tort, elder abuse, or some combination, because pleading strategy may determine both the timeliness of the action and the magnitude of recoverable damages.

Practice	Medical Malpractice
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