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PRACTICE BRIEF · MEDICAL MALPRACTICE

MICRA at 50: AB 35's Phased Reforms and What They Mean for Malpractice Plaintiffs

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The Medical Injury Compensation Reform Act was enacted in 1975 in response to what California's legislature characterized as a medical malpractice insurance crisis. Its centerpiece — a $250,000 ceiling on non-economic damages — was intended as a temporary stabilizer. Fifty years later, it had never been adjusted for inflation, and a $250,000 award in 2022 represented roughly $56,000 in 1975 purchasing power.

AB 35, signed by Governor Newsom in May 2022, ended the era of the fixed $250,000 cap. It established a phased schedule of increases, beginning in 2023, that will more than triple the non-death cap and quadruple the death cap by 2033 — after which both adjust annually with inflation.

I. The Full Cap Schedule

The AB 35 schedule for non-economic damage caps in medical malpractice cases:

- 2023: $350,000 (non-death) / $500,000 (death)
- 2025: $400,000 / $600,000
- 2027: $450,000 / $700,000
- 2029: $500,000 / $875,000
- 2031: $600,000 / $950,000
- 2033: $750,000 / $1,000,000
- 2034 and after: indexed to 2% annual inflation

For cases tried in 2026, the applicable caps are **$400,000** (non-death) and **$600,000** (death).

AB 35 Phased Cap Schedule — Non-Economic Damages
2023
$500,000
$350,000
2025–26
Current
$600,000
$400,000
2027–28
$700,000
$450,000
2029–30
$875,000
$500,000
2031–32
$950,000
$600,000
2033+
$1,000,000 — then 2%/yr
$750,000 — then 2%/yr
Death & Permanent Injury
Non-Death Cases
Civ. Code § 3333.2 (AB 35, 2022) — verify current period

> *"For plaintiffs, the phased schedule creates a genuine strategic question: is it better to try the case now at a lower cap, or is the evidentiary position strong enough to warrant additional preparation time in anticipation of a higher cap year?"*

II. What MICRA Still Governs

AB 35 modified only the non-economic cap. The following MICRA provisions remain unchanged and continue to shape the economics of malpractice litigation in California:

A. Periodic Payment

Under Code of Civil Procedure § 667.7, any defendant in a medical malpractice case may elect, post-verdict, to pay future damages exceeding $50,000 in periodic installments. This converts a lump-sum future-care award into an annuity — protecting defendants against plaintiffs dying early, but also protecting plaintiffs against defendants who might otherwise have paid and run.

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B. Attorney Fee Schedule

MICRA caps plaintiff attorney fees on a sliding scale: 40% of the first $50,000 recovered, 33.33% of the next $50,000, 25% of the next $500,000, and 15% of any amount above $600,000. This scale has also not been adjusted since 1975 — though several reform efforts are pending in the legislature.

C. Collateral Source Offset

Unlike in ordinary personal injury actions, MICRA permits defendants to introduce evidence of collateral source payments (health insurance, disability benefits) and reduce the damage award accordingly. This provision significantly reduces recovery for plaintiffs who are adequately insured — which is the majority of California patients.

III. Strategic Implications: Timing and Case Selection

STRATEGIC CONSIDERATIONS FOR 2026 CASES

- The 2026 non-death cap ($400,000) means cases with strong non-economic damage exposure — paralysis, disfigurement, severe chronic pain — warrant re-evaluation of settlement ranges relative to 2024 and 2025
- Death cases now carry a $600,000 non-economic ceiling; wrongful death and survival actions together must fit within that cap — proper allocation between heirs matters
- Economic damages (past and future medical costs, lost income) remain uncapped and are often the dominant value driver in catastrophic cases
- Cases with multiple negligent actors may support arguments for separate per-defendant caps; the case law on this point is not uniform
- MICRA's attorney fee schedule, not the cap, often drives case economics — understanding net recovery after fees is essential to plaintiff counseling

California's medical malpractice landscape in 2026 is more favorable to injured patients than at any point in the last fifty years. But MICRA's remaining provisions — the fee schedule, periodic payment, collateral source offset — continue to create structural disadvantages for plaintiffs that require experienced advocacy to navigate.

Practice	Medical Malpractice
Topics	MICRA · AB 35 · Collateral Source
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