G | P
Grand Park Law Group
A Professional Corporation

Westside Towers
11835 W. Olympic Boulevard #870E
Los Angeles, California 90064

O:+1 888.629.4754
F: +1 310.900.0805

PRACTICE BRIEF · MEDICAL MALPRACTICE

Recent Developments in California Medical Malpractice Law (2023-2024)

Grand Park Law Group · January 2024 · 10 min read



The 2023-2024 period marked one of the most consequential stretches in California medical malpractice law in decades. Anchored by the implementation of AB 35 and its long-overdue reform of MICRA's damages cap, these two years also brought significant litigation and legislative activity touching hospital liability, wrongful death standing, expert qualification standards, and the standard of care in emergency settings.

Taken together, these developments signal a meaningful recalibration of the balance between healthcare provider protection and patient access to justice. For nearly half a century, California's medical malpractice framework had remained largely static, defined by the original MICRA legislation and the doctrines that grew up around it. The changes surveyed below represent the most significant period of reform since the mid-1970s, and practitioners on both sides of the aisle must understand their implications. This article examines five key developments in detail.

September 2022 / Effective January 1, 2023

AB 35 Signed: MICRA Reform After 47 Years

Governor Newsom signed AB 35 in September 2022, bringing to an end the 47-year freeze on MICRA's non-economic damages cap that had remained fixed at $250,000 since 1975. The legislation was the product of a negotiated compromise between plaintiff attorneys and the California Medical Association, reached in part to avert a contentious ballot initiative that would have restructured the cap more aggressively. By the time the law took effect on January 1, 2023, the original cap's real value had eroded to a fraction of its 1975 purchasing power.

AB 35 established a two-track phased schedule under Civil Code section 3333.2: $350,000 for non-death cases and $500,000 for wrongful-death cases starting January 1, 2023, with annual increases of $40,000 and $50,000 respectively through 2033. After 2033, both caps adjust by 2% annually for inflation, ensuring the cap will never again stagnate in real terms. The dual-track structure recognizes that wrongful death cases carry distinct severity and that families who have lost a loved one to medical negligence warrant a higher ceiling for pain and suffering recovery.

The reform immediately affected pending case valuations and settlement dynamics across the state. Cases that would have been capped at $250,000 in non-economic damages now carried substantially higher exposure for defendants, shifting the calculus for both settlement offers and trial strategy. Defense insurers began adjusting reserves, and plaintiff firms revisited case inventories to reassess which matters had become economically viable under the new caps. The phased schedule also introduced a timing dimension to litigation strategy: in cases where trial dates could be influenced, practitioners weighed whether deferring trial to a later cap year would meaningfully increase the client's recovery.

2023-2024

COVID-19 Hospital Liability Protections Debated

As California's pandemic-era emergency declarations expired, the state confronted a difficult question: whether the liability protections extended to hospitals and healthcare workers during the crisis should be formalized, extended, or allowed to lapse entirely. During the height of COVID-19, Governor Newsom's executive orders had provided some measure of protection for healthcare providers making emergency decisions under unprecedented conditions, including crisis standards of care, resource rationing, and the redeployment of personnel outside their usual specialties.

Plaintiffs argued forcefully that these protections should not shield providers from standard malpractice claims arising from non-COVID care delays. Patients whose cancer screenings were postponed, whose elective surgeries were indefinitely deferred, or whose chronic conditions were inadequately managed during the pandemic sought redress under traditional negligence theories. They contended that the emergency framework was never intended to insulate providers from accountability for treatment decisions unrelated to COVID-19 patient surges.

Courts grappled with causation questions that proved analytically challenging: Did pandemic conditions constitute a superseding cause that broke the chain of negligence? What standard of care applied when a hospital was operating under a declared emergency but the specific treatment at issue was not itself an emergency intervention? These questions produced inconsistent rulings at the trial court level, and appellate guidance remained limited as many cases settled before reaching the appellate courts. The uncertainty created a litigation environment in which both plaintiffs and defendants faced significant risk, often pushing cases toward negotiated resolution.

2023-2024

| Beverly Hills • San Francisco • San Diego • Chicago |
| Main: (888) 629-GPLG (4754) • Fax: (310) 900-0805 • www.GrandParkLawGroup.com |

Wrongful Death Statute Modernization

California's wrongful death statute, codified at Code of Civil Procedure section 377.60, underwent meaningful modernization efforts during 2023-2024. Historically, the statute had limited standing to bring wrongful death claims to a narrow set of family members, a framework that increasingly failed to reflect the diversity of modern family structures. Legislative amendments expanded the categories of persons entitled to bring wrongful death claims, including domestic partners and certain dependent stepchildren who had been functionally part of the decedent's household but lacked statutory standing under the prior law.

Courts also addressed the interplay between wrongful death actions and survival actions following SB 447's amendment to Code of Civil Procedure section 377.34. SB 447 had expanded the damages recoverable in survival actions to include pain, suffering, and disfigurement experienced by the decedent before death, reversing a longstanding limitation. The interaction between these expanded survival damages and the separate wrongful death recovery available to heirs required careful analysis, particularly in medical malpractice cases where the decedent endured a prolonged period of suffering before death due to a provider's negligence.

The modernization reflected an evolving understanding of who bears the real-world consequences of a patient's death caused by medical negligence. By broadening standing and expanding recoverable damages, California moved toward a framework that more accurately compensates the individuals who suffer genuine loss. Practitioners handling medical malpractice wrongful death cases during this period needed to carefully evaluate which family members and dependents now had actionable claims and how to allocate damages among multiple claimants to maximize total household recovery.

2023-2024

Expert Witness Standards Tightening

California courts tightened their scrutiny of expert witnesses in medical malpractice cases during 2023-2024, applying Evidence Code section 720 and the gatekeeper framework established in *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 with increasing rigor. Trial courts excluded experts whose opinions lacked adequate foundation in the specific medical specialty at issue, particularly where a proposed expert practiced in a different subspecialty or geographic region than the defendant provider. The trend signaled a judicial expectation that expert testimony must be grounded in direct, relevant clinical experience rather than general medical knowledge.

Defense motions to exclude plaintiff experts intensified, with defense counsel filing *Sargon* motions as a routine strategic tool in medical malpractice litigation. These motions challenged whether a plaintiff's expert had sufficient familiarity with the standard of care in the defendant's specific practice area, the type of facility where the alleged negligence occurred, and the clinical circumstances presented. Courts were receptive to these challenges where the gap between the expert's practice and the defendant's specialty was significant, such as a general internist opining on the standard of care for a subspecialty surgical procedure.

| Beverly Hills • San Francisco • San Diego • Chicago |
| Main: (888) 629-GPLG (4754) • Fax: (310) 900-0805 • www.GrandParkLawGroup.com |

For plaintiffs, the tightening of expert standards raised the practical cost and complexity of bringing medical malpractice claims. Securing an expert who not only held the right credentials but also practiced in a sufficiently similar subspecialty and setting became more difficult and more expensive. Plaintiff attorneys responded by investing more resources in early case evaluation and expert retention, recognizing that the viability of many cases now turned on whether a properly qualified expert could be identified and retained before the defense filed its inevitable exclusion motion.

2023-2024

Emergency Room Standard of Care Evolution

The standard of care applicable to emergency room physicians continued to evolve in California litigation during 2023-2024, as courts examined whether the heightened pace, limited patient history, and resource constraints inherent in emergency medicine warranted a modified standard of care. Defense counsel argued that emergency physicians should be evaluated against what a reasonably competent emergency physician would do under similar emergency conditions, rather than against the standard expected of a specialist seeing a patient in a controlled outpatient or inpatient setting. Plaintiffs countered that emergency physicians are board-certified specialists who are trained precisely for high-acuity, time-pressured decision-making, and that the emergency setting does not excuse failures to order appropriate diagnostic testing or follow-up care.

The distinction between emergency stabilization under the Emergency Medical Treatment and Labor Act (EMTALA) and ongoing treatment decisions created additional analytical complexity. EMTALA imposes a federal obligation to screen and stabilize patients presenting to emergency departments, but it does not define the state-law standard of care for the treatment decisions that follow stabilization. Courts had to parse whether an alleged act of negligence occurred during the initial stabilization phase, where the emergency context is most pronounced, or during subsequent treatment decisions where the urgency had diminished and additional clinical information was available.

Plaintiffs challenged the notion that emergency conditions excused delayed diagnosis or failure to order appropriate follow-up, arguing that modern emergency departments are equipped with sophisticated diagnostic tools and that emergency physicians have an obligation to use them. The evolving case law suggested that while courts would consider the emergency context as a factor in evaluating reasonableness, they would not adopt a categorical reduction in the standard of care for emergency physicians. The practical effect was a fact-intensive inquiry in each case, with the outcome hinging on the specific clinical circumstances, the resources available, and the timing of the treatment decisions at issue.

| Beverly Hills • San Francisco • San Diego • Chicago |
| Main: (888) 629-GPLG (4754) • Fax: (310) 900-0805 • www.GrandParkLawGroup.com |

KEY TAKEAWAYS FOR PRACTITIONERS

- AB 35's phased cap schedule under Civil Code section 3333.2 fundamentally alters case valuation; practitioners must account for the applicable cap year when advising clients on settlement timing and trial strategy
- COVID-era liability questions remain unsettled at the appellate level, creating both risk and opportunity for claims involving pandemic-related care delays
- Expanded wrongful death standing and SB 447's survival action amendments require careful identification of all potential claimants and strategic allocation of damages among heirs
- Expert witness retention now demands early investment in subspecialty-matched experts who can withstand *Sargon* gatekeeper challenges
- Emergency room cases require granular factual development distinguishing stabilization-phase decisions from post-stabilization treatment choices

Looking Ahead

The 2023-2024 period reshaped the terrain of California medical malpractice litigation in ways that will reverberate for years. From the structural reform of MICRA to the evolving standards for expert qualification and emergency care, these developments demand that practitioners stay current and adapt their strategies to a legal landscape that is, for the first time in decades, moving meaningfully in favor of injured patients.

As the AB 35 cap schedule continues its annual increases and appellate courts begin to address the unresolved questions surrounding pandemic-era liability and emergency room standards, the next several years promise further evolution. Practitioners who invest in understanding these shifts now will be best positioned to advise their clients effectively as the law continues to develop.

Practice	Medical Malpractice
Topics	AB 35 · MICRA · Wrongful Death · Standard of Care
Publication	Recent Developments · 2023-2024

Available online at grandparklawgroup.com/practices/medical-malpractice/insights/articles/recent-developments-2023-2024. This publication is provided for general information and is not legal advice.
© 2026 Grand Park Law Group, A.P.C. Attorney Advertising.