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PRACTICE BRIEF · PERSONAL INJURY

MICRA's Evolving Cap: Where California Stands in 2026 and What Plaintiffs Can Now Recover

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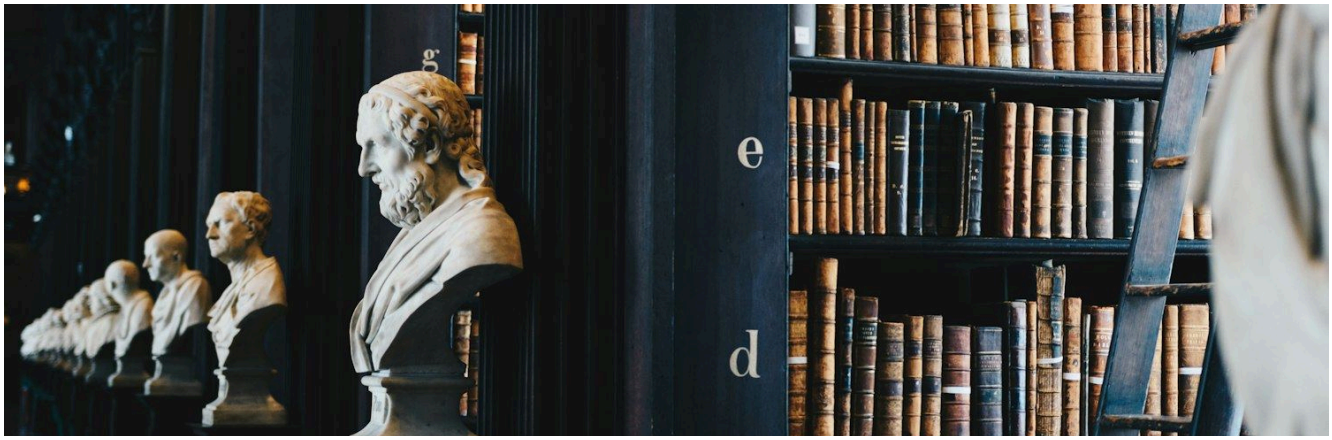

Since 1975, California's Medical Injury Compensation Reform Act (MICRA) imposed a $250,000 ceiling on non-economic damages — pain, suffering, emotional distress, and loss of consortium — in medical malpractice actions. For nearly five decades, that cap did not move. A nurse's aide who was left quadriplegic through a surgeon's negligence could not recover more than $250,000 for the non-economic dimensions of that loss — the same figure that was set when gas cost 57 cents a gallon.

AB 35, signed in 2022, changed that. The legislation enacted a phased schedule of cap increases that began in 2023 and continues through 2033. For personal injury plaintiffs — those pursuing non-MICRA tort claims — the MICRA reform is not directly applicable, but it reshaped the litigation landscape around adjacent claims and the valuation of healthcare-related injuries generally.

I. The Current MICRA Cap

Under AB 35's schedule, the non-economic damage cap in California medical malpractice cases for 2026 is:

- **$400,000** for cases not involving the death of the patient
- **$600,000** for cases involving the death of the patient

The schedule began in 2023 at $350,000 / $500,000 and increases each year. By 2033, the non-death cap reaches $750,000 and the death cap reaches $1,000,000, after which both caps adjust annually by 2% for inflation. Verify the applicable cap year under Civil Code § 3333.2 for any case

currently in litigation.

> *"The MICRA cap reform does not merely benefit malpractice plaintiffs. It recalibrated the entire landscape of how catastrophic injury cases are valued and settled in California — in both the medical and non-medical context."*

AB 35 Non-Economic Damage Cap — Key Milestones
Pre-2023
$250,000 — All Cases (uniform)
2023
Start
$500,000 — Death & Permanent Injury
$350,000 — Non-Death Cases
2026
Current
$600,000 — Death & Permanent Injury
$400,000 — Non-Death Cases
2033
Final
$1,000,000 — Death & Permanent Injury
$750,000 — Non-Death Cases
Death / Permanent Injury
Non-Death Cases
Civ. Code § 3333.2 (AB 35, 2022)

II. What Remained Unchanged

AB 35 modified the non-economic cap only. Several other MICRA provisions remain in force and continue to govern medical malpractice litigation:

- **Periodic payment of future damages:** Defendants can elect to pay future damages — including medical care costs — in periodic installments rather than a lump sum
- **Attorney fee limits:** MICRA imposes a sliding-scale cap on plaintiff attorney fees in malpractice cases (40% of first $50k, 33% of next $50k, etc.)
- **Collateral source rule:** Medical malpractice damages may be reduced by collateral source payments such as health insurance, unlike in ordinary personal injury cases

III. Strategic Implications for Personal Injury Plaintiffs

For plaintiffs asserting both medical malpractice and general negligence theories — common in cases involving negligent medical equipment, hospital premises liability, or non-physician health-care providers — the applicable cap depends on whether the claim falls within MICRA's scope. MICRA applies to "professional negligence" by a "health care provider." General negligence claims against the same defendant may not be subject to MICRA's cap.

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PRACTICAL CONSIDERATIONS FOR 2026 CLAIMS

- Economic damages — past and future medical costs, lost income, future earning capacity — remain uncapped; MICRA constrains only the non-economic component
- The $400,000 non-economic cap applies per plaintiff, per occurrence, regardless of how many defendants are named
- Claims involving multiple incidents of negligence may support multiple occurrences — each with its own cap — where the negligent acts were discrete events
- Death claims: the $600,000 cap applies to wrongful death and survival actions combined; claimants and heirs must allocate within that ceiling

If you or a family member has been injured by medical negligence, understanding the relationship between MICRA's evolving cap and your specific damages — economic and non-economic — is essential to evaluating the realistic value of your claim.

Practice	Personal Injury
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