

Damages: Past, Present, and Future

MICRA, the Medical Injury Compensation Reform Act, was passed by California in 1975 to control sky-rocketing medical malpractice insurance premiums, which seemed to force physicians out of practice, and to ensure the continuing availability of malpractice insurance coverage. MICRA instituted a cap of \$250,000 on any award for non-economic damages, like pain and suffering, and imposed limits on plaintiffs' attorney fees, with a sliding scale, allowing for fees between 40% and 15%, depending on the award.

When looking at California jury verdicts for medical malpractice cases, one study found that MICRA triggered changes by judges to jury awards in 45% of cases decided in plaintiff's favor. The reduction under MICRA reduced the overall liabilities of the defendants by 30 percent. In death cases, defendants' liabilities were reduced by 51 percent, compared with a 25 percent reduction in non-fatal injury claims.

Past proposed legislature has tried to have the \$250,000 cap increased to account for inflation. This most recent 2014 proposition, prop 46 was unsuccessful. This proposition would have increased the cap three-fold. However, with many physicians having malpractice policies for \$1,000,000 per incident, the adjustment for inflation would not be efficient in keeping premiums down for physicians, and the coverage would need to go up immensely. In fact, one study concluded that essentially tripling the cap would increase defendants' liabilities by 13%.

However, there may be future uses for an increased allowance for non-economic damages. With advances in medicine, it may become commonplace for once "traumatic" injuries to be treated more easily, making the plaintiff closer to whole. For example, when in the past, a surgical error could result in the loss of vision, or a horrible disfigurement, in the not-too-distant-future, optic nerves and body parts can be re-grown or transplanted, lessening the overall damage to the plaintiff. Thus, the barrier to what is considered "pain and suffering" may lower, and having the small period of time where one is without some body-part, may lead a jury to awarding higher non-economic damages than before.

With better treatment options, although economic damages in malpractice matters should decrease, there may need to be an incentive for physicians to practice careful medicine, and not act more adventurously or reckless. Whether the acts of physicians are controlled either by statute, or increased premiums, or if there is an overall decrease of medical malpractice actions due to the decreased financial reward, has yet to be seen.

Source: Capping Non-Economic Awards in Medical Malpractice Trials California Jury Verdicts Under MICRA by Nicholas M. Pace, Laura Zakaras, Daniela Golinelli 2004 RAND Corporation <https://www.rand.org/pubs/monographs/MG234.html>; Proposition 46: What Does the Research Say? ^[1] <https://www.rand.org/jie/justice-policy/projects/micra-ballot-initiative.html> ^[2]

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