

Restoring the “Spirit of ’75”

The First in a Series of Articles on California’s Medical Injury Compensation Reform Act (MICRA)

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Forget that new car or kitchen remodel if MICRA is changed to satisfy the trial attorneys. Without MICRA you could be paying more than \$100,000/year in malpractice premiums. With MICRA protections, California has some of the lowest premiums in the U. S.

MICRA was enacted in 1975 in response to skyrocketing judgments, drastic increases in malpractice insurance premiums, and diminishing access to health care. That year, two malpractice insurance companies made major announcements: One notified 2,000 Southern California physicians that their insurance would not be renewed, and the other notified 4,000 Northern California physicians that their premiums would be increased 300 to 500 percent.¹

Like our earlier heroes of 1775, anesthesiologists are activists and catalysts of change. On May 1, 1975, a major group of anesthesiologists in Northern California refused to pay the excessive premiums demanded by their insurer, Argonaut Insurance Company, and withdrew from all but emergency anesthesia service. Argonaut had first stated it would not renew policies expiring April 30, 1975, but then reversed itself to offer renewals on an individual physician basis, with premium increases of up to 380%.

Events then started escalating:^{2, 3}

May 6, 1975 The CSA Board of Directors call an emergency meeting at the State Capitol. More than 1,500 anesthesiologists and other physicians walk on Sacramento.

¹ <http://www.thedoctors.com/advocacy/ourcause/stateleg/micra.asp>

² California Society of Anesthesiologists *Bulletins* from 1974-1976

³ Ludlam, James E. *Health Policy—the Hard Way: an anecdotal personal history by one of the California players*, Hope Publishing Company, Pasadena, CA, 1998.

May 12, 1975 Anesthesiologists in three counties adjacent to the San Francisco Bay area offer emergency services only; they still had insurance coverage.

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- May 16, 1975 Governor Jerry Brown issues an emergency proclamation calling the Legislature into special session to deal with the malpractice insurance crisis.
- May 19-26, 1975 As the special session begins, more anesthesiologists in Los Angeles, San Diego, and Orange Counties withhold all but emergency services. This results in the lay-offs of 13,000 hospital employees in the 100 Southern California hospitals.
- May 31, 1975 The California Medical Association (CMA) House of Delegates meets in emergency session. The CMA warns that unless the Legislature implements meaningful legislation within approximately 90 days, a work stoppage by all physicians in the state is a possibility. CMA members are assessed \$300 to support lobbying efforts.
- June 2, 1975 The Northern California anesthesiologists return to work, paying the excessive premiums.
- September 1975 The CMA warns at a State Senate Committee hearing, that up to 45 percent of the State’s practicing physicians might retire, modify their practices or move out of the state unless premiums become affordable.
- September 9, 1975 MICRA (Medical Injury Compensation Act) is passed.
- November 1, 1975 Premiums for anesthesiologists in Northern California increase 300 percent, from \$7,000 to \$21,000/year (in 2003 dollars, premiums go from \$25,000 to \$75,000), with quotes up to \$32,000 (2003 dollars: \$104,500) for January 1976. Fortunately, the premium rates quickly fell and continued to decrease. (See Figure 1 on page 57.)

MICRA has kept the rates in California among the lowest in the country. The following table compares 2004 Malpractice Premiums for a \$1M/\$3M mature claims-made annual policy.

[Request copy of Table from CSA Office]

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Figure 1 shows California Anesthesiology Medical Liability Premium Rates from 1968-2003.

[Request copy of Figure 1 from CSA Office]

What is MICRA?

MICRA created the Board of Medical Quality Assurance (BMQA), now named the Medical Board of California, as well as procedures to review insurance premium rates. However, it is best known for its impact on malpractice claims.

MICRA’s key provisions for medical liability actions include:

1. \$250,000 limit on non-economic (general, pain, suffering, inconvenience, disfigurement, et cetera) damages for medical negligence
2. Disclosure of “Collateral Source” Payments
 - Physicians defending medical liability actions may inform the jury of payments to plaintiff from private health insurance, disability income insurance, life insurance, and state disability insurance.

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- This prevents “double-dipping” by the plaintiff. The jury has discretion to deduct any collateral source payments made to plaintiff in its award of damages.
 - The provider of the collateral source benefits (i.e., the health insurer) is prohibited from recouping the payments from either the plaintiff or the defendant.
3. Unlimited economic damages, such as lost earnings, medical care and rehabilitation costs.
 4. Limits on attorney contingency fees
 - 40% of first \$50,000
 - 33% of next \$50,000
 - 25% of next \$500,000
 - 15% of any amount exceeding \$600,000

For example, on a \$1,000,000 award, the patient receives \$779,000 and the attorney receives \$221,000.

5. Advance notice of a claim
 - A claimant must provide 90-days notice of intention to bring a suit for alleged professional negligence.
6. Limits on statute of limitations
 - For an adult, an action must be brought within one year after discovery of an injury and its negligent cause or within three years from injury, whichever occurs first.
 - For a patient under age 18, a malpractice action must be brought within three years of the date of the alleged injury.
 - For a patient under age 6, the suit may be brought up to three years from the date of the alleged injury or up until the child’s eighth birthday, whichever is later.
7. Periodic payments of future damages
 - If a jury awards \$50,000 or more for future damages, the courts must, at the request of either party, require that the money for future damages be paid periodically rather than in one lump sum.

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8. Option of future binding arbitration of disputes

- A written contract for medical services may include a clause that requires the parties to resolve any medical liability dispute through binding arbitration.

Table 2 illustrates the impact of MICRA key provisions on a typical case.

**Table 2. Illustration of MICRA Key Provisions
Based on a Typical Case⁴**

	No MICRA	With MICRA
Lost Income	\$725,000	\$725,000
Pain and Suffering ⁵	\$400,000	\$250,000
Reimbursed Medical	\$200,000	-0-
Out-of-Pocket Medical	\$150,000	\$150,000
Collateral Source Liens ⁶	(\$200,000)	-0-
Legal Costs & Expenses	(\$50,000)	(\$50,000)
Attorney Fees ⁷	(\$408,333)	(\$232,917)
Patient Net Recovery	\$816,667	\$842,083

Everyone benefits from MICRA. California patients can expect to receive a larger portion of a jury award because MICRA eliminates health insurance company liens and limits the contingency fees attorneys can claim for their services. California patients receive compensation within three years on average as compared to states without medical liability reform where cases drag on for six years or longer.

⁴ Personal Communication, NORCAL Mutual Insurance Company

⁵ Subject to cap under MICRA

⁶ Without MICRA, the collateral source may require the prevailing plaintiff to repay any benefits he or she received.

⁷ Without MICRA, contingency fees are usually 33 percent.

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Attorneys also benefit from MICRA. Plaintiff attorneys are not refusing the smaller cases because of MICRA. Of the 8,080 California cases reported to the National Practitioner Data Bank during 1995-1999, the median case payment was \$45,000. With contingency fees of 40 percent on the first \$50,000, rather than the traditional 33 percent without MICRA, plaintiff attorneys are not refusing the “smaller cases.”⁸

California physicians pay one-half to one-third of the premium charged in states without medical liability reform. Instead of dramatic increases, California anesthesiologists have seen their premiums decrease since the enactment of MICRA in 1975.

Medical liability insurers are better able to predict future claims and defense costs and avoid runaway verdicts that can lead to diminished financial capacity or even insolvency. California has the most healthy medical liability insurance companies in the nation because of MICRA.

Disclosures: Dr. Dailey is a Director of NORCAL Mutual Insurance Company.

⁸ Personal Communication, NORCAL Mutual Insurance Company