

What is the likely effect of Proposition 46 on trial awards for medical malpractice plaintiffs?

PATIENTS AND LAWYERS BOTH BENEFIT

Injured patients will on average be able to keep a higher proportion of their original jury awards, and their lawyers will also benefit.



Juries in California decide on liability in malpractice trials and award damages without knowledge of MICRA's limits on noneconomic damage awards. Judges then adjust the awards to comply with state law. The original awards would not change if Proposition 46 passes, but injured patients will, on average, be able to keep a higher proportion of their original jury awards. Their lawyers will also benefit.

A RAND study looked at the effects of MICRA on malpractice awards in California by examining 257 medical malpractice trials that ended with a verdict for the plaintiff between 1995 and 1999. In these cases, judges reduced total awards (which include verdicts for both economic and noneconomic damages) by an average of 30 percent to comply with the law. The cap was imposed in 45 percent of all plaintiff verdicts.

The damage cap had a disproportionate effect on certain kinds of cases in the study sample:

- Death cases had much larger reductions than non-fatal cases, with a median loss of 49 percent when the award was capped (versus a 28 percent drop for injury cases). The reason for these deep percentage cuts in total award size for wrongful death verdicts is that death cases receive relatively low awards for economic damages compared with the amounts originally granted by juries for noneconomic damages.
- Newborns and young children with very critical injuries had some of the steepest reductions in their awards—often \$2.5 million or more. Plaintiffs less than one year of age had awards capped 71 percent of the time, compared to 41 percent for all plaintiffs with nonfatal injuries.
- Victims of brain damage and other catastrophic injuries, including paralysis, often incurred reductions of more than a million dollars.

WHAT IF THE MICRA CAP HAD BEEN INDEXED FOR INFLATION?

The researchers also calculated how these results would have been different if the MICRA cap had been indexed for inflation since 1975. By 1999 (the last year of the study sample), the cap would have nearly tripled to \$774,000 from the original \$250,000. Assuming that the same number and types of trials would occur under these modified conditions in the five years' worth of cases examined, researchers found:

- Defendants would have saved 21 percent of the amount originally awarded (compared with a 30 percent savings under the fixed MICRA cap). Put another way, their payments for all of the trials in the sample would have increased by 13 percent as a result of tripling the cap.
- The proportion of verdicts over the cap would have decreased by more than half, from 45 percent to 19 percent.
- Catastrophic injury cases would have been capped 40 percent of the time, compared with 63 percent of the time with a fixed cap.
- Total attorneys' fees paid would have increased by about 12 percent.
- Net recoveries to plaintiffs (adjusted awards minus attorneys' fees) would have increased by about 13 percent.

WHAT WOULD BE THE EFFECT OF INCREASING THE CAP TO \$1.1 MILLION AS PROPOSED BY PROP 46?

A dramatic and immediate jump in the threshold would undoubtedly change the malpractice landscape in noticeable ways—by expanding access to attorney representation, increasing the number of malpractice claims made against health care providers, and changing the frequency and types of litigation that survive to the trial stage. Based on what the earlier report concluded about a hypothetical tripling of the cap, it is reasonable to assume that raising the cap to over a million dollars would:

reduce the savings realized by defendants and their insurers that MICRA now affords

defendant



decrease the number of jury verdicts reduced by a judge

judge



increase total attorneys' fees across all cases to some degree

lawyer



increase total net recoveries across all plaintiffs

plaintiff



It will be important to remember, however, that it is impossible to forecast conclusively without collecting information about recent awards in medical malpractice trials in California. Verdict size, trial frequency, and the types of injury and death claims heard by juries may well be different from what they were during the original study period.



This infographic describes work done in the RAND Institute for Civil Justice and documented in *Is Better Patient Safety Associated with Less Malpractice Activity? Evidence from California* by Michael D. Greenberg, Amelia M. Haviland, J. Scott Ashwood, Regan Main, TR-824-ICJ (available at www.rand.org/t/TR824.html), 2010; *Patterns of Specialization in Medical Malpractice Among Contingency Fee Attorneys* by Michael D. Greenberg, Steven Garber, WR-700-ICJ (available at www.rand.org/pubs/working_papers/WR700.html), 2009; and *Capping Non-Economic Awards in Medical Malpractice Trials: California Jury Verdicts Under MICRA* by Nicholas M. Pace, Laura Zakaras, Daniela Golinelli, MG-234-ICJ (available at www.rand.org/t/MG234.html), 2004. The RAND Corporation is a research organization that develops solutions to public policy challenges to help make communities throughout the world safer and more secure, healthier and more prosperous. RAND is nonprofit, nonpartisan, and committed to the public interest. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors. RAND® is a registered trademark.

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