



American Medical Association

Physicians dedicated to the health of America

Components of an Effective Cap on Non-Economic Damages

Not all caps are created equal! California's Medical Injury Compensation Reform Act of 1975 ("MICRA") law includes a proven and effective **\$250,000 hard cap on non-economic damages**. Under this cap, non-economic damage awards do NOT increase over time, or with multiple defendants or claimants. The wording in a cap is critical and must prevent the courts from applying a cap per doctor and/or per claimant.

For example, a statute that states:

"The total amount of non-economic damages recoverable for all malpractice claims for injuries to or death of a patient shall not exceed \$250,000 regardless of the number of physicians or claimants involved."

The statutory language should not be equivocal. The legislative intent and statute's wording should be clear and not subject to misinterpretation by the courts.

Effective medical liability reform, ideally, also should incorporate MICRA's other important features including:

- collateral source offsets,
- limits on contingency and other attorney fees,
- advance notice of liability claims,
- effective statute of limitations,
- periodic payment of damages,
- binding arbitration agreements permitted,
- damages capped per incident, and
- abolition of joint and several liability.

\$250,000 Non-Economic Damage Caps are Proven and Effective. The higher the cap, the less effective it is, as these experts attest:

- "I would expect the effectiveness of a cap on non-pecuniary damages to drop off rather quickly above \$250,000. After a cap of \$500,000 is added to economic damages – as well as pre-judgment interest, defense costs, and other items that may be coming out of the insurance limits – the percentage of physicians likely to carry enough insurance to benefit becomes small." (McCullough, Campbell & Lane)
- Few physicians carry policies with coverage limits above \$1,000,000. With a \$500,000 cap, total damages come close to the policy limit. Therefore, the number of claims against physicians affected by the \$500,000 cap is likely to be small, and the resulting effect on payments to plaintiffs similarly small. (McCullough, Campbell & Lane; Tillinghast-Towers Perrin)

Examples of Caps that Do Not Work. Without a firm cap on non-economic damage caps and other MICRA-like medical liability reforms, these states will likely remain in crisis:

- Florida: Variable \$500,000 to \$1,000,000 non-economic damages cap, and no joint and several liability reform.
- Massachusetts: \$500,000 non-economic damages cap with exceptions; no joint and several liability reform; no periodic payment provision; no affidavit/certificate of merit requirement and a three year statute of limitations for adults.
- Missouri: \$350,000 cap adjusted annually for inflation (currently over \$500,000); a cap allowed for each of multiple claimants and for each of multiple physicians added to the case; no joint and several liability reform; no collateral source reform and no limits on attorney's fees.

Examples of States Without Caps in Crisis. New York, Oregon, Illinois, Kentucky, Washington, Arkansas, Connecticut, North Carolina, and Pennsylvania.

Pass effective reforms and positive results follow

- Within three years after the enactment of direct tort reforms, including caps on non-economic damages, premiums in states with direct reforms declined by 8.4%. (D. Kessler and M. McClellan, 1997)
- Premiums in the United States have risen 750 percent between 1976-2002, while under MICRA in California, premiums have risen only 245 percent between 1976-2002. (National Association of Insurance Commissioners)
- Texas' new law and constitutional amendment in 2003 upholding a cap on non-economic damages has resulted in insurers reducing premiums on multiple occasions. (Texas Medical Association) For example, Medical Liability Trust, reduced their premiums a total of 17% in the year 2004.
- The number of liability lawsuits filed in Texas in 2004 has plummeted as compared to those filed in 2003. (The Associated Press)
- Caps on non-economic damages reduce medical professional liability expenses by 31%. When underwriting costs (such as defense costs) were also included, the reduction was 23%. (Sloan et al., 1989)
- Caps on damages (which included non-economic, total, and punitive damage caps) decreased medical professional liability expenses by between 16% and 29% in the short term. (Viscusi and Born, 1995)
- Caps on non-economic damages reduced medical professional liability expenses. (Zuckerman et al., 1990)
- Caps on non-economic damages have been extremely effective in reducing the severity of claims. (Congressional Budget Office, 1998)

**Professional Liability Insurance
Manual rates for \$1M/\$3M policies***

Ob-gyn	2000	2001	2002	2003	2004
Florida (Miami-Dade)	147,621	166,368	201,376	249,196	277,241
Pennsylvania (Philadelphia)	37,556	45,938	100,045	134,335	161,211
Illinois (Chicagoland)	78,880	88,928	102,640	139,696	147,540
Connecticut	63,292	77,533	94,978	123,470	148,164
New York	115,429	115,431	115,431	123,853	133,787
New Jersey	68,000	68,000	70,720	102,643	128,304
Missouri (St. Louis/Kansas City)	49,603	49,603	55,071	79,208	92,726
California (Los Angeles)	52,874	52,874	54,563	60,259	63,272

General Surgery

Florida (Miami-Dade)	110,068	124,046	174,268	226,542	277,241
Pennsylvania (Philadelphia)	33,684	35,793	82,157	108,038	128,524
Illinois (Chicagoland)	52,364	59,016	68,080	92,576	102,700
Connecticut	32,651	34,283	36,854	42,385	57,220
New York	62,733	65,870	65,870	74,211	80,163
New Jersey	32,333	38,800	41,516	58,786	63,489
Missouri (St. Louis/Kansas City)	34,722	34,722	38,759	55,649	65,131
California (Los Angeles)	32,507	32,507	36,740	45,421	54,505

Internal Medicine

Florida (Miami-Dade)	32,744	38,378	56,153	65,697	69,310
Pennsylvania (Philadelphia)	7,390	7,853	18,429	24,546	27,505
Illinois (Chicagoland)	19,604	22,060	26,404	35,756	38,424
Connecticut	7,736	9,863	13,820	21,420	28,917
New York	16,751	16,751	21,648	23,228	25,091
New Jersey	11,359	12,495	13,620	20,893	23,818

Missouri (St. Louis/Kansas City)	9,921	9,921	11,572	16,385	19,140
California (Los Angeles)	10,097	10,097	11,164	12,493	14,237

**The rates in the table above are examples of manual rates for professional liability insurance. These rates were selected by the AMA from a comprehensive rate report of insurers in all 50 states by the Medical Liability Monitor, an independent Chicago-based publication. This table does not include all the rates reported for the geographic areas selected above, nor the premiums paid by physicians in other areas of the country, which may be higher or lower. These rates reflect the manual rates for one of the state's marketshare leaders. The MLM reports that these rates do not reflect credits, surcharges, or other factors that may reduce or increase the actual rates charged to physicians. The AMA alone is responsible for the accuracy of the above information taken from the MLM and believes the rates listed above are a reasonable benchmark to demonstrate professional liability insurance trends for select specialties in certain geographic areas. To view the full report or to verify its accuracy, the survey may be obtained by visiting www.mlmonitor.com or by calling 312-944-7900. Note: Connecticut 2004 rates are for \$1 million/\$4 million limits.*

A Properly Constructed Non-Economic Damages Cap Works in Stabilizing and Reducing Medical Liability Insurance Rates and Improving Patient Access to Care

For the most comprehensive data, please refer to *Medical Liability Reform Now!*, which can be downloaded from the AMA Web site: www.ama-assn.org/go/mlrnow