

EMTALA and the MICRA Cap

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The Emergency Medical Treatment and Active Labor Act (EMTALA) is a federal law that requires hospitals to screen and stabilize individuals who come to their emergency rooms suffering from an "emergency medical condition." EMTALA permits an individual harmed by a violation of its provisions to recover "those damages available for personal injury under the law of the state in which the hospital is located."

On March 25, 1999, the California Supreme Court issued its decision in a case entitled *Dawnelle Barris v. County of Los Angeles* (1999) 20 Cal.4th 101. It held that an award of noneconomic damages for violating the "failure to stabilize" requirement of EMTALA is subject to the \$250,000 limitation under California's Civil Code §3333.2, part of the 1975 Medical Injury Compensation Reform Act (MICRA). The decision has brought needed clarity to this narrow question, resolving a conflict between state and federal courts in California. However, it has left unresolved whether the damages limitation also applies to a screening claim under EMTALA. On a broader scale, by restricting the precedential value of an earlier decision, it has created uncertainty where there had at least been hope for a consistent statutory scheme addressing claims against health care providers.

A Failure to Stabilize Claim is Based on Professional Negligence

The limitation on noneconomic damages, the so-called MICRA cap, applies to causes of action "based on professional negligence." While recognizing that a failure to stabilize claim under EMTALA is not identical to a state malpractice claim, the court concluded nonetheless that such a claim is one "based on professional negligence." EMTALA defines "to stabilize" as "to provide such

medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from the facility" The court explained, "The standard of 'reasonable medical probability' is an objective one, inextricably interwoven with the professional standard for rendering medical treatment."

Thus, "the medical causation proof required to establish an EMTALA claim that a hospital failed to provide medical treatment to assure, within reasonable medical probability, that the patient's condition would not materially deteriorate is the same as that which would be required to prove 'a negligent act or omission to act by a health care provider'" under Civil Code §3333.2.

The MICRA Cap May or May Not Apply to a Screening Claim

The court left for another day the question of whether a claim based on a violation of EMTALA's screening requirement is also subject to the MICRA cap. EMTALA requires "an appropriate medical screening examination within the capability of hospitals," but leaves "appropriate" undefined. Most federal circuits have held that EMTALA requires a hospital to provide uniform medical screening to all patients. Thus, a hospital faces liability for a screening violation upon proof of disparate treatment or proof that it departed from its standard screening protocol.

The question of whether proof of improper motive is required to establish a screening claim is unsettled, although most federal circuits have found that it is not. (See *Roberts v. Galen of Virginia, Inc.* (1999) 119 S.Ct. 685, 687 & fn. 1 ["express[ing] no opinion" on the matter].) In any event, it is not clear that proof of a screening claim necessarily overlaps with proof of a medical negligence claim - the rationale for applying the MICRA cap to a failure to stabilize claim.

Even if there is no overlap, a future court

may yet decide the MICRA cap applies. Two concurring justices in *Barris* concluded that any failure to comply with EMTALA, including noncompliance with the screening requirement, fits the MICRA definition of professional negligence, and thus any claim against a hospital for violation of EMTALA qualifies as an act based on professional negligence, "without regard to whether the particular claim entails consideration of the prevailing medical standards of care generally associated with a malpractice action." Until a screening case works its way up through the system, this will remain an area of uncertainty for hospitals, with the potential for very high damages exposure.

Central Pathology is Just a Case about Punitive Damages

In reaching its decision in *Barris*, the court affirmed the judgment of the court of appeal but rejected its rationale that relied on *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181. The court of appeal had concluded that the MICRA cap applies to a failure to stabilize claim because the injury giving rise to it is "directly related to the professional services provided," i.e., is an injury "arising from" or "based on" professional negligence, as that phrase was construed in *Central Pathology*.

Echoing its recent decision in *Delaney v. Baker* (1999) 20 Cal.4th 23 construing the Elder Abuse Act, the Supreme Court cautioned that *Central Pathology's* broad definition of professional negligence has no application outside the context of Code of Civil Procedure §425.13, a punitive damages statute that employs MICRA phraseology although it was enacted after MICRA. Rather, the scope and meaning of the phrases "arising from professional negligence" and "based on professional negligence" can vary depending on the statute at issue. In the words of Justice Brown, concurring in *Delaney*, "[b]ased on professional negligence" means whatever this court says at any particular moment." Whether it will turn out to mean the same thing at least in every MICRA provision is far from certain. □