

S283128

SUPREME COURT OF CALIFORNIA

FRANCISCO GUTIERREZ,
Plaintiff and Appellant,
v.

URIEL TOSTADO, et al.,
Defendants and Respondents.

H049983
(Santa Clara County
Super. Ct. No. 20CV361400)

PETITION FOR REVIEW

After a Decision by the Court of Appeal
Sixth Appellate District

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TABLE OF CONTENTS

ISSUE FOR REVIEW..... 4

INTRODUCTION 5

STATEMENT OF THE CASE 7

 A. Factual Summary7

 B. Procedural History.....8

REASONS WHY REVIEW IS WARRANTED 9

 A. Whether MICRA applies to traffic accidents involving
 ambulances is a recurring issue of statewide importance....9

 B. There is a split of authority about when MICRA applies
 to ambulance accidents — and most decisions violate
 this Court’s precedents 11

 C. Review is necessary because depublishing the Court
 of Appeal’s opinion will not resolve the underlying
 problem..... 14

CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases

<i>Aldana v. Stillwagon</i> (2016) 2 Cal.App.5th 1.....	6, 12
<i>Canister v. Emergency Ambulance Service, Inc.</i> (2008) 160 Cal.App.4th 388.....	5, 6, 13, 14
<i>Flores v. Presbyterian Intercommunity Hospital</i> (2016) 63 Cal.4th 75	6, 11, 12, 13, 15
<i>Johnson v. Open Door Community Health Centers</i> (2017) 15 Cal.App.5th 153.....	6, 13, 14
<i>Lee v. Hanley</i> (2015) 61 Cal.4th 1225	11, 12, 13, 15
<i>Lopez v. American Medical Response West</i> (2023) 89 Cal.App.5th 336.....	6, 13, 14

Rules

California Rules of Court, Rule 8.1125.....	14
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ISSUE FOR REVIEW

Does the Medical Injury Compensation Reform Act (“MICRA”) govern personal-injury claims by drivers whose vehicles are struck by negligently-driven ambulances?

INTRODUCTION

Every year, hundreds of Californians are involved in automobile accidents with ambulances.¹ In a published 2-1 decision in this case, the Sixth Appellate District holds that those drivers' personal-injury claims are subject to MICRA, as long as there is a patient in the back of the ambulance at the time of the accident. (Typed Opn. at 6-10.)

The majority opinion, authored by Presiding Justice Greenwood and joined by Justice Grover, reasons that if treatment is being rendered when an ambulance crashes, then any resulting lawsuit involves a claim for professional negligence that is subject to MICRA's one-year statute of limitations. (Typed Opn. at 6-7.) The dissenting opinion, authored by Justice Bromberg, argues that this interpretation of MICRA is unpredictable and unfair, since injured third parties rarely know whether a patient was in the back of an ambulance at the time it struck them. (Typed Disn. Opn. at 1.)

The split among the justices on the panel about whether MICRA governs ambulance accidents reflects a larger split of authority on this question within the Court of Appeal — one that now spans five published opinions. This Court's intervention is necessary to resolve the split and restore uniformity to this area of California law.

The first entry in the debate was the Court of Appeal's decision in *Canister v. Emergency Ambulance Service, Inc.* (2008) 160 Cal.App.4th 388, which held that MICRA applies to suits by

¹The data underlying this estimate is analyzed at pages 9-10 of the petition.

third parties who are injured when ambulances crash, because driving an ambulance is within the scope of licensure for paramedics and EMTs. (*Id.* at pp. 404-408.) This Court rejected that licensure-based test when it considered the scope of MICRA in *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, 86. Unfortunately, the *Flores* decision did not cite or expressly overrule *Canister*. As a result, the Court of Appeal has remained divided over whether *Canister* is still good law.

The court in *Aldana v. Stillwagon* (2016) 2 Cal.App.5th 1, declined to follow *Canister*, noting that it was “questionable” whether the decision was correct in light of *Flores*. (*Id.* at p. 7.) Instead, *Aldana* held that MICRA does not apply to “a ‘garden-variety’ accident not resulting from the violation of a professional obligation but from a failure to exercise reasonable care in the operation of a motor vehicle.” (*Id.* at p. 5.)

The court in *Johnson v. Open Door Community Health Centers* (2017) 15 Cal.App.5th 153, admitted that “the court's rationale, in *Canister*, does not comport with *Flores*'s analysis,” but claimed “the outcome is arguably correct” because EMTs transporting a patient in an ambulance are rendering professional services. (*Id.* at p. 162.) The court in *Lopez v. American Medical Response West* (2023) 89 Cal.App.5th 336 agreed, following *Canister* on the ground that “*Flores* does not mention — much less overrule — *Canister*.” (*Id.* at pp. 346-346.) And the majority opinion in this case also follows *Canister*, rejecting the argument “that *Canister* is no longer viable authority after *Flores*.” (Typed Opn. at 6.)

This Court should grant review to resolve the split within the Court of Appeal, particularly because the majority of the decisions have reached the wrong conclusion. Their “interpretation extends MICRA’s statute of limitations unpredictably and unfairly,” by conditioning the amount of time an injured motorist has to sue on whether there was a patient in the back of the ambulance when it crashed. (Typed Disn. Opn. at 1.) And because MICRA also caps noneconomic damages and attorney fees, the same rule may mean motorists have vastly different rights depending on what type of vehicle struck them on California’s roads.

Applying MICRA to suits by third parties injured in ambulance crashes is also anomalous, because there is not “any reason to believe that traffic accident claims involving ambulance drivers are covered by medical malpractice insurance.” (Typed Disn. Opn. at 4-5.) To harmonize the statute’s text with its purpose, this Court should clarify that MICRA applies “only to claims requiring proof that a professional obligation owed by health care providers has been violated.” (*Id.* at 2-5.)

STATEMENT OF THE CASE

A. Factual Summary

Plaintiff Francisco Gutierrez was stopped on the I-280 freeway when he was rear-ended by an ambulance. (Typed Opn. at 1.) The ambulance was driven by an EMT, Uriel Tostado, who was employed by ProTransport-1, LLC. (*Id.*) Gutierrez was injured in the collision, and he visited a chiropractor within ten days. (*Id.* at 2.)

At the time of the accident, the ambulance was carrying out the non-emergency transport of a patient. (Typed Disn. Opn. at 1.) Without seeing lights and sirens, Gutierrez had no way to know that there had been a patient in the back of the ambulance that struck him, who was receiving care from Tostado's partner, another EMT. (*Id.*)

B. Procedural History

Gutierrez filed a complaint against Tostado and ProTransport-1 before the normal two-year statute of limitations for personal injury had elapsed. (Typed Opn. at 2.) The defendants moved for summary judgment on the sole ground that Gutierrez's claims were untimely under MICRA's two-year statute of limitations for professional negligence by healthcare providers. (*Id.*)

The trial court agreed and granted the motion. (*Id.*) It ruled that, because Tostado was transporting a patient at the time he crashed into Gutierrez's vehicle, his failure to stop was professional negligence — and was therefore subject to MICRA. (*Id.*) Gutierrez filed a timely notice of appeal from the judgment. (*Id.*) The Court of Appeal affirmed in a 2-1 published decision.

The majority opinion holds “that third parties injured in a collision with an ambulance when it is rendering medical care are subject to MICRA.” (Typed Opn. at 8.) It rejects the argument “that driving safely is an overlapping duty Tostado owed to the general public, not a specific duty he owed by virtue of his role as a healthcare provider.” (*Id.* at 9.) The majority reasoned, “Simply because there is also a general duty owed to the public to drive

safely does not negate the fact that the conduct at issue in this case was integral to the provision of medical care.” (*Id.*)

The dissenting opinion argues that MICRA should be “interpreted to apply only if the plaintiff advances a claim requiring proof that an obligation owed by health providers was violated.” (Typed Disn. Opn. at 2.) It contends that Gutierrez’s claims sound in general negligence because they “are based on the generally applicable, nonprofessional duty of care owed by all drivers” — not a professional obligation specific to EMTs or paramedics. (*Id.* at 5.)

REASONS WHY REVIEW IS WARRANTED

A. Whether MICRA applies to traffic accidents involving ambulances is a recurring issue of statewide importance

The legal system needs a clear answer to whether MICRA applies when ambulances strike other vehicles on California’s roads, because accidents of this type are extremely common. There are 6,427 of these accidents in the United States every year.² The majority of fatal crashes occur while ambulances are *not* responding to emergencies, and most of the people killed are occupants of other vehicles.³

People struck by ambulances — and the families of those killed in such accidents — deserve definitive answers about (1) how long they have to sue and (2) whether noneconomic

² National Highway Traffic Safety Administration, “Ground Ambulance Crashes,” February 2023, p. 15, https://www.ems.gov/assets/Ground-Ambulance-Crashes-Presentation_-2012-2018-Data_FINAL.pdf

³ *Id.* at pp. 13-14.

damages and attorney fees are capped by MICRA. This fact pattern has occurred thousands of times in the past; it will recur thousands of times in the future. It is unfair to defendants, to injured parties, and to their attorneys to maintain uncertainty about the rules that govern such a common species of accident.

The exact number of ambulance crashes per year in California is hard to pin down, but it is clear that these incidents are widespread. If the rate of ambulance accidents in each state is proportionate to population then, as the largest state in the country, California would have more than 750 of these accidents every year.⁴

There are 60,000 EMTs in California and 20,000 paramedics.⁵ Together, they operate 3,600 ambulances on the state's public roads.⁶ Those ambulances respond to 6.4 million calls per year, each of which presents an opportunity for an accident.⁷ When those accidents inevitably occur, the legal rules that govern them must be clear. Today, they are not.

⁴ Stanford Institute for Economic Policy Research, "California's Population Drain," October 2023, <https://siepr.stanford.edu/publications/policy-brief/californias-population-drain> [California's 39 million residents represent 11.7% of total U.S. population]

⁵ California Ambulance Association, "California's Ambulance Industry," 2022, <https://www.the-caa.org/california-s-ambulance-industry>

⁶ *Id.*

⁷ California Emergency Medical Services Authority, Annual EMS Data Report, 2020, p. 14, https://emsa.ca.gov/wp-content/uploads/sites/71/2022/05/SYS_100-09_Annual_EMS_Report_CY2020.pdf

B. There is a split of authority about when MICRA applies to ambulance accidents — and most decisions violate this Court’s precedents

Today, there is a split in the Court of Appeal about whether traffic accidents involving ambulances are governed by MICRA. Worse, it is a split in which the majority of the decisions have not followed the principles established by this Court.

In *Flores v. Presbyterian Intercommunity Hospital*, this Court warned that MICRA’s “special rule for professional negligence” should not be transformed “into an all-purpose rule covering essentially every form of ordinary negligence that happens to occur on hospital property.” (*Id.*, 63 Cal.4th at p. 86.) Recognizing that the obligations owed by healthcare providers “often overlap with obligations that all persons subject to California’s laws have,” the Court explained that lawsuits alleging the breach of a “generally applicable obligation” by a healthcare provider are not subject to MICRA. (*Id.* at p. 88, quoting in part *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1238.)

Instead, the Court held that MICRA would apply only to suits alleging “negligence in rendering the professional services that hospitals and others provide *by virtue* of being health care professionals: that is, the provision of medical care to patients.” (*Id.* at p. 88, emphasis added.)

The test that the Court adopted in *Flores* was imported from the Court’s decision the prior year in *Lee*, which construed a sister statute of MICRA that governed professional negligence by attorneys. (*Flores*, 63 Cal.4th at p. 88 [“Although *Lee* concerned a different statute of limitations, its analysis of the similarly

worded statute of limitations governing actions against attorneys is instructive.”].) *Lee* held that the statute before it applied “when the merits of the claim will necessarily depend on proof that an attorney violated a professional obligation — that is, an obligation the attorney has *by virtue of* being an attorney — in the course of providing professional services.” (*Lee*, 61 Cal.4th at p. 1229, original emphasis.) The Court emphasized that the statute did *not* apply if, while providing professional services, the attorney breached a “generally applicable nonprofessional obligation” — such as the obligation not to commit theft or sexual battery. (*Id.* at p. 1238.)

The *Lee/Flores* test clearly indicates that ambulance crashes are not subject to MICRA, because the duty to drive safely on California’s roads is a general obligation shared by all drivers, not a duty that ambulance drivers owe *by virtue of* being healthcare professionals. That was what Justice Bromberg recognized in his dissenting opinion in the present case. (Typed Disn. Opn. at 5 [“In my view, MICRA’s statute of limitation should be interpreted in accordance with *Lee* majority’s approach to apply only to claims requiring proof that a professional obligation owed by health care providers has been violated” and it therefore does not apply to claims “based on the generally applicable, nonprofessional duty of care owed by all drivers.”].)

It was also the approach that the Court of Appeal took in *Aldana*, which ruled that MICRA did not apply when a paramedic crashed an emergency vehicle on the way to a 911 call. (*Aldana*, 2 Cal.App.5th at p. 5.) That unanimous opinion

perfectly applied the *Lee/Flores* rule: “The obligation was one that [the paramedic] owed to the general public by virtue of being a driver and not one that he owed to a patient by virtue of being a paramedic.” (*Id.* at p. 5.)

Yet the majority in this case reached the opposite conclusion. Its opinion admits that there is “a general duty owed to the public to drive safely,” but holds that suits alleging the breach of that duty by paramedics or EMTs are still subject to MICRA, because driving an ambulance is “integral to the provision of medical care” when a patient is being transported. (Typed Opn. at 9.) This reasoning is obviously contrary to the *Lee/Flores* test, as Justice Bromberg pointed out. (Typed Disn. Opn. at 1 [noting that the test adopted in this case mirrors the “the *Lee* dissent’s approach”].)

Yet this expansive reading of MICRA has now been endorsed by multiple panels of the Court of Appeal in published opinions. The first of these came before the *Flores* decision. (See *Canister*, 160 Cal.App.4th at p. 392 [“We hold that . . . negligence in operating an ambulance qualifies as professional negligence....”].) However, there are now multiple post-*Flores* opinions endorsing the same rule. (See *Johnson*, 15 Cal.App.5th at p. 162 [“EMTs who allegedly operated an ambulance without due care were rendering professional services at the time”]; accord, *Lopez*, 89 Cal.App.5th at p. 347 [“MICRA's statute of limitations applies to plaintiffs’ claims because their alleged injuries occurred while the EMT's were rendering professional services by transporting plaintiffs in an ambulance”].)

None of these opinions grapple with the bizarre results of the rule they have adopted. If everything a paramedic or EMT does while transporting a patient is subject to MICRA, then does MICRA apply if those healthcare providers sexually assault their patients in the back of ambulances? What if they steal a patient's belongings? And if whether MICRA applies to a collision depends on whether there was a patient in the back of an ambulance when it crashed, then how are third parties supposed to know how long they have to file suit? Since injured motorists rarely see inside the back of the ambulances that hit them, will victims of ambulance accidents have to wait until discovery is underway to find out whether their claims are subject to MICRA?

These are only a few of the questions that now remain unanswered about how MICRA applies to EMTs and paramedics. This Court's intervention is necessary to resolve the split of authority in the Court of Appeal and to restore fairness and predictability to this area of the law.

C. Review is necessary because depublishing the Court of Appeal's opinion will not resolve the underlying problem

The anomalous consequences of the rule adopted by the majority of the Court of Appeal in this case cannot be eliminated simply by depublishing the opinion pursuant to California Rule of Court 8.1125.

First, the majority's holding mirrors the position that has already been adopted in three published opinions over a period of 15 years. (See *Canister*, 160 Cal.App.4th at p. 392; *Johnson*, 15 Cal.App.5th at p. 162; *Lopez*, 89 Cal.App.5th at p. 347.) This

expansive reading of MICRA will continue to be cited as good law in California until this Court grants review and expressly disapproves of it.

Second, in hindsight, this Court's decision in *Flores* was not explicit enough to avoid misinterpretation by the Court of Appeal. *Flores* "signaled that it would follow *Lee*'s approach in interpreting MICRA's statute of limitations." (Typed Disn. Opn. at 3.) However, that signal has not proven emphatic enough to restrain the Court of Appeal's instinct to expand MICRA beyond its intended scope.

As Justice Bromberg acknowledges, "*Flores* did not rule that the MICRA's statute of limitations applies only to claims requiring proof that a professional obligation has been violated." (*Id.*) That appeared to the Court's thinking; "nothing in *Flores* suggests that the Supreme Court intended to reject *Lee*'s approach and to interpret MICRA's statute of limitations to apply in a fundamentally different way." (*Id.*) Yet a definitive statement of the *Lee/Flores* rule was not provided with sufficient clarity to avoid any potential misunderstanding.

Review, rather than depublication, is necessary to make explicit what was implicit in *Flores*. This Court must expressly hold that MICRA: (1) applies to claims that allege the breach of a duty that a defendant owed *by virtue* of being a healthcare provider; and (2) does not apply to claims alleging the breach of generally applicable duties, even when the breach of those duties occurs *during* the rendering of professional services.

CONCLUSION

In the next decade, thousands of Californians will be struck by ambulances on this state's roads. When that occurs, they deserve to know whether their claims are subject to MICRA. This Court should grant review to provide that clarity.

Dated: January 4, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.504(d)(1))

The text of this petition consists of 2,781 words, according to the word count generated by the Microsoft Word word-processing program used to prepare the brief.

Dated: January 4, 2024.

/s/ Jeffrey I Ehrlich

Jeffrey I. Ehrlich

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

FRANCISCO GUTIERREZ,

Plaintiff and Appellant,

v.

URIEL TOSTADO, et al.,

Defendants and Respondents.

H049983

(Santa Clara County

Super. Ct. No. 20CV361400)

Francisco Gutierrez appeals from a judgment entered after the trial court granted summary judgment in favor of respondents Uriel Tostado and ProTransport-1, LLC, on the basis that Gutierrez’s personal injury claims were time-barred under the Medical Injury Compensation Reform Act (MICRA). Gutierrez contends that the trial court erred when it found MICRA’s one-year statute of limitations for professional negligence applicable. We conclude that because Tostado was a medical provider rendering professional services at the time the alleged negligence occurred, MICRA’s statute of limitations bars Gutierrez’s claims. We thus affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Gutierrez was driving on Interstate 280 when he was forced to stop. Shortly after Gutierrez stopped, Tostado, who was driving an ambulance, rear-ended him. At the time of the accident, Tostado was an emergency medical technician (EMT) employed by ProTransport-1, LLC and was transporting a patient from one medical facility to another. While Tostado drove, his partner attended to the patient in the rear of the ambulance.

Gutierrez was injured in the collision and visited a chiropractor for treatment within ten days of the incident.

Almost two years later, Gutierrez filed a complaint against Tostado and ProTransport-1, alleging various personal injury claims. The respondents filed a motion for summary judgment on the sole ground that Gutierrez’s claims were time barred under MICRA’s one-year statute of limitations. The trial court agreed that MICRA applied and granted the motion. The trial court concluded that because Tostado was transporting a patient at the time of the accident, he was rendering professional services. The trial court held that Gutierrez’s claims against the defendants were time-barred under the statute.

Gutierrez timely appealed from the judgment.¹

II. DISCUSSION

A. *Standard of Review*

“We review the grant of summary judgment de novo, and in doing so, we review the evidence in the light most favorable to the losing party. [Citation.]” (*Lopez v. American Medical Response West* (2023) 89 Cal.App.5th 336, 342 (*Lopez*).) In this case, the trial court granted summary judgment based on its statutory construction of MICRA. We review issues of statutory construction de novo. (*Aldana v. Stillwagon* (2016) 2 Cal.App.5th 1, 6 (*Aldana*).)

B. *MICRA’s Statute of Limitations Bars Gutierrez’s Claims*

The trial court granted summary judgment on the sole ground that Gutierrez’s action was barred by the statute of limitations set forth in MICRA. Gutierrez contends that the trial court erred in dismissing his claims because MICRA does not apply to his

¹ Gutierrez filed his notice of appeal on April 19, 2022, after the trial court had granted summary judgment in favor of the defendants but prior to judgment being entered. We issued an order to show cause as to why Gutierrez’s appeal should not be dismissed as premature. After the trial court filed the judgment and Gutierrez submitted a notice of submission of judgment, we discharged the order to show cause and deemed Gutierrez’s notice of appeal filed on July 11, 2022, the date judgment was entered.

personal injury claims. A personal injury action for negligence must generally be filed within two years of the date on which the injury occurred. (Code Civ. Proc., § 335.1.)² However, suits against health care providers for professional negligence must be filed within one year. (§ 340.5.) Gutierrez argues that the one-year statute of limitations does not apply to his action because his claims are for general negligence not professional negligence, and the duty that Tostado violated by crashing into his car was a duty of care generally owed to the public, not a professional duty owed by a medical provider to a patient.

MICRA defines professional negligence as “a negligent act or omission to act by a health care provider in the rendering of professional services.” (§ 340.5, subd. (2).) The parties do not dispute that an EMT transporting a patient in an ambulance is providing medical care to the patient for purposes of the statute. (*Lopez, supra*, 89 Cal.App.5th at p. 347; *Canister v. Emergency Ambulance Service, Inc.* (2008) 160 Cal.App.4th 388, 407 (*Canister*).) However, only actions “alleging injury suffered *as a result of* . . . the provision of medical care to patients” are covered. (*Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, 88, italics added (*Flores*).)

In this appeal we must decide whether a driver in a separate vehicle, injured in a collision with an ambulance transporting a patient, was injured as a result of the provision of medical care, such that MICRA’s one year statute applies. Gutierrez urges us to find that any injury here was caused by ordinary negligence. He argues that where a medical provider owes no professional duty to the plaintiff and allegedly breaches only a duty owed to the general public, a claim for personal injuries should be governed by the two-year statute of limitations applicable to ordinary negligence. Conversely, respondent suggests that the critical question is not whether defendant owed plaintiff a professional duty, but simply whether plaintiff was injured as a result of the provision of medical

² All statutory references are to the Code of Civil Procedure, unless otherwise stated.

services by defendant; in other words, was plaintiff’s injury a foreseeable consequence of defendant’s act of providing medical care?

1. *Legal Framework for MICRA*

The Supreme Court in *Flores* examined what it means for a health care provider to render professional services under MICRA. There, a hospital patient sued the hospital for negligence after the latch on her bedrail broke, causing her to fall and injure herself. (*Flores, supra*, 63 Cal.4th at p. 89.) The court considered the difference between regular negligence arising out of the duty owed to the general public, the negligence in the maintenance of equipment and premises that are merely convenient for, or incidental to, the provision of medical care to a patient, and the negligence that arises from the duty owed to patients in the rendering of professional services. (*Id.* at pp. 88-89.) The court found that “Even those parts of a hospital dedicated primarily to patient care typically contain numerous items of furniture and equipment—tables, televisions, toilets, and so on—that are provided primarily for the comfort and convenience of patients and visitors, but generally play no part in the patient’s medical diagnosis or treatment. Although a defect in such equipment may injure patients as well as visitors or staff, a hospital’s general duty to keep such items in good repair generally overlaps with the ‘obligations that all persons subject to California’s laws have[.]’ [Citation.]” (*Ibid.*)

Relying on its prior decision in *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1237 (*Lee*)³, for this concept of overlapping duty, the court held that where there are overlapping

³ In *Lee*, the Court considered “section 340.5’s neighboring provision imposing a one-year statute of limitations for ‘[a]n action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services.’ [Citation.]” (*Flores, supra*, 63 Cal.4th at p. 87.) The court decided “that section 340.6(a) is properly read to apply to claims that ‘depend on proof that an attorney violated a professional obligation in the course of providing professional services.’ [Citation.]” (*Ibid.*) Explaining that the statute excludes services unrelated to the law or matters that entail violations of professional obligations that may overlap with obligations that all persons have, the court emphasized that the statute applies when an attorney violates a

obligations—those owed to patients, and those owed to the general public—an injury resulting from a breach of a generally applicable obligation does not fall within MICRA. “Rather, the special statute of limitations for professional negligence actions against health care providers applies only to actions alleging injury suffered as a result of negligence in rendering the professional services that hospitals and others provide by virtue of being health care professionals: that is, the provision of medical care to patients.” (*Flores, supra*, 63 Cal.4th at p. 88.) The court concluded that the hospital’s alleged negligence in the maintenance of plaintiff’s bedrail did not overlap with its general duty owed to the public because it was “integrally related to [plaintiff’s] medical diagnosis and treatment,” and was therefore professional negligence encompassed by MICRA. (*Id.* at p. 89.)

Flores and *Lee* both considered whether the injury to the patient or client was caused by negligence in the provision of professional services or whether the injury was the result of the breach of some broader overlapping duty owed to the public. Gutierrez asks us to conclude that the contrast drawn in those cases, between a professional duty and the general duty owed to the public, means that MICRA only applies where the defendant owes a professional duty to the plaintiff. However, neither *Flores* nor *Lee* considered whether MICRA applies where the plaintiff is injured during the provision of professional services, as a result of those services, but was *not the recipient* of the services. In both of those cases, the plaintiff was either the client or the patient. Multiple courts have considered injuries to third parties who were not patients and have concluded that MICRA applied to their claims.

In *Canister*, a police officer accompanying an arrestee in the back of an ambulance was injured when the ambulance hit a curb. At the time of the accident, the ambulance was being driven by one EMT while another attended to the arrestee in the rear of the

professional obligation as opposed to some generally applicable nonprofessional obligation. (*Id.* at pp. 87-88.)

ambulance. The officer sued for negligence. (*Canister, supra*, 160 Cal.App.4th at p. 392.) After finding that an EMT was a health care provider and that transporting a patient constituted professional services within the meaning of MICRA, the *Canister* court held that MICRA extends to “ ‘any foreseeable injured party, including patients, business invitees, staff members or visitors, provided the injuries alleged arose out of professional negligence.’ [Citation.]” (*Id.* at pp. 407-408.) The court concluded that it was foreseeable as a matter of law that a police officer accompanying an arrestee in an ambulance might be injured in the operation of the ambulance. (*Id.* at p. 408.)

Gutierrez argues that *Canister* is no longer viable authority after *Flores*, because *Flores* set forth “a completely new framework for analyzing the scope of MICRA, making those prior cases irrelevant.” *Flores* neither mentions nor overrules *Canister*. (See *Lopez, supra*, 89 Cal.App.5th at pp. 345-346 [expressing doubt that *Flores* overruled *Canister*].) Nor did it need to. Because the plaintiff in *Flores* was a patient injured at the hospital due to faulty equipment, the analysis necessarily focused on whether the duty owed to plaintiff was that of a medical provider or a duty owed to the general public. The *Flores* court concluded that by providing the bedrail the hospital was *providing medical care*, not just a convenience incidental to care. The question before the *Flores* court was *what* duty was owed to its patient, not to *whom* their professional duty of care extended.

2. Tostado was a medical provider providing medical care at the time of the accident.

Tostado was transporting a patient who was receiving medical care at the time of the accident. He drove while his partner attended to the patient. There is no question that transporting a patient in an ambulance qualifies as the provision of medical care, and that the act of driving the ambulance is an integral part of that care. (*Lopez, supra*, 89 Cal.App.5th at p. 347.) For certain patients, safe and quick ambulance transport may mean the difference between life and death. Even though the transport at issue here does

not appear to have been emergent, we cannot say that an interfacility transport is so trivial that it can be characterized as being “merely convenient for, or incidental to, the provision of medical care to a patient.” (*Flores, supra*, 63 Cal.4th at p. 88.) Consistent with *Flores*, driving the ambulance qualifies, under the circumstances here, as “rendering of professional services.” (See § 340.5, subd. (2); contrast *Aldana, supra*, 2 Cal.App.5th at pp. 5, 7-8 [MICRA does not apply where paramedic supervisor not transporting patient, but driving to the scene of an emergency in a truck].)

3. Gutierrez was injured as a result of the provision of medical care.

Because Gutierrez was not the recipient of the medical care, the question here is different from the one raised in *Flores*. It is not whether the injuries alleged were the result of general or professional negligence. Instead, the question here is whether an injury to a third party, who is *not* a patient, is subject to MICRA’s statute of limitations because the injury occurred during, and as a result of, the provision of medical care by a medical provider.

The court in *Lopez*, a case decided after *Flores*, considered this issue and decided that nonpatients injured while an EMT was rendering professional services were subject to MICRA. In *Lopez*, plaintiffs were the patient who was being transported by an ambulance and his son who was also in the ambulance. Both were injured when the ambulance was in an accident. The *Lopez* court held, “MICRA’s statute of limitations applies to plaintiffs’ claims because their alleged injuries occurred while the EMT’s were rendering professional services by transporting plaintiffs in an ambulance. Plaintiffs’ injuries resulted from [] negligence in the ‘use or maintenance of equipment [the ambulance] integrally related to [plaintiff’s] medical diagnosis and treatment’ and therefore was professional negligence for the purposes of section 340.5. [Citation.]” (*Lopez, supra*, 89 Cal.App.5th at p. 347.) The court acknowledged that the son was not a patient. However, the court held that this fact “does not change our analysis because the injury to both plaintiffs occurred while defendant was using the ambulance to transport

[the patient]. Section 340.5 applies to negligent acts or omissions ‘in the rendering of professional services’ but does not require the services to have been performed for the plaintiff. [Citations.]” (*Id.* at p. 347, fn. 6; see *Aldana, supra*, 2 Cal.App.5th at p. 8 [“MICRA is not limited to suits by patients”]; *Canister, supra*, 160 Cal.App.4th at p. 407 [applying MICRA to claim by third party injured while defendant rendered professional services to another].)

In both *Canister* and in *Lopez*, the nonpatient was also a passenger in the ambulance. Here, plaintiff was not a passenger in the ambulance, but was injured by Tostado while Tostado was providing medical services. *Canister* focused on the foreseeability of the injury to a passenger (*Canister, supra*, 160 Cal.App.4th at pp. 407-408), while *Lopez* adopted the *Flores* framework and found that the passenger was injured due to negligence in the rendering of professional services and did not need to be the recipient of the services (*Lopez, supra*, 89 Cal.App.5th at p. 347). Because neither *Flores* nor *Lee* considered MICRA’s applicability to nonpatients, we must agree with *Canister* and *Lopez* and conclude that MICRA is not limited to suits by patients or to recipients of medical services as long as the plaintiff is injured due to negligence in the rendering of professional services and his injuries were foreseeable.

The provision of ambulance services involves driving on the road, sometimes at a very high speed. Getting a patient to the hospital quickly is often as integral to the provision of this medical service as performing CPR or administering medication intravenously. It is, therefore, entirely foreseeable that collisions may occur where third parties are injured. The fact that Tostado was not driving quickly here or that Gutierrez was in a separate vehicle rather than in the ambulance does not change the analysis or our conclusion that third parties injured in a collision with an ambulance when it is rendering medical care are subject to MICRA.

To hold otherwise would lead to unintended consequences. At oral argument we posed the following hypothetical to counsel for Gutierrez: If a hospital attendant were

wheeling a patient on a gurney down the hallway of the hospital at a high speed and ran into a hospital visitor, injuring both the patient on the gurney and the nonpatient visitor, would the visitor be subject to MICRA, or the two-year statute of limitations for general negligence? Counsel for Gutierrez acknowledged that under their proposed approach of applying MICRA only to those owed a professional duty by the medical provider, the third party would be subject to a general negligence statute of limitations. Counsel's concession demonstrates the untenability of such a result. Under Gutierrez's proposed approach, two people involved in the same accident at the same time would be subject to two different statutes of limitations, possibly resulting in two separate lawsuits with inconsistent judgments and greatly increased costs for all involved. Such an outcome is inconsistent with the fundamental intent of MICRA to "reduce the cost of medical malpractice insurance 'by limiting the amount and timing of recovery in cases of professional negligence.' [Citations.]" (*Flores, supra*, 63 Cal.4th at p. 81.)

For these reasons, Gutierrez's reliance on *Johnson v. Open Door Community Health Centers* (2017) 15 Cal.App.5th 153 and on *Aldana* to argue that driving safely is an overlapping duty Tostado owed to the general public, not a specific duty he owed by virtue of his role as a healthcare provider, is misplaced. Simply because there is also a general duty owed to the public to drive safely does not negate the fact that the conduct at issue in this case was integral to the provision of medical care. As explained in *Flores*, even when there is a general duty to the public to maintain safe premises, MICRA applies where equipment is "integrally related to [a patient's] medical diagnosis and treatment." (*Flores, supra*, 63 Cal.4th at pp. 88-89; *Lopez, supra*, 89 Cal.App.5th at p. 347 [relying on *Flores* to conclude that ambulance transport is "integrally related" to a patient's medical diagnosis and treatment].) Similarly here, even though Tostado may owe a duty to the public to drive the ambulance safely when not in use for medical care, the injury to Gutierrez occurred while Tostado, a medical provider, was performing the integral

function of transporting a patient by ambulance. The trial court correctly concluded that MICRA's one-year statute of limitations applied to Gutierrez's negligence claims.

III. DISPOSITION

The judgment is affirmed.

Greenwood, P. J.

I CONCUR:

Grover, J.

H049983
Gutierrez v. Tostado, et al.

Bromberg, J., dissenting.

I respectfully dissent. The majority interprets the statute of limitations in the Medical Injury Compensation Reform Act (MICRA) (Code Civ. Proc., § 340.5) to apply whenever a claim involves conduct constituting professional negligence under MICRA. This interpretation extends MICRA's statute of limitations unpredictably and unfairly. It also departs from the Supreme Court's approach to a similarly worded statute of limitations in *Lee v. Hanley* (2015) 61 Cal.4th 1225 (*Lee*) in favor of the *Lee* dissent's approach. In my view, we should follow the *Lee* majority.

This case arises out of a run-of-the-mill traffic accident involving an ambulance that happened to be transporting a patient on a non-emergency matter, presumably with its siren off. As a consequence, plaintiff Francisco Gutierrez had no way of knowing that the ambulance that rear ended him was transporting a patient and therefore no way of knowing that, under interpretation adopted by the majority, MICRA's statute of limitations applies. (It also would have been difficult for Gutierrez or his lawyer to determine that MICRA's statute of limitations applies to claims against paramedics because paramedics are no longer included in the statutory provisions referenced by MICRA. (See *Canister v. Emergency Ambulance Service, Inc.* (2008) 160 Cal.App.4th 388, 395-399 [noting that the paramedic provisions were moved in 1982].) As a consequence, Gutierrez and his counsel were quite likely surprised to learn that his traffic accident claim is subject to MICRA's one-year limitations period rather than the two-year period now generally applicable to personal injury claims. (See Code Civ. Proc., § 335.1.)

MICRA's statute of limitations need not be interpreted to apply in such an unpredictable and surprising manner. That statute of limitations applies to claims "for injury or death against a health care provider *based upon* such person's alleged professional negligence" (Code Civ. Proc., § 340.5, italics added), and the Supreme Court has interpreted a similarly worded, neighboring statute of limitations to apply only to

claims that are based on professional negligence in the sense that they require proof that a special obligation imposed on professionals has been violated. As a consequence, MICRA's statute of limitations need not be interpreted to apply here because the ambulance that rear-ended plaintiff happened to be carrying a passenger. Instead, MICRA's statute of limitations can—and, in my view, should—be interpreted to apply only if the plaintiff advances a claim requiring proof that an obligation owed by health providers was violated.

This is how the Supreme Court interpreted the statute of limitations in section 340.6 of the Code of Civil Procedure in *Lee*. Section 340.6 applies to claims “against an attorney for a wrongful act or omission . . . arising in the performance of professional services.” (Code Civ. Proc., § 340.6, subd. (a).) *Lee* held that “the way a plaintiff styled his or her complaint” does not determine whether a claim arises in the performance of professional services by attorneys under section 340.6. (*Lee, supra*, 61 Cal.4th at p. 1236.) It also held that a claim does not arise in the performance of professional services merely because it touches upon professional services (*id.* at p. 1238), rejecting the dissent's position that section 340.6 applies whenever such services are involved. (See *id.* at p. 1242 (dis. opn. of Corrigan, J.) [“I would hold that section 340.6 governs any claim against an attorney, except for actual fraud, that is based on the attorney's wrongful conduct in performing professional services.”].) Instead, the Supreme Court held that application of section 340.6 depends on the proof needed to establish the claim asserted by the plaintiff: Specifically, under *Lee* a claim arises out of the performance of professional services, and triggers application of section 340.6, if it requires “proof that an attorney violated a professional obligation as opposed to some generally applicable nonprofessional obligation.” (*Id.* at p. 1238.)

MICRA's statute of limitations should be interpreted using this approach. In *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75 (*Flores*), the Supreme Court relied on *Lee* in interpreting MICRA's statute of limitations. Section

340.6, *Flores* noted, is a “neighboring provision” that is “similarly worded.” (*Id.* at pp. 87-88.) *Flores* also observed that *Lee*’s analysis of section 340.6 is “instructive” (*id.* at p. 88) and, in particular, that *Lee*’s distinction between professional obligations and generally applicable nonprofessional obligations applies to MICRA’s statute of limitations. “Just as an attorney’s obligations ‘often overlap with obligations that all persons subject to California’s laws have’ [citation], so do the obligations of hospitals.” (*Ibid.*) “And,” *Flores* continued, “just as an attorney’s breach of a generally applicable obligation to avoid stealing from or physically harming his or her clients does not fall within section 340.6(a), so too, we conclude, an injury resulting from a hospital’s breach of a generally applicable obligation to maintain its equipment and premises in a safe condition does not fall within section 340.5.” (*Ibid.*)

It is true that *Flores* did not rule that the MICRA’s statute of limitations applies only to claims requiring proof that a professional obligation has been violated. That issue was not raised in *Flores*: The question before the Supreme Court in *Flores* was instead whether the violation that the plaintiff sought to prove involved “professional negligence.” (*Flores, supra*, 63 Cal.4th at pp. 88-89 [concluding that maintaining a hospital bed’s rail involved professional negligence because it was “integrally related to the medical treatment and diagnosis of the patient”].) Nonetheless, *Flores* signaled that it would follow *Lee*’s approach in interpreting MICRA’s statute of limitations by observing that section 340.6 is “similarly worded” to MICRA’s statute of limitations (*id.* at pp. 87-88), describing *Lee*’s analysis of section 340.6 as “instructive” (*id.* at p. 88), and noting that *Lee*’s distinction between professional obligations and generally applicable nonprofessional obligations applies to MICRA. (*Ibid.*) Moreover, nothing in *Flores* suggests that the Supreme Court intended to reject *Lee*’s approach and to interpret MICRA’s statute of limitations to apply in a fundamentally different way from section 340.5. much less that it intended to interpret MICRA’s statute of limitations using the approach of the *Lee* dissent.

In addition, adopting the *Lee* majority’s approach avoids the unpredictability and unfairness that the approach of the *Lee* dissent creates here. Under the dissent’s approach, MICRA’s statute of limitations and its one-year limitation period applies whether or not a plaintiff such as Gutierrez had reason to suspect that a patient was being treated in the ambulance that rear-ended him. By contrast, under the *Lee* majority’s approach, MICRA’s one-year statute of limitations applies only if a plaintiff asserts a claim requiring proof that a health care provider’s professional obligation has been violated, which means that under that approach the plaintiff will always know if his or her claim is based upon professional negligence and there will no surprise or unfairness.

The majority objects that it is impracticable to interpret MICRA’s statute of limitations to depend on whether a claim requires proof that a professional obligation has been violated because claims by two people involved in the same accident at the same time might be subject to two different statutes of limitations. While it is true that claims by different people may be subject to different statute of limitations, that is no reason to reject the *Lee* majority’s approach. *Lee* itself recognized that under this approach claims brought by the *same* person concerning the same conduct may be subject to different statutes of limitations: (*Lee, supra*, 61 Cal.4th at p. 1230 [“[A]n claim based on his violation of [the defendant’s professional] obligations is time-barred” but “a claim for conversion whose ultimate proof at trial may not depend on the assertion that [defendant] violated a professional obligation . . . is not time-barred.”].) As a consequence, it is neither impermissible nor impractical to interpret MICRA’s statute of limitations so that claims involving the same conduct may be subject to different statutes of limitations if they are based on different theories.

The majority also argues that a restrictive interpretation of MICRA’s statute of limitations would undermine MICRA’s overarching goal of reducing the cost of medical malpractice insurance. However, the majority does not offer any reason to believe that traffic accident claims involving ambulance drivers are covered by medical malpractice

insurance. Nor does it offer any reason to believe that, if such claims are covered, they are so numerous and costly that they will have a material impact on medical malpractice rates. In any event, MICRA's statute of limitations was not intended to shorten the limitations period for tort claims against health care providers. When MICRA was enacted, personal injury claims were subject to the same one-year limitations period as under MICRA (*Flores, supra*, 63 Cal.4th at p. 82), and therefore extending MICRA's limitations period to personal injury claims would not have limited claims or reduced medical malpractice costs (*id.* at p. 86). Indeed, because MICRA adopts a discovery rule that delays the running of the statute of limitations (Code Civ. Proc., § 340.5), "at the time MICRA was enacted," extension of the Act's statute of limitations "could well have been counterproductive" from a financial perspective. (*Flores, supra*, 63 Cal.4th at p. 87, fn. 4.)

In sum, I see no good reason to reject the approach of the *Lee* majority in interpreting MICRA's statute of limitations, much less to do so in favor of the *Lee* dissent's approach. In my view, MICRA's statute of limitation should be interpreted in accordance with *Lee* majority's approach to apply only to claims requiring proof that a professional obligation owed by health care providers has been violated. Because Gutierrez's claims are based on the generally applicable, nonprofessional duty of care owed by all drivers, I also would conclude that his claims are not subject to MICRA's statute of limitations and reverse the judgment.

BROMBERG, J.

Gutierrez v. Tostado et al.
H049983

Trial Court:

Santa Clara County Superior Court
Superior Court No.: 20CV361400

Trial Judge:

The Honorable Christopher G. Rudy

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H049983

Gutierrez v. Tostado et al.

Gutierrez v. Tostado, et al.
Supreme Court No. S283128
Court of Appeal No. H049983
Superior Court Case No.: 20CV361400

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 237 West Fourth Street, Second Floor, Claremont, CA 91711.

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Executed on **January 4, 2024**, at Claremont, California.

/s/ Isabel Cisneros-Drake
Isabel Cisneros-Drake, Paralegal

Gutierrez v. Tostado, et al.
Supreme Court No. S283128
Court of Appeal No. H049983
Superior Court Case No.: 20CV361400

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Lower Court Case Number: **H049983**

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