

PRF NEWS

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Covering Practice and Risk Management Issues for Health Professionals

Oppose the Lawyers' Health Care Lawsuit Ballot Measure

Protect Access to Quality Health Care and Patient Privacy

BY A.J. KENNEDY AND VICTOR CHRISTY

Physicians Reimbursement Fund has joined a broad and bipartisan coalition of doctors, community health centers, hospitals, local governments, public safety, business and labor groups to fight a November 2014 ballot proposition that will weaken MICRA by making it easier and more profitable for lawyers to sue health care providers like doctors, hospitals and community clinics. Under this measure, lawyers will make more money, but providers, consumers and taxpayers will see higher health care costs.

WHAT MICRA IS AND WHAT IT DOES

California's Medical Injury Compensation Reform Act (MICRA) governs what happens when someone is injured while receiving medical treatment. The law ensures injured patients receive fair compensation and also preserves patients' access to health care by including disincentives for lawyers to file meritless lawsuits against health care providers which do nothing but increase health care costs. In turn, this keeps medical liability rates low for doctors, nurses and health care providers so they can remain in practice, treating patients.

Prior to the passage of MICRA, California was in a medical liability crisis. Lawsuits against health care providers filed by enterprising attorneys were driving medical liability premiums sky high. It was so bad that some physicians retired early and/or left the state to practice elsewhere. In some dire cases, doctors went without any liability coverage at all. Patients were losing the ability to see their trusted physicians.

With MICRA, medical liability rates have stabilized and health care consumers have saved billions of dollars.

The data in the table below compares annual professional liability costs in three states. With more stable rates, more health care providers can remain in practice providing care to patients.

Provisions of MICRA

MICRA preserves patients' access to fair compensation when they have justifiable claims, including:

- UNLIMITED compensation for all economic or out-of-pocket costs for past and future medical care;
- UNLIMITED compensation for any past and future lost wages or lost earning potential;

- UNLIMITED compensation for punitive damages; and
- Up to \$250,000 for non-economic damages.
 - The \$250,000 cap reduces incentives to file meritless lawsuits, while at the same time ensuring that legitimate claims can move forward.

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Annual Professional Liability Costs

	California (Los Angeles/ Orange Counties)	New York (Nassau/ Suffolk Counties)	Florida (Dade/ Miami Counties)
Ob/Gyn	\$71,248	\$184,802	\$190,829
General Surgery	\$54,400	\$133,593	\$190,829
Internal Medicine	\$15,415	\$35,733	\$47,707

Source: Medical Liability Monitor, 2013.

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Why it's important to defeat a measure destined for the November 2014 statewide ballot that will dramatically change MICRA, the law that governs legal proceedings if someone is injured in a medical procedure.

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Protecting access to health care services

MICRA is especially critical in protecting specialty and high-risk services, including women's health care, community clinics, health centers and rural providers that can least afford skyrocketing costs. States without medical liability reform suffer from shortages of providers leading to the closing of hospitals, clinics and trauma centers and leaving patients with no doctors in their immediate vicinity.

Strong support for MICRA

Hundreds of organizations, including PRF, physicians, hospitals, nurses, dentists, community clinics, labor, local government, public safety, business and taxpayer groups and many others strongly support MICRA.

TRIAL LAWYERS SPONSORING A BALLOT MEASURE TO WEAKEN MICRA'S PROTECTIONS

The trial lawyers and their allies submitted signatures in late March, and the measure will likely qualify for the November 2014 statewide ballot.

The measure's main provision will quadruple MICRA's non-economic damages cap—from the current \$250,000 to nearly \$1.1 million. This single change will triple lawyers' legal fees in health care lawsuits.

Additional voter "sweeteners" added

The measure contains two other provisions dealing with drug testing and prescription drug databases which have been included to act as a voter sweetener, an attempt to disguise the MICRA change and the financial benefit to lawyers. One of the supporters of the proposition even admitted it. According to the *Los*

Angeles Times: "The drug rules are in the initiative because they poll well, and the backers figure that's the way to get the public to support the measure. 'It's the ultimate sweetener,' says Jamie Court, the head of Consumer Watchdog."

Costly for consumers and taxpayers

If medical lawsuit awards are increased, somebody has to pay, and that will be physicians through higher liability rates and consumers through higher health care premiums. According to a study by California's former Legislative Analyst, this proposition will increase health care costs across all sectors by \$9.9 billion annually. Furthermore, California's current independent Legislative Analyst's Office (LAO) warns the proposition could increase state and local government medical liability and health care costs by "hundreds of millions of dollars annually," placing the burden of this additional cost on all taxpayers.

Jeopardizes patient access to quality health care

This measure will cause doctors to leave the state and practice in places where malpractice insurance rates are lower. Many people could lose their personal physician if this measure were to become law. Community health centers, like Planned Parenthood Affiliates of California, say this measure will raise insurance costs that will cause specialists, including Ob/Gyn's, to reduce or eliminate services to their patients. Finding doctors to deliver babies in rural areas and work in community clinics is already difficult, and reducing services will make a bad situation worse.

Jeopardizes privacy and patient access to prescription medications

This measure mandates the use of a government database with personal information

on patients' prescription drug history. California has a poor track record with government databases, which jeopardizes the privacy of our personal health information. Furthermore, when this database crashes, and it will, people could have trouble getting their necessary prescriptions from their doctor or pharmacy.

TAKE ACTION!

We are prepared to do what it takes to defeat this costly and dangerous initiative, but we need your help, now and until Election Day. PRF is urging all its members to go to the campaign website to get involved:

www.StopHigherHealthCareCosts.com

From the website you can:

Sign up to **become an official opponent** <http://stophigherhealthcarecosts.com/take-action/join-coalition>

Get important facts, downloads and information that will help you spread the word about this costly measure <http://stophigherhealthcarecosts.com/>

Send an email to your organization's members, to your friends and/or to your colleagues encouraging them to oppose the measure <http://stophigherhealthcarecosts.com/take-action/tell-a-friend>

Contribute to the campaign to help fight the trial lawyers <https://stophigherhealthcarecosts.nationbuilder.com/>

Read the campaign press release which was distributed when trial lawyers filed their signatures <http://stophigherhealthcarecosts.com/in-the-news/press-releases>

Check out the list of opponents who are working to defeat this costly measure being advanced by trial lawyers <http://stophigherhealthcarecosts.com/who-we-are>

When you sign up to be an official opponent you will receive frequent campaign updates and important news on how you can communicate with other physicians and health care providers, your patients, friends, family and neighbors. ■

A.J. Kennedy and Victor Christy are the communications director and public affairs director, respectively, at Californians Allied for Patient Protection.



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The Health Care Lawsuit Measure: Questions & Answers

BY A.J. KENNEDY AND VICTOR CHRISTY

What will this measure do?

This measure will make it easier and more profitable for lawyers to sue health care providers, like doctors and hospitals. Lawyers will benefit financially, but consumers and taxpayers will be stuck with higher health care costs as a result. The measure will also reduce patient access to care.

The measure's main provision will quadruple the non-economic damages cap on California's successful Medical Injury Compensation Reform Act (MICRA), the law that governs legal proceedings if someone is injured in a medical procedure. This single change will triple lawyers' legal fees in health care lawsuits. (*Note: Under MICRA, economic damages for past and future lost wages, past and future medical costs, and punitive damages are unlimited.*)

The measure contains two other provisions dealing with drug testing and prescription drug databases which were intentionally included by the backers in an attempt to mislead voters. In fact, one of the main supporters of the proposition admitted to the *Los Angeles Times* that the drug rules are in the initiative because they poll well, calling these provisions "the ultimate sweetener."



NEW ONLINE COURSES THOUGH ELM EXCHANGE

PRF is offering four new online courses in collaboration with ELM Exchange. Again this year, PRF Insureds will earn CME credits for all courses and will receive a check for \$150 after completing at least three courses. The new courses are:

- 1) HIPAA/HITECH
- 2) Documentation Electronic Medical Records
- 3) Controlled Substance Prescribing: Risks in Managing and Terminating Patients
- 4) Coordination of Care

An enclosure with mailed copies of this newsletter includes instructions about how to take the courses. Call June Riley in the PRF office with questions. ■

Who opposes it?

A broad coalition of doctors, nurses, community clinics, Planned Parenthood Affiliates of California, local governments, labor unions, business groups, taxpayer groups, hospitals, community groups and many others, including PRF, oppose this ballot measure because it will lead to more lawsuits, higher health care costs and reduce patients' access to health care.

Who supports it?

Trial lawyers who stand to benefit from the MICRA change are the main supporters of this ballot measure. In fact, 100 percent of the reported contributions to pay for signature gathering to place this on the ballot in November 2014 came from trial lawyers and groups politically aligned with trial lawyers.

What are the costs for health care consumers?

California's former Legislative Analyst evaluated increased costs across all sectors of the health care marketplace and found that costs could go up by about \$9.9 billion annually.

This translates to more than \$1,000/year in higher health care costs for a family of four.

How will this ballot proposition lead to reduced access to health care services?

There is no doubt this ballot measure will increase lawsuits against health care providers like doctors, hospitals, and community clinics, and their costs will increase. Providers could reduce services, reduce staff or close altogether in response to higher costs. Doctors could leave the state and practice in places where malpractice insurance rates are lower. Many people could lose their personal physician if this measure were to become law.

Why are community clinics so strongly opposed to this ballot measure?

Community clinics say this measure will raise insurance costs that will cause specialists, like Ob/Gyn's, to reduce or eliminate services to their patients. Many clinics struggle financially, particularly community clinics that serve low-income and uninsured patients. Anything that increases costs could jeopardize access to care for those patients most in need.

Shouldn't doctors be drug tested?

The physician community and all health care providers are always looking for ways to

improve patient safety. But don't be fooled by this ballot measure. The drug testing provision is a "bait and switch." The main supporter admitted to the *Los Angeles Times* that drug testing was added as the "ultimate sweetener" for voters. Clearly this isn't about good policy, rather a good sales pitch to voters.

What is wrong with the provision mandating use of the CURES database?

This database sounds simple, but it's not. A recent independent report found that the ballot measure "would almost certainly result in a situation in which prescribing health providers would be legally required to use a database that was, in practice, not available." Troubling issues include:

The CURES database cannot now accommodate the 200,000 additional registrants who will need to be added to the system in order to make it universally utilized, according to the Department of Justice.

The CURES database will—absent a change in the current timeframe—not be operational at that scale by the November 2014 deadline required in the measure.

If passed, the measure would potentially force physicians to choose between "denying treatment to their patients or violating" the law.

Finally, California has a terrible track record when it comes to government-run databases. Patients could have trouble getting needed medications if the website malfunctions. Also, people's personal drug prescription history will be held on this database and that information could be vulnerable to hackers.

Won't this ballot measure help improve quality by holding doctors more accountable?

Even one medical error is too many and that is why the entire health care community is always looking for ways to improve patient safety. But don't be fooled by this measure.

Increasing lawsuits is not the answer and will do absolutely nothing to improve health care quality. Worse, the resulting higher health care costs will put health care services even more out of reach for people who already suffer from lack of access. Community clinics, rural practitioners and safety net providers are the most vulnerable to cost increases and could be forced to cut back services. ■

PRF PLUS: Your Insurance Coverage Just Got Bigger

BY STEPHEN J. SCHEIFELE, MS, MD

Physicians are practicing at a time of increasing scrutiny and oversight in an environment in which data breaches have become almost routine. Even in the absence of medical malpractice, the costs of legal representation can be onerous in the event of alleged infractions involving a State Licensure Board, a potential HIPAA violation, or a Medical Staff action. Recognizing this exposure, PRF now offers members expanded Licensing Board Coverage for the same low annual premium of \$324. For no additional fee, “PRF Plus” now includes expanded protection against certain cyber risks, professional committee activities, and regulatory proceedings. “PRF Plus” provides coverage up to \$50,000 for each occurrence and \$150,000 aggregate coverage, per policy period, for legal defense arising from Regulatory Proceedings initiated by:

- State Boards responsible for the licensure, regulation or discipline of health care professionals
- Hospitals involving staff membership, credentialing, or privileges
- Managed Care Organizations seeking to restrict, suspend or terminate participation
- Governmental Agencies with oversight in enforcing laws and guidelines governing health care such

as CMS, HIPAA, HITECH, EMTALA or the California Medical Information Act

- Health Care Plan proceedings to enforce compliance with laws governing payment

Legal defense for California Medical Board proceedings

The California Medical Board may initiate a proceeding under several circumstances.

- Patients are encouraged to report their concerns directly to the Board.
- The Board may (and increasingly does) conduct its own independent inquiry into any malpractice settlement exceeding \$29,999.
- Certain medical staff actions may require Medical Board notification.

Under any of these circumstances, legal representation to protect your rights is an absolute necessity. While “PRF Plus” will provide a legal defense, it does not cover any fines, restitution or judgment arising from a CMB proceeding.

Legal defense for professional committee activities

Entities whose committee activities are covered include:

- Hospitals
- Non-profit medical associations or societies
- Member Boards of the American Board of Medical Specialties
- PRF

Legal defense for cyber events

A data security breach may result in an unauthorized release or disclosure of personal information. Personal information can be:

- Social Security Number
- Driver's license or other state identification number
- Medical information
- Credit card information

A data security breach may result in identity theft, unauthorized credit card use or misuse of medical information. It may result from:

- Unauthorized release or disclosure by an employee or provider
- Failure to properly manage, store, control or dispose of electronic data

- Theft, destruction or loss of electronic hardware
- Failure to provide notification of unauthorized access to or use of personal information

“PRF Plus” covers the costs of identifying and notifying those patients whose personal information may have been compromised. Costs associated with ongoing monitoring, such as credit reports that arise from a data security breach are covered for up to 12 months. While representation for the defense of a potential HIPAA violation will be covered, any resulting fines or judgments are not.

To protect against a data security breach, medical offices should perform an audit of how data is secured, who has access and where vulnerabilities may be. Ongoing HIPAA compliance and training for staff members is essential.

“PRF Plus” applications

“PRF Plus” is the only coverage applicable to the defense of a regularity proceeding, a claim arising from a professional committee or a data security breach (including the payment of notification and monitoring expenses). Without “PRF Plus” there is no coverage for these events even if the occurrence results in a malpractice action.

“PRF Plus” exclusions

“PRF Plus” coverage does not apply to:

- An occurrence in which the Insured knowingly or willfully violates a penal statute
- An occurrence involving the initial application for licensure, medical staff membership or privileges
- An occurrence involving an initial application for status as a provider under a health care plan or managed care contract

This summary is intended to be only a brief discussion of “PRF Plus” and its benefits for PRF policyholders. Please review your policy for details or call the PRF office if you have not signed up for “PRF Plus.” ■

Dr. Scheifele is the chair of PRF's Risk Management & Education Committee.



**HAVE YOU
CALLED THE
PRF OFFICE?**

PRF Insureds call the PRF office for a variety of reasons. Common reasons for calling may involve changes to an Insured's practice, the last premium payment made, reporting a claim, or simply asking about how to handle a difficult patient or an adverse outcome. A review of PRF's current members shows that approximately **75% of PRF Insureds have called the PRF office.** If you have any questions or comments for PRF staff, please don't hesitate to give us a call. Whether you are a physician or an allied healthcare provider, each member of the PRF staff is here to help you and would be pleased to be of assistance. ■