

OCTOBER 2025

Appellate Briefs

MICRA and claims based on generally applicable duties of care, as opposed to "professional negligence"

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MICRA

Statute of limitations; ambulance collision; negligence claims based on generally applicable duties of care, as opposed to "professional negligence"

Gutierrez v. Tostado (2025) 18 Cal.5th 222

Motorist brought personal-injury action against emergency medical technician (EMT) and EMT's employer, based on injuries the motorist suffered when he was rear-ended by the EMT while the EMT was driving an ambulance that was transporting a patient from one medical facility to another. The lawsuit was filed timely under the two-year limitations provision for personal-injury actions, Code Civ. Proc. section 335.1, but was not timely under MICRA's one-year limitations provision for actions subject to MICRA, Code Civ. Proc. section 340.5. The trial court granted summary judgment for the EMT, finding that the action was time-barred under the MICRA limitations period. The Court of Appeal affirmed. Reversed.

In *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, 88, the Court held that MICRA's limitations provision 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*, further explained, "[W]hether negligence in maintaining hospital equipment or premises qualifies as professional negligence depends on the nature of the relationship between the equipment or premises in question and the provision of medical care to the plaintiff. A hospital's negligent failure to maintain equipment that is necessary or otherwise integrally related to the medical treatment and diagnosis of the patient *implicates a duty that the hospital owes to a patient by virtue of being a health care provider*. Thus, if the act or omission that led to the plaintiff's injuries was negligence in the maintenance of equipment that, under the prevailing standard of care, was reasonably required to treat or accommodate a physical or mental condition of the patient, the plaintiff's claim is one of professional negligence under section 340.5. But section 340.5 does not extend to negligence in the maintenance of equipment and premises that are merely convenient for, or incidental to, the provision of medical care to a patient." (*Ibid.*)

Flores thus perceived a fundamental distinction between claims involving "professional negligence" (§ 340.5) that are subject to the MICRA statute of limitations and claims involving only general negligence that are beyond the statute's scope. While the former "implicates a duty that the [defendant] owes to a patient by virtue of being a health care provider" (*Flores*, *supra*, 63 Cal.4th at p. 88), the latter implicates the general duty to exercise ordinary care that each person owes to all other members of the public (Civ. Code, § 1714, subd. (a))."

Although section 340.5 refers to claims by a "plaintiff" rather than a "patient," it applies only to actions "*for injury or death ... based upon ... professional negligence*," rather than a broader category of actions against health care providers. (Italics added.) In addition, section 340.5 specifically defines "'[p]rofessional negligence'" as "a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death." (*Id.*, subd. (2).) This circumscribed definition suggests the statute is only concerned with injuries resulting directly from the negligent *rendering* of medical care, as opposed to all injuries that might occur *during* or that *arise out of* the provision of medical care.

Applying the foregoing principles, the Court concluded that the MICRA statute of limitations did not apply here because plaintiff's claim stems from the breach of a general duty of care owed to the public. Plaintiff does not allege that defendants were negligent in performing "medical diagnosis or treatment" of the patient whom they were transporting. Rather, plaintiff alleges that defendants were negligent in their failure to obey traffic laws applicable to all drivers on the road. Defendants owed a duty to the general public to drive their ambulance with ordinary care under the circumstances. In other words, defendants' duty to drive with ordinary care was not a duty owed "by virtue of being a health care provider" (*Flores*, at p. 88), but rather, a duty owed simply by virtue of being a *driver*. As such, plaintiff's claim sounds in general negligence and falls outside of MICRA's scope.

The Court disapproved *Canister v. Emergency Ambulance Service, Inc.* (2008) 160 Cal.App.4th 388, which held that MICRA applied to an action by a police officer who was injured while riding with a patient in an ambulance when it collided with another vehicle. *Canister*, which predated *Flores*, reasoned that the EMTs operating the ambulance were rendering professional services to the patient when the collision occurred and that "courts have broadly construed 'professional negligence' to mean negligence occurring during the rendering of services for which the health care provider is licensed." *Flores* rejected that view. *Lopez* followed *Canister*, holding that MICRA's statute of limitations applied to claims by a passenger patient and his son who had accompanied the patient during transport.

Canister and *Lopez* were incorrect to the extent they suggest that a plaintiff's claim sounds in professional negligence merely because the plaintiff's injuries "occur[ed] *during* the rendering of services" to a patient. For MICRA's statute of limitations to apply, it is not enough that there is a temporal connection between the plaintiff's alleged injuries and a health care provider's rendering of professional services. Rather, the alleged injury must be "suffered as a result of negligence in rendering the professional services that hospitals and others provide by virtue of being health care professionals." (*Flores*, *supra*, 63 Cal.4th at p. 88.) That is, the breach of the professional obligation must be the "proximate cause of a personal injury or wrongful death." (§ 340.5, subd. (2).) Here, plaintiff's injuries were allegedly caused by Tostado's negligent driving. As previously noted, this is not a "duty that the [defendant] owes to a patient by virtue of being a health care provider" (*Flores*, at p. 88); an ambulance driver owes *the general public* a duty to drive with ordinary care simply because they are operating a vehicle on a road.

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