California's Statutory Limit on Recovery of Noneconomic Damages in Medical Malpractice Actions Does Not Violate Equal Protection. Fein v. Permanente Group, 695 P.2d 665 (Cal.)

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Available at: http://openscholarship.wustl.edu/law_lawreview/vol64/iss2/15
CALIFORNIA'S STATUTORY LIMIT ON RECOVERY OF NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE ACTIONS DOES NOT VIOLATE EQUAL PROTECTION


In Fein v. Permanente Group, a sharply divided California Supreme Court employed a deferential standard of review in rejecting an equal protection challenge to a statutory ceiling on the amount recoverable for noneconomic damages in medical malpractice actions. The plaintiff, Lawrence Fein, went to the hospital after experiencing intermittent chest pains. A physician suggested that muscle spasms had caused the pain and sent Fein home. The next day, however, Fein suf-
Fein sued Permanente Medical Group, a partnership of physicians, alleging negligent failure to diagnose and treat an impending heart attack. A jury awarded Fein actual damages$ and 500,000 dollars for noneconomic damages. Permanente moved to modify the award in accordance with the Medical Injury Compensation Recovery Act (MICRA), which places a 250,000 dollar ceiling on the amount recoverable for noneconomic damages in medical malpractice actions. Pursuant to the motion, the trial court reduced the noneconomic damage award to 250,000 dollars. On appeal, the California Supreme Court affirmed and held: the statutory limitation on the amount recoverable for noneconomic damages in medical malpractice actions did not violate the equal protection clause.

The California Legislature enacted MICRA in 1975 in response to a well-publicized "crisis" in California's medical malpractice insurance...
In an effort to stabilize rising medical malpractice insurance premiums, the legislature imposed a 250,000 dollar limit on the amount recoverable for noneconomic damages. Because MICRA limits recovery in medical malpractice cases but not in other personal injury cases, MICRA arguably violates the equal protection clause. Article I of the California Constitution and the fourteenth amendment of the United States Constitution guarantee persons equal protection of the laws. The equal protection clause does not require absolute equal treatment in legislation. Rather, equal protection requires that similarly situated individuals be treated alike. Whether a legislative classification may treat differently those who are similarly situ-
ated usually depends upon the standard of review exercised by the court.\textsuperscript{21}

Courts in six states have considered equal protection challenges to statutes limiting recovery in medical malpractice cases. The courts, however, have not applied a uniform standard of review.\textsuperscript{22} In \textit{Carson v. Mau-}

\textit{r},\textsuperscript{23} the New Hampshire Supreme Court employed a "means focused" equal protection inquiry\textsuperscript{24} to invalidate a statute imposing a 250,000 dollar limitation on the amount recoverable for noneconomic damages.\textsuperscript{25} The court concluded that the necessary relationship between the legislative purpose and the means chosen to attain that purpose was weak.\textsuperscript{26} Although courts in Illinois,\textsuperscript{27} North Dakota,\textsuperscript{28} Ohio,\textsuperscript{29} and Texas\textsuperscript{30} have invalidated on equal protection grounds damage award limitations, they have not clearly articulated the standard of review employed.

\begin{footnotesize}

Traditional equal protection analysis has generally employed two standards of review. The more stringent standard, strict scrutiny, requires that the legislation be necessary to the promotion of a compelling state interest. Generally, this test is utilized only when legislative classifications impinge on certain suspect classes or fundamental interests. Gunther, \textit{Forward: In Search of Evolving Doctrine on a Changing Court: A Model for newer Equal Protection}, 86 \textit{Harv. L. Rev.} 1 (1972). The second standard, mere rationality, requires only that distinctions drawn by a challenged statute bear some rational relationship to some conceivable legitimate state purpose. \textit{See McGowan v. Maryland}, 366 U.S. 420 (1961).

Despite the two traditional standards of review, courts have also applied a variety of intermediate levels of scrutiny. \textit{See Gunther, Constitutional Law} 591 (11th ed. 1985).

\begin{itemize}
\item[21.] The higher the standard of review exercised by the court, the greater the likelihood that the legislative classification will violate the equal protection clause.
\item[22.] Courts have traditionally applied a deferential standard of review when considering equal protection challenges to economic and social welfare legislation. \textit{See New Orleans v. Dukes}, 427 U.S. 297, 303 (1976).
\item[23.] \textit{Id.} at 925, 424 A.2d 825 (1980).
\item[24.] \textit{Id.} at 926, 424 A.2d at 826.
\item[25.] The court found this relationship weak for two reasons: (1) damage awards only account for a small portion of premium costs and (2) a few individuals actually suffer noneconomic damages in excess of $250,000. \textit{Id.} at 926, 424 A.2d at 830.
\item[26.] \textit{Id.} at 929, 424 A.2d at 830.
\item[27.] \textit{Id.} at 927, 424 A.2d at 828.
\item[28.] Wright v. Du Page Hosp. Ass'n, 63 Ill. 2d 313, 347 N.E.2d 736 (1976) ($500,000 limitation on damages for personal injuries held unconstitutional).
\item[29.] Simon v. St. Elizabeth Medical Center, 355 N.E.2d 903 (Ohio Ct. Comm. Pleas 1976) ($200,000 limitation on general damages held unconstitutional).
\item[30.] Baptist Hosp. of Southeast Tex., Inc. v. Baber, 672 S.W.2d 296 (Tex. App. 1984) ($500,000 limitation on hospital liability held unconstitutional).
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The Indiana Supreme Court, in *Johnson v. St. Vincent Hospital, Inc.*, applied yet another standard, rejecting an equal protection challenge to a $500,000 dollar limitation on damages recoverable in medical malpractice actions. The court determined that the legislative classification must not be "arbitrary or unreasonable" and that "a fair and substantial relationship [must] exist between the classification and the purpose of the legislation." The court concluded that the limitation on recovery could rationally be considered by the legislature to be an "essential part" of a plan to "spread the risk of loss" suffered by health care providers.

On three occasions, the California Supreme Court has rejected equal protection challenges to three separate MICRA provisions. In each case, the court employed the rational relation test to determine whether the challenged provision violated the equal protection clause. In *American Bank & Trust Co. v. Community Hospital of Los Gatos-Saratoga, Inc.*, the court held that MICRA's provision for periodic payment of future damages did not violate the equal protection clause. After noting the problems created by large lump sum damage awards, the court concluded that periodic payment of future damages was rationally related to the goal of reducing costs to medical malpractice defendants.

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32. Id. at 377, 404 N.E. 2d at 587.
33. Id. The court explained that when neither a fundamental right nor a suspect classification is involved, courts defer to legislative judgment. Id. at 390, 404 N.E. 2d at 601.
34. Id.
36. This provision provides in pertinent part:

In any action for injury or damages against a provider of health care services, a superior court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump sum payment if the award equals or exceeds fifty thousand dollars ($50,000) in future damages.

**CAL. CIV. PROC. CODE § 667.7 (Deering 1982).**


37. 37 Cal. 3d at 162, 683 P.2d at 682, 211 Cal. Rptr. at 385. The state supreme courts in New Hampshire and Wisconsin have addressed the constitutionality of similar periodic payment provisions. See Carson v. Maurer, 120 N.H. 925, 424 A.2d 825 (1980); State ex rel. Strykowski v. Wilkie, 81 Wis. 2d 491, 261 N.W. 2d 434 (1978). Both courts utilized the rational basis test and held that the statutes did not violate the equal protection clause.

38. 37 Cal. 3d at 155, 683 P.2d at 678, 211 Cal. Rptr. at 380. The court found that large lump sum awards required insurance companies to retain large reserves to pay judgments. The adoption
In *Barme v. Wood*, the court explicitly relied on the deferential standard of review applied in *American Bank*. The court held that the MICRA provision that precluded a "collateral source" from recouping medical expenses and benefits from a medical malpractice defendant did not violate the equal protection clause. Finally, in *Roa v. Lodi Medical Group, Inc.*, the court reviewed an equal protection challenge to a statutory limit on attorneys' contingency fees in medical malpractice actions. The court again applied the rational relation test, holding that the legislation was rationally related to the legislative purpose.

of a periodic payment procedure would permit insurers to retain fewer liquid reserves and thereby to increase the capital available for investments. *Id.*

39. 37 Cal. 3d 174, 689 P.2d 446, 207 Cal. Rptr. 816 (1984). The plaintiff, a police officer, suffered a heart attack while on duty. During heart surgery, he sustained brain damage. He subsequently sued his physicians, alleging that his brain damage was due to their negligence. The City of Huntington, a self-insured workers' compensation carrier, intervened. The city sought to recover expenses it had incurred in providing workers' compensation benefits to the plaintiff. *Id.* at 176, 689 P.2d at 447, 207 Cal. Rptr. at 819.

The city argued that the elimination of the collateral source rule in medical malpractice actions denies equal protection by: (1) granting benefits to medical malpractice victims that are not granted to other tort victims, and (2) imposing a burden on employers who provide benefits to victims of medical malpractice that is not imposed on other employers. *Id.* at 182, 689 P.2d at 451, 207 Cal. Rptr. at 826:

40. *Id.* at 183, 689 P.2d at 451, 207 Cal. Rptr. at 825.

41. CAL. CIV. CODE § 3333.1(b) (Deering 1982).

42. The court stated that the statutory changes at issue were constitutionally limited to medical malpractice actions because that was the area in which the crisis arose. The legislature could have reasonably believed that the statute would help reduce the expenses of medical malpractice insurers by shifting costs to other insurers. 37 Cal. 3d at 183, 689 P.2d at 451, 207 Cal. Rptr. at 825.

43. 37 Cal. 3d 920, 695 P.2d 164, 211 Cal. Rptr. 77 (1985).

44. CAL. BUS. & PROF. CODE § 6146 (Deering 1982). In brief, the statute limits the amount of contingency fees that an attorney can contract for or collect in a professional negligence suit. Specifically, the statute limits contingency fees to: (1) 40% of the first $50,000 recovered, (2) 33 1/3% of the next $50,000 recovered, (3) 25% of the next $50,000 recovered, and (4) 10% of any amount by which the recovery exceeds $200,000. *Id.*

45. The plaintiffs argued that the provision violated the equal protection clause by imposing limits on the fees that plaintiffs' attorneys could charge, without imposing comparable limits on the fees that defense counsel could charge. 37 Cal. 3d at 926, 695 P.2d at 170-71, 211 Cal. Rptr. at 84.

46. The court found three constitutionally sufficient rationales. First, the legislature could have reasonably determined that the provision would promote lower settlements. Second, due to the disproportionate number of defense verdicts in the medical malpractice field, the provision would discourage frivolous suits and thereby reduce litigation costs for medical malpractice defendants. Finally, because the statute limited a victim's damage recovery, the legislature could have reasonably concluded that a limitation on contingency fees would be an "appropriate means of protecting the already diminished compensation" of medical malpractice plaintiffs. *Id.*

47. According to the court, the legislature had determined that the high cost of medical malpractice insurance premiums threatened to curtail the availability of medical care in the state and created a situation in which patients, injured by medical malpractice, might not have sufficient liabil-

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In *Fein v. Permanente Medical Group*, the California Supreme Court applied the same deferential standard of review to an equal protection challenge to a statutory limitation on noneconomic damages recoverable in medical malpractice actions. The majority relied heavily on the court's previous decision in *American Bank*, finding that the classifications created by the limitation on recoverable damages were rationally related to the legislative purpose.

The court rejected the assertion that the 250,000 dollar limit unconstitutionally distinguished plaintiffs with less than 250,000 dollars in noneconomic damages from plaintiffs with more than 250,000 dollars in noneconomic damages. Judge Kaus, writing for the court, listed three legislative rationales to support the constitutionality of the statute. First, the 250,000 dollar limit would provide a more stable basis to calculate insurance rates. Second, the statutory ceiling would help promote settlements, thereby reducing litigation costs. Finally, an across-the-board limitation would be fairer than total elimination of recovery for noneconomic damages.

The court quickly disposed of the argument that the statute unconstitutionally discriminated against medical malpractice victims. The court reiterated its conclusions in *American Bank*, *Barnes*, and *Roa*, stating that the legislature could constitutionally limit the statute to medical malpractice because that is the area in which the crisis arose.

The court also quickly disposed of the argument that the statute violated the equal protection clause by denying complete recovery only to malpractice victims with noneconomic damages. The court concluded that the equal protection clause does not require the legislature to "limit a victim's recovery for out-of-pocket medical expenses or lost earnings" simply because the legislature also limited "damages for pain and suffering and similar noneconomic losses."
In a strident dissent, Chief Justice Bird criticized the majority's decision, arguing that the limitation could not survive "any serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals." Although the Chief Justice acknowledged the legitimacy of the legislative purpose, she rejected each of the possible legislative rationales posited by the majority. In addition, Chief Justice Bird argued that the statute created a class of persons, plaintiffs suffering noneconomic damages greater than $250,000, that was underinclusive.

The dissent's analysis is flawed for three reasons. First, the Chief Justice failed to refute the legislative rationales posited by the majority. She asserted that the rationales were invalid because they would apply to any limitation on damages. Equal protection doctrine, however, does not require the legislature to have a unique justification for every classification that it creates. The equal protection clause only requires that a given classification have a rational relationship with the legislative goals.

Second, Chief Justice Bird's finding that the classification was underinclusive did not mean that such a classification was unconstitutional. Even if a classification is underinclusive, it may still be constitutional if it is rationally related to a legislative purpose.

Finally, the dissent's position reflects a misunderstanding of the role of the judiciary when economic or social welfare legislation is challenged on

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55. Id. The court also asserted that the legislature could have believed it to be fairer to plaintiffs to reduce only the very large noneconomic damage awards, rather than to diminish modest recoveries for pain and suffering. Id.
57. Chief Justice Bird characterized the court's decision as "depriving" victims of medical negligence of compensation for proven noneconomic damages greater than $250,000. She also characterized MICRA as "arbitrarily singling out a few injured patients to be stripped of important and well-established protections against negligently inflicted harm." Id. at 167, 695 P.2d at 687, 211 Cal. Rptr. at 391.
58. Id. at 170, 695 P.2d at 691, 211 Cal. Rptr. at 393. The Chief Justice declared the first two rationales invalid because they would apply to any restriction on recovery. To the Chief Justice, judicial acceptance of such broad rationales would render judicial scrutiny meaningless. The Chief Justice also rejected the majority's "fairness rationale," stating "[t]he notion that the Legislature might have concentrated the burden on the most severely injured victims out of considerations of fairness certainly has the advantage of originality." Id.
59. According to the dissent, the classification created by the statute was underinclusive. The dissent implied that the legislative purpose could be better achieved by calling on a sacrifice from a larger class of plaintiffs. Id.
60. See supra notes 18-21 and accompanying text.
equal protection grounds. The essence of Chief Justice Bird's opinion was that the statute was unfair. The Chief Justice's attempt to find the statute unconstitutional was little more than an attempt to substitute judicial wisdom for that of the legislature.

In *Fein v. Permanente Medical Group*, the California Supreme Court reached a logical and well-supported result. The court remained consistent with its recent decisions upholding the constitutionality of other MICRA provisions. Most importantly, the majority properly limited judicial review of economic legislation, requiring statutory classifications to bear a rational relationship to the legislative purpose. 61

*A.J.W.*

61. *See supra notes* 18-20 and accompanying text.