Shutterstock

MICRA expanded to non-patient drivers negligently hit by ambulances

By Benjamin T. Ikuta

On Friday, Dec. 1, the Sixth District Court of Appeal filed and published its opinion in Gutierrez v. Tostado (Cal. Ct. App., Dec. 1, 2023, No. H049983) 2023 WL 8296004. The divided decision has far-reaching implications to drivers hit by negligent EMTs and ambulances. In short, the Court of Appeal held that an action involving a driver negligently harmed by an ambulance driver on a non-emergency transport with its lights off is considered medical malpractice.

In *Gutierrez*, an EMT was transporting a patient from one hospital to another. The transportation was on a non-emergency matter and the ambulance had its siren and lights off. The EMT negligently rear-ended another car on the freeway, causing the non-patient driver harm. Nearly two years after the incident, the driver filed suit against the ambulance company. Under Code of Civil Procedure section 335.1, the statute of limitations in a personal injury action is two years. However, under section 340.5, medical malpractice cases must be filed within one year.

The trial court granted summary judgment, finding the case was one for medical malpractice and thus time-barred. The driver appealed, arguing that the EMT crashing the ambulance owed a duty of care to the general public, no different than if a truck or a sedan rear-ended the driver on the freeway.

The Court of Appeal affirmed, finding that the case was one of medical malpractice. Not surprisingly, the Court of Appeal relied on the California Supreme Court's decision in *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75. In *Flores*, a hospital patient fell out of her bed when the latch on a bedrail failed and the rail collapsed. After suing for premises liability and general negligence over a year since the fall, the California Supreme Court deemed the lawsuit untimely pursuant to MICRA's one-year statute of limitations under section 340.5.

In doing so, the California Supreme Court rejected the plaintiff's argument that "professional services" as defined in the MICRA statutes only involves those that required a high degree of professional skill. Likewise, the Court also rejected the patient's argument that MICRA only applied when there was an active rendering of professional services.

Unlike *Flores*, however, the plaintiff in this case was obviously not a patient. However, the Court of Appeal explained that "[m]ultiple courts have considered injuries to third parties who were not patients and have concluded that MICRA applied to their claims."

The Court of Appeal then relied on two similar, yet distinguishable cases. The first was *Canister v. Emergency Ambulance Service, Inc.* (2008) 160 Cal.App.4th 388. *Canister* involved a case where the Court of Appeal held that MICRA applied when a non-patient police officer was injured due to poor driving by an EMT, while accompanying an arrestee patient in the back of an ambulance. However, *Canister* was decided before *Flores* and a few courts have called into question whether *Canister* remains good law. (See *Johnson v. Open Door Community Health Centers* (2017) 15 Cal. App.5th 153, 160; *Aldana v. Stillwagon* (2016) 2 Cal.App.5th 1, 4.)

The second was the recent decision in *Lopez v. American Medical Response West* (2023) 89 Cal. App.5th 336, 346. In *Lopez*, the patient's son was accompanying the patient in the back of the ambulance when the EMT rear-ended another vehicle, causing the son harm. Unlike *Johnson* and *Aldana*, *Lopez* cited *Canister* with approval in finding the son's case subject to MICRA.

The majority in *Gutierrez* stated: "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." Moreover, "the fact that [the EMT] was not driving quickly or that [the injured driver] 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."

The dissent by the Honorable Daniel H. Bromberg is strong and compelling. Judge Bromberg correctly noted that *Flores* specifically cautioned that MICRA did not cover every conceivable injury just because a healthcare provider is involved. As held in *Flores*, "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." As an example, *Flores* explained that if "a chair in a waiting room collapses, injuring the person sitting in it, the hospital's duty with respect to that chair is no different from that of any other home or business with chairs in which visitors may sit. [MICRA] does not apply to a suit arising out of such an injury."

Judge Bromberg also noted "the unpredictability and unfairness" of the holding. Judge Bromberg noted that this was a "run-of-the-mill traffic accident involving an ambulance that happened

See Page 7 — MICRA

MICRA expanded to non-patient drivers negligently hit by ambulances

Continued from page 6

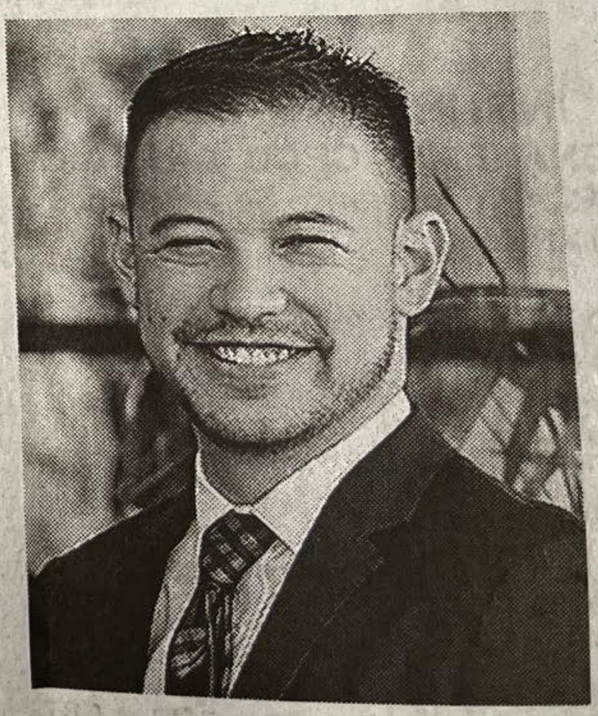
to be transporting a patient on a non-emergency matter." Since the lights and siren were off, there would have been no possible way for the injured driver to know that the ambulance that hit him was transporting a patient.

While not directly addressed by Judge Bromberg, that is what makes this case easily distinguishable from *Canister* and *Lopez*. While neither *Canister* nor *Lopez* involved plaintiffs who were patients, both plaintiffs in those cases *knew* at the time of the incident that the crash involved the transportation of a patient and the rendering of care. Both *Canister* and *Lopez* involved plaintiffs who voluntarily agreed to be driven by the EMT. Both *Canister* and *Lopez* involved an emergent transport unlike the non-emergent transport in *Gutierrez*. (See also *Aldana v. Stillwagon* (2016) 2 Cal.App.5th 1, 4 [holding that MICRA did not apply to a driver injured by the negligent driving of a paramedic supervisor who was en route to an injured victim in his employer's pickup truck in order to supervise EMTS and potentially provide emergency assistance.].)

Judge Bromberg also astutely notes the legislative history behind MICRA was to reduce the cost of medical malpractice premiums. However, the EMT company offered no evidence that medical malpractice insurance (rather than general automotive insurance) covered the action. Thus, because the driver's "claims are based on the generally applicable, nonprofessional duty of care owed by all drivers, [Judge Bromberg] also would conclude that his claims are not subject to MICRA's statute of limitations and reverse the judgment."

Of course, in any lawsuit even tangentially involving healthcare or a healthcare provider, the plaintiff's attorney should always file within one year to be safe. But MICRA obviously goes far beyond the one-year statute. Even if filed timely, such a holding may have a devastating impact on those seriously injured by the negligent driving of EMT drivers. Not only are general damages severely capped by Civil Code section 3333.2, but the collateral source rule is abolished in medical malpractice cases and health insurance coverage is admissible. In addition, Code of Civil Procedure section 667.7 requires that a court enter periodic payments of any future damage award over $250,000 if requested by a defendant. Given the importance of the decision, the California Supreme Court should grant review.

Benjamin T. Ikuta *is an attorney at Ikuta Hemesath LLP, where he concentrates his practice entirely on medical malpractice on the plaintiff side.*



Justices seem skeptical of challenge