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**ADVANCE PAYMENT OF DAMAGES IN MEDICAL MALPRACTICE SUIT TOLLS
STATUTE OF LIMITATIONS**

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In *Coastal Surgical Institute v. Charles Blevins*, a recent case of first impression, the California Court of Appeals held that the tolling provisions of Insurance Code §11583 apply to the one-year statute of limitations period for medical malpractice actions.

In *Coastal Surgical*, defendant paid plaintiff's medical expenses during the period when plaintiff was not represented by counsel and failed to notify him in writing of the statute of limitations. In addition, plaintiff did not sign a release of liability. The Court of Appeals affirmed the trial court's ruling that the one-year statute for medical malpractice actions was tolled and therefore did not bar plaintiff's malpractice action against the defendant.

In so holding, the Court of Appeals in *Coastal* reasoned that the Medical Injury Compensation Reform Act (MICRA), §340.5 and §364, are consistent with their ruling. "Section 340.5 provides that the time for commencement of a medical malpractice action 'shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.' Section 364 provides that a medical malpractice action may not be commenced 'unless the defendant has been given 90 days' prior notice of the intention to commence the action.'" (§364(a)) "If the notice is served within 90 days of the expiration of the applicable statute of limitations, the time for commencement of the action shall be extended 90 days from the service of the notice." (§364(d)). *Coastal Surgical*, 2015 Cal. App. 2d at 5-6.

The Court of Appeals held that both §340.5 and §364 of MICRA do not purport to limit tolling which extends the total limitations period less than or up to three years. Accordingly, the tolling provisions of §11583 can extend the one-year period of §340.5 up to a maximum of three years from the date of injury.

The court held that Insurance Code §11583 "requires no more than that the payor notify the payee in writing of the applicable statute of limitations, not the actual expiration date." The court did not agree with the argument that the application of §11583 to medical malpractice actions would forever expose doctors to potential suit.



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The *Coastal* court relied, in part, on *Belton v. Bowers Ambulance Service* in finding that the tolling provisions of §11583 apply to the one-year limitations period of § 340.5. In *Belton*, the Supreme Court held that a similar provision for prisoners tolled the same statute of limitations. In that case, the court reasoned that since the plaintiff filed his complaint after the one-year statutory period expired, but well within the statute's three-year maximum per §340.5, he was not attempting to extend that maximum and was only seeking to toll the one-year period.

The court in *Coastal* determined that scienter is not a requirement of §11583, and whether or not a defendant or his insurer intended to “lull a plaintiff into not filing a timely complaint” is irrelevant to the tolling of the statute of limitations in medical malpractice cases. The *Coastal* court's ruling essentially means that whenever an advance partial payment for medical expenses preceding any litigation is made by a defendant or his insurer, and no release of liability is signed at the time the payment is given, then the potential for future liability exists as the statute of limitations will be tolled for a one-year period and up to three years unless and until written notice is provided to the injured person notifying them of the applicable statute of limitations. The only exception to this rule is that the notification is not required if the injured person is represented by an attorney at the time they receive the advance or partial payment.

It is evident that the payment of advance partial medical expenses gives rise to additional responsibility. While it does not result in the admission of liability, doctors, practitioners in the medical field and their insurers may think twice before paying for an injured person's medical expenses in hopes of avoiding potential litigation, as the very act of paying any expenses invites the risk of a suit and tolls the applicable statute of limitations.