INSURANCE—IOWA CODE SECTION 147.136, WHICH ABOLISHES THE COLLATERAL SOURCE RULE IN MEDICAL MALPRACTICE CASES, IS NOT UNCONSTITUTIONAL, BASED UPON A RATIONAL RELATIONSHIP TEST.—*Rudolph v. Iowa Methodist Medical Center* (Iowa 1980).

William Rudolph entered Iowa Methodist Medical Center in November, 1975, in order to undergo diagnostic tests to determine the cause of neck and arm pains from which he had been suffering.[1] The malady was diagnosed and Rudolph underwent surgery intended to correct herniation of intervertibral discs in his cervical spine.[2] After the surgery, Rudolph was transported back to his room on a cart by hospital employees.[3] In the course of transferring Rudolph from the cart to his bed, his head was permitted to drop sharply backward.[4] The incident was not immediately reported to the neurosurgeon, Dr. Robert Hayne, and in the next several hours Rudolph became partially paralyzed.[5] When Dr. Hayne was finally notified he took prompt steps to locate the problem,[6] and eventually performed a second surgery.[7] Rudolph subsequently recovered, although he was forced to spend three months in the hospital's rehabilitation unit and sustained some permanent disability.[8]

Rudolph brought suit for medical malpractice in the Polk County District Court against Iowa Methodist Medical Center,[9] alleging negligence on the part of the hospital employees.[10] The jury agreed with Rudolph, and awarded him $553,725.88,[11] which included a total collateral source recovery of $15,008.28.[12] The defendant, Iowa Methodist Medical Center, appealed,

---

1. Brief for Appellant at 11, Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d 550 (Iowa 1980).
2. *Id.*
3. *Id.*
4. Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d 550, 553 (Iowa 1980).
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* The jury found that the hospital employees' negligence was the proximate cause of Rudolph's paralysis and the subsequent surgery, treatment, disability and other damages. *Id.*
11. *Id.*
12. *Id.* at 559. Under the collateral source rule, if an injured person receives compensation for his injuries from a source wholly independent of the tortfeasor, the payment would not be deducted from the damages which he would otherwise collect from the tortfeasor. *See* Groesbeck v. Napier, 275 N.W.2d 388, 392 (Iowa 1979). Therefore, under this rule, Rudolph's receipt of $15,008.28 from collateral sources would not be deducted from his total damages award. However, section 147.136 of the Iowa Code (1979) purports to abrogate the collateral source rule at least partially in cases involving malpractice suits against designated providers of health care. The statute provides that:

asserting error on the part of the trial court for ruling that section 147.136 of the Iowa Code was unconstitutional.[13] The Iowa Supreme Court *held,* modified and affirmed.[14] Code section 147.136, which abolishes the collateral source rule in medical malpractice cases, is not unconstitutional, based upon a rational relationship test.[15]

Section 147.136 of the Iowa Code was enacted after the General Assembly found a critical situation existed because of the high cost and impending unavailability of medical malpractice insurance.[16] A more general statement concerning the legislative intent was outlined as follows:

> It is the intent of this Act to provide only an interim solution to the impending unavailability of medical malpractice insurance. It is not anticipated that this Act will resolve the underlying causes of the unavailability and high cost which extend beyond the insurance mechanism. It is anticipated that future legislation will be required to deal on a more permanent basis with the underlying causes of the current situation.[17]

The goal of the legislature was to help assure the public of continued health

---

> In an action for damages for personal injury against a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatrist, optometrist, pharmacist, chiropractor, or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based on the alleged negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, in which liability is admitted or established, the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to, the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source except the assets of the claimant or of the members of the claimant's immediate family.

IOWA CODE § 147.136 (1979).

13. Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d at 557. At trial, the court overruled a motion by the defendant to exclude any evidence of plaintiffs of medical bills reflecting evidence of economic losses and salary for which they had or would be indemnified from a third party. *Id.* The court subsequently sustained a motion by plaintiffs to bar the introduction of evidence by the defendant of insurance payments of Rudolph's medical bills and salary paid William while he was absent from his job. *Id.* These rulings were decided based on the trial court's holding that section 147.136 violated the equal protection clauses of U.S. Const. Amend. XIV and Iowa Const. Art. I, § 6.

14. *Id.* at 561. The sufficiency of evidence on the issue of liability was not challenged on appeal. Other issues raised on appeal were whether the trial court erred in various respects in relation to the jury during trial, in refusing to order a new trial based on excessiveness of Rudolph's verdict, and in instructing the jury on Rosellyn's (William Rudolph's wife) loss of consortium claim. *Id.* at 553.

15. *See id.* at 557. The court said that the plaintiffs "did not carry their burden to show section 147.136 lacks a rational relationship to a legitimate state interest. Therefore the trial court erred in holding the statute unconstitutional." *Id.* at 559.

16. 1975 Iowa Acts ch. 239, § 1.

17. *Id.*

care services by a reduction in verdicts by the amount of the medical malpractice victim's collateral source recovery.[18] This reduction in medical malpractice verdicts would presumably cause a decrease in medical malpractice insurance premiums, thus making the insurance both affordable and available.[19]

Section 147.136 treats victims of medical malpractice differently than victims of other torts because it denies malpractice victims the benefit of the collateral source rule.[20] In evaluating this possible equal protection violation created by the separate classification of malpractice tort victims, the Iowa Supreme Court employed what has been termed the "rational basis" test.[21] Traditionally, the courts have followed a "two-tier" analysis of equal protection issues raised by legislative enactments.[22] If a "fundamental right" is affected by the legislation, a strict scrutiny will be applied to the statute to determine whether it violates the constitutional guarantees of equal protection.[23] Likewise, if the statute creates a "suspect" classification, strict scrutiny will be applied.[24] Absent the creation of a suspect classification or impingement of a fundamental right, the courts have traditionally applied the rational basis test.[25]

The United States Supreme Court said in *McGowan v. Maryland*,[26] that:

> The constitutional safeguard [of equal protection] is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any set of facts reasonably may be conceived to justify it.[27]

Under this rational basis test, the plaintiff has a heavy burden of showing the statute unconstitutional and must negate every reasonable basis upon

---

18. Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d at 558.
19. *Id.*
20. *See id.*; note 12 *supra*.
21. 293 N.W.2d at 557.
22. *See* Gunther, *The Supreme Court, 1971 Term, Foreward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972) [hereinafter cited as Gunther].
23. *Id.* Prime examples of interests identified as fundamental by the Warren Court are voting, Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); criminal appeals, Griffin v. Illinois, 351 U.S. 12 (1956); and the right of interstate travel, Shapiro v. Thompson, 394 U.S. 618 (1969).
24. *See* Gunther, *supra* note 22, at 8. Certain classification, such as those based on race, lineage, and alienage, are said to be suspect. *See, e.g.*, Korematsu v. United States, 323 U.S. 214, 216 (1944).
25. *See generally* Gunther, *supra* note 22.
26. 366 U.S. 420 (1961).
27. *Id.* at 425-26.

which the classification may be sustained.[28] Using the traditional equal protection analysis, the *Rudolph* court proceeded to determine whether the plaintiffs had met their burden of proving that the classification "[was] wholly irrelevant to the achievement of the State's objective."[29]

By applying the rational basis test, the *Rudolph* court rejected the recently recognized means-oriented scrutiny test recommended by the appellee.[30] This test would have the court take *seriously* a constitutional requirement that has never been formally abandoned, that legislative means must substantially further legislative ends.[31] Under the means-oriented scrutiny test, a substantial relationship must be shown to exist between the classification that the legislation chose to adopt, and the objective in view.[32] This means-scrutiny test recommended by the appellee[33] would raise the level of the minimal scrutiny of the statute from virtual abdication to genuine judicial inquiry.[34] In actual practice, when strict scrutiny was applied to a statute, it almost invariably fell to constitutional attack, and when the rational basis test was applied, the statute was nearly always sustained.[35] As the *Rudolph* majority recognized, the method of analysis makes a critical difference.[36] The test chosen for application by the court will almost invariably be determinative of the constitutional outcome.[37] Nonetheless, in rejecting the means-oriented scrutiny test, the *Rudolph* court said that "except when a classification is suspect or involves fundamental rights, this court applies the rational basis test."[38]

In refusing to depart from the traditional rational basis test, the majority relied heavily on the determination that most courts have applied traditional equal protection analyses when addressing the constitutionality of legislation regulating medical malpractice litigation.[39] This reliance in and of

---

28. MRM v. City of Davenport, 290 N.W.2d 338, 342 (Iowa 1980).

29. 293 N.W.2d at 558.

30. *See id.* at 557.

31. Gunther, *supra* note 22, at 20. An application of the means-oriented scrutiny test would dictate that a court would be less willing to create justifying rationales for legislation. *Id.* The legislative purposes would need to have a basis in actuality and not merely in conjecture. *Id.* Furthermore, applying the means-oriented scrutiny test would have the justices gauge the reasonableness of questionable means by information offered to the court, rather than by resorting to rationalizations created by judicial hypotheses. *Id.* at 20-21.

32. *See, e.g.*, Eisenstadt v. Baird, 405 U.S. 438, 454 (1972).

33. *See* Brief for Appellee at 3, Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d 550 (Iowa 1980).

34. For a comprehensive examination of the state equal protection doctrine distinguishing the "restrained review" and "active review" areas, *see Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969) [hereinafter cited as *Developments*].

35. *See* Gunther, *supra* note 22, at 8.

36. 293 N.W.2d at 559.

37. *See* Gunther, *supra* note 22, at 8.

38. 293 N.W.2d at 557.

39. *Id.*

itself is not defective, however, it must be tempered by the fact that application of the rule may serve as a substitute for critical analysis. "Without such analysis," said Chief Justice Reynoldson, "we abdicate our highest duty."[40] This duty was stated in *Chicago & Northwestern Railway Co. v. Fachman*,[41] where the court held that "[t]he provision of the Fourteenth Amendment to the Constitution of the United States requiring equal protection of the laws, and the sixth section of Article I of the State Constitution requiring that all laws shall have a uniform operation, should not be frittered away."[42]

In Iowa, the traditional rational basis analysis requires that legislative classification not be "arbitrary or unreasonable" but based on a real and substantial difference having a reasonable relation to a legitimate object of government.[43] As Chief Justice Reynoldson recognized in his dissenting opinion in *Rudolph*, section 147.136 of the Iowa Code has created three distinct levels of legislative classification.[44] The first level of classification was created by the negligent health care provider being given special privileges and immunities not afforded other tortfeasors.[45] Secondly, the statute created a special classification depriving select tort victims of the benefits of collateral source payments.[46] Finally, the statute created two classifications of medical malpractice tort victims: those who have purchased insurance to protect themselves in the event of tort injury and those who have not.[47]

To withstand an equal protection challenge, "the classification must be based upon some apparent difference in situation or circumstances of the subjects placed within the one class or the other which establishes the necessity or propriety of discrimination between them."[48] The Iowa Constitution Article I, section 6, provides that "[a]lthough laws of a general nature shall have a uniform operation, the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."[49] In *Bierkamp v. Rogers*,[50] this section of the Iowa Constitution was considered the source for the stan-

---

40. *Id.* at 562 (Reynoldson, C.J., dissenting).

41. 255 Iowa 989, 125 N.W.2d 210 (1963).

42. *Id.* at 1003, 125 N.W.2d at 217-18. The role of these provisions in guarding against segregation of society into classes and in assuring to all citizens equality before the law cannot be overestimated. "If the constitutionality of these statutes cannot be sustained save by resort to refinements in distinction and sophistry in reasoning, in which no court should indulge . . . they should fall." *Id.*

43. Redmond v. Carter, 247 N.W.2d 268, 271 (Iowa 1976). *See* Chicago & Northwestern Ry. Co. v. Fachman, 255 Iowa 989, 999, 125 N.W.2d 210, 216 (1963).

44. 293 N.W.2d at 561 (Reynoldson, C.J., dissenting).

45. *Id.*

46. *Id.*

47. *Id.*

48. Redmond v. Carter, 247 N.W.2d at 271.

49. IOWA CONST. art. I, § 6.

50. 293 N.W.2d 577 (Iowa 1980).

dard by which classifications drawn in a statute must be tested.[51] The standard explained that under the equal protection clause, judicial inquiry did not end when there was a showing of equal application among the class members as defined by the legislature, but rather that "the courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose."[52]

In *Bierkamp*, the sole issue presented on appeal was whether the Iowa Guest Statute, section 321.494 of the Iowa Code, was violative of Article I, section 6, of the Iowa Constitution.[53] It is puzzling that an application of the same standard respecting an equal protection challenge (the traditional rational basis analysis) in *Bierkamp* could hold unconstitutional a statute which resulted in a classification almost identical to the one found in *Rudolph*.

The statute in *Bierkamp* distinguished between gratuitous passengers in automobiles and those in other means of conveyance.[54] It also distinguished between paying and nonpaying automobile guests.[55] In *Rudolph*, the court permitted discrimination against only one class of tort victims, the malpractice patient, and in favor of only one class of defendants, the negligent doctor, nurse, or hospital.[56] These discriminations were not the only ones permitted under section 147.136.[57] The justification for the sanctioned discrimination was that it would reduce insurance premiums for those health care practitioners and permit them to acquire malpractice insurance coverage more easily, thereby indirectly benefiting all of society.[58]

If the court is to base its constitutional conclusions upon the presence or absence of insurance coverage "then the legislative desire to protect the health care practitioner directly and society indirectly from high insurance premiums in the one case is the same as the legislative desire to protect the host motorist directly and the motoring public indirectly from high insurance premiums in the other."[59]

Classifications do not deny equal protection simply because they result in some inequality.[60] They do deny equal protection if the lines drawn do not rationally advance a legitimate government purpose.[61] In *Rudolph*, the appellee argued that there was neither a defined nor proven relationship between the abrogation of the collateral source rule and the problem of the

---

51. *Id.* at 580. *Bierkamp* was issued the same day as *Rudolph*.
52. *Id.* (citing McLaughlin v. Florida, 370 U.S. 184, 191 (1964)).
53. 293 N.W.2d at 578.
54. *Id.* at 583.
55. *Id.*
56. *Id.* at 585 (LeGrand, J., dissenting).
57. *See* text accompanying notes 44-47 *supra*.
58. 293 N.W.2d at 585.
59. *Id.* at 586.
60. Lunday v. Vogelman, 213 N.W.2d 904, 907 (Iowa 1974).
61. Bierkamp v. Rogers, 293 N.W.2d at 581.

impending unavailability of medical malpractice insurance.[62]

In 1975, the Sixty-sixth General Assembly of Iowa, in a joint resolution, Senate Joint Resolution 12, provided for an interim "study of the causes and effects of and solutions to the high cost and unavailability of malpractice insurance to licensed health care providers."[63] The committee reported that the state had not suffered from a crisis involving unavailability of malpractice insurance in terms of basic liability insurance coverage.[64] The report further stated that, in general, insurance had been and continued to be available, at least at the lower limits of coverage.[65] The report indicated that there had been problems with the availability of coverage at higher dollar limits, which in the opinion of some medical doctors was essential for their personal financial protection.[66] Coverage limits of $100,000 per incident was available for nearly everyone who applied for it, but liability insurance with one million dollar limits was becoming impossible to acquire.[67] Interestingly, the report indicated that no single Iowa health care provider had ever incurred judgment liability in excess of one million dollars and less than one percent of all claims involved amounts in excess of $100,000.[68] The report contained further information which pointed out that it was doubtful at best whether the elimination of the collateral source rule would rationally advance the legislature's purpose.[69]

This conclusion was supported by a second study in Iowa which addressed itself to liability insurance problems generally, including liability insurance for health care providers.[70] This report was fraught with notations that data was unavailable to enable the committee to conclude that specific proposals would have the desired effect.[71] A third and more extensive national report examined by the legislature attributed much of the medical malpractice crisis to the insurance industry's own actuarial problems.[72]

In determining whether classifications drawn in section 147.136 are violative of Article I, section 6, of the Iowa Constitution, considerable deference must be given to the judgment of the legislature.[73] However, changes in the attendant circumstances may vitiate any rational basis for the legislation.[74]

---

62. Brief for Appellee at 7, Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d 550 (Iowa 1980).

63. The Malpractice Ins. Study Comm., S.J. Res. 12, 66th G.A. 2nd Sess. (1976).

64. *Id.* at 2.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 3.

69. *Id.*

70. Insurance Pool Study Comm., 67th G.A. 1st Sess. (1977).

71. *See generally id.*

72. *Report of the Commission of the Secretary of Health, Education and Welfare on Medical Malpractice* (1973).

73. Bierkamp v. Rogers, 293 N.W.2d at 581.

74. *See* Gleason v. City of Davenport, 275 N.W.2d 431, 435 (Iowa 1979) (holding separate

After five years of section 147.136's existence, surely data is available to analyze whether the abrogation of the collateral source rule has had its desired effect. Judicial deference to the legislature has been premised in part upon the perceived need for experimentation, especially in social and economic matters.[75] The passage of time may call for a less deferential standard of review as the experimental or trial nature of legislation is less evident.[76] After all, the act was to provide only an "interim solution" to the "impending unavailability" of medical malpractice insurance in 1975.[77] It was anticipated that future legislation would be required to deal with the underlying causes of the critical situation.[78]

The *Rudolph* case, considered in light of its companion, *Bierkamp*, has revealed that little consistency can be expected from the Iowa Supreme Court with respect to equal protection analyses. Whether a court upholds or invalidates a statute, the court is making policy and judgments.[79] So, too, is the choice of the equal protection test a matter of judgment, and it should be recognized as such.[80]

The classification scheme in *Rudolph* created a distinct exception to the generally-applied collateral source rule in tort actions. The scheme has been enforced for a sufficient period of time so that the rational basis advanced for its support can be examined. "Where a classification scheme creates a discrete exception to the general rule and has been enforced for a sufficiently long period of time that all rationale likely to be advanced in its support have been developed, a court should fully examine those rationale and determine whether they are sound."[81]

The rationale for the abrogation of the collateral source rule in medical malpractice actions was to reduce the size of malpractice verdicts by barring recovery for the portion of the loss paid for by collateral source benefits.[82] The rationale advanced for retention of the collateral source rule has been that a reduction in recovery by the amount of collateral payments would cause the deterrent impact of tort actions to be diminished or lost entirely.[83] For certain types of collateral source benefits like insurance, an additional

---

limitation on claims against special charter cities violative of equal protection clauses).

75. Bierkamp v. Rogers, 293 N.W.2d at 581 (citing Manistee Bank & Trust Co., 394 Mich. 655, 672, 232 N.W.2d 636, 642-43 (1975)).

76. *Id.*

77. *See* text accompanying note 17 *supra.*

78. *Id.*

79. Shaman, *The Rule of Reasonableness in Constitutional Adjudication: Toward the End of Irresponsible Judicial Review and the Establishment of a Viable Theory of the Equal Protection Clause*, 2 HASTINGS CONST. L. Q. 153, 174 (1975).

80. Manistee Bank & Trust Co., 394 Mich. at 672, 232 N.W.2d at 642.

81. *Id.*

82. *See* text accompanying notes 16-19 *supra.*

83. Comment, *An Analysis of State Legislative Responses to Medical Malpractice Crisis*, 1975 DUKE L. J. 1417, 1447-48.

rationale can be advanced. That is, if a plaintiff has chosen to insure, this choice should not lessen the tortfeasor's liability.[84] Pragmatically, the quality of health care might decline if the medical profession, which could be held less accountable than in the past, relaxes medical standards.[85] Although the legislature is entitled to proceed one step at a time and address itself to the phase of a problem which seems most acute,[86] an alleged emergency can not lessen constitutional restraints on irrational and arbitrary classifications.[87]

Dean A. Lerner

84. *Id.* at 1448.

85. American Bank & Trust Co. v. Community Hospital, 104 Cal. App. 3d 219, 233-35, 163 Cal. Rptr. 513, 521-22 (1980).

86. Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955).

87. 293 N.W.2d at 564.