

Medical Malpractice Summary of Indiana Law

I. The Indiana Medical Malpractice Act and Qualified Health Care Providers

In Indiana, most medical malpractice claims are controlled by Indiana's Medical Malpractice Act ("the MMA"). The MMA defines "malpractice" as either a tort or breach of contract claim arising out of health care or professional services that were provided, or should have been provided, by a "qualified health care provider". The MMA is not all-inclusive - a claim against a qualified health care provider that sounds in premises liability or general negligence, not medical malpractice, will be outside the scope of the MMA.



To be a "qualified health care provider," the health care provider or the health care provider's insurance carrier must file proof of financial responsibility with the Commissioner of Insurance and pay the surcharge assessed by the Commissioner. This surcharge is used to fund the Indiana Patient's Compensation Fund. The amount of insurance coverage necessary to establish financial responsibility depends upon type of provider (hospital/ health maintenance organization/health facility) and number of beds.

A. Medical Review Panel

A plaintiff cannot file an action against a qualified health care provider in Indiana courts until he has presented his proposed complaint to a medical review panel (established by the Department of Insurance) and the panel has rendered an opinion. The only two ways a plaintiff can get around this requirement is if: (1) all parties agree, in writing, that the plaintiff may file his Complaint in an Indiana court without first presenting to a medical review panel; or (2) the plaintiff stipulates that his alleged damages are less than \$15,000. The plaintiff may also file his Complaint in Superior or Circuit Court while the panel's decision is pending, but the Complaint must not contain any identifying information about any defendant and the court can take no action in the case other than setting a trial date until the panel's decision is released. If a plaintiff who brings an action against a qualified health care provider violates the procedural requirements, the claim is subject to dismissal for lack of subject matter jurisdiction or for failure to state a claim upon which relief may be granted.

B. Statute of Limitations

The statute of limitations for a medical malpractice claim is two (2) years from the date of the alleged negligent act or omission, except that a minor under the age of six (6) years old has until his eighth (8) birthday to file. This also applies to claims against any healthcare defendant who is not a "qualified provider,"

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because Indiana's Professional Services Statute, which has the same limitations period, would apply in that case. The two year statute of limitations is subject to the "discovery rule," which tolls the running of the limitations period until the time when the claimant "knew or should have known" that malpractice occurred. Filing a proposed complaint with the Department of Insurance (which triggers the medical review panel) tolls the applicable statute of limitations until 90 days after receipt of the panel's opinion. Should the Department of Insurance inform the parties that a provider is not a qualified health care provider under the Act, the statute begins to run again and the claimant must file an action in court or risk being time-barred.

C. Damages Caps for Qualified Health Care Providers

The total recovery in a medical malpractice action against a qualified health care provider (even if the alleged malpractice resulted in the patient's death) is limited to \$1,250,000. Furthermore, the MMA caps a qualified health care provider's individual malpractice liability at \$250,000 per occurrence. Victims of medical malpractice committed by qualified health care providers whose damages exceed \$250,000 may petition the Patient's Compensation Fund for payment of their excess damages. The same is true for settlement. If a health care provider or its insurer agrees to settle its liability by paying its policy limits of \$250,000, the victim can again petition the

Fund for excess damages.

II. NON-QUALIFIED HEALTH CARE PROVIDERS

A. No MMA Damages Caps

Any medical provider who fails to qualify as a "qualified health care provider" – either by failing to obtain adequate medical malpractice insurance, failing to pay the surcharge assessed by the Commissioner of Insurance or failing to file a certificate of financial responsibility with the Commissioner – will not be entitled to the protections of the MMA. The MMA states: "[i]f a health care provider does not qualify, the patient's remedy is not affected by this article." This means that any claims against that provider will not be subject to the damages caps set forth above. In the words of one Indiana court, the provider may be subject to "unlimited liability." However, the provider would still be protected by Indiana's general cap on punitive damages, which limit punitives to three (3) times the amount of the compensatory damages or \$50,000, whichever is greater.

No Medical Review Panel

In the early days of the MMA, it was arguably unclear whether claims against all providers had to be brought before a medical review panel. However, Indiana courts clarified that because a non-qualified health care provider is "not affected by the Act," a claimant who wishes to bring an action against a non-qualified provider is not required to submit a proposed complaint to a medical review panel before commencing an action in court. The proper procedure for determining whether a provider is qualified is to make inquiry to the Commissioner of the Department of Insurance. If one is uncertain as to whether a provider is qualified under the MMA, it would be prudent to tender a complaint to the Commissioner. Filing a proposed complaint with the Commissioner, as noted above, tolls the statute of limitations until the Commissioner informs the parties that the provider has not qualified. At that time, the statute of limitations begins running again and the claimant must file an action in court or risk being time-barred.

III. ISSUES FOR QUALIFIED AND NON-QUALIFIED PROVIDERS

A. Vicarious Liability

Principles of vicarious liability (respondeat superior) will usually apply to a healthcare employer (such as a hospital) for its employees. Vicarious liability may also apply to the alleged negligence of an independent contractor (such as a non-employee physician) if the patient reasonably believes that the

hospital was the provider of care. A hospital will be deemed to have held itself out as the provider of care, and thus subject to liability for the negligence of independent-contractor physicians, unless it gives notice to the patient that it is not the provider of care and that the care is provided by a physician who is an independent contractor not subject to the control and supervision of the hospital.

B. Contributory Negligence

For claims against qualified health care providers only, the MMA (rather than Indiana's Comparative Fault Act) will apply. Under the MMA, a patient may not recover where he was contributorily negligent by failing to follow the defendant's instructions, if such contributory negligence is simultaneous with and unites with the fault of the defendant to proximately cause the injury. However, a patient is not held accountable for his negligence which may have created the need to seek medical treatment in the first place. For claims against both qualified health care providers and non-qualified providers, the Comparative Fault Act (CFA) will apply. The CFA prohibits contribution among joint tortfeasors, but provides defendants with the option of asking the jury to assign fault to non-parties. The CFA also diminishes the plaintiff's recovery in direct proportion to the plaintiff's degree of comparative fault up to 50%. If the plaintiff's fault exceeds 50% and was a proximate cause of his injury, he will be completely barred from recovery.

C. "Loss of Chance" Doctrine

Indiana allows recovery of damages for failure to properly diagnose an illness or disease which later proves fatal (commonly known as the "loss of chance" doctrine). In these cases, a relaxed causation standard is applied: the plaintiff does not have to show that the healthcare provider's alleged negligence was the primary proximate cause of the decedent's death, but the plaintiff will recover part of his damages if the jury finds that the healthcare defendant's actions decreased the decedent's chance of survival. In those cases, the defendant's share of the damages "is equal to the percent of chance lost multiplied by the total amount of damages which are ordinarily allowed in a wrongful death action."

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