

INDIANA MEDICAL MALPRACTICE LAW SUMMARY

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Statutes of Limitation

In general a claim for medical negligence must be brought within two years of the date of the alleged negligence; for the most part, the statute is occurrence based. Further, the statute is tolled once the claim is filed with the Indiana Department of Insurance until 90 days after a medical review panel renders an expert opinion in the matter.

A minor less than six years of age has until his or her eighth birthday to bring the claim.

Contributory Negligence

Contributory negligence applies in a claim based on medical malpractice. Any negligence on the part of the claimant will require the fact finder to return a verdict for the defendant healthcare provider.

Joint and Several Liability

When two or more health care providers owe the same duty to a patient, and each contribute to a breach of that duty, they are jointly and severally liable for the patient's death pursuant to Indiana's Medical Malpractice Act. Joint tortfeasors have no right to contribution.

Vicarious Liability

A hospital generally will be able to avoid vicarious liability for the negligent acts of its independent-contractor physicians by providing meaningful written notice to the patient that physicians or its staff are not employees, acknowledged at the time of admission. Vicarious liability does apply to those healthcare providers that employ nurses, technicians, and other ancillary staff.

Expert Testimony

Indiana requires all medical negligence claims to go before a medical review panel which will issue an expert opinion on the merits of the case. This opinion is admissible in any subsequent action in court as an expert opinion. If a favorable opinion is issued with regards to the Defendant, plaintiff must provide a controverting expert opinion or summary judgment will be appropriate.

Damage Caps

The statutory cap on damages in anyone cause of action is limited to \$1,250,000. However, the defendant healthcare provider's liability is capped at \$250,000. Any judgment above that amount is paid out of the Indiana Patient Compensation Fund.

Statutory Cap on Attorney's Fees

When a plaintiff is represented by an attorney in the prosecution of the plaintiffs claim, the plaintiffs attorney's fees from any award made from the patient compensation fund may not exceed 15% of any recovery from the fund.

Periodic Payments

If the possible liability of the health care provider to the patient is discharged solely through an immediate payment, the limitations on recovery from a health care provider apply without adjustment.

If the health care provider agrees to discharge its possible liability to the patient through a periodic payments agreement, the amount of the patient's recovery from a health care provider in a case under this subsection is the amount of any immediate payment made by the health care provider or the health care provider's insurer to the patient, plus the cost of the periodic payments agreement to the health care provider or the health care provider's insurer. For the purpose of determining the limitations on recovery

and for the purpose of determining the question of whether the health care provider or the health care provider's insurer has agreed to settle its liability by payment of its policy limits, the sum of:

- (1) the present payment of money to the patient (or the patient's estate) by the health care provider (or the health care provider's insurer); plus
- (2) the cost of the periodic payments agreement expended by the health care provider (or the health care provider's insurer);

must exceed one hundred eighty-seven thousand dollars (\$187,000).

More than 1 health care provider may contribute to the cost of a periodic payments agreement, and in such an instance the sum of the amounts expended by each health care provider for immediate payments and for the cost of the periodic payments agreement shall be used to determine whether the \$187,000 requirement has been satisfied. However, 1 health care provider or its insurer must be liable for at least \$50,000.

Collateral Source Rule

The Indiana legislature abrogated the common law collateral source rule. The specific purpose of the collateral source evidence statute is to enable the trier of fact in a personal injury or wrongful death action to determine the actual amount of the prevailing party's pecuniary loss, and to provide that a prevailing party not recover more than once from all applicable sources for each item of loss sustained.

The collateral source evidence statute provides, that in a personal injury or wrongful death action, the court must allow the admission into evidence of:

- (1) proof of collateral source payments (with three exceptions discussed below);
- (2) proof of the amount of money that the plaintiff is required to repay, including workers' compensation benefits, as a result of the collateral benefits received; and
- (3) proof of the cost to the plaintiff or to members of plaintiffs family of collateral benefits received by the plaintiff or the plaintiffs family.

Proof of payments shall be considered by the trier of fact in arriving at the amount of any award and shall be considered by the court in reviewing awards that are alleged to be excessive.

The collateral source evidence statute provides that proof of the following collateral source payments is inadmissible in evidence:

- (1) payments of life insurance or other death benefits;
- (2) insurance benefits for which the plaintiff or members of the plaintiffs family have paid for directly; and
- (3) payments made by the state or the United States, or any agency, instrumentality, or subdivision thereof, that have been made before trial to a plaintiff as compensation for the loss or injury for which the action is brought.

Pre-Judgment Interest

Under Indiana Medical Malpractice Act, a qualified health care provider is responsible for the payment of the collateral litigation expense of prejudgment interest notwithstanding that the entire amount of the judgment equals the maximum amount recoverable under the Act, or that the imposition of prejudgment interest may cause the provider's total judgment debt to exceed applicable limit.

Patient Compensation Funds

The Indiana Department of Insurance operates the Patient Compensation Fund. It is paid for by Indiana healthcare providers and their respective insurances companies. The cap on recovery from the fund is \$1,000,000. Access to the fund is granted only in the event that the total judgment award for each occurrence of medical negligence exceeds \$250,000. The first \$250,000 in any award is the responsibility of the negligent health care provider.

Immunities

Members of a medical review panel have immunity from civil liability.

Arbitration

Arbitration agreements with regards to medical malpractice are generally upheld and enforced. However, there are several safe guards one must take to secure the validity of such an agreement. It would be good practice to present the agreement to the patient as a separate document and with an explanation of the ramifications of such an agreement. Further, arbitration agreements, like other contracts, are not enforceable when made under duress or in an emergency situation. Finally, most arbitration agreements that are mandatory before medical services are to be rendered have usually been ruled as invalid.

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