

# MINNESOTA MEDICAL MALPRACTICE LAW SUMMARY

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## **Statutes of Limitation**

Malpractice claims brought by a patient against a health care provider, including a hospital or treatment facility, must be commenced within four years of date cause of action accrued. Minn. Stat. § 541.076 (West 2005). This statute applies to actions commenced on or after August 1, 1999. Generally, the cause of action accrues when the physician's treatment for the particular condition ceases. *Johnson v. Winthrop Laboratories Div. of Sterling Drug, Inc.*, N.W.2d 77, 80 (Minn. 1971). "The statute of limitations will be extended when a doctor's negligence is part of a continuing course of treatment, such as when a doctor consistently fails to properly treat a fracture." *Fabio v. Bellomo*, 504 N.W.2d 758, 762 (Minn. 1993). The statute of limitations for medical malpractice resulting in death is three years from the date of death, but not longer than four years from the date the cause of action accrued. Minn. Stat. § 573.02 (West 2005).

The statute of limitations is suspended during infancy, but not for more than seven years or for more than one year after the claimant turns eighteen. Minn. Stat. § 541.15 (West 2005). The statute of limitations is also suspended during a claimant's insanity, but not for more than five years or for more than one year after the disability is removed. *Id.*

## **Contributory or Comparative Negligence**

Minnesota applies modified comparative fault. Contributory fault does not bar recovery if the contributory fault is not greater than the fault of the person against whom recovery is sought. Minn. Stat. § 604.01 (West 2005). Damages must be diminished in proportion to the amount of fault attributable to the person recovering. *Id.* In other words, if two parties are each 50% at fault, they can each recover 50% of their respective damages. Fault, as used in the statute, includes negligent or reckless acts or omissions, strict tort liability, breach of warranty, unreasonable assumption of risk (not constituting express consent or primary assumption of risk), misuse of a product, and unreasonable failure to avoid an injury or mitigate damages. *Id.* The doctrine of last clear chance is abolished. *Id.* Minnesota does not apply comparative negligence principles to an intentional tort. *Florenzano v. Olson*, 387 N.W.2d 168, 175 (Minn. 1986).

## **Joint and Several Liability**

In claims arising from events occurring on or after August 1, 2003, liability is several except for the following: (1) a person whose fault is greater than 50 percent; (2) two or more person who act in a common scheme or plan that results in injury; (3) a person who commits an intentional tort; (4) a person whose liability arises under chapters 18B, 115, 115A, 115B, 115C, 229J (which involve environmental torts and are not likely be involved in a medical malpractice action). Minn. Stat. § 604.02 subd. 1. (West 2005).

## **Contribution**

When two ore more people are severally liable, contributions to awards must be in proportion to the percentage of fault attributable to each. Minn. Stat. § 604.02 subd. 1 (West 2005). Upon motion made within one year after judgment is entered, the court must determine whether all or part of a party's equitable share of the obligation is uncollectible from that party. Minn. Stat. § 604.02 subd. 2. (West 2005). The court must reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. *Id.* A party whose liability is reallocated is still subject to contribution and any continuing liability to the claimant on the judgment. *Id.*

## **Vicarious Liability**

A hospital is liable for the torts of its employees. *Swigerd v. City of Ortonville*, 75 N.W.2d 217, 220 (Minn. 1956). A hospital can only be vicariously liable for the acts of a physician if the physician is an employee of the hospital. *McElwain v. Van Beek*, 447 N.W.2d 442, 446 (Minn. Ct. App. 1989) (citing *Moeller v. Hauser*, 54 N.W.2d 639, 645-46 (Minn. 1952)). However, when the hospital assigns one of its employee nurses to perform a duty for a physician and surrenders direction and control over the nurse to the

physician, the nurse becomes the servant of the physician insofar as the nurse's services relate to the controlled work. *Swigerd*, 75 N.W.2d at 220. The hospital is then no longer liable for the negligence of the nurse. *Id.* The hospital is liable for the negligence of an employed nurse in performing "administrative or clerical acts" that do not require application of specialized technique or the understanding of a skilled physician, even though those acts constitute part of a patient's prescribed treatment. *Id.*

### **Expert Testimony**

Expert testimony is necessary where a determination of causation and damages would rest on technical concepts. *Paulos v. Johnson*, 502 N.W.2d 397 (Minn. Ct. App. 1993). In an action against a health care provider where expert testimony is required, the plaintiff must serve on the defendant with the summons and complaint an affidavit of expert review. Minn. Stat. § 145.682 subd. 2 (West 2005). The affidavit of expert review must be by the plaintiff's attorney and must state that the facts of the case have been reviewed by an expert whose opinions are reasonably expected to be admissible at trial and that, in the opinion of this expert, one or more defendants deviated from the applicable standard of care and caused the plaintiff's injury. Minn. Stat. § 145.682 subd. 3(a) (West 2005). If the plaintiff could not reasonably obtain an expert review before commencing the action because of the applicable statute of limitations, the plaintiff must serve with the summons and complaint an affidavit stating same. Minn. Stat. § 145.682 subd. 3(b) (West 2005). In that case, an affidavit of expert review must be served upon the defendant within 90 days of service of the summons and complaint. *Id.*

Within 180 days of commencement of the litigation, the plaintiff must also serve upon the defendant an affidavit identifying the experts the plaintiff expects to call as expert witnesses at trial. Minn. Stat. § 145.682 subd. 2 (West 2005). The affidavit must be signed by each expert listed and by the plaintiff's attorney. Minn. Stat. § 145.682 subd. 4 (West 2005). The affidavit must also state the identity of each person the plaintiff expects to call as an expert witness at trial, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. *Id.*

### **Damage Caps**

There is no statutory cap on medical malpractice damages in Minnesota.

### **Statutory Cap on Attorney's Fees**

There is no statutory cap on attorney's fees in medical malpractice actions in Minnesota.

### **Periodic Payments**

When a claimant is awarded future damages greater than \$100,000, the court must hold a hearing before ordering entry of judgment to allow the claimant to consider whether payment as damages are incurred is in the claimant's best interest. Minn. Stat. § 549.25 (West 2005). If the claimant chooses structured payments, the court must make available information to assist the claimant in choosing an appropriate financial instrument to provide the payments. *Id.*

### **Collateral Source Rule**

A liable party may move the court within ten days of the date of the verdict to determine the effect of collateral source payments on a damage award. Minn. Stat. § 548.36 subd. 2 (West 2005). Collateral source means payments related to the injury or disability in question made to the plaintiff, or on the plaintiff's behalf, including payments from (1) federal, state, or local income disability, workers compensation, or other public program providing medical expenses, disability payments, or similar benefits; (2) health, accident and sickness, or automobile accident insurance or liability insurance, United States Social Security Act or pension payments, except life insurance benefits; (3) a contract or agreement of a group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental or other health care services; or (4) a contractual or voluntary wage continuation plan or any other system intended to provide wages during a period of disability, except benefits received from a private disability insurance policy where the premiums were wholly paid for by the plaintiff. Minn. Stat. § 548.36 subd. 1 (West 2005). The court is responsible for reducing the award of damages by the amount of the collateral sources, offsetting the payments made by the plaintiff or his family to secure the right to the collateral source. Minn. Stat. § 548.36 subd. 3 (West 2005).

## **Pre-Judgment Interest**

Interest accrues on pecuniary damages from the time of the commencement of the action or an arbitration demand, or from the time of a written notice of claim, whichever comes first. Minn. Stat. § 549.09 subd.1(b) (West 2005). The action must be commenced within two years of a written notice of claim for interest to begin to accrue from the time of the notice of claim. *Id.*

If a settlement offer is made by both parties and the losing party's offer is closer to the actual judgment than the winning party's offer, the winning party can only get interest on the settlement offer or award or the judgment, whichever is less, from the time of the commencement of the action or the arbitration demand, or the written notice time frame. *Id.*

The interest is calculated as simple interest per annum. Minn. Stat. § 549.09 subd. 1(c) (West 2005). The interest rate is based on "the secondary market yield of one year United States Treasury bills, calculated on a bank discount basis as provided in this section." *Id.*

## **Patient Compensation Funds and Physicians Insurance**

Minnesota does not have a patient compensation fund or state-sponsored liability insurance for physicians.

## **Minnesota Immunities**

### **I. State**

The State of Minnesota is liable for an employee's act or omission that occurs while the employee is acting within the scope of his employment if the state, as a private person, would be liable. Minn. Stat. § 3.736 subd. 1 (West 2005).

There are several exceptions where the state and its employees will not be liable. See Minn. Stat. § 3.736 subd. 3(a-r) (West 2005). Specifically the state is immune from liability for losses based on the "usual care and treatment, or lack of care and treatment, of a person at a state hospital or state corrections facility where reasonable use of available appropriations has been made to provide care." Minn. Stat. § 3.736 subd. 3(l) (West 2005).

The state will not pay punitive damages. *Id.* The State's liability is \$300,000 for wrongful death claims and \$300,000 per person; \$750,000 per single occurrence for claims after January 1, 1998, and before January 1, 2000, or \$1,000,000 per single occurrence for claims after January 1, 2000. Minn. Stat. § 3.736 subd. 4(a-c) (West 2005). A state agency may obtain liability insurance, and if the insurance exceeds the above listed limits, the state will have waived its rights for governmental immunity for these state limits. Minn. Stat. § 3.736 subd. 8 (West 2005).

Within 180 days after the alleged loss or injury is discovered, the claimant must provide the attorney general, or the university attorney in the case of a claim against the University of Minnesota, with notice of the time, place, circumstances, names of any state employees involved, and amount of compensation or relief demanded. Minn. Stat. § 3.736 subd. 5 (West 2005). Actual notice of sufficient facts to reasonably put the state or its insurer on notice of a possible claim complies with the notice requirements. *Id.* The time for giving the notice does not include the time during which the claimant is incapacitated by the injury from giving the notice. *Id.* In claims for wrongful death, the notice must be presented within one year after the alleged injury or loss resulting in death. Minn. Stat. § 3.736 subd. 6 (West 2005).

### **II. Municipalities, Cities, Counties, Towns, and Other Political Subdivisions**

Municipalities include cities, towns, counties, school districts, public authority, public corporation, and other political subdivisions. Minn. Stat. § 466.01 (West 2005). Each municipality is liable for its torts and the torts of its officers, employees and agents that are acting within the scope of their employment duties. Minn. Stat. § 466.02 (2005). The municipality's liability limits are the same as those stated above for the state. Minn. Stat. § 466.04 Subd. 1 (a)(1-3) (West 2005). Municipalities are not liable for punitive damages. Minn. Stat. § 466.04 subd. 1(b) (West 2005). Similar 180-day notice provisions also apply to claims against a municipality. Minn. Stat. § 466.05 (West 2005). Also, municipalities are authorized to

obtain liability insurance, which constitutes a waiver of immunity to the extent of coverage. Minn. Stat. § 466.06 (West 2005).

### **Arbitration**

Minnesota does not require mandatory arbitration or other alternative dispute resolution in a medical malpractice case.