

Medical Malpractice

Factors to Consider if the Unfortunate Should Happen to You

presented by:

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Firm Mission: Reduce Risk/Increase Bottom Line For Those Who Place Their Trust In Us.
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Consult with an attorney concerning your specific circumstances

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The General Framework / Statutory Scheme

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Governing Healthcare Malpractice Claims in Maryland

Subtitle 3-2A of Courts and Judicial Proceedings Article

- **Governs nearly all claims brought by plaintiffs against healthcare providers**
- **The subtitle establishes the Healthcare Alternative Dispute Resolution Office (the “HCADRO”)**
- **Under this statute, plaintiff has to first obtain a certificate of merit by a medical doctor (qualified expert)**
 - **that the negligent doctor breached the standard of care**
 - **and caused injury to the injured plaintiff**

Qualifications of the Medical Doctor / Expert ?

- **Have clinical experience**
- **Provide consultation related to clinical practice**
- **Taught medicine**
- **Board certified**

What must the Certificate of Merit contain?

Certain elements

- Where Doctor is licensed to practice
- An opinion within reasonable degree of medical probability
- Doctor's Professional activities

How Is A Malpractice Claim Initially Handled?

- The plaintiff/claimant must file his or her claim with the Director of the HCADRO.
- He or she must also file their certificate from a qualified expert attesting to the alleged departure by the defendant physician from the standard of care and that the departure was the proximate cause of the alleged injury of the plaintiff.
- The Director then refers the claim to an arbitration panel.

What Else Happens in Arbitration?

Determinations by the Panel

1. The panel will first determine the issue of liability with respect to a claim referred to it.
2. If no liability, the award will be in favor of the healthcare provider.
3. If found liable, panel will then consider, itemize, assess, and apportion appropriate damages.
4. The award will itemize damages.

Can You Do Anything After the Panel makes an Award?

Yes! After the Panel's Award Determination

- **Any party may apply to the arbitration panel to modify or correct its award.**
- **A party may reject an award.**
- **The findings are admissible in subsequent court proceedings, unless vacated by the court.**
- **If subsequent verdict is not in favor of rejecting party, he or she is liable to the other party for costs.**

Waiver of Arbitration

- **The arbitration process may be avoided altogether.**
- **At any time prior to the hearing of a claim, the parties may agree mutually to waive arbitration**
- **If the parties agree, the claim will proceed to court.**
- **Additionally, a claim may be waived unilaterally by the claimant or any defendant after the filing of the certificate of a qualified expert.**

Litigation

Statutes of Limitations

- **Generally, any medical malpractice action must be filed either within five years from the date when the injury was committed or three years from the date when the injury was discovered, whichever is earlier**
- **Minors – age of 11**

Vicarious Liability

Who else can be held liable besides the physician?

- **In Maryland, a hospital may, under appropriate circumstances, be held responsible for the negligent acts of its independently-contracted physicians, based on principles of apparent agency**

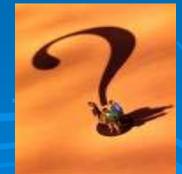
Elements of A Malpractice Action

- 1) A duty owed to the plaintiff;
- 2) A breach of that duty by the healthcare practitioner; and
- 3) A resulting injury to the plaintiff proximately caused by the practitioner's breach.



Question that is Often Raised

What type of Duty does a Physician owe to his or her Patient?

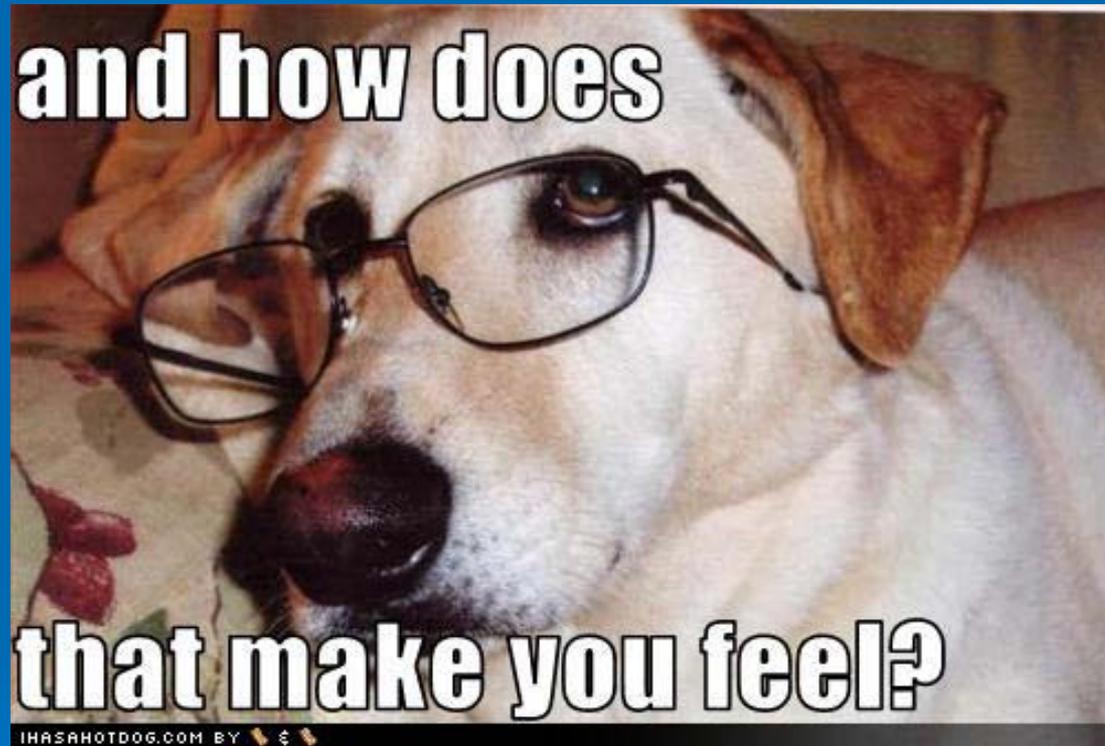


Physician's Duty

- The duty owed by a physician to his or her patient is for the physician to exercise ordinary medical care and skill.
- In determining that standard of care, the Court in *Shilkret v. Annapolis Emergency Hosp. Ass'n*, 276 Md. 187, 349 A.2d 245 (1975), rejected the “locality” rule and endorsed a “national” standard of care.
- Therefore, a common standard of care is applied to all physicians.

Physician's Duty cont.

- **However, what is expected of a reasonably competent physician will vary depending on factors such as specialization, availability of facilities and advances in the profession.**



and how does

that make you feel?

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Case Evaluation

What went wrong?

Consider these Facts

- Patient consulted Physician A after experiencing pain in her left breast, in which she also discovered a lump.
- After they had discussed her left breast, before leaving Physician A's office, patient casually says to Physician A, "You know one time I think I felt a very small lump in my right breast; but I'm sure it was nothing", and she left the office.
- Physician A referred Patient for a sonogram of her left breast; the results revealed that Patient had two tender masses in her left breast, one of which was determined to be a simple cyst.
- The other one was a complex cyst containing a mural nodule; as to this one, a biopsy was suggested due to the possibility of malignancy.

Consider these Facts cont.

- The following week after leaving Physician A's office, one of Physician A's administrative staff members incorrectly called Patient's fiancé and left a voice message that stated Patient will have to have both breasts removed due to cancer; this message was actually intended for another patient.
- Patient fiancé broke off the engagement.
- On Physician A's advice, Patient consulted a surgeon (Physician B) regarding how best to proceed with regard to the cysts.
- Physician B was employed by Hospital, who was negligent in the credentialing of Physician B.

Consider these Facts cont.

- Having initially attempted to aspirate the cysts to determine if they were cancerous, but finding that Patient was too tender for Physician B to aspirate with a needle, Physician B determined that the best way to proceed would be a surgical procedure to remove the solid nodule.
- Note: while attempting to aspirate the cyst, Physician B was able to obtain a “milky fluid” and indicated in her notes that the fluid may suggest the presence of an underlying infection.
- In preparation for the surgery, Physician B informed Patient of the risks involved, including post-operative infection.
- Patient consented to the expected procedure, “excision breast mass left”.

Consider these Facts cont.

- She also agreed to the following:
 - “I have been advised that during the course of this admission, conditions unknown prior to the treatment may be revealed which necessitate or make advisable an extension of the original procedure or a different procedure than that referred to in Paragraph 1. I, therefore, authorize and request that the above named doctor, his assistants and associates perform such procedures or render such treatment as is necessary or advisable in the exercise of professional judgment.”
- During the surgical procedure, tissue surrounding the two cysts was removed and some of Patient’s milk ducts were cut in the process of removing the mass.

Consider these Facts cont.

- It was later discovered; Patient had cancer in her right breast.
- Patient sued: Physician A, Physician B and Hospital.

Case Discussion

Informed Consent

- **Informed consent in Maryland medical malpractice cases involves the question of whether the patient had a meaningful opportunity to be an informed participant in the patient's own healthcare decisions.**

Informed Consent cont.

- **This duty to disclose under Maryland law requires a physician to reveal to his patient**
 - (1) the nature of the ailment**
 - (2) the nature of the proposed treatment**
 - (3) the probability of success of the contemplated therapy and its alternatives**
 - (4) the risk of unfortunate consequences associated with such treatment.**

Informed Consent cont.

- Unlike some other jurisdictions, Maryland views the question of informed consent from a reasonable patient perspective. In other words, the Maryland standard focuses on considering what a patient would need to know in order to understand the decision at that particular moment.
- Must disclose “material” risks.
- Most health care providers in Maryland have specific policies that state which health interventions require a signed consent form.

Final Thoughts

- **Competence**
- **Compliance**
- **C.Y.A.**
- **Disclosure**
- **Document**
- **Don't Quit**

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**Dedicated to All of
The Good Doctors
Who Have Fallen
to the System.**

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