Maryland Association for Justice, Inc.
2021 Fact Sheet

EXISTING LIABILITY PROTECTIONS FOR MARYLAND HEALTH CARE PROVIDERS

Over the past half century, Maryland health care providers have accumulated a very robust set of liability protections. These laws are collected in the Courts and Judicial Proceedings Article (CJ).

Pre-Suit Administrative Proceeding. Every claim against a health care provider is first filed in the Health Care Alternative Dispute Resolution Office (HCADRO). To get out of HCADRO, the plaintiff must file a Certificate of Qualified Expert and Report (CQE). CJ § 3-2A-04(b).

To sign a CQE, the "qualified expert" must be a health care provider. Therefore, every medical negligence claim that gets out of HCADRO has the ***support of a qualified health care provider***.

Under current Maryland law, therefore, health care providers – not lawyers – ***already*** control which claims may proceed to court, and which claims never get past square one.

Rigorous Qualification Requirements for Expert Witnesses. To be "qualified" in a given case, a health care provider must satisfy ***all*** of these requirements:

- clinical or teaching experience in the defendant's specialty (or a related specialty) within 5 years of the time when the claim arose,
- Board-certified in the defendant's specialty (or a related specialty),
- ***and*** devote less than 25% of professional activities to testimony.

Failure of the certifying expert to satisfy any of these requirements subjects a case to ***summary dismissal***.

Pre-Suit Certification of Meritorious Claim. In addition, the expert's CQE must satisfy ***all*** of the following requirements:

- attest that the defendant deviated from the applicable standard of care,
  - "Applicable standard of care" means those standards of practice among members of the same health care profession with similar training and experience, practicing under the same or similar circumstances, at the time of the acts or omissions giving rise to the cause of action. *See* CJ § 3-2A-02(c).
  - By definition, the "applicable standard of care" takes into account all of the circumstances affecting the health care at issue. This includes the availability of equipment (*e.g.*, x-ray v. CT v. MRI), specialized health care provider consultants (pediatric neuro-ophthalmologists, neurological surgeons, *etc.*), as well as the existence of an ongoing global catastrophic health emergency.
    - In other words, the law automatically takes into account special exigencies, including the pandemic, in deciding whether care was appropriate or not.
- ***and*** attest that the deviation from the standard of care was a proximate cause of the plaintiff's injury,
- ***and*** provide sufficient additional detail to allow the parties and the court to understand the expert's opinions.

Failure of the CQE to satisfy any of these requirements subjects a case to ***summary dismissal***.

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Because of these very robust pre-suit liability protections, Maryland ordinarily does not have any problem with so-called "frivolous" medical negligence lawsuits. The hospitals and Medical Mutual have admitted all of this for years in their testimony in Annapolis. Moreover, the number of medical negligence claims filed in HCADRO has decreased in recent years.

Existing Immunity Under Catastrophic Health Emergency Proclamations. Under existing Maryland law, health care providers have immunity from civil and criminal liability when they act "in good faith under a catastrophic health emergency proclamation." Md. Pub. Safety § 14-3A-06.

***Daubert* Standard**. Health care providers recently secured a victory when the Court of Appeals adopted the *Daubert* standard for evaluating the admissibility of expert testimony in August of 2020. The *Daubert* standard strongly favors parties in litigation with greater financial resources.

Statute of Limitations. Maryland law also has a special statute of limitations just for negligent health care providers. Md. CJ 5-109. Claims must be filed within three years of discovery of the injury, or within five years of when the injury was committed, whichever is shorter.

Maryland law also includes special limitations on the damages that plaintiffs can recover from negligent health care provider defendants.

Collateral sources. When a plaintiff is injured by negligence, the general rule is that a defendant cannot use the fact that the plaintiff's health care expenses were paid, *e.g.*, by the plaintiff's own health insurance, to reduce their own liability. This rule is called the "collateral source rule," because the law will not allow a defendant to benefit from benefits that the plaintiff obtained from sources other than (collateral to) the defendant.

In medical negligence cases ***only***, the General Assembly abrogated the collateral source rule. Md. CJ § 3-2A-09(d). After trial – *i.e.*, ***after*** the health care provider defendant has been found negligent by a jury – the judgment will be reduced to account for the plaintiff's collateral benefits.

Non-economic damages. Maryland law caps the recoverable non-economic damages in actions for personal injury and/or wrongful death. Md. CJ § 11-108.

In medical negligence actions ***only***, a special, lower cap applies. Md. CJ § 3-2A-09. The grieving families of victims of medical negligence share ***less than half*** the compensation allowed by law for their anguish and pain than victims' families can recover from every other kind of negligent defendant.

January 2021	Personal Injury	Wrongful Death
Medical Negligence	$ 845,000.00	$ 1,056,250.00
Everyone Else	$ 890,000.00	$ 2,225,000.00

For more than a half century, Maryland's health care providers have accumulated a vast array of special liability protections, which make it easier for health care providers to avoid responsibility for the consequences of malpractice. In contrast, ***not one single statute*** in the entire Maryland Annotated Code makes it ***easier*** for victims of malpractice to get justice.

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