

Common Terms and Definitions

Certificate of Qualified Expert: In Maryland, victims of medical malpractice, in addition to filing their Claim in the Health Claims Arbitration Dispute Resolution Office, must file a certificate and report of a medical expert who is an expert in the same or similar field as the defendant health care provider. The certificate must set forth certain criteria which shows the expert is qualified under the law to render an opinion about the care given to the patient and the report must set forth the opinions the expert holds as to how the defendant was negligent and what harm the patient suffered. Failure to file this certificate and report in the time and manner prescribed by law will result in the case being dismissed.

Damages: Even if a health care provider is negligent, the patient must have suffered some harm before a medical malpractice case can be filed. Negligence that does not result in harm is not actionable.

There are different types of damages:

Compensatory pecuniary damages are actual costs that have been or will be incurred for past or future medical care, funeral expenses, loss of household services, wage loss, and the like.

Compensatory nonpecuniary damages are typically known as "pain and suffering." These are the damages to compensate a patient or the family for the emotional suffering as a result of the malpractice.

Punitive damages. These are designed to "punish" a health care provider for his or her actions. Punitive damages are very rarely awarded because the plaintiff must show the health care provider intentionally and willfully wanted to cause the harm that ultimately occurred.

Loss of Consortium: This term describes a type of non-economic harm that can often be brought by a spouse or a child. Loss of consortium seeks to compensate a family member who loved and cared for the patient harmed by medical malpractice and whose relationship with the patient has suffered because of the malpractice.

Duty: A patient-health care provider relationship must exist before a patient is permitted to sue that health care provider.

Health Claims Arbitration Dispute Resolution Office ("HCADRO"): HCADRO is an administrative agency Maryland that serves as a sort of "clearinghouse" for medical malpractice claims. A Claimant must first file their Statement of Claim in the HCADRO and fulfill certain procedural requirements before he or she is permitted to file a lawsuit in state or federal court. Failure to file the claim in HCADRO first will result in the case being dismissed.

Never Event: This term is used by Medicare and other health insurers to describe negligence for which there is no excuse. Common examples of "never events" include operating on the wrong part of the body or the wrong patient, developing a bedsore in the hospital, or leaving an instrument in the patient's body after surgery.

Policy Limits: This is the total amount of insurance coverage a health care provider has in which to pay any claim, verdict or settlement as a result of medical malpractice.

Standard of Care: This is the legal "yardstick" against which a health care provider's actions are judged. The care rendered by a defendant health care provider must be that which a reasonable health care provider in the same or similar specialty would provide in the same or similar circumstances. If not, the health care provider has committed medical malpractice.

Standard of Proof: There are 3 different standards of proof in the American justice system.

“Beyond a Reasonable Doubt” is the standard of proof used in criminal cases. The government must prove to a near certainty (99% or more) that the defendant committed the crime. This is the highest level of proof required and that is because in criminal cases, a person found guilty can have his or her freedom taken away.

“Clear and Convincing Evidence” This intermediate standard is less rigorous than “beyond a reasonable doubt.” The plaintiff must prove that his or her allegation is substantially more true than not true. The percentage of certainty is 75%. This standard is often used when a government attempts to regulate a private citizen’s rights but can be used in both criminal and civil cases

“Preponderance of the Evidence”: This is the standard used in medical malpractice cases. The plaintiff must prove that his or her allegations are more likely true than not true. This is the 51% certainly standard, and is the lowest burden a proof a plaintiff has.

Statute of Limitations: This is the time that a patient has to file his or her claim against a health care provider. In general, the statute of limitations in Maryland is 3 years. The 3 years is measured from the time the negligence occurred. In certain circumstances, the statute of limitations may be extended to 5 years, if the plaintiff could not reasonably discover the negligence within 3 years. In addition, if a child was injured by medical malpractice in Maryland, the child has until his or her 21st birthday to file the claim. A case not filed before the statute of limitations expires will be subject to dismissal.

Survival Action: This term describes an action that is typically brought by the personal representative of the estate of a patient who has suffered an injury as a result of medical malpractice and has subsequently passed away. The survival action claim sues for all of the harm, both economic and pain and suffering, that the patient could have brought had the patient survived. The statute of limitations is the same 3 years, with certain exceptions.

Wrongful Death: This term describes an action against a health care provider that can be brought by certain family members (spouse, children, parents) when a patient dies as a result of medical malpractice. A wrongful death action seeks compensation for the family member’s personal loss, whether it be pain and suffering or economic loss. The statute of limitations to bring a wrongful death action is 3 years from the date the patient died.

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