

## LIABILITY ISSUES

### INTRODUCTION

Each year thousands of Texans receive health care treatment related to the detection and diagnosis of cancer. While advances in medicine have led to more favorable outcomes for many patients, even the most diligent treatment cannot guarantee positive results in every situation. In the vast majority of these instances, negative results occur despite the best efforts of those providing the treatment. Unfortunately, there are rare occasions when the actions or inactions of those professionals trusted to help with a patient's care and treatment actually cause additional negative consequences for the patient. This chapter is intended to offer an overview of the rights and remedies available to patients and families who have been injured as a result of substandard health care in relation to their diagnosis and treatment.

### **What if my family or I have concerns about the quality of treatment that I have received?**

If you feel that you have been harmed by a health care provider in either your diagnosis or follow-up treatment, finding an attorney with significant experience in medical liability cases is the best option for exploring a possible claim related to your illness. Over the last thirty years, Texas has developed a large body of specialized law related to medical liability cases. Most recently, in 2003, the Texas legislature passed a sweeping tort reform bill that now governs all new medical liability actions. This measure contains both pre-suit requirements for medical liability cases as well as damage caps, which limit the maximum amount that a claimant in a medical liability action may recover from a health care provider.

### **What can I expect to recover if I bring a successful medical liability claim?**

If you or your family members are successful obtaining a judgment in a medical liability case, you can expect to receive monetary compensation for the injuries you suffered as a result of the substandard care or treatment. This compensation can be broadly divided into two categories (i) economic damages; and (ii) non-economic damages. Types of damages commonly recoverable as economic damages include medical expenses, lost income, loss of future income, lost earning capacity, and household and domestic expenses. Non-economic damages are those damages awarded for the purpose of compensating a claimant for physical pain and suffering, mental or emotional anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, loss of enjoyment of life, and any other non-pecuniary losses other than punitive damages.

In Texas, non-economic damages in medical liability cases are limited to \$250,000 for all claims against individual health care providers. Additionally, non-economic damages awarded against health care institutions are limited to \$250,000 for each institution with a total limit not to exceed \$500,000 for all institutions involved in any given case. Finally, in cases with allegations relating to the death of a patient, the total amount of both economic and non-economic damages is further limited by a cap that is calculated based on fluctuations in the consumer price index. This cap on the total recovery allowed in what is known as a “wrongful death case” is currently approximately \$1.6 million.

### **How long do I have to explore a potential claim before filing suit?**

A lawsuit related to a medical liability claim must be filed within two years of the substandard treatment that caused the injuries to the patient. This period is generally known as the statute of limitations or simply the limitations period. As part of the current tort reform statute impacting medical liability cases, these cases are subject to a rigid two-year limitations period that does not include general exceptions for extending the limitations period that are available in other types of cases. However, minor children have until their fourteenth birthday to file a medical liability claim related to their care and treatment that occurred before their twelfth birthday.

In rare cases where the particular facts of a patient’s claim make it completely impossible to bring the claim within the two-year statute of limitations, the patient might be able to challenge the application of the two-year statute of limitations under the open courts provision of the Texas Constitution. The analysis of the courts’ system with regarding such constitutional challenges is complex, and successful challenges under this provision are very rare. If you feel you may have a claim that would support such a challenge, an attorney with experience in this type of claim should be consulted as soon as possible. However, even in instances where constitutional challenges to access to the courts system may be invoked, there is an absolute ten-year limitations period, known as a statute of repose, that applies to medical liability claims.

One question that arises in discussions of the limitations period in medical liability cases is: what point in time should be used to begin calculating the two-year limitations period? In cases where the exact date of the substandard care and treatment can be identified, the two-year period begins with that date. For example, in cases involving a substandard surgery, the two-year limitations period begins on the date of the surgery. In other cases, where the substandard care and treatment is not readily identifiable and the treatment extends over a number of days, the two-year limitations period can be calculated beginning on the last date of the relevant course

of treatment, or in the case of hospital admissions, the last date of the relevant hospitalization.

In all medical liability cases, the patient making the claim is required to file a report authored by a competent expert witness supporting the claim within 120 days of filing suit. For this reason, it is important that patients who feel they may wish to pursue a medical liability claim not wait until the last few days or weeks of the two-year limitations period to consult an attorney, as it may be practically impossible for the patient's attorney to obtain the required expert report on such short notice.