

## Medical Malpractice

Medical malpractice law in Michigan, in 2011, is a complex and highly regulated area of law as a result of Republican legislatures and Governor Engler's attempts to limit the amounts of money that can be recovered, shorten the statutes of limitations, that is the time within which lawsuits might be brought, as well as a variety of other changes which make the litigation of these cases more expensive and complex.

As a result of the Michigan Legislative and Michigan Supreme Court decisions limiting the rights and recoveries of medical malpractice patients in Michigan, the public must carefully select an attorney who is experienced in the specialty field of medical malpractice.

Patients, unlike other victims of negligence, are only given two years from the date of malpractice to file a suit. Although patients can still recover for past and future medical expenses, health insurers are increasingly asking to be repaid the health insurance dollars they paid for the malpractice patient's care. The Michigan legislature has limited the amount of money that can be recovered for pain and suffering to \$400,000 where the patient, regardless of the consequences, has an injury that does not involve permanent paralysis, coma and/or brain damage. Where there is permanent paralysis, coma and/or brain damage, the maximum amount that can be recovered is \$400,000.

The law also provides that if a patient is receiving disability insurance benefits, life insurance benefits or other benefits from "collateral sources", the wrongdoing defendant gets the benefit of the coverage purchased by the patient and these sums are subtracted from any recovery the patient might make.

Some medical specialties, such as neurosurgery, orthopedics and obstetrics and gynecology present special medical malpractice litigation problems. The Michigan Society of Orthopedic Surgeons, the Michigan Society of Neurosurgery and the Michigan Society of Obstetricians and Gynecologists have met and agreed that none of their members, regardless of the merits of the case, will testify against other members of the same specialty. This forces

patient plaintiffs and their attorneys to seek expert testimony from experts outside of the State of Michigan. This creates a strong disadvantage to the patient plaintiff because all of the defendant physician's experts come from hospitals and universities in the State of Michigan.

The general rules outlining and defining medical malpractice remain the same, however. In order for a claim to be brought, the patient must show that the physician deviated from the accepted medical standard of care of that specialty and that an injury was caused by that deviation that otherwise would not have happened. Because of the changes in Michigan's Supreme Court case law and legislative changes as well, the cost of bringing medical malpractice cases has doubled or tripled in most instances over the last 10 years. This means that attorneys practicing in the specialty of medical malpractice litigation may now reject cases that previously would have been accepted because the amount of the recovery is less or equal to the amount of money that would have to be spent to bring the case.

Careful case selection and work-up prior to filing suit is the cornerstone of a successful medical malpractice case. In the approximate 30 years since that verdict, attorneys with Charfoos & Christensen have developed and expanded their expertise in the field of medical malpractice at the trial level, the trial preparation and work-up levels. Charfoos & Christensen attorneys have authored and co-authored scholarly articles and books (see *Publications*) on a multitude of medical malpractice issues causing the firm to be recognized as the preeminent medical malpractice firm in the State of Michigan.