

Pennsylvania Supreme Court Breathes New Life into Survival Actions

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The Pennsylvania Supreme Court gave new life to otherwise time-barred survival action claims in medical malpractice cases in a significant decision last month - even if one justice was blunt in his disagreement with the decision.

The court on November 22 held that survival actions - which center on the individual pain and suffering of the deceased - can be brought within two years of the date of a patient's death regardless of when the allegedly negligent act occurred. Previous case law held that survival claims must be brought within two years of when the alleged malpractice occurred.

The decision creates a special rule applicable only in medical malpractice actions. It also reverses years of jurisprudence regarding when survival actions accrue for statute of limitation purposes.

The underlying issue in the case involved a woman who developed pressure sores starting in 2005 during several hospital admissions and nursing home stays. She died in October 2007. Almost two years after her death, her husband, the plaintiff, sued the nursing home and hospital for allegedly negligent care, which the husband asserted caused the woman to develop pressure sores and her death. Both a survival action and a wrongful death claim were brought by the plaintiff. After trial in Philadelphia County, the plaintiff received \$1 million for the survival action, \$125,000 for the wrongful death action and a punitive damages award of \$875,000. The defendants appealed, arguing the limitation period on the survival action claims started to run in 2005, when the injuries first occurred and the 2009 action was, therefore, time-barred under long-standing Pennsylvania case law. The state's highest court agreed with the plaintiff, however, relying on a section of the MCARE Act, which applies only in medical malpractice actions and states that survival action and wrongful death actions "must be commenced within two years after the death."

Justice Max Baer did not hide his disagreement with the majority decision, which was joined by only three of five justices with two justices not participating in the consideration or decision of the case. Baer called it "an undisciplined judicial expansion of the law" and hypothesized situations in which plaintiffs could pursue survival action claims long after the precipitating event occurs. "By any stretch of the imagination, this could not be what the General Assembly intended" when it passed the MCARE Act, he wrote in his opinion.

Medical providers in Pennsylvania will need to be aware of this new ruling and take it into consideration when deciding whether or not a potential claim is truly time-barred. If you have questions about this case and its effects, please [contact me](#) or any of the attorneys in [Barley Snyder's Health Law Industry Group](#).



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