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Proving
Medical
Negligence

In Maryland

The Standard of Care

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Proving Medical Negligence in Maryland—The Standard of Care

In general, a plaintiff in a medical malpractice case bears the burden of proof on four issues:

- 1) *the applicable standard of care;*
- 2) *a deviation from the standard of care by a healthcare provider(s);*
- 3) *a causal relationship between the deviation from the standard of care and plaintiff's injury; and*
- 4) *proof of plaintiff's injury.*

The necessary proof for each of the above elements may vary from jurisdiction to jurisdiction. As a result, a litigant must carefully choose an attorney who is familiar with the local requirements for proving medical malpractice/medical negligence. This is particularly true in the State of Maryland. This article provides a primer on what a litigant must do in Maryland to establish the applicable standard of care for a healthcare provider (i.e., physician or nurse) in a medical malpractice/medical negligence case.

Establishing the applicable standard of care is merely one of the four required elements of proof. Maryland courts have held that evidence regarding the applicable standard of care is beyond the knowledge of lay people. As such, expert testimony (i.e., testimony of a physician) is always required to prove the applicable standard of care.

To establish the applicable standard of care, an expert witness must be able to testify that a specific healthcare practitioner did not use the “degree of care and skill, which is expected of a reasonably competent practitioner in the same class to which he belongs, acting in the same or similar circumstances. Under this standard, advances in the profession, availability of facilities, specialization or general practice, proximity of [other] specialists and special facilities, together with all other relevant considerations, are to be taken into account.”¹ When a hospital (i.e., the institution as opposed to an individual physician) is a named defendant in a medical malpractice/medical negligence action, it “is required to use that degree of care and skill which is expected of a reasonably competent hospital in the same or similar circumstances, and under this standard, advances in the profession, availability of special facilities and specialists, together with all other relevant considerations, are to be taken into account” as well.²

¹*Shilkret v. Annapolis Emergency Hospital Ass'n*, 276 Md. 187 (1975).

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In 1975, Maryland courts abandoned a strict locality rule regarding standard of care testimony. Under the strict locality rule, an expert witness testifying about the standard of care had to demonstrate familiarity with the applicable standard of care in the locality or the community where the defendant healthcare practitioner committed the alleged act of medical negligence/medical malpractice. In contrast, Maryland has adopted a broader view without regard to geographical limitations. In *Shilkret v. Annapolis Emergency Hospital Association*, the Court of Appeals held, without regard to a geographical medical community or locality, that, “a physician is under a duty to use that degree of care and skill which is expected of a reasonably competent practitioner in the same class to which he belongs, acting in the same or similar circumstances.”³ Therefore, an expert testifying about the standard of care must have the same or similar training, experience, and specialty, among other things, as the Defendant. Geography, by itself is inconsequential to determining whether an expert is qualified to provide expert testimony regarding the standard of care.

Finally, Maryland has additional necessary statutory requirements for establishing the standard of care, which are set forth in the Health Claims Arbitration Act. An article dedicated to exploring its specific requirements is forthcoming.

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