A physician determined a lump in a patient’s breast was benign. However, two years later, the lump increases in size and a biopsy showed the lump was cancerous. The cancer spread to the woman’s lymph nodes and metastasized to her bone marrow.

If the patient wants to bring a medical liability lawsuit, does a six-month statute of limitations clock to file a claim begin ticking when the cancer diagnosis is delivered to the patient? Or did that clock start after another physician—more than a year after the cancer diagnosis—told the patient that the original physician should have found the tumor to be malignant during the first mammogram and ultrasound?

The Michigan Supreme Court is poised to answer that question.

The case law on that scenario is well settled in Michigan, the Litigation Center of the American Medical Association and State Medical Societies and the Michigan State Medical Society (MSMS) told the court in a brief they filed arguing that the justices should uphold the appellate court’s decision to dismiss the case. The appellate court found that when the woman was diagnosed with cancer “she had sufficient information to trigger the running of the discovery rule period” and that she did not meet her burden to show otherwise. She filed the lawsuit 17 months after the cancer diagnosis.

“Patients and physicians must be able to rely on Michigan courts to follow sound, established precedent and produce just outcomes, even in difficult situations,” the brief tells the court in the case, *Bowman v. St. John Hospital and Medical Center*. “Michigan’s lower courts have long ensured that a plaintiff ‘act diligently in discovering his cause of action and cannot simply sit back and wait for others to inform of his possible claim,’” the brief says, citing an earlier ruling.
Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.

**Limits support fair litigation**

When legislatures and courts put statutes of limitations in place, they want to ensure claims can be adjudicated promptly. In addition, it provides those being sued with a fair opportunity to defend themselves, the AMA Litigation Center brief says.

If limits aren’t in place, the incident will have occurred so long ago that evidence may be forgotten or misplaced, expert testimony would become stale and unreliable, and defendants would have a protracted fear of litigation.

“So, while a plaintiff must have an adequate opportunity to bring a claim, a defendant and the courts must be protected from cases in which the search for truth may be impaired,” the brief tells the court. “The more time that elapses between the event and the lawsuit, the more challenging it becomes to determine whether the physician failed to meet the appropriate standards of care and whether any such failure caused the alleged injury.”

Excessive time to file claims also increases the chances that patients will file claims for non-medical reasons, such as frustration with a physician, personality differences or negative outcomes, the brief says.

**A check on liability crises**

Having limits in place help prevent medical liability crises that force doctors to limit services or practice in other states where medical liability insurance is attainable and affordable, the AMA Litigation Center tells the court.

The brief outlines medical liability reforms that the Michigan legislature has adopted and the courts have upheld in response to medical liability crises numerous times since the 1970s, including measures such as an expert witness testimony rule, pre-filing notice obligation, affidavit of merit requirement and a cap on noneconomic damages. Most recently, Michigan Gov. Gretchen Whitmer signed an executive order to ensure that health care providers would not be subject to liability while on the front-lines of the COVID-19 pandemic.

“Michigan courts have upheld these enactments because of the legislature’s legitimate interest in
enacting liability reforms to improve access to affordable health care,” the brief says in its call for the court to uphold the statute of limitations requirement. “Continued diligence is required, as the effort to ensure a properly functioning medical liability system remains an important, bipartisan objective.”