

# Redefining "cause of death" meaning would upend medical liability law

AUG 19, 2021

**Tanya Albert Henry**

Contributing News Writer

A Pennsylvania court decision redefines the universally understood term "cause of death." And if the ruling is allowed to stand, it would upend the state's medical liability climate, physicians tell Pennsylvania's highest court.

In an opinion, the Superior Court of Pennsylvania said that "cause of death" is ambiguous and interpreted it to mean the "conduct the plaintiff alleges led to the decedent's death." That definition would allow plaintiffs to file lawsuits beyond the two-year statute of limitations established in the bipartisan Medical Care Availability and Reduction of Error Act (MCARE).

In an amicus brief, the Litigation Center of the American Medical Association and State Medical Societies, the Pennsylvania Medical Society (PAMED) and others tell the state Supreme Court that allowing the decision to stand would be "to the great detriment of the cost and availability of health care to the citizens" of Pennsylvania.

Lawmakers passed MCARE in 2002 in response to a medical liability crisis during which 42% of physician specialists had to reduce or stop offering high-risk services because of rising medical liability insurance costs. Some physicians could not obtain insurance and the crisis resulted in some doctors leaving the state entirely, physicians tell the court.

"Should the Superior Court's opinion be affirmed, there is tremendous cause for concern amongst Pennsylvania physicians," says the brief physicians filed in the case, *Reibenstein v. Barax*. "With the seven-year statute of repose ... already having been declared unconstitutional, the Superior Court's opinion opens the floodgates even further."

The AMA Litigation Center and others tell the court that allowing stale claims "will put medical malpractice insurance carriers in an even worse position than they were in during the medical malpractice liability crisis of the early 2000s, unquestionably resulting in an increased number of liability claims that could be brought and a corresponding rise in the cost of insuring those claims."

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.

## Outside statute of limitations

The case the court is considering was filed nearly six years after Mary Ann Whitman died from a ruptured abdominal aortic aneurysm that happened five days after a CT scan that her primary care physician, Patrick D. Conaboy, MD, ordered.

Charles Barax, MD, drafted a radiology report stating that there was an abdominal aortic aneurysm that was "poorly visualized." The administratrix for Whitman's estate sued Dr. Barax a year later. In his deposition, Dr. Barax said he spoke with Dr. Conaboy and told him he couldn't confirm whether it was rupturing.

Nearly six years after Whitman's death, the estate administratrix separately sued Dr. Conaboy. The physician asked the court to dismiss the case because of MCARE's general two-year statute of limitations. The trial court agreed with Dr. Conaboy, saying there was "no evidence of affirmative misrepresentation or fraudulent concealment of the cause of death." In other words, the medical cause of death was correctly identified on the death certificate and known to the plaintiff so there was no reason to not apply the two-year statute of limitations. But the appeals court defined the "cause of death" to include the "conduct leading to death." It overturned the trial-court decision and said the lawsuit could go forward.

## "Cause of death" not ambiguous term

The AMA Litigation Center and others tell the court that the meaning of "cause of death" is "unmistakably plain, obvious and unambiguous." For example, the brief notes that Black's Law Dictionary defines it as "the happening, occurrence or condition that makes a person die."

"To take an unambiguous medical term of art and redefine it in such a manner, with no support in either legislative history or precedent is absurd," the brief tells the court.

The brief says the Superior Court redefined "cause of death" with legalese.

"It took a law that was carefully negotiated and passed on an overwhelmingly bipartisan basis, repealed it and unilaterally installed a new law in its place. And it did so in a total vacuum of support in either legislative history or legal precedent," the brief tells the court. "This must be undone."