Medical malpractice or ordinary negligence? A primer for understanding the scope and impact of the Medical Malpractice Act.

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A patient suffers an injury while receiving treatment from a health care provider. The patient alleges that the injury was the result of the provider’s negligence and the provider is qualified pursuant to the Medical Malpractice Act (the “Act”). Does an action filed by the patient against the qualified provider as a result of the injury-causing incident fall within the scope of the Act? Not necessarily. This article provides guidance for determining whether the Act applies and explains the importance of assessing this issue when defending actions brought by patients against health care providers.

When the Act Applies: Medical Negligence

The Act applies when a plaintiff alleges medical negligence, or negligence related to the provision of “health care,” which is defined by the Act as “an act or treatment performed or furnished, or that should have been performed or furnished, by a health care provider for, to or on behalf of a patient during the patient’s medical care, treatment or confinement.” Accordingly, a qualified provider commits medical negligence – also known as malpractice – and is subject to liability under the Act if the qualified provider breaches its duty to the patient to exercise reasonable care in the provision of health care resulting in harm to the patient. We must therefore turn to the plaintiff’s complaint for damages to determine whether the allegations asserted are related to the provision of health care such that they fall within the scope of the Act.

Although the substance of the complaint generally controls, the plaintiff need not specifically allege medical negligence or use the term “malpractice” for the Act to apply. Rather, the plaintiff’s complaint is subject to the Act if the “tenor” of the complaint, taken as a whole, is one of medical negligence, such as when the complaint generally alleges that the qualified provider was negligent in providing care to the patient or questions the judgment of the qualified provider when making health care decisions. See, for example, Putnam County Hospital v. Sells, wherein the patient fell out of a hospital bed while under general anesthesia and suffered injuries. The patient filed suit against the hospital, alleging that its staff was negligent by failing
to ensure that the side guardrails of the hospital bed were in place to prevent a fall.5 The allegations, which questioned the hospital’s decision on how to prevent falls of patients under general anesthesia, challenged the treatment decisions of the health care provider and were deemed to be allegations of medical negligence that fell “squarely within the scope of the Act.”6

**When the Act Does Not Apply: Ordinary Negligence**

Not all allegations of negligence against a qualified health care provider fall within the scope of the Act.7 Premises liability actions, which involve allegations of the failure to maintain a reasonably safe premises, are matters of ordinary rather than medical negligence because they are unrelated to the provision of health care. Accordingly, the Act does not apply to premises liability claims, even when the plaintiff is a patient and the defendant is his or her health care provider.8 The Court’s opinion in *Sells* is helpful for clarifying the subtle distinction between a claim for medical negligence and one for ordinary negligence.

In *Sells*, the Court distinguished the facts before it from those in the matter of *Harts v. Caylor-Nickel Hospital, Inc.*, which also involved a patient who had suffered injuries after falling from a hospital bed. In *Caylor-Nickel*, the hospital did have bedrails in place on the patient’s bed. However, the patient fell from his hospital bed when the guardrail collapsed as he attempted to use it for support. The patient subsequently filed a complaint against the hospital alleging that the “direct and proximate cause of the fall of Plaintiff was the negligence of the Defendants.” The patient also filed an affidavit which specifically alleged ordinary negligence and not medical negligence.9 The Court of Appeals held that the tenor of the patient’s complaint supported an allegation of ordinary negligence, as the patient did not allege any “breach of duty directly associated with medical care” that would have subjected his claim to the Act.10

Other cases in Indiana similarly refused to apply the Act in cases where the patient alleged injury as a result of the condition of hospital premises as opposed to the manner in which health care was provided. See, for example, *Winona Memorial Foundation of Indianapolis v. Lomax*, wherein the plaintiff sued the hospital for injuries sustained after tripping on a protruding floorboard while leaving a dressing room area without the assistance of any hospital employees.11 The plaintiff’s complaint did not allege that the injury resulted from malpractice or that the hospital failed to render appropriate medical care, and the patient had not received medical treatment prior to or at the time of her fall.12 Accordingly, the Act did not apply. See also *Pluard v. Patients Compensation Fund*,13 wherein a newborn suffered injuries after a surgical lamp detached from the wall and fell on his head. The plaintiff’s allegations were deemed to arise from ordinary rather than medical negligence because the injury was caused by the lamp’s detachment from the wall (an issue of premises liability), and not the medical provider’s judgment in positioning of the lamp.14

**Why Does it Matter?**

Having a general understanding of when the Act applies is important for a few reasons. First, a court lacks subject matter jurisdiction over claims for medical negligence until after a Medical Review Panel has issued its written opinion. Thus, where a patient files a medical negligence claim against a qualified health care provider and fails to simultaneously file a proposed complaint with the Indiana Department of Insurance, the patient’s court complaint may be subject to dismissal for a lack of subject matter jurisdiction. Subject matter jurisdiction challenges cannot be waived and may be raised even for the first time on appeal.15

Secondly, if the claim sounds in medical negligence as opposed to ordinary negligence the qualified provider will be entitled to the protections afforded health care providers by the Act. Those protections include, but are not limited to the following: the requirement that the provider’s anonymity be maintained in any court pleadings pending an opinion of the Medical Review Panel; the right to have the provider’s care reviewed by an impartial Medical Review Panel prior to the patient being allowed to proceed in court; the application of contributory fault whereby any fault allocated to Plaintiff bars Plaintiff’s recovery;16 and perhaps most significantly, limitations on damages. Specifically, the Act limits the amount a plaintiff may recover for injuries sustained as a result of medical negligence that occurred after June 30, 2017 and before July 1, 2019, to $1,650,000, of which $400,000 would be paid by the health care provider with the remainder paid by the patient’s compensation fund. The provider’s share of its exposure could be further limited through the purchase of an annuity in an amount that
complies with the Act’s provisions. If the negligence alleged does not fall within the purview of the Act, then the provider defendant is not entitled to the Act’s above protections.

Imagine a situation where a patient falls while hospitalized and sustains a subdural hematoma with permanent loss of cognitive function. The jury determines the patient’s economic and noneconomic damages total $3,000,000. If that fall occurred because the patient was a known fall risk and fell as a result of the health care provider’s failure to implement fall prevention interventions (which requires an exercise of medical/nursing judgment), then the Act would apply and the provider’s exposure would be capped at $400,000. However, if the patient fell as a result of water being allowed to accumulate on the floor (a defect in the premises), the Act would not apply and the provider’s exposure would be $3,000,000. Quite simply, the Act’s impact on the liability of a provider can be significant.

Given the potential (and possibly significant) disparity in the amount of damages available to a plaintiff in an ordinary negligence action versus a medical malpractice action, it is important for providers and their attorneys to understand when the Act applies so that appropriate procedural action can be taken against a complaint inappropriately filed in court under the guise of an ordinary negligence action. Asking a few simple questions at the start of litigation – such as “Does the plaintiff question the health care decisions of the provider?” and “Were the plaintiff’s injuries the result of equipment failure or an improperly-maintained premises?” – could avoid a provider’s exposure to potentially excessive jury awards.

4 Methodist Hospital of Indiana, Inc. v. Rioux, 483 N.E.2d 315, 316-17.
6 Id. at 971.
8 465 N.E.2d at 740-42. See also Harts, 553 N.E.2d at 874.
9 Caylor-Nickel, 553 N.E.2d at 879.
10 Id.
12 Id. at 733, 740-42.
14 Id. at 1037-38.
15 Sells , 619 N.E.2d at 970.
16 In comparison a general liability claim is governed by Indiana’s Comparative Fault Act such that a percentage of fault allocated to Plaintiff by the jury will reduce Plaintiff’s recovery, but not necessarily bar Plaintiff’s recovery. Cavens v. Zaber-dac, 849 N.E.2d 526, 528-29 (Ind. 2006).

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