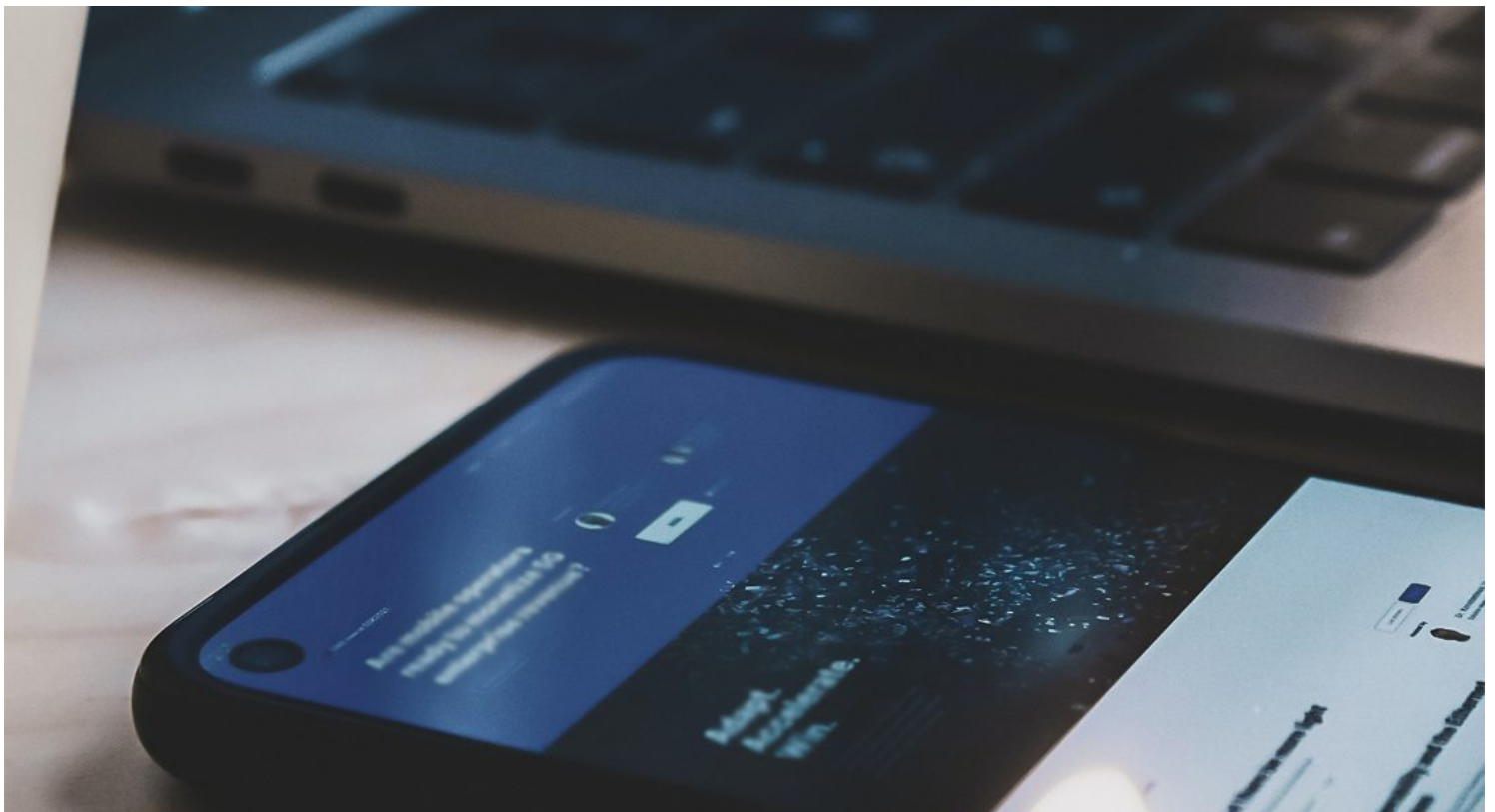


NEWS & INSIGHTS

Pennsylvania Supreme Court Rules MCARE Statute of Repose is Unconstitutional

[INSIGHTSLEGAL UPDATE](#)

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The Pennsylvania Supreme Court recently declared that the seven-year statute of repose applicable to medical malpractice lawsuits is unconstitutional. Healthcare providers and their insurers and reinsurers should be mindful that some claims that were barred by the passage of time may be newly viable.

The MCARE Act's Statute of Repose

In 2002, the Pennsylvania Legislature enacted the Medical Care and Reduction of Error (MCARE) Act. The MCARE Act included a seven-year statute of repose, 40 P.S. § 1303.513, that barred plaintiffs from asserting claims after seven years from the date of the allegedly negligent care. The statute of repose did not apply to claims involving minors or claims involving foreign objects unintentionally left inside patients' bodies. Therefore, the application of the statute of repose is narrow and generally applied only to an adult's negligence claim in which the alleged injury was discovered seven or more years after the medical care occurred.

Yanakos v. UPMC: The holding

In an October 31, 2019 decision, a closely divided Supreme Court in *Yanakos v. UPMC* considered the constitutionality of the MCARE Act's statute of repose. It ruled that the Statute violated Article I, Section 1.1 of the Pennsylvania Constitution, which states "[a]ll courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have a remedy by due course of law" and was not substantially related to an important government interest. This means the statute of repose was unconstitutional and can no longer be used as an affirmative defense.

Yanakos v. UPMC: The facts

In *Yanakos*, the plaintiffs sued a hospital and several physicians for alleged negligence arising from a partial liver transplant to treat the patient's Alpha-1 Antitrypsin Deficiency (AATD). The donor was the patient's son. Twelve years later, the transplant failed, and the patient still had AATD, which should have been eliminated by the transplant. The plaintiffs sued alleging the healthcare providers were negligent because they failed to recognize the patient's son also had AATD.

The healthcare providers raised the statute of repose as an absolute bar to the plaintiff's claims. The trial court agreed with the defense's arguments and granted judgment in favor of the healthcare providers. The plaintiffs appealed to the Superior Court raising several constitutional challenges to the statute of repose. The Superior Court rejected the constitutional challenges and affirmed the judgment. The Supreme Court, however, sided with the plaintiffs and reversed the judgment. The Supreme Court found that the Pennsylvania Constitution provides individuals with the "right to a remedy" which cannot be infringed upon without being substantially related to the achievement of an important government interest.

The Court recognized that controlling rising costs of medical care and medical malpractice insurance premiums are important government interests. However, it determined that the statute of repose is not substantially related to achieving those goals. The Court found neither evidence to show that the statute of repose would provide actuarial certainty to insurers calculating premiums nor evidence it would have any effect on malpractice insurance costs.

Takeaways for the Healthcare Community

Although the statute of repose had, in practice, a narrow application, it provided a degree of certainty to time limits of certain types of claims. Healthcare providers, insurers, and reinsurers should recognize this ruling may revive a small subset of claims that had been extinguished due to the passage of time, such as those discovered more than seven years after the care was provided. This case also serves as a reminder that the protections afforded to healthcare providers by the 2002 enactment of the MCARE Act are subject to continuing challenges that require strong defense.

Saxton & Stump attorney [Morgan S. Hays](#) is available to discuss how your organization may be impacted by this recent ruling and our [Appellate and Post-Trial Advocacy](#) team can assist with preserving the protections afforded to healthcare providers.

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