Medical Economics

By Lee J. Johnson, JD

How long can a patient still sue?

Q One of my colleagues was just sued in a case that dates back nearly 20 years. How can that be? I've always assumed that the statute of limitations in medical malpractice cases is only two or three years, depending on state law.

A Although most states require a malpractice suit to be filed within two or three years of the alleged injury, statutes of limitations depend on the nature of the case, and some lawsuits can be brought even after many years have passed. In fact, even if you weren't named in the original suit, and the statute has expired, you can still be brought into a case if you're named as a "third party" by one of the defendants.

The purpose of the statute of limitations is to set a reasonable time limit on a physician's liability. But depending on the case, judges will often bend over backward to give the plaintiff his day in court. Here are the most common reasons that can keep the clock running on a plaintiff's right to sue you:

Continuous treatment. If the patient's care is ongoing, the statute of limitations may be governed by the rule of "continuous treatment extension." In such cases, the statute begins to run on the last day you treated the patient for the same condition, not on the day of the alleged malpractice.

For example, if you fail to spot a malignant cyst on an initial visit, but then pick it up three years later on an X-ray, the statue of limitations would start to run on the date the cyst was detected, not the date of the original misdiagnosis.

In some states, the mere scheduling of an appointment may extend the statute if it's for treatment of the same condition. The plaintiff may not receive the continuous-treatment extension, however, if a court rules that the interval between treatments was excessive.

Foreign objects. If a suit is based on the discovery of a foreign object in a patient's body, the statute in many states doesn't begin to run until the patient discovers or "should have discovered" the problem. Let's say you left a needle in a patient during a surgery, but the patient doesn't experience any problems until several years later, when the needle shows up on an X-ray. The statute begins to run on the date of that discovery—not the date of the operation or the start of symptoms caused by the needle. Courts tend to be liberal in determining when the patient should have known of the negligence.

Pediatric and obstetrical cases. In many states, the statute of limitations for an injury to a child doesn't begin to run until the child reaches the age of majority—usually 18. That's why so many lawsuits involving neurologically impaired children are filed 20 years after the child is born. These cases are particularly difficult to defend because after all that time memories have faded, witnesses have moved or died, and records may have been lost.

Thorough documentation is the best defense against a malpractice suit filed many years after the treatment that gave rise to it. That's why it's not a bad idea to hold on to certain medical records even after the statute of limitations has expired, especially with cases that might be problematic. (If storage becomes a problem with old paper records, consider scanning them.) Also, tell your malpractice insurer about any adverse incidents, even if you don't think they're likely to result in a suit. That way, the carrier can secure the records and interview witnesses if necessary. ■

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