



CLAIM STUDIES

A RISK MANAGEMENT
PUBLICATION FOR
LEGAL PROFESSIONALS

Plaintiff Medical Malpractice

Any matter that involves an injury to a person or a fatality can be emotional for the parties involved. It is not uncommon for individuals to have high, and sometime unrealistic expectations of medical professionals. Those expectations may also exist when an attorney has been retained in a legal dispute with a medical professional or hospital. According to claim data from Travelers Lawyers Professional Liability program for the time period between 2010 and 2015, one of the most common allegations involving Plaintiff Medical Malpractice was failure to timely document information with a total incurred cost of over \$1.5 million. For the same time period, the total cost incurred for claims against law firms with a focus on Plaintiff Medical Malpractice was over \$8.5 million.

The following claim studies are based on recent claims received by Travelers.

Failure to Timely File Claim Against a Hospital

BACKGROUND

An attorney was retained to represent a client in a wrongful death claim against a hospital. The client's 80-year-old father was admitted to the hospital after becoming ill during the night. At some point during the night, he vomited into his oxygen mask. He was subsequently diagnosed with aspiration pneumonia and three weeks later, he died. The death certificate listed "heart failure/natural causes" as the cause of death. The attorney filed a wrongful death lawsuit against the hospital alleging that the hospital negligently failed to monitor the father, allowing him to aspirate and ultimately causing his death from pneumonia.

However, the wrongful death case was dismissed with prejudice based on the attorney's failure to file a timely governmental claim pursuant to state statute as the hospital was a governmental entity. The attorney had filed a claim before the state's medical review panel, and assumed that this filing tolled the deadline for a governmental claim in the same way that it tolls the statute of limitations. The attorney filed an appeal on behalf of the client. Ultimately, the appellate court affirmed, finding that the medical review panel proceeding did not toll the deadline for filing a notice of tort claim against the government

RISK FACTOR:

It is important to know the law and jurisdictional requirement specific to the client's representation and to document and calendar all key dates and requirements.

WHAT HAPPENED

The client retained counsel to pursue a malpractice claim against the attorney and made a \$250,000 settlement demand. As the issue of timely filing was decided against the attorney by the appellate court, the defense of the malpractice claim focused on causation and damages. The client's father was 80 years old and in poor health. He suffered from advanced heart disease, which was identified as the cause of death in the death certificate.