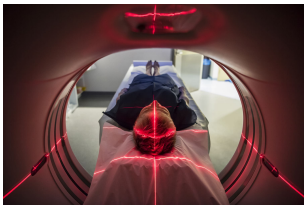

Third Party Indemnity Claims: What Health Care Providers Need to Know

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A recent case from the Indiana Court of Appeals highlights the parameters of Indiana's Medical Malpractice Act (the "MMA") where the Court held that an indemnity claim made by one healthcare provider against another provider is subject to the MMA.

In *Lake Imaging, LLC v. Franciscan Alliance, Inc.*, a hospital system, Franciscan Health, independently contracted with the Lake Imaging radiology group to read images of Franciscan's patients. Between April 19 and 25, 2011, Lake Imaging allegedly failed to diagnose a patient's brain bleed, and the patient subsequently died on April 25. In 2013, the family of the deceased patient brought suit against Franciscan Health, but not against Lake Imaging. Franciscan, in turn, sought indemnity from Lake Imaging for costs imposed on Franciscan for the alleged negligence of Lake Imaging. In 2016, the final claim was settled in favor of the patient's estate.

In 2018, Franciscan demanded relief in the amount of the claim from Lake Imaging pursuant to an indemnification provision in Franciscan's contract with Lake Imaging. Lake Imaging did not pay, and Franciscan brought suit for breach of the indemnification provision. Lake Imaging moved for summary judgment arguing that Franciscan's claim, based on the allegation of medical negligence, was in fact a claim for medical malpractice and thus was barred by Indiana's two-year statute of limitations for such claims. On appeal, the Indiana Court of Appeals agreed and found in favor of Lake Imaging.

What do these redefined parameters mean for health care providers? Key lessons from the Lake Imaging Case follow:

- **An indemnity claim based on medical negligence—regardless of who the claimant is—is subject to the MMA.** In analyzing the broad provisions of the MMA, the Court held that the MMA's provisions encompassed Franciscan's breach of contract claim because the claim is "(1) 'in contract'; (2) 'against a health care provider'; and (3)

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'based on professional services or health care that was provided or could have been provided,'" and thus aligns with the statute of limitations provisions within the MMA. Further, the MMA is not limited to patients, as the word "claimant" is used instead of the word "patient" in several provisions. Due to the broad language in the MMA, it stretches beyond conventional medical malpractice claims brought by a patient or their estate against a medical professional. A claim by one provider against another, if based on medical negligence, is subject to the MMA.

- **The MMA's time constraints require strategic litigation.** In this case, the Court noted that its holding—which limits the timeframe within which a plaintiff may sue—will likely result in plaintiffs having to bring suit before actually suffering a loss, which is counterintuitive in an indemnity situation. But, the Court stated, the legislative intent in enacting the MMA allows for this deviation, and simultaneous litigation of the underlying injury and indemnification is permitted under Indiana Trial Rule 14. In this case, for example, Franciscan was left with only two weeks to bring Lake Imaging into the suit before the expiration of the statute of limitation. Franciscan argued that, because medical malpractice claims are often filed just days before the expiration of the statute of limitations, subjecting these indemnity claims to the MMA would have "far-reaching, adverse implications." However, the Court responded that Franciscan had the option to avoid being put in its predicament.
- **Avoiding vicarious liability is possible with proper notice to the patient.** Since 1999, hospitals and physicians in Indiana have been able to avoid vicarious liability for the negligence of their independent contractors by providing adequate notice to the patient that the care being received is not provided by, or affiliated with, the hospital or system, but rather by an independent contractor. *Sword v. NKC Hospitals, Inc.* 714 N.E.2d 142, 152 (Ind. 1999). As applied here, if Franciscan gave such notice to the patient before the patient was treated by Lake Imaging, Franciscan would have avoided its vicarious liability for Lake Imaging's negligence. Thus, it is crucial that

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hospitals and health systems that contract with independent third-party providers should make patients aware of any treatment being performed by such third parties.

- **Administrative prerequisites must be satisfied.** In this case, the Court noted, medical malpractice claims must—with few exceptions—be presented to the Indiana Department of Insurance and reviewed by a medical review panel before being heard by any court. Because Franciscan skipped these crucial steps in the medical malpractice process, the Indiana Court of Appeals found that the trial court properly dismissed the claim for lack of subject matter jurisdiction.

This holding puts health care providers in the position of medical malpractice plaintiffs, a role opposite their typical status in such claims. Just as injured plaintiffs must abide by the significant limitations of the MMA, it is now crucially important that hospitals and physicians who contract with outside providers also do so by filing any indemnity claims based on medical negligence within Indiana's two-year statute of limitations.

For any questions on this article or for more information about Indiana's Medical Malpractice Act as it applies to health care providers, please contact Cami Trachtman at ctrachtman@fbtlaw.com or 317.237.3806.

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