Legal issues

What if something goes wrong?

What is a statute of limitation?

What is informed consent?
What if something goes wrong?

It is probably safe to say that at least once in your lifetime, you have paid a visit to a doctor’s office, been examined in the ER, or been admitted to the hospital. Sometimes we are not happy with the medical care we receive. Sometimes surgeries are not successful. Sometimes medications that we take fail to heal us or make us feel better. Sometimes, despite our belief that science and medical advancements have the ability to cure all ailments, we are overcome with grief and despair when a loved one succumbs to disease. A medical outcome that does not turn out as expected is not necessarily the result of medical negligence or medical malpractice. On the other hand, medical errors made by doctors, nurses, therapists, and other medical professionals can and do occur, and when such a situation arises, it is your right as a patient to seek to have those wrongs addressed through the filing of a lawsuit.

If you have questions about medical care that you or a loved one received, you should contact a qualified attorney to discuss your legal options. It is important to note that the area of medical malpractice law is a highly specialized field. There are many attorneys in Allegheny County who specialize in handling only medical malpractice lawsuits. It is important for you to remember that just because someone went to law school and graduated with a law degree, this does not automatically qualify them to handle your potential lawsuit. Most lawyers concentrate their entire careers upon specializing in only a few areas of the law. Therefore, it is up to you to do some research on any potential lawyer you may hire. During your initial consultation with a lawyer, do not be afraid to ask him/her what his/her qualifications are for handling your case, if he/she has handled cases likes yours in the past, and what his/her success rate was. Hiring a lawyer is just like hiring a plumber or electrician, for example. You should be comfortable with their qualifications, price for services, experience, and personality prior to retaining them.

If you do not know an attorney, a lawyer referral service can put you in touch with one. You and your attorney can evaluate the unique facts of your situation, and decide if filing a lawsuit is the right step for you.

For more information on how to get in contact with a lawyer, please consult:

Allegheny County Bar Association Lawyer Referral Service
http://www.acbalrs.org/

For information on whether an attorney has been disciplined by the state disciplinary board of Pennsylvania, or to report an attorney for unethical or egregious conduct, please consult http://www.padisciplinaryboard.org/consumers.php.
What is a statute of limitation?

The term "statute of limitations" means that there is a specific time frame in Pennsylvania in which an individual is permitted to initiate legal action against another person or entity. It is important to file suit within the designated time period because once the statute of limitations expires, it is nearly impossible to initiate legal action, no matter how much merit your lawsuit may have. Once the statute of limitations expires, so does your legal right to sue. If the statute of limitations expires and you have not yet filed a lawsuit, you will lose your right to money damages and other relief. The reason that each state has a statute of limitations governing medical malpractice actions is to encourage injured parties to evaluate their claims and take action or file a lawsuit within a certain period of time. The sooner a lawsuit is initiated after the perceived wrongdoing, the more likely it is that memories and documents pertinent to that lawsuit remain intact and are not destroyed by the passage of time.

The statute of limitations in Pennsylvania for injuries resulting from medical error or medical malpractice is two years. The easiest way to think of the statute of limitations is like a big clock counting down the years and days in which you have to file a lawsuit. Generally, the two-year statute of limitations “clock” begins to count down from the exact date the injury occurred. For example, the statute of limitations would begin to run on the day you underwent surgery or the day you attended an appointment with a physician in which a medical error occurred. Unfortunately, the day of a patient’s death may also mark the beginning of the countdown of the statute of limitations clock. In most cases, it is fairly easy to determine the exact date of injury, and the patient has two years from that date to file a lawsuit, if that is the course of action he/she chooses.

In other situations, however, the date of injury may not always be so obvious. For those difficult instances where a patient discovers a medical error after the usual two-year time period has passed, that person may still be able to file a medical negligence lawsuit thanks to a legal rule called the “discovery rule.” The discovery rule says that in certain instances, the statute of limitations clock does not begin to run until the patient actually “discovers” that wrongdoing has occurred. The discovery rule most often takes effect in cases where there is a delayed diagnosis of some type of ailment, like cancer. Most individuals who believe they have been harmed by the negligence of a nurse, physician, or other medical practitioner do not possess the necessary legal knowledge needed to know when they should file a lawsuit. That is the job of a qualified attorney. The most important thing you as a concerned patient can do is contact an attorney or attorney referral service at the first moment you think you have been harmed by a doctor or hospital. Time is certainly of the essence when it comes to protecting your legal right to sue another person or entity, and it is important to be aware of this two-year deadline.

For more information on the statutes of limitations in effect in Pennsylvania, please consult:

40 P.S. §1303.513 (statute)
http://www.capp-pa.org/MCAREStatute.htm

42 Pa C.S. §5524 (statute)
http://law.onecle.com/pennsylvania/judiciary-and-judicial-procedure/00.056.024.000.html
What is informed consent?

Except in the case of emergencies, a physician owes a duty to a patient to obtain the informed consent of the patient prior to performing surgery, administering anesthesia, administering chemotherapy or radiation, giving a blood transfusion, inserting an implantable medical device, or prior to administering an experimental medication, treatment, or device.

A patient's consent to receive certain medical treatment or surgery is considered "informed" when the patient has been given by the doctor a full description of the procedure he/she is about to receive, an explanation of the risks and benefits to undergoing that procedure, and an explanation of possible alternative treatments, if any are available. Usually, your doctor will discuss a proposed procedure with you, the patient, during an office visit or in the hospital setting. During that discussion, your doctor will describe the procedure he/she is going to perform, how it will benefit you, what the risks of performing this procedure are, and the alternative remedies that may be available to you should you choose to forego treatment. After this discussion takes place, the doctor, or possibly a nurse or other healthcare professional, will ask you to sign a piece of paper indicating that you have been given all pertinent information regarding the procedure that is about to be performed on you, you understand the information, and you chose to either move forward with the procedure or forego treatment.

If, for any reason, you do not understand what type of procedure a doctor wishes to perform, or if you do not understand how a treatment or medication will benefit you, please speak up and ask the doctor to explain things to you a second time. It is your right as a patient to ask as many questions of your doctor as you feel necessary. Your doctor wants you to be comfortable with any and all decisions you make about the health care you receive, and gaining your informed consent to certain medical treatment is one step towards achieving this goal.

A doctor may be liable to you for money damages in a court of law if he/she fails to obtain your informed consent prior to performing a procedure on you. A doctor may be liable to his/her patient for money damages in a court of law if he/she does not obtain informed consent or if that doctor misrepresents to the patient his/her professional credentials, training, or experience. As always, if you feel as though a physician did not obtain your informed consent to certain medical treatment, please call a qualified attorney or attorney referral service immediately so that you can discuss how to protect your legal rights.

For more information on the issue of informed consent, please consult:

40 P.S. §1303.504 (statute)
http://www.capp-pa.org/MCAREStatute.htm

American Medical Association

National Cancer Institute http://www.cancer.gov/clinicaltrials/conducting/informed-consent-guide/page1

Temple Health
Preparing for terminal outcomes

Estate planning

Business planning

- What is your business worth?
- How will management of the business continue?
- How will the ownership in the business be transferred?
- How will the transfer be funded?
Estate planning

Despite that no one likes to think about these things, the old adage about "nothing certain but death and taxes" is never truer than when applied to estate planning. In particular, careful estate planning can save you and your loved ones a great deal of trouble, confusion, and money. By planning ahead, you have the ability to limit your taxes and ensure that your family and loved ones receive as much of your estate as possible. Establishing a last will and testament and planning ahead to minimize the assets that will be subject to probate can accomplish this.

In Pennsylvania, upon death, your estate will be subject to "probate." This process involves the appointment of an executor or administrator of your estate, who will then gather all of your assets, pay your debts, pay inheritance taxes, and then finally, divide the remaining assets amongst your heirs. Pennsylvania is one of the few remaining states that has a state inheritance tax, which must be paid within nine months after the date of death. If Pennsylvania inheritance taxes are filed within three months of the date of death, a 6% discount is applied to the amount of tax due. Depending upon the size of your estate, it may be subject to federal inheritance tax as well.

Upon death, your estate will be considered either testate (meaning you died with a will) or intestate (you did not have a will). Whether or not you have a will can determine who gets what in your estate. If you have a will, you have control as to where your assets and possessions go. If you do not have a will, Pennsylvania has a law of intestacy, which provides for distribution to your heirs in accordance to your relationship to each person. In particular, if you wish to leave assets to a non-family member, including a domestic partner, you can only do so through a will; Pennsylvania intestacy law recognizes only blood relatives and spouses. A will need not be a formal document; Pennsylvania recognizes holographic wills, which are handwritten statements, signed by the testator.

In addition to a last will and testament, estate planning may involve the creation of trusts, jointly owned property, joint bank accounts, and other financial planning which will help minimize inheritance taxes. By planning ahead, you can save your family and loved ones a great deal of confusion and stress, and quite often, you can minimize family conflicts and prevent situations of heirs fighting over your assets. For more comprehensive estate planning, you should contact an attorney.

For more information as to the Allegheny County probate process, see http://www.alleghenycounty.us/wol.
Business planning

In addition to estate planning, business owners must also think about succession planning. Business succession planning is the process of preparing to have a successor or successor to the business and its operations and value. Like estate planning, succession planning is not a matter of "if" but rather a matter of "when." No one likes to contemplate death or incapacity. However, succession planning is important to preserving your business and your estate's value.

Succession plans can be temporary (for those who need to take a year or two off because of a serious medical problem) or permanent (upon death or a permanent departure from the business). Key considerations are below.

What is your business worth?

A business valuation will help you determine your business's worth. There are several methods to determining the value of a business and often people choose to get an accountant involved when determining which method to use.

How will management of the business continue?

When the sole owner of business dies, the "life" of the business continues on. In the absence of a power of attorney, corporate document, or will indicating who will "continue on the life of the business," a conservator or guardian would need to be appointed to act on behalf of the incapacitated or deceased owner. Until the probate court approves the creation of an estate and appoints an executor for the business, which can take up to several weeks, the management and day to day operations of the business could be suspended. Some ways to get around this could include the above succession planning, using a trust, and/or appointing a key person to take over the management or operations of the business.

Management of a business should not be confused with ownership in the business. Who is willing to take over the day to day operations and perform the countless tasks which keep the business afloat? It is not about who will become the owner of the shares or assets. When considering how to delegate management of the business, it is important not to delegate critical tasks exclusively in one person. Sometimes redundancy is desirable. For example, when only person has check-signing authority, and he/she is unavailable, the business is stuck without a person who can sign checks or possibly pay payroll. It is also beneficial to choose a key employee or other experienced person who has had training or a background in the business or industry.

How will the ownership in the business be transferred?

A key tool used when selling or giving away ownership in a business is a buy-sell agreement. A simple way to look at a buy-sell agreement is to view it as your business will; it will govern what happens if you partner in the business dies, is forced to leave the business, or chooses to leave the business. Like a will, the buy-sell agreement does not come into play until one of the event triggered under it occurs, i.e., the business owner becomes disabled, chooses to leave, or dies.

How will the transfer be funded?

As important as determining how the ownership will transfer it is planning how the transfer will be funded. What funds will be used to buy out the value of the ownership being transferred or bought? In the event of a death, what about estate taxes? Often people use life insurance or disability insurance policies.

Planning of estate taxes is one of the most critical elements to succession planning. Failure to plan for estate and inheritance taxes can lead to the "death" of a family business. It is very common for the bulk of a business' worth to be in assets that can't easily be turned into cash, i.e., real estate, equipment, machinery, or other tangible items. With little access to cash, you may have to sell some property to make the cash available.

Determining the best course of business planning often involves professional guidance. You should contact your attorney to discuss what business planning is required to meet your needs.
Love and support

Support groups help bring families in similar situations or life transitions together to help support, encourage, and comfort each other through some of life's most difficult times. While some are lucky to have built in support, sometimes our friends and families cannot quite understand our situation. Support groups can help us find the consolation, nurturing, and encouragement from others in similar circumstances or experiences.

Prior to joining a support group, consider what type of group might be best suited for you. For some people, a small, intimate group may offer a stronger sense of closeness; while others may prefer a larger group where they're allowed anonymity. Most hospitals or health care specialists can help find a local group and make recommendations as to what will best fit your needs. Please keep in mind that many national associations or organizations will have a local chapter that may also provide support group services.

ACHIEVA (Allegheny County) - Support for people with disabilities and their families.

Allegheny County Coalition for Recovery (ACCR)

Allegheny Link - Resources and referrals for housing, employment, and issues related to disability and aging.

Allegheny County Respite Care Coalition - Resource lists for respite care providers in the region.

Area Agency on Aging County resource links, contacts and many helpful information sheets.

Cancer Caring Center or call 412-622-1212

Caregiver Support Program - Allegheny County, Department of Human Services. Respite services for Caregivers.

Call Seniorline at 412-350-6460

Children's Hospital of Pittsburgh 412-882-7105

Family Hospice and Palliative Care - Bereavement specialists offer support and counseling to those who have experienced loss, in one-to-one sessions and group settings or call 412-572-8821 • 1-800-513-2148 (toll free)

Family House - Family House provides a special "home away from home" for patients and/or families who must travel to Pittsburgh for treatment of serious or life-threatening illnesses.

HelpLine and United Way - Information & Referral Services providing problem solving and referrals to over 5500 Health and Human Services or call 412-255-1155

Highmark Caring Place - A Center for Grieving Children, Adolescents and Their Families – A peer support program for children who have had a family member die. Pittsburgh - 888-224-4673, Erie - 888-224-4673, Central PA - 888-613-4673, Warrington - 888-743-4673.

NAMI, National Alliance on Mental Illness (PA BRANCH) - The site offers information to support groups for the mentally ill and their loved ones, advocacy tools, and educational resources.

NAMI - Emergency preparedness planning for the disabled

Pennsylvania’s Here to Help

Pennsylvania Prevention Project Community Resource Directory on HIV/AIDS service providers (listed under resource, PA service providers)

Pittsburgh Caregiver Support Network or call 412-736-0436

Three Rivers Center for Independent Living - Advocacy and support organization

University of Pittsburgh, Center for Healthy Aging

Healthy aging educational resources and health tools (such as exercise tracking)

University of Pittsburgh, Institute on Aging

Partners with UPMC to offer educational material and community information on aging for families and caregivers affected by aging issues.
Glossary

ADA - Americans with Disabilities Act

ADLs - Activities of Daily Living, which include bathing, dressing, using the toilet, transferring (to or from bed or chair), caring for incontinence, and eating.

ADS - Adult Day Service

CCRCs - Continuing Care Retirement Communities

CHIP - Children's Health Insurance Program

Covered Entity – Under HIPAA, any health care provider, health care plan or health care clearing house.

EMTALA - Emergency Medical Treatment and Active Labor Act

FMLA - Family & Medical Leave Act

Generations Program – The first stages of the Allegheny County Child Custody program

HCBS - Home and community based services

HHS - U.S. Department of Health and Human Services

HIPAA – Health Insurance Portability and Accountability Act of 1996

IRS - Internal Revenue Service

Legal custody - right to make major decisions on behalf of the child

LTAC – A long term acute care hospital that specializes in the treatment and rehabilitation of medically complex patients who require an extended stay in a hospital setting.

Physical custody – physical possession & control of the child

PPACA – Patient Protection and Affordable Care Act (aka the Health Care Law Reform Act)

Pro Se – A person in a court action who is acting on their own behalf without a lawyer

Pro Se Motions Program – A program through the Allegheny County Court of Common Pleas, Family Division that assists people without a lawyer in making family law requests through the court system.

PWAC - Pennsylvania Workers' Compensation Act

SNF - Skilled Nursing Facilities

SSA – Social Security Administration

SSDI – Social Security Disability Insurance

SSI – Supplemental Security Insurance

Unreimbursed medical expenses – Out of pocket medical costs such as co-pays or deductibles
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If you have a legal concern that is important to you, we urge you to consult with an attorney. For those who are concerned about their ability to afford legal assistance, the ACBA's Lawyer Referral Service is here to help: http://www.acbalrs.org.

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