

To: Lee Barclay
From: Brent Kabler
Re: Definition of medical incident

3/10/2009

Lee, I did a little research regarding how state laws and various courts have defined a medical incident for purposes of applying caps on noneconomic damages. I think these changes would conform to the dominant practice.

Change definition on Section 2U:

“Incident” means an alleged medical error or omission or a series of related errors or omissions leading to harm. A single incident may span multiple years and involve numerous named defendants.

Guidelines – to replace the description under item 4 on page 23:

A unique incident identifier should be assigned to all related claims. The term incident encompasses related medical errors or omissions that are alleged to have contributed to the injury or injuries giving rise to a malpractice claim. A single incident may span multiple years and implicate numerous individual practitioners and institutions.

All defendants named in a single lawsuit should generally be assigned the same incident identifier. Class action lawsuits are an exception.

In cases where a lawsuit has not been filed, reporting entities should assign incident identifiers in a way adheres to legal practice.

A single instance of alleged malpractice that results in allegations of injury to numerous *unrelated* individuals should be treated as *separate* incidents.

Incidents should encompass errors or omissions that are causally related to a given medical outcome, regardless of the time that elapses between each discrete error.

In general, allegations associated with a given injured party should be assigned the same incident identifier, regardless of the number of plaintiffs. Exceptions occur if allegations arise from separate and causally unrelated injuries.

Examples of single instances:

Multiple failures to diagnose the same condition or related conditions across many years.

A healthy patient is misdiagnosed with an illness, and subsequently treated for the misdiagnosed illness. The error is not discovered until years later.

Surgical material is retained, resulting in an infection. The infection remains undiagnosed, resulting in amputation, which is performed on the incorrect body part.

Examples of multiple instances:

A hospital mislabels blood type, impacting numerous unrelated patients.

Numerous patients experience a negative reaction to a single medication prescribed by a single physician.

A cardiology group is named as a defendant in a class action lawsuit alleging defective mechanical heart valves.

A single claim should be filed for each individual or institution associated with a single incident, regardless of the number of claimants.