

## White and Williams Files Amicus Brief in Pennsylvania Medical Malpractice Time-Limit Ruling

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White and Williams, on behalf of various industry groups, including the Hospital and Healthsystem Association of Pennsylvania, filed an amicus brief on November 14th urging the Pennsylvania Supreme Court to reconsider its recent ruling declaring the state's seven-year deadline for medical malpractice lawsuits to be unconstitutional.

In *Yanakos v. UPMC*, the Pennsylvania Supreme Court, in a 4-3 decision, struck down as unconstitutional the seven-year statute of repose in the Medical Care Availability and Reduction of Error (MCARE) Act. The statute places an absolute deadline of seven (7) years for filing a medical malpractice action. The court reasoned that the seven-year statute of repose conflicted with the "Open Courts" provision in the Pennsylvania Constitution, which guarantees that "courts shall be open; and every man for any injury ... shall have remedy by due course of law."

In assessing its constitutionality, the majority subjected the seven-year statute of repose to the intermediate scrutiny standard. Under this standard, a statute must be "substantially related to achieving an important governmental interest." In demonstrating the relationship between a statute and its objectives, a proponent may rely on a variety of sources, including legislative history, empirical evidence, case law, and even common sense, but one cannot rely on anecdotal evidence.

Here, the court recognized that the legislature had a legitimate purpose in enacting the seven-year statute of repose, namely, to control the rising costs of medical malpractice premiums by providing actuarial certainty to insurers; however, it did not demonstrate how the law was substantially related to that purpose. The court found no evidence in the legislative history to show how the General Assembly determined that the seven-year statute of repose would provide actuarial certainty. The court noted the legislature never defined the scope of the perceived problem by citing statistics on how many medical malpractice cases were filed seven years after an occurrence.

In the amicus brief, we asserted that the court, in violation of well-established principles, substituted its judgment for the legislature's and engaged in policymaking by deciding that the duly enacted seven-year statute of repose is unwise, or at least insufficiently supported. We argued if the General Assembly can eliminate causes of action altogether, that power necessarily includes the right to merely limit causes of action. This exercise of "line drawing" between the permissible and impermissible in its varied forms is inherently a policymaking function that is squarely within the province of the legislature.

Additionally, we argued that even assuming that the statute was properly subjected to an intermediate scrutiny standard, the seven-year statute of repose met that standard. We emphasized how the legislature employed a common-sense rationale to limit the discovery rule to seven years as the outermost limit because it would reasonably reduce stale claims, makes liability insurance more affordable, and promotes the prompt and fair determination of medical negligence cases. Contrary to the majority's view, there is no quantification requirement in constitutional jurisprudence for intermediate scrutiny and the reasonableness of the particular amount chosen is appropriately determined legislatively.

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More broadly, we argued that the majority's opinion invades the legislature's policymaking authority and erects a new standard for judicial review that now allows courts to second-guess that policymaking authority under the guise of judicial review. Therefore, we urged the court to grant re-argument to reconsider and correct this substantial departure from existing jurisprudence.

If you have questions or would like further information, please contact Andrew Susko, Edward Koch, ([koche@whiteandwilliams.com](mailto:koche@whiteandwilliams.com); 215.864.6319), Russell Lieberman ([liebermanr@whiteandwilliams.com](mailto:liebermanr@whiteandwilliams.com); 215.864.6285) or another member of the Healthcare Group.

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