

Murky Waters: Revisiting Statute of Limitations in Professional Negligence Actions in Nevada

BY ALIA A. NAJJAR, M.D., ESQ.

Over the years, the higher courts in Nevada have taken up the issue of the statute of limitations in professional negligence (i.e., medical malpractice) actions on multiple occasions. Most recently, the Nevada Court of Appeals revisited the inquiry notice portion of Nevada Revised Statute (NRS) 41A.097(2) in the now-published decision *Igtiben v. Eighth Judicial District Court*, 140 Nev. Adv. Op. 9 (February 22, 2024). Despite recent changes in the law extending the one-year inquiry notice period of the statute to two years,¹ the accrual of the statute of limitations in these oft-factually-complex cases is likely to remain a contentious issue in the years to come. *Igtiben* does, however, serve to re-affirm certain important points of consideration when assessing the statute of limitations in medical malpractice actions in Nevada.

Case Summary

In *Igtiben*, an inmate was taken to the hospital after suffering a second collapse in prison three weeks after heart surgery. Despite finding sickle cells in his blood work, he underwent computed tomography (CT) angiography of the chest, abdomen, and pelvis. The results demonstrated a pulmonary embolism (blood clot in the lung), and he was started on an anticoagulant. The following day, his hemoglobin had dropped, he became hypotensive, and he went into kidney failure. Further testing of his blood revealed that he had sickle cell disease.² He continued to deteriorate and went into cardiac arrest the following day, November 25, 2019, and was unable to be resuscitated. *Igtiben*, 140 Nev. Adv. Op. at 9, at pp. 3-4.

On January 6, 2020, decedent's mother (the plaintiff) obtained decedent's hospital records. Sometime thereafter, she obtained a copy of the death certificate. On April 2, 2020, she filed a motion in proper person to substitute as real party in interest in a civil rights case pending in federal court against the Nevada Department of Corrections. In her motion, plaintiff stated "I understand, I have to submit my Negligence Claim [] of [decedent's] Death. I understand

that I need to pursue them in state court." On May 12, 2020, plaintiff filed a probate petition in state court, attaching a copy of the death certificate, which listed the cause of death as pulmonary infarction due to a pulmonary embolism, acute renal failure, sickle cell trait, hypertension, and recurrent atrial fibrillation and atrial flutter. The only assets of the estate listed were the federal court lawsuit and a prospective wrongful death lawsuit. Thereafter, plaintiff retained counsel. She was appointed as special administrator of the estate in May 2020. *Id.* at pp. 4-5.

In September 2021, a pathologist³ was retained in relation to the federal lawsuit to review the decedent's medical records. In February 2022, the pathologist opined that decedent's death was caused by exposure to the intravenous contrast ordered by Dr. Christopher Igtiben for the CT scan, which resulted in kidney failure due to decedent's sickle cell disease. On November 22, 2022, plaintiff filed a complaint for professional negligence and wrongful death against the medical providers, including Igtiben. Thereafter, Igtiben filed a motion to dismiss, arguing, in part, that the statute of limitations pursuant to NRS 41A.097(2)⁴ had

CONTINUED ON PAGE 21

Murky Waters

expired. The district court denied the motion, stating, in part, that a finder of fact could find the then one-year statute of limitations did not begin to run until February 2022, when the pathologist formed his opinions.

Thereafter, a writ petition was filed, and the Nevada Court of Appeals agreed to take up the issue. *Id.* at pp. 5-6. As further set forth below, the court held that the district court was obligated to dismiss the case pursuant to NRS 41A.097(2) based upon the applicable statute of limitations.

Igtiben Court Reaffirmed Inquiry Notice Determined by Receipt of All Pertinent Medical Records

The *Igtiben* court held that plaintiff is placed on inquiry notice of a potential professional negligence claim when all relevant medical records are received because plaintiff has access to the facts that would lead an ordinarily prudent person to investigate further into whether negligence may have caused the injury. *Id.* at p. 8 (citing *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 253-54 (2012) and *Kushnir v. Eighth Jud. Dist. Ct.*, 137 Nev. 409, 410 (Ct. App. 2021)). Unless there is an impediment to pursuing an action, once all necessary medical records documenting the relevant treatment at issue are received, inquiry notice of the claim is triggered. *Id.* at p. 2. In *Igtiben*, the court found that plaintiff received the relevant medical records, the hospital records, which would have led an ordinarily prudent person to investigate whether the treatment provided by *Igtiben* resulted in decedent's death on January 6, 2020. *Id.* at p. 9. As such, the court found that the complaint filed on November 22, 2022, was untimely and the district court was required to dismiss it. *Id.* at p. 10.

Relevant Facts Must Be Undisputed for a Dispositive Motion on Statute of Limitations Grounds to be Granted

While the statute of limitations accrual date is usually a question of fact for the jury, where the evidence irrefutably shows that a plaintiff was placed on inquiry notice of a potential claim, the determination may be made by the court

as a matter of law. *Winn*, 128 Nev. at 251-52. In *Igtiben*, it was undisputed that plaintiff obtained the relevant hospital records on January 6, 2020. *Id.* at pp. 8-9. The fact that the death certificate was obtained subsequent to this time did not impact the decision as the opinions were able to be formed based upon the medical records. *Id.* at p. 9, fn 7. Plaintiff also conceded at oral argument that there was no impediment to obtaining expert review prior to September 2021, and there was no argument raised as to any alleged concealment of pertinent records. *Id.* at p. 9, fn 8. Additionally, in this matter, plaintiff acknowledged possible existence of the claims in 2020, based upon her own statements in the federal court and probate actions. *Id.* at p. 9. As such, the court found that there were no genuine issues of material fact on the statute of limitations issue in this matter. *Id.* at p. 7.

Concealment May Toll Statute of Limitations but Must Involve Intentional Act

The statute of limitations is tolled for any period during which a provider of health care has concealed any act, error, or omission upon which the action is based and which is known or through reasonable diligence should have been known to the provider of health care. NRS 41A.097(4). While the issue of concealment was not raised in *Igtiben*, various Nevada cases have considered this issue. The tolling provision only applies when there was an intentional act that objectively hindered a reasonably diligent plaintiff from timely filing suit. *Libby v. Eighth Judicial Dist. Court of the State*, 130 Nev. 359, 357 (Nev. 2014). If a plaintiff has all necessary medical records that would provide inquiry notice of the claim more than a year before filing the complaint and the alleged concealment did not hinder the ability to obtain a supporting expert affidavit or declaration, a professional negligence claim filed after the applicable inquiry notice period would be barred. *See Kushnir*, 137 Nev. at 410. Where a provider of health care against whom the complaint is filed played no role in concealment, tolling does not apply. *Winn*, 128 Nev. at 277.

The aforementioned discussion considered only the inquiry notice portion of the statute, which is only the tip of the proverbial iceberg regarding accrual of the statute of limitations in professional

negligence actions. Many other issues, including the application of both time limits set forth in NRS 41A.097, were beyond the scope of this article and not considered here.

ALIA A. NAJJAR, an experienced attorney and medical doctor with surgical training, practices in health law, with a focus on professional negligence/medical malpractice defense, healthcare licensing board matters, Centers for Medicare & Medicaid matters, and other federal and state administrative agency matters before the Drug Enforcement Administration. She also advises clients on a variety of healthcare specific contractual issues, as well as on the various and ever-changing compliance and regulatory issues in healthcare.

ENDNOTES:

1. See NRS 41A.097(3).
2. Sickle cell disease is the most common inherited blood disorder in the U.S. Individuals with sickle cell disease produce abnormal hemoglobin, which sickles under conditions of deoxygenation. Iodinated radiographic contrast is contraindicated in patients with sickle cell disease because it may precipitate or exacerbate a sickle cell crisis.
3. Because the court reached a decision on the statute of limitations issue, the court did not consider the alternative basis for dismissal regarding whether the affidavit of merit attached to the complaint satisfied NRS 41A.071.
4. Because the claims in *Igtiben* arose before October 1, 2023, the applicable statute of limitations is set forth in NRS 41A.097(2), which states, in pertinent part:

Except as otherwise provided in subsection 4, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first,