New Tennessee Medical Malpractice Laws

by Randall L. Kinnard

We're going where no friendlies have ever gone before. The terrain is steep. It's going to be dangerous. There'll be a lot of booby traps out there. Be careful every step you take. Keep a sharp lookout. Keep an eye out for each other. [1]

Introduction

Two new statutes, T.C.A. § 29-26-121 and T.C.A. § 29-26-122 forever change the landscape of medical malpractice in Tennessee. Effective October 1, 2008,[2] *the handling of a medical malpractice claim for a plaintiff will change dramatically. Old terrain will be destroyed. New terrain, through which no one has been yet, will be revealed. Deep inside this unknown territory lurk many traps.*

The purpose of this article is to advise you of the new laws, to warn you of potential traps, and to give you the best advice I can on how to negotiate this new, hostile territory.

Each subsection of these statutes has to be surveyed carefully. But each needs to be considered in light of the other subsections to avoid being trapped. So, let's analyze each section one at a time.

Notice Before Filing Lawsuit

T.C.A. § 29-26-121(a) provides, in pertinent part:

Any person, or that person's authorized agent, asserting a potential claim for medical malpractice shall give written notice of such potential claim to each health care provider against whom such potential claim is being made at least sixty (60) days before the filing of a complaint based upon medical malpractice in any court of this state.

Whoever drafted this law appears to have taken the language of it from a Texas statute.[3] *There is a subtle, but major difference between the Texas statute and the Tennessee statute. The Texas law says, " . . . shall give written notice of such claim . . ."* Whereas, the Tennessee statute uses the phrase *potential claim*. At first glance, the difference may not seem significant. But I submit that this language is one of the traps of this new territory.

As of October 1, 2008, the plaintiff's attorney *must* give written notice of a *potential* claim to each health care provider that the attorney intends ultimately to sue. Because each defendant is entitled to the 60 day notice, you will be best served by giving written notice to each health care provider *at the same time* so the same 60 day waiting period before filing suit is the same for all defendants. That way, you do not end up having to file separate suits.

For example, if you give notice to one health care provider on May 1, 2009, and before filing suit you discover another potential claim against another health care provider, you would have to give new notice to the second health care provider. If you do that on August 1, 2009, you should wait the required 60 days after giving notice to the second health care provider before filing suit against any defendant. (This assumes you can still sue the first provider within the statute of limitations. And it is all very complex, requiring extreme care in negotiating this terrain.)

Notice Letter

What language do you use in the notice letter? I suggest language such as follows:

Dear Dr. Doe:

Pursuant to T.C.A. § 29-26-121, please be advised that I am the attorney representing [name of client], and I am the authorized agent of [name of client]. Through me, [name of client] is asserting a potential claim for medical malpractice against you. Attached hereto is a list of all health care providers to whom notice is being given pursuant to T.C.A. § 29-26-121(a).

This is the minimum of information which should be sent, in my opinion, to the health care provider. Include other information about the nature of the claim, but I suggest minimal information as the statute does not even require that the nature of the claim be explained.[4]

If the potential claim is not based upon "medical malpractice," is notice required? Probably not. However, there will be motions to dismiss filed by defense attorneys who will allege "failure to give notice" when the plaintiff's attorney sued--not for medical malpractice --but for ordinary negligence. A slip and fall in the hallway of a hospital most likely is not a medical malpractice claim. However, would the failure of a physician to write legibly an order for a drug, which bad handwriting resulted in the wrong drug being given, be a claim for "medical malpractice," thus requiring notice? Assume it is and send notice, is my advice. Better to be overly cautious and give notice if there is any doubt as to the nature of the claim.

List of Health Care Providers

The second sentence of T.C.A. § 29-26-121(a) says:

Attached to such written notice shall be a list of all health care providers to whom notice is being given pursuant to this section.

Do what the statute says. If you perceive there is more than one health care provider at fault, attach a list of each and every health care provider that you so contend is at fault. Do not state their names in the *letter* of notice to each health care provider. Simply attach the list to the letter as the law states. On the list that you attach, state the name and correct address of each of the health care providers that will receive a similar notice.

How Notice is Achieved

The third sentence of T.C.A. § 29-26-121 says:

For purposes of this section, notice shall include actual written notice provided to the health care provider or such provider's authorized agent; or notice by registered mail, return receipt requested, to the health care provider or such provider's authorized agent; or notice by overnight delivery using a nationally recognized carrier.

In my judgment, "actual written notice provided" means "hand delivery." Although hand delivery is an option under the statute, whoever drafted the bill that became this law apparently does not appreciate the embarrassment a doctor can feel when a lawyer (or his agent) walks into a doctor's office reception area — full of patients — and announces, "I am Attorney X, and I am here to serve written notice on Dr. Doe." This option is, in my opinion, thoughtless and inconsiderate of the doctor.

Of course, hand delivery could be achieved anywhere the doctor could be found, to include his home. On a humanity level, I think serving a doctor at home with a notice letter would be more tasteless and inconsiderate than delivering it to him at his office. Until some court ruling indicates that service of the notice letter must be accomplished by hand delivery, I will refuse

to subject the doctor or health care provider to the embarrassment of having someone deliver to his office or home a notice letter.

The law would permit hand delivery to the medical care provider's authorized agent. This could be an agent for service of process in the instance of a corporation. It could be a hospital administrator in the case of a hospital. But what if it turns out that you thought you were hand delivering written notice to an "authorized agent" and it turns out later that they were not "authorized" to accept hand delivery? So, I ask myself: "Why even go there?" Especially when the law provides alternatives to service by hand delivery.

The next option is to send notice by registered mail to the health care provider or the provider's authorized agent. This seems to be the most practical, considerate, least expensive way to achieve service. I suggest that you send your notice letter by registered mail to the actual health care provider and the provider's authorized agent, in the event there is one. Make certain that the addresses are current and correct. Make sure your spelling is correct.

Because you may be required to provide evidence of the achievement of service ("given") upon the health care provider,[5] you must have a careful system in your office for the proper handling of the return of registered mail receipts. Develop a fail-safe system, showing dates notice letters were sent, and dates you received receipts. Keep track of all re-ceipts in a safe manner. Insure that a copy of each receipt in a particular case is kept safely in the file. This way, if someone ever raises an issue concerning whether notice was "given," your evidence will be ready.

Notice can also be given by "overnight delivery using a nationally recognized carrier." Until we have hacked our way through the jungle (courts) far enough, and until we are satisfied the law is settled, our office will send notice letters by registered mail *and* overnight delivery. We will get written confirmation by overnight delivery and save it for the file. Receiving duplicate notice letters may aggravate health care providers. It is unfortunate if they are aggravated; however, it was the health care industry which lobbied for this law, and your obligation, representing a plaintiff in a medical malpractice case, is to protect your client.[6]

T.C.A. § 29-26-121(b) Says:

If a Complaint is filed in any court alleging a claim for medical malpractice, the pleading shall state whether each party has complied with the provisions of § 29-26-121(a) . . .

In the Complaint, in a separate numbered paragraph, simply state, "The plaintiff has complied with the provisions of T.C.A. § 29-26-121(a)." Nothing more is required to be stated in the Complaint to satisfy this subsection.

T.C.A. § 29-26-121(b) provides further as follows:

... and shall provide such evidence thereof as the court may require to determine if the provisions of this section have been met. The court has discretion to ex-cuse compliance with this section only for extraordinary cause shown.

In the event a defendant believes he has not been "given" the required pre-suit, written notice, his attorney will file a motion to dismiss the Complaint for failure to comply with the notice provisions of the statute. You will have to respond and explain what you did to comply with the notice requirements. Rather than merely assert that the plaintiff has complied, how much better would it be for you to be able to state, "Attached hereto is a copy of the notice letter, the attachment showing all health care providers against whom potential claims were being made, as well as the return receipt of registered mail, which shows the notice was received?" Save your receipts!

The court has discretion to excuse compliance with this section (giving notice) only for *extraordinary* cause. Apparently, "good cause" is not good enough. And what, exactly, is "extraordinary" cause? This is why you need to do the best you can in accomplishing written notice on the front end rather than having to seek relief from the court on the back end.

T.C.A. § 29-26-121(c) provides, in part, as follows:

If notice is given as provided in this section, the applicable statutes of limitations and repose shall be extended up to a period of ninety (90) days, and this extension shall apply to all parties and potential parties.

Of all the language in all these new laws, here lie the most dangerous traps of all.

Analyzing the words of this subsection, when is notice "given?" Is it upon sending (by registered mail or overnight delivery) the notice or upon actual receipt by the health care provider, or his authorized agent? Language of a similar statute in Texas has been interpreted to mean that notice is effective when mailed and not when received.[7]

Until the courts in Tennessee interpret the language of this statute, it would be safer to assume that notice is "given" when received. You do not want to file suit prematurely (before the expiration of the 60 days notice required).

Under the Tennessee Rules of Civil Procedure, service of pleadings is complete upon mailing.[8] *Logic indicates, therefore, that notice is given upon mailing. However, my advice for now, is to be ultra safe. Assume that "given" means the date received, and when the Tennessee Supreme Court says it is "when mailed," you can safely change your habits.*

The language, "If notice is given . . . the applicable statutes of limitations and repose shall be extended up to a period of ninety (90) days ..." is a trap. BEWARE! Due to the ambiguity of the language of this statute, this is very dangerous territory.

Focus your attention on the language, "extended up to." What does that mean? The words customarily used in such notice statutes are, "notice given . . . shall toll the applicable statute of limitations ..."[9] *If* the drafters of this Tennessee law indeed took its basic language from Texas law, they adroitly changed the word "toll" to the phrase "extended up to." This "extended up to" language will be the basis of many motions to dismiss and motions for summary judgment. Ultimately, the appellate courts will render opinions as to the meaning of this phrase. Until there is appellate court interpretation of the meaning of this ambiguous phrase, I will assume that the statute of limitations and repose are not *tolled*, *to wit*, are not *suspended* for any period of time.[10] *Sadly, in the instance of T.C.A. § 29-26-121(c), no one can tell exactly to what point in time the statute of limitations (or repose) is extended to. We are left to guess.*

Texas law says that when notice is given, it will toll the statute of limitations "to and including a period of 75 days following the giving of the notice."[11] *The drafters of the Texas law made it perfectly clear that everyone gets 75 days of tolling (suspending) of the statute of limitations once notice is given.*

For Tennessee, let me give you two examples of how I think this statute will be interpreted. In one case, the statute of limitations will not be extended at all. In another, it will be extended, but not for 90 days.

Example one: If the malpractice occurred on January 1, 2009, and the plaintiff

gives notice to the health care provider on June 1, 2009, the lawsuit can be filed on July 31, 2009 (60 days after notice is given), and well within the ordinary statute of limitations (January 1, 2010). In such case (until a court rules otherwise) I would assume that you do *not* have 90 days beyond January 1, 2010 to file the lawsuit. In my opinion, there is *no* extension of the statute of limitations at all in such a case. You should file suit before January 1, 2010.[12]

Example two: The malpractice occurred on January 1, 2009. The notice letter is sent on December 1, 2009. The statute of limitations will be "extended," beyond January 1, 2010, but how far? In my opinion, it will not be extended for 90 days past January 1, 2010. If the act of sending the notice on December 1, 2009 is the date notice is "given," 31 days pass by the time January 1, 2010 rolls around.[13] You have to wait 29 more days to sue. (Remember, the 60 day waiting period.) This brings us to January 30, 2010 as the first possible date suit can be filed. But what about the 90 days' extension? In my judgment, only 29 days remain to file suit, or by February 28, 2010.[14] If I am correct, the window of opportunity to file suit is between January 31, 2010 and February 28, 2010. Because we do not yet know when notice is officially "given," I would file suit in the middle of February, 2010. I also would assume suit is barred if filed after February 28, 2010.[15]

Due to the ambiguities of the language of this subsection and the ambiguities created by other subsections, it is difficult to know exactly what this law means when it says, "... [T]his extension shall apply to all parties and potential parties." This phrase shall be litigated time and again. Who exactly are "potential" parties? Does the word "parties" refer to health care providers who receive written notice, prior to suit? Does it refer to "parties" as that word is contemplated in lawsuit terminology — after suit is filed? We simply do not know the answer.

T.C.A. § 29-26-121(c) also says, in part:

In no event shall this section operate to shorten the statutes of limitations or repose applicable to any action asserting a claim for medical malpractice.

I submit that the drafters of this law recognize that the language of the new statutes is so confusing that someone might perceive that the Legislature has shortened the already incredibly short one-year statute of limitations. I guess we can all sleep better knowing that the statute of limitations for medical malpractice is not ten months.

T.C.A. § 29-26-121(c) also provides, in part:

Once a complaint is filed alleging a claim for medical malpractice, the notice provisions of this section shall not apply to any person or entity who is made a party to the action thereafter by amendment to the pleadings as a result of a defendant's alleging comparative fault.

On its face, it appears the statute means that if the plaintiff adds a party defendant after a current defendant alleges comparative fault, no notice needs to be sent. But what of the situation where you *discover* another wrongdoer during discovery, but no defendant alleges comparative fault against that person? The statute is silent on this point. Therefore, I would recommend that you send notice to such health care provider that you intend to add as a defendant before adding that individual in the lawsuit.

T.C.A. § 29-26-121(d) provides as follows:

All parties in an action covered by this section shall be entitled to obtain complete copies of the claimant's medical records from any other party. A party shall provide a complete copy of the claimant's medical records as of the date of the receipt of a written request for such records within thirty (30) days thereafter. However, the receipt of a medical authorization executed by the claimant shall be considered compliance by the claimant with this section.

Examining the language, "all parties in an action ...", immediate questions arise. What is an "action" as used here? A "party" is a litigant. I submit that an "action" is a lawsuit. If I am correct, when an attorney simply is investigating a possible claim and no lawsuit has been filed, this section does not apply to the patient. There is no obligation on the part of the patient to provide copies of all of his/her medical records to anyone.

In your pre-suit investigation, when you request records from a health care provider that you have cause to believe may have been negligent, send your request for records by registered mail, return receipt requested. That way, you will have proof of the "date of the receipt" of your request. This proof can be helpful to you if the health care provider refuses to send the records or sends only part of the records. Refusal of the defendant to release the medical records in a timely fashion or where it is impossible for the plaintiff to obtain the medical records shall waive the requirement that the [plaintiff's] expert review the medical record prior to expert certification.[16]

What if you are merely investigating a possible claim, have not given notice to anyone, but you have requested records from a health care provider, and you get a telephone call from the lawyer? That lawyer may state she represents the health care provider and she wants to know what you are up to. "Do you intend to sue Dr. Doe?" she may ask you. In my view, there is no legal obligation on your part to explain the reason you want the records. You do not want to start an exchange of letters between yourself and a lawyer or health care provider wherein the conversation about a possible claim is "confirmed." This could trigger the notice provisions of the statute and ultimately could lead to destruction of an extension of the statute of limitations.

Here is an example of how that might happen: If the purpose of your seeking medical records was to investigate a "potential claim," your confirmation letters are dated three months before your notice letter is sent, the notice letter is sent one month prior to the expiration of the statute of limitations, you rely upon the "extension" of the statute of limitations under the statute and file suit after the ordinary expiration of the statute of limitations, the defense attorney files a motion to dismiss claiming the statute of limitations has expired because long before your "second notice letter" you sent your first "notice letter" and you could have filed suit within the ordinary statute of limitations. (I fully recognize the complexity and confusion of this paragraph. But this is just another example of the dangerous territory ahead and why you have to keep a sharp lookout.)

After the lawsuit is filed and the defense attorney requests you to provide a medical authorization form executed by your client, make certain you do not have your client sign an authorization form that destroys your client's rights under Givens v. Mullikin, 75 S.W.3d 383 (Tenn. 2002) and *Alsip v. Johnson City Medical Center,* 197 S.W.3d 722 (Tenn. 2006).

T.C.A. § 29-26-122

This statute is extremely lengthy. Space here does not permit quoting it in its

entirety. However, I will state the essence of each subsection and discuss them in detail.

T.C.A. § 29-26-122(a):

This requires that within 90 days after a complaint in a medical malpractice case is filed, the plaintiff or plaintiff's counsel shall file a Certificate of Good Faith which states:

(1) Plaintiff's counsel (or plaintiff in a pro se complaint) has consulted with one or more experts who have provided a signed written statement confirming that "upon information and belief," they:

(A) Are competent under T.C.A. § 29-26-115 to express opinions; and

(B) Believe, based on the information available from the medical records, there is a good faith basis to maintain the action consistent with the requirements of § 29-26-115, or

(2) Plaintiff's counsel (or plaintiff) has consulted with one or more experts who have provided a signed written statement confirming "upon information and belief" they:

(A) Are competent under § 29-26-115 to express opinions; and

(B) Believe, based on the information available from the medical records and "as appropriate" information from the plaintiff or others with knowledge of the incident(s), there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to the plaintiff or plaintiff's counsel; and that despite the absence of this information, there is a good faith basis for maintaining the action as to each defendant consistent with the requirements of § 29-26-115.[17]

What does it all mean? For one thing, it means that the Legislature has created a law that imposes a duty on a plaintiff's attorney that exceeds the obligations of attorneys in every other kind of case in Tennessee. In all other litigation, Rule 11 T.R.C.P. states the obligations of a lawyer. Rule 11 states that the lawyer's signing of a complaint means the lawyer certifies that a reasonable inquiry has been done and the allegations have evidentiary support, "or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." Plaintiffs' attorneys in medical malpractice cases are, effective October 1, 2008, pushed into new, hostile territory where no one in this state has gone before.

So, if you represent a plaintiff in a medical malpractice action, here is what I believe you are going to have to do:

1. Investigate as quickly as you can.

2. Before filing suit, get the medical records.

3. Find the "competent" experts you need. The experts on negligence and causation that you will need have to be "competent" under T.C.A. § 29-26-115. That requires each expert to practice in a contiguous state or in Tennessee during the year preceding the alleged negligent act. Additionally, the expert should be in a specialty making his/her testimony relevant to one or more issues. If the expert is one for negligence, the expert needs to have familiarity with the standard of care in the community where the negligence occurred or in a similar community.

4. You should check out the qualifications of your expert and confirm "competency" under the statute. If the expert has a curriculum vitae, obtain a copy of it from the expert.

5. Although the written statement of your expert is not discoverable during litigation,[18] *it may nonetheless have to be produced after the defendant "prevails on the basis of the failure of [the plaintiff] to offer any competent expert testimony as required by § 29-26-115.*[19] *(Further discussion on the triggering mechanism to discover your expert's written statement and the sanctions for failure to offer competent expert testimony will be discussed below.)*

Duties Placed on Defendants and Their Counsel Under the New Statutes

The only duty a defendant and his attorney has vis-a-vis Certificates of Good Faith, is triggered when a defendant wishes to allege fault against a non-party. Within 30 days after a defendant has alleged in an Answer, or Amended Answer, that a non-party is at fault, defense counsel must file a Certificate of Good Faith, and jump through the same hoops the plaintiff must jump through in filing a certificate to justify the filing of the complaint.[20]

If a defendant fails to file a Certificate of Good Faith as to a non-party defendant, upon motion, the allegations are "subject to being stricken ... unless the plaintiff consents to waive compliance with this section."[21] *Then, if such allegations are stricken, no defendant, except for one who has complied with the provisions of this section, can assert the fault of a non-party.*[22]

Similar sanctions that can be heaped upon plaintiff's counsel for violating the law apparently will apply to defense counsel when they allege fault of a non-party, but cannot back up the allegation and the plaintiff prevails "on the basis of the failure of a [defendant] to offer any competent expert testimony as required by § 29-26-115.[23]

Incentives for Having Good Certificates of Merit

Of course your main concern in representing a plaintiff in a medical malpractice case is to obtain a just result for your client. In order to do this, competent expert testimony will be required. Getting the "competent" expert/s on board and getting them to analyze the case properly requires hard work. The hard work on behalf of your client, hopefully, will help your client prevail. Getting the written statement of the expert/s signed in a timely manner will give you the confidence to proceed further into this dangerous territory on behalf of your client.

There is an additional incentive for your obtaining the signed written statement by competent expert/s and that is to protect yourself against personal sanctions. Not only does the failure of the plaintiff to file a Certificate of Good Faith make the case subject to dismissal with prejudice,[24] *if the defendant prevails on the merits for your failure to produce a competent expert, and the court "determines that this section has been violated, the court shall award appropriate sanctions against the attorney."*[25]

To determine if a violation has occurred, the court may compel plaintiff's counsel to provide to the court a copy of each expert's signed written statements relied upon in executing the Certificate of Good Faith. Additionally, such medical experts may be compelled to provide testimony under oath to determine the plaintiff's counsel's compliance with this new law.[26]

If a violation is found, sanctions may include:

1. Payment of some or all of the attorney's fees and costs in-curred by the defendant.

2. The Court shall forward its order imposing sanctions to the Tennessee Board of Professional Responsibility for appropriate ac-tion.

3. If a lawyer has filed a Certificate of Good Faith in violation of the statute in three courts of records in Tennessee, the court shall, upon motion, require the lawyer to post a bond in the amount of $10,000 for each adverse party in any future medical malprac-

tice case.[27]

Prior Violations

When filing the Certificate of Good Faith, plaintiff's counsel is required to disclose the number of prior violations of this statute.[28]

Form

The Administrative Office of the Courts will develop a form Certificate of Good Faith to meet the requirements of the law.[29]

What Information is Needed in Statement of Expert/s

Other than requiring the expert to give a statement that says the expert is competent and — based on review — there is a good faith basis to maintain the action, the new law does not go further. You are left to decide what more should go into the written statement.

This is yet another piece of ground in this battlefield for which there are no maps.

While getting the signed written statement from your expert/s will facilitate the progress of the case on behalf of your client, it also will protect you. It is my suggestion that the written statement should contain more rather than less. In the document itself, show why the expert is competent under the law. Show the expert's qualifications by experience and training. Set forth detailed facts in his/her written statement as to why he/she is qualified and competent. Attach a copy of his/her curriculum vitae to the statement and make reference to it in the statement. Show, in detail, in the statement why the physician is of the opinion that there was medical negligence in the case, state the basis, in detail. Sometimes, a negligence expert can offer opinions on causation. Sometimes, they cannot because they are not qualified. When you need another expert on causation, get one.

You may, or may not, end up using one or more of your experts who give you written statements as actual experts at trial. In getting statements, you should treat them as if they will be testifying experts.

Obviously, expert witnesses can die before trial. They can become incapacitated. They can move. They can suddenly have no interest in the case anymore for a multitude of reasons. Some can, and will, flat out abandon you and your client. Additionally, all lawyers who have significant experience in medical malpractice cases know that an expert witness can change or deviate from prior sworn opinions. Sometimes, they completely contradict themselves on the witness stand, from sworn deposition testimony. To protect yourself from sanctions, get a good written statement from each expert you need and keep it in the file! All you can do is do the best you can. If for some unforeseen reason, you lose the case for failure to produce the appropriate expert testimony, at least you can protect yourself after the loss from further harm. You already suffered enough. Why suffer more?

Conclusion

This new medical malpractice law, effective October 1, 2008, raises the bar for the handling of medical malpractice cases on behalf of the patient. The handling of a medical malpractice case on behalf of a patient in Tennessee has always been serious business. On October 1, 2008, it is going to get far more serious. Given the extremely short one-year statute of limitations, the requirement of notice, the requirement of waiting periods before filing suit, unpredictable dates for the statute of limitations, the Certificate of Good Faith, urgency for competent experts and written statements, and potentially extremely harsh sanctions, the territory ahead for the medical malpractice attorney is dark and dangerous. It is just like Captain Spagnoli said:

We're going where no friendlies have ever gone before. The terrain is steep. It's going to be dangerous. There'll be a lot of booby traps out there. Be careful every step you take. Keep a sharp lookout. Keep an eye out for each other. ⚖

[1] *Captain Bob Spagnoli, Company Commander, 173rd Airborne Brigade, II Corps, South Vietnam, near the Cambodian border, August 4, 1968.*

[2] *That is the date the two new statutes are effective*

[3] *The words of T.C.A. § 29-26-121 starkingly track the language of Vernon's Texas Statutes and Codes Annotated, Civil Practice & Remedies Code § 74.051.*

[4] *Other states' statutes require lengthy descriptions of the nature of the claim. See, e.g., Utah law at U.C.A. § 78-14-8, which requires 90 days of notice before suit can be filed, and in the notice allegations must be made of date, time, and place of occurrence, the circumstances, specific conduct complained of, injuries, and damages.*

[5] *See T.C.A. § 29-26-121(b) and discussion below.*

[6] *I do not suggest that a plaintiff's attorney must achieve service of this written notice by more than one method. I am just saying that our office will do it until this terrain opens up and we can see that there are no traps in serving by only one method.*

[7] *McClung v. Komorn (App. 14 Dist. 1982) 629 S.W.2d 813.*

[8] *Rule 5.02 T.R.C.P.*

[9] *See V.T.C.A., Civil Practice & Remedies Code § 74.051(c).*

[10] *There is a difference between a statute of limitations being tolled and being extended. If a statute of limitations is tolled, it is as if the time is not running at all during the tolled period. If it is extended, the time for latest filing merely is pushed back.*

[11] *V.T.C.A., Civil Practice & Remedies Code § 74.051(c).*

[12] *Others may disagree with me, and I hope they are right. I hope the statute of limitations is pushed 90 days beyond January 1, 2010, just because notice is given. But I think that is wishful thinking.*

[13] *Assuming the date of mailing counts as one day in the calculation.*

[14] *Ninety days from December 1, 2009 is February 28, 2010.*

[15] *Thus, the statute of limitations is not extended 90 days beyond the original expiration date of January 1, 2010 to March 31, 2010.*

[16] *T.C.A. § 29-26-122(a)(2)(B).*

[17] *An extension in which to file a Certificate of Good Faith is possible if the court determines that a health care provider who has medical records relevant to the case has failed to timely produce medical records upon timely request, or for other good cause shown.*

[18] *T.C.A. § 29-26-122(d)(1).*

[19] *T.C.A. § 29-26-122(d)(2).*

[20] *T.C.A. § 29-26-122(b).*

[21] *T.C.A. § 29-26-122(c).*

[22] *Id.*

[23] *See T.C.A. § 29-26-122(d)(1)-(3).*

[24] *T.C.A. § 29-26-122(c).*

[25] *T.C.A. § 29-26-122(d)(3).*

[26] *T.C.A. § 29-26-122(d)(2).*

[27] *T.C.A. § 29-26-122(d)(3).*

[28] *T.C.A. § 29-26-122(d)(4).*

[29] *T.C.A. § 29-26-122(d)(5).*

The author: Randy Kinnard is a certified medical malpractice specialist and civil trial specialist. He has handled medical malpractice cases for plaintiffs for 30 years. He is a former President of the Tennessee Association for Justice.