



# Reibenstein v. Barax (Pa. S. Ct.)

Topics Covered: Abusive Litigation Against Physicians

## Issue

This medical malpractice case involves two issues: 1) the meaning of the term “cause of death” in the statute of limitations provision in Pennsylvania’s Medical Care Availability and Reduction of Error Act (MCARE); and 2) whether the affirmative misrepresentation or fraudulent concealment referenced in MCARE must be attributable to the specific defendant asserting the statute of limitations (and not a third party).

## AMA Interest

The AMA supports efforts to curb lawsuit abuse against physicians.

## Case Summary

At the request of her primary care physician, Dr. Conaboy, Mary Ann Whitman underwent a CT scan, which Dr. Barax reviewed. After reviewing the scan, Dr. Barax drafted a radiology report that stated that Mrs. Whitman had an abdominal aortic aneurysm that was “poorly visualized” on the study. His report did not document an aneurysm rupture or any concern of a possible rupture. The report stated that Dr. Conaboy was contacted with the findings. Five days later, Whitman died from a ruptured abdominal aortic aneurysm.

Plaintiff Linda Reibenstein, the administratrix of the estate, sued Dr. Barax. In his deposition, Dr. Barax testified that he spoke with Dr. Conaboy and explained that the CT scan showed a previously undocumented abdominal aortic aneurysm, but because he could not visualize the aneurysm very well, he could not confirm whether it was rupturing.

Ms. Reibenstein initiated a separate action against Dr. Conaboy almost six years after Mrs. Whitman’s death. Dr. Conaboy moved for summary judgment citing the general two-year statute of limitations under MCARE. The trial court granted summary judgment because it found “no evidence of affirmative misrepresentation or fraudulent concealment of the cause of death.” Thus, the statute of limitations could not be equitably tolled because decedent’s medical cause of death was correctly identified on decedent’s death certificate and thus known to the plaintiff.

Plaintiff argued on appeal to the Superior Court that Dr. Barax had concealed his communications with Dr. Conaboy concerning Mrs. Whitman’s aneurysm, and this concealment was directly related to the cause of Mrs. Whitman’s death. Therefore, based on Section 1303.513(d), the two-year statute of limitations should have been equitably tolled. The Superior Court agreed and vacated the summary judgment.

Dr. Conaboy has appealed the Superior Court ruling to the Pennsylvania Supreme Court.

### **Litigation Center Involvement**

The Litigation Center and the Pennsylvania Medical Society joined an *amicus* brief supporting Dr. Conaboy's appeal to the Pennsylvania Supreme Court.

Pennsylvania Supreme Court Brief