

# Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

A Monthly Newsletter from the Hamilton County Law Library

December 2014

## Court of Appeals Dilutes the Definition of "Medical Claim" under R.C. 2305.113

By Taylor Knight of Reminger Co. LPA. Reprinted with permission.

Ohio law sets forth strict limitations guidelines for the filing of all civil actions. In that regard, a personal injury action involving a "medical claim" must be filed within one year of the accrual date of the cause of action under R.C. 2305.113. Conversely, an action for personal injuries that is not a "medical claim" must be filed within two years of the accrual date of the cause of action. Thus, whether a civil action is deemed to be a "medical claim" has a significant impact on the amount of time a potential claimant has to file a claim.

As it relates to long-term care facilities, a "medical claim" is defined as "any claim that is asserted in any civil action against a \*\*\* home, or residential facility, against any employee or agent of a \*\*\* home, or residential facility \*\*\* and that arises out of the medical diagnosis, care, or treatment of any person." See R.C. 2305.113(E)(1). Despite the fact that, by definition, a claim asserted against a long-term care

facility arising out of the medical diagnosis, care or treatment of a resident is a medical claim, in *Haskins v. 7112 Columbia, Inc.*, the Seventh District Court of Appeals became the latest Ohio district court to misinterpret R.C. 2305.113 by holding that a claim for personal injuries arising from an incident in a long-term care facility is not a medical claim. *Haskins v. 7112 Columbia, Inc.*, 7th Dist. No. 13 MA 100, 2014-Ohio-4154.

In *Haskins*, the plaintiff's mother was a resident of a long-term care facility. At some point following her admission, she had become bed-bound, was unable to walk independently and required constant daily care and monitoring. Because of her condition, her bed linens had to be changed while she remained in

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### Hamilton County Law Library

Hamilton County  
Courthouse  
1000 Main Street  
Room 601  
Cincinnati, OH 45202  
T:513.946.5300  
F:513.946.5264

Open Monday-Friday 8 - 4

<http://www.hamilton-co.org/cinlawlib/>

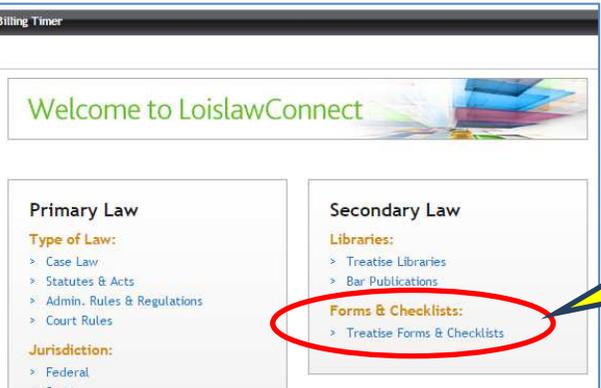
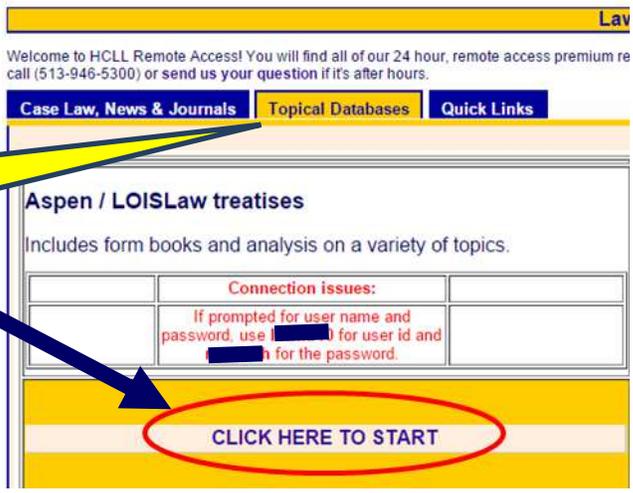
(Continued on page 4)

# Tech Tip: Discovery Forms at your Fingertips

By Julie Koehe, Assistant Law Librarian, Systems

Our LoislawConnect product offers many forms. Here are the instructions on how to access the most requested Discovery forms from your home or office.

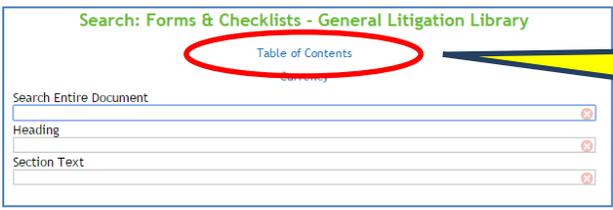
**STEP 1:** Log on to our website, go to the Topical Databases Tab, then select "Click Here to Start".



**STEP 2:** Click on "Treatise Form and Checklist."

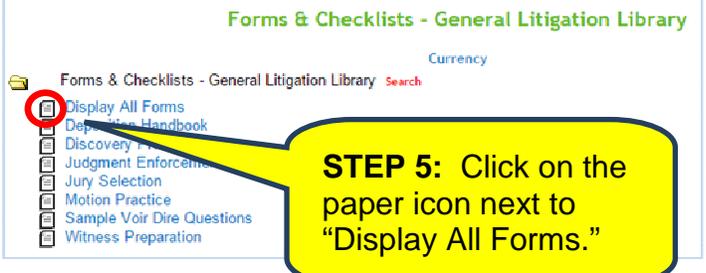


**STEP 3:** Click on "General Litigation" and press the green continue button at the bottom of the screen.



**STEP 4:** Click on "Table of Contents" within the General Litigation Library.

- [Criminal Case Voir Dire](#)  
(Appendix F of "Jury Selection")
- [Declaration In Support of Renewal of Judgment](#)  
(Form 12-9 of "Judgment Enforcement")
- [Default Judgment for Debt and Possession](#)  
(Form 11-14 of "Judgment Enforcement")
- [Demand to Inspect Documents](#)  
(Form 12-29 of "Judgment Enforcement")
- [Demand to Produce Medical Reports or Medical Report Authorizations](#)  
(Form E-1 of "Discovery Practice")
- [Deponent Notification Letter](#)  
(Form B-7 of "Discovery Practice")
- [Deposition Checklist](#)  
(Section 5.3 of "Witness Preparation")



**STEP 5:** Click on the paper icon next to "Display All Forms."

**STEP 6:** Choose the form you are interested in by clicking on the blue title and edit.

## Upcoming CLEs

Free to subscribers; \$50 for non-subscribers  
To register, call 513.946.5300 or via email  
[reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org)

### Social Media Update: Recent Cases and Best Practices

Presenter: Laura Dixon-Caldwell  
Wednesday, December 17  
Noon-1pm  
Approved for 1.0 hour of general CLE credit in Ohio and Kentucky.

### WestlawNext CLE

Presenter: Susan Reale  
Friday, January 16  
Noon-1pm  
Approved for 1.0 hour of general CLE credit in Ohio

## Coffee Area Improvements

We were able to update the subscriber lounge a bit this fall with a fresh paint job and new carpeting in the coffee service area. What an improvement a coat of paint makes! Thanks to all of the library users who worked around the plasterers, painters, and carpenters during that effort. Slowly but surely, we're addressing some deferred maintenance, including ceiling tile replacement and painting where needed.



## New Website to Launch in December

The Law Library staff is proud to share the library's new website:

<http://lawlibrary.hamilton-co.org>.

We intend to launch it in early December with notifications to all subscribers when it's available. Months in the making, and developed by Ardent Technologies with significant input from and testing by library staff, the new site offers a contemporary look and enhanced functionality. The current website will remain available for a few weeks. Please contact a librarian here with any questions or comments. New features include:

- One step sign-on for remote access to legal information databases;
- Self-registration for CLEs and training;
- Online reservations for conference rooms;
- Quick links to mobile printing and our social media presence; and,
- A cleaner, more intuitive interface.

## Your Law Librarians as Voices of Authority

Mary Jenkins, Director, and Laura Dixon-Caldwell, Reference Librarian, were invited speakers recently at the annual meeting of the Ohio Regional Association of Law Libraries. Laura spoke on the topic of *Services to the Public*. Mary presented on the *Uniform Electronic Legal Materials Act* and on *License Negotiation Strategy*.

*(Continued from page 1)*

her bed. On July 29, 2011, when two of the facility's employees attempted to change her bed linens, one of the sheets became lodged under her, and in attempting to move her and extract the sheet, her leg was broken. She was taken to the hospital, where testing revealed she had suffered a fracture of her left femur.

On September 10, 2012, more than one year after the incident, the plaintiff filed a claim against the facility seeking to recover damages for his mother's injuries. After filing an Answer, the facility sought the dismissal of the plaintiff's claim on the grounds that it was a "medical claim" within the meaning of R.C. 2305.113 and the one-year statute of limitations expired prior to the filing of the plaintiff's complaint. The trial court held the claim was in fact a medical claim and had been filed after the expiration of the statute of limitations, thereby dismissing the plaintiff's claim as untimely. The plaintiff appealed on the basis that changing bed linens is not a medical procedure, but rather, a routine chore that did not require any particular professional skill; therefore, his claim was a general negligence claim, not a medical claim, and subject to the two-year statute of limitations.

The Seventh District reserved the dismissal, holding that while the defendant qualified as a "home" under R.C. 2305.113, the defendant's employees were not providing "medical care" at the time of the incident; therefore, the claim was a general negligence claim subject to the two-year statute of limitations. Specifically, the court held that "while it is possible that changing bed linens

had some medical purpose, there are also a variety of possible non-medical reasons that the sheets were changed" the day of the injury. Further, the court noted the complaint did not indicate that the two employees changing the linens had any particular medical expertise or skill, nor did it indicate the plaintiff's mother was involved with or being prepared for any medical treatment.

Significantly, the Haskins court's acceptance of the position that certain services performed by nurses' aids in a long-term care facilities do not require any type of professional skill or training is a significant misinterpretation of Ohio law. In that regard, the Ohio Revised Code and the Ohio Administrative Code set forth strict guidelines governing the provision of services to residents in long-term care facilities. See R.C. 3721 et seq.; OAC 3701-17. Specifically, long-term care facilities are required to employ qualified "nurses' aids" to perform "nursing-related services", which include activities such as attending to the personal care needs of residents and providing personal care services, i.e. assisting residents with bed mobility, locomotion and transfer, bathing, grooming, toileting, dressing, and eating. In order to constitute a qualified nurses' aid, an individual must undergo a specified amount of training specific to providing care and treatment in a long-term care facility, including training on how to make an occupied bed, and successfully complete a state administered test with examination and performance demonstration components. See OAC 3701-17 et seq; OAC 3701-18 et seq. In this face of this regulatory landscape, the Haskins decision clearly reaches the wrong result. Quite simply, the act of changing the linens of a bed-bound resident requires an amount of profes-

sional skill and care over and above that of the average individual.

If you find your facility in a situation where a claim has been made against it and the claimant is attempting to argue that it is a general negligence claim, not a medical claim, such as in *Haskins*, it is important to look to the regulations set forth in the Ohio Revised Code and the Ohio Administrative Code governing the functioning of long-term care facilities and education and training of the facilities' employees to establish the services being provided do in fact fall within the definition of care and treatment under R.C. 2305.113.

If you have any questions regarding the *Haskins v. 7112 Columbia, Inc.* decision, would like a complete copy of the opinion, or have questions regarding Ohio law governing long-term care facilities, please contact a member of Reminger's [Long-Term Care Practice Group](#). If you would like an expanded version of this article, contact [Laura Dixon-Caldwell](#).

### Mobile Printing

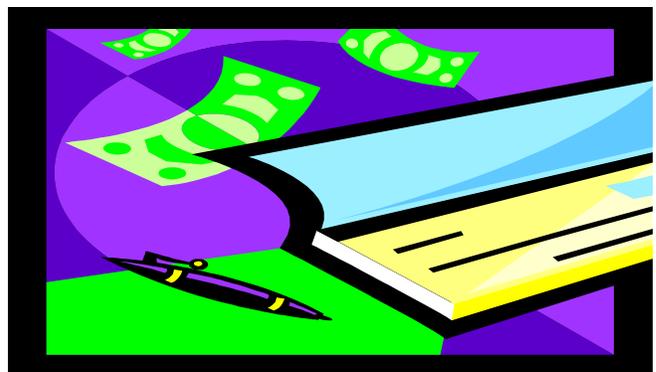
Want to print from your mobile device? Send your print job to the Law Library multi-function device (a.k.a. photocopier) on your way to the Courthouse by emailing it to [hcllcopyroom@printspots.com](mailto:hcllcopyroom@printspots.com). You'll receive a print release code to enter into the copier when you get here. Prints are 15¢ per page for the public and 8¢ per page for subscribers and county officials using a copier vend card. Systems librarian Julie Koehne offered an in-depth look at mobile printing in our [January 2014 newsletter](#). Any staff member can show you how to release your print job.

### Subscriber Renewals

We will mail invoices for Hamilton County Law Library's 2015 enhanced services for subscribers in early December. We hope that you will renew without a moment's hesitation, given the many services and resources offered by the Law Library. You are welcome to pay in December or wait until January – your choice. There is no rate increase for 2015.

Our librarians appreciate your calls and emails for research support. Subscribers and county officials may request cases, chapters, Shepard's reports, forms, and more. We will send the items you need quickly via email or fax. This service is available to you at no additional charge. We also offer CLEs and training, video conferencing, meeting room use, loan of books, and low cost photocopying. Our solo attorney and full firm subscribers benefit from off-site access to a number of legal information databases.

Thanks for your continued use of the Law Library, whether on-site or from the convenience of your home or office. If you have questions about the invoice or about making the most of your investment, please contact [Mary Jenkins](#) or [Vanessa Reams](#).



## Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, Westlaw, IntelliConnect, Hein Online Law Journals and Federal Register, and over 70 Aspen /LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises, HeinOnline and IntelliConnect.

## You and the Legal System

The You and the Legal System series will take a hiatus in December and January and resume in February 2015. If you would like to be placed on the mailing list for news on upcoming events, contact [Laura Dixon-Caldwell](#).

## Online Research Guides

Our librarians have produced research guides on a variety of topics: family law, sentencing, landlord tenant, foreclosure, and consumer law. Additionally, we offer a welcome guide that introduces our services, a guide on primary law research, and a tech tips guide. See them all at <http://libguides.hamilton-co.org/>. We invite [your suggestions](#) for additional topics.

## New Computers

Thanks to a grant from the Consortium of Ohio County Law Libraries, we are able to replace two computers in the computer room this month as part of our standard replacement cycle. Patron computers are all configured the same for ease of use.



## Intellectual Property Resources

The Law Library offers a variety of print and online resources on Intellectual Property. If you have questions about access to any of these resources, just call us at 531.946.5300.

### Books

Demystifying intellectual property : a guide for the nonspecialist  
KFO330 .I544 2013

Drafting patent license agreements  
KF3145 .M35 2012

Drafting patents for litigation and licensing  
KF3145 .D727 2013

Horwitz on patent litigation  
KF3155 .W5 2013

How to write a patent application  
KF3125.C5 S47 2014

Intellectual property: acquisition, development and ownership (BNA tax management portfolio)  
KF6289.A1 T35 no. 557-2nd 2012

IP strategy : complete intellectual property planning, access, and protection  
KF2979 .I727 2014

Law of the internet  
KF390.5.C6 D45 2013

McCarthy on trademarks and unfair competition  
KF3180 .M29 2014

Patry on copyright

KF2991.5 .P382

### Online Resources-Remote Access

#### **Aspen/Loislaw Intellectual Property Law Library**

Forms & Checklists

Trademark and Copyright Disputes:

Litigation Forms and Analysis

Guide to Registering Trademarks

Handbook on Intellectual Property Claims and Remedies

Epstein on Intellectual Property

Guide to TTAB Practice

Trademark Law: Protection, Enforcement and Licensing

#### **Aspen/Loislaw Licensing Agreements Library**

Forms & Checklists

2013 Licensing Update

Drafting License Agreements

Licensing Agreements: Forms & Checklists

Licensing Royalty Rates

The Licensing Journal

#### **CCH IntelliConnect**

IP Law Daily

Copyright Law Newsletters

Guide to Computer Law Newsletters

Trademark Law Report Letter

Title 21 C.F.R. - Food & Drugs

Title 37 C.F.R. - Patents, Trademarks & Copyrights

Copyright Law Reporter

Guide to Computer Law

Patent Reform Law - Leahy-Smith America Invents Act

Trademark Law Guide

\*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

**Upcoming Events:**

December 17: Social Media CLE

January 16: WeslawNext CLE

**Law Library Holidays:**

The Law Library will be closed on Thursday, December 25 in observance of Christmas and Thursday, January 1 in observance of New Year's Day.



# December 2014 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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1000 Main Street, Room 601  
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