

STATUTE OF LIMITATIONS

What is a statute of limitations?

It is a time limit beyond which a person may not bring a lawsuit.

What is the medical malpractice statute of limitations in Washington?

A medical malpractice action in Washington must be brought within the later of: ¹

- Three years of the act or omission alleged to have caused the injury or condition.
- One year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by the act or omission.²

In 2006, the Washington Legislature re-enacted the eight-year statute of repose for medical malpractice actions, providing that “in no event shall an action be commenced more than eight years after said act or omission”.³ An earlier enactment of this statute of repose was declared unconstitutional by the Washington Supreme Court.⁴ Whether the 2006 reenactment of the statute repose will survive constitutional challenge remains to be seen.

For purposes of a claim of continuing negligent medical treatment, the statute of limitations begins to run on the date of the last act or omission alleged to have caused the harm.⁵

When is the medical malpractice statute of limitations tolled?

The medical malpractice statute of limitations is tolled (does not run) in the following circumstances:

- Upon proof of fraud.⁶
- Upon proof of intentional concealment.⁷
- Upon proof of the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect.⁸

¹ RCW 4.16.350(3).

² *Ohler v. Tacoma Gen. Hosp.*, 92 Wn.2d 507 (1979), *Adcox v. Children’s Hosp.and Med. Ctr.*, 123 Wn. 2d 15 (1993).

³ RCW 4.16.350(3).

⁴ *DeYoung v. Providence Med. Ctr.*, 136 Wn. 2d 136 (1998).

⁵ *Caughell v. Group Helath Coop.*, 124 Wn. 2d 217 (1994), *Unruh v. Cacchiotti*, 172 Wn. 2d 98, (2011).

⁶ RCW 4.16.350(3).

⁷ RCW 4.16.350(3).

⁸ RCW 4.16.350(3).

- During the incompetency of a patient.⁹
- For one year following a written, good faith request for mediation before filing a lawsuit.¹⁰

Does the medical malpractice statute of limitations apply to every medical malpractice action against a physician?

No. The medical malpractice statute of limitations does not apply in a civil action based on intentional conduct brought against a physician for recovery of damages for injury as a result of childhood sexual abuse.¹¹

It also does not apply to an action for wrongful death against a physician. The patient's personal representative has three years from the date of the patient's death to bring a wrongful death,¹² and to medical malpractice resulting in death.¹³

How does the medical malpractice statute of limitations apply to minors?

Since 2006, the medical malpractice statute of limitations does not toll for minors in medical malpractice cases.¹⁴ The minor has the later of three years, or one year from the date he or she discovers or reasonably should have discovered that the injury or condition was caused by the alleged professional negligent, to file suit.¹⁵ The statute of repose states that in no case may a medical malpractice action be commenced more than eight years after the alleged negligent act or omission (except for the tolling of the statute of limitations until the patient/representative is aware of proof of fraud, intentional concealment, or a non-therapeutic foreign body).¹⁶

Once the minor reaches age 18 and is not otherwise incompetent, any knowledge that the custodial parent or guardian has about the minor's possible medical malpractice claim is imputed to the minor.¹⁷

If a minor reaches age 18, but is otherwise incompetent, the statute of limitations does not begin to run unless and until the patient becomes competent.¹⁸

⁹ RCW 4.16.190(1).

¹⁰ RCW 7.70.110.

¹¹ RCW 4.16.350(3).

¹² RCW 4.16.080(2).

¹³ RCW 4.16.080(2), *Wills v. Kirkpatrick*, 56 Wn. App. 757, cert. denied.

¹⁴ RCW 4.16.190(2), *Unruh v. Cacchiotti*, 172 Wn. 2d 98, (2011).

¹⁵ RCW 4.16.350(3).

¹⁶ RCW 4.16.350(3).

¹⁷ RCW 4.16.350(3).

¹⁸ RCW 4.16.190(1).