

Abuse Or Neglect Of Nursing Home Resident: Court Extends Statute Of Limitations For Lawsuits.

The U.S. District Court for the Eastern District of Louisiana has ruled that Louisiana's *ten year* statute of limitations for breach of contract, not the state's *one year* statute of limitations for personal injury lawsuits, applies to a civil lawsuit filed against a nursing home by the family to recover monetary damages for abuse or neglect of a family member who at one time resided in the nursing home.

Note that each individual state has jurisdiction to set its own statutes of limitations for various categories of civil lawsuits. There are few generalities about statutes of limitations that would hold true across the board, except that in most states the statute of limitations for filing suit for a breach of contract is considerably longer than the statutory time allowed to file a personal injury case.

If a case is not started by the plaintiff or his or her legal representative, by filing the case in court or by serving the summons and complaint upon the defendant as required by state law, within the time set by state law as the applicable statute of limitations, the right to sue expires simply due to the passage of time, regardless of the actual legal merits of the lawsuit.

The number of years within which to sue is rigidly defined by state law. However, the courts have considerable latitude in how they may conceptualize the legal nature of a particular case so as to choose one limitations period rather than another, and in defining the operative event which starts the time limit running.

It is imperative that knowledgeable local legal counsel, familiar with state statutes, court precedents and rules of court, be consulted for any risk management decision to write off a potential claim for expiration of the statute of limitations. **Schenck vs. Living Centers-East, Inc.**, 917 F. Supp. 432 (E.D. La., 1996).

Abuse or neglect of a nursing home resident amounts to a legal breach of contract for which the family may file suit. The statute of limitations for breach of contract, considerably longer than that for personal injury, applies in such a case.

Many if not most nursing home residents are in a vulnerable physical and/or mental state.

Placing a loved one in such a facility necessarily entails trust on the part of the family as well as the resident.

Since the resident resides in the nursing home, the family has comparatively limited access and opportunity to learn if the resident is being neglected or mistreated.

If entrusting one's money to an investment company creates a business relationship of trust and accountability, one would hope, at least in principle, that entrusting a valued family member to the care of a business entity such as a nursing home would carry similar responsibilities.

UNITED STATES DISTRICT COURT,
LOUISIANA, 1996.

HIV: Hospital's Emergency Department Subject To State's Discrimination Laws, Court Says.

A patient came to the emergency room with severe abdominal pain from acute appendicitis. Upon his arrival, according to the court record, he informed emergency room personnel that he was HIV positive. Various lab tests were done, x-rays were taken and an IV was started. The emergency room physician told the patient he thought he had appendicitis, and should be seen right away by the surgeon. The ER physician went to find and consult with the surgeon.

The emergency room physician returned to the ER and told the patient the surgeon at the hospital with whom he had just spoken would not examine him, because the patient was HIV positive. The physician further told the patient that he could not be admitted to the hospital, but would have to be transported to a certain hospital in another city.

Eight or nine hours after he had presented himself in the hospital's emergency room, the patient was transported, at his own expense, to the other hospital. At the other hospital, a surgeon examined him and decided that surgery was not indicated. However, the other hospital did admit him for several days for observation. It discharged him when his acute symptoms had resolved, without surgery.

The patient sued the first hospital, its ER physician and the surgeon for HIV discrimination. The Court of Appeals of Ohio ruled the patient had a valid case.

The court's legal authority came entirely from state law forbidding a place of public accommodation from discriminating against a handicapped person as defined by law. State law says explicitly that a person with HIV is protected from discrimination based on HIV status. A victim of HIV discrimination need not look to Federal law as the basis for a lawsuit. **Fiske vs. Rooney**, 663 N.E. 2d 1014 (Ohio App., 1995).