

Misdiagnosis: Statute Of Limitations Ran Out Before Suit.

The patient saw a family nurse practitioner for a twisted ankle. The nurse practitioner sent her for an x-ray that a radiologist read as showing no fracture.

The patient came back months later to the same nurse practitioner for a new twisting injury to the same ankle. Radiologists read a new x-ray and an MRI as normal.

A month later the nurse practitioner sent the patient to an orthopedist who made a diagnosis of a bony stress fracture and tendon damage.

Two months after making the diagnosis the orthopedist recommended surgery.

The statute of limitations to sue for malpractice starts to run when the patient realizes there was or could have been a negligent error or omission by a healthcare provider.

For the statute of limitations to begin running the patient does not yet have to have a full understanding of the implications of the provider's negligence in terms of additional treatments and residual aftereffects.

COURT OF APPEALS OF MISSISSIPPI
November 5, 2019

Without ruling on the question of negligence, the Court of Appeals of Mississippi dismissed the malpractice claim against the nurse practitioner because Mississippi's two-year statute of limitations ran out before the patient filed suit.

The statute of limitations began to run when the patient first learned from the orthopedist that her injury was incorrectly diagnosed, not two months later when she learned the full extent of the problem when the orthopedist recommended surgery. Hawkins v. Med. Ctr., __ So. 3d __, 2019 WL 5704170 (Miss. App., November 5, 2019).

Pneumonia: Court Sees Insufficient Proof As To Cause Of Death.

The family of a deceased patient filed suit for wrongful death against the nursing facility where she had resided.

The lawsuit alleged the patient was forced to take Seroquel against her will to subdue her and control her behavior, that Seroquel is a dangerous drug that can lead to pneumonia in dementia patients, that the patient did come down with pneumonia and that, a month later, the patient died from pneumonia.

Too much speculation is needed to conclude that, of all the possible factors that can lead to pneumonia in a ninety year-old nursing home patient, it was more likely than not that Seroquel was the cause of death.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
November 4, 2019

The US Court of Appeals for the Fifth Circuit (Texas) dismissed the family's lawsuit.

The family could establish at best only a tenuous connection between the Seroquel given to the patient and her death.

It is not enough for a lawsuit under the wrongful death statute that a patient might contract pneumonia as a side effect of a certain medication and that pneumonia can lead to death.

The wrongful death statute provides civil liability only for an injury or wrongful conduct, neglect or carelessness that actually causes a person's death.

A preponderance of the evidence must prove the alleged wrongful conduct, neglect or carelessness was a substantial factor in causing the death. The evidence must prove to a reasonable degree of certainty that without the wrongful conduct, neglect or carelessness the victim's death would not have occurred. Peterson v. Living, __ Fed. Appx. __, 2019 WL 5699973 (5th Cir., November 4, 2019).

Malpractice: Statute Of Limitations Ran Out Before Suit.

The patient's wife brought him to the hospital's emergency department with severe chest pains. A battery of tests were ordered and done including troponin, CBC, metabolic and lipid panels, chest x-ray, CT scans and an EKG. The results were inconclusive for cardiac dysfunction.

Eight hours later a nurse alerted the physician when a new lab draw showed a critical troponin value. About that time the patient coded and was revived. Ambulance transport was arranged to another hospital whose cath lab was open on weekends. The patient died soon after arrival.

A month after the statute of limitations ran out the widow finally got word from her lawyer that an expert witness had been found who would testify there was a causal relationship between what happened in the emergency department and her husband's death.

CALIFORNIA COURT OF APPEAL
October 28, 2019

The California Court of Appeal dismissed the widow's malpractice lawsuit against the hospital. The statute of limitations expired before the lawsuit was filed.

The case did not beat the statute of limitations because her lawyer did file the lawsuit promptly as soon as the lawyer had lined up the necessary proof for all the elements of a malpractice case, including an expert opinion on the issue of causation.

The Court ruled instead that the statute of limitations began to run the day the patient was in the emergency department. His wife was there and knew full well that hospital staff did little to nothing for him for eight hours until a critical development prompted them to try sending him where he could be helped. Simich v. Hospital, 2019 WL 5540877 (Cal. App., October 28, 2019).