What is a Statute (NOT Statue!) of Limitations?

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An important legal principle, and one that has been briefly discussed in some of the cases presented in earlier Bulletins, is the statute of limitations. It is defined as either a state or federal law passed by the respective legislatures that sets the maximum time period during which an action can be brought [in court] or rights enforced. (1) After the time period has "run", no legal action can be brought or rights enforced.

One of the first things a defense attorney checks when he or she is defending a suit is whether the suit was filed, or whether the right sought to be enforced, is within the applicable statute of limitations. If the statute has run, then the attorney files a motion to dismiss the case with prejudice, meaning that it cannot be brought again. (2)

Many statutes of limitations apply to health care. As examples, there is the state statute that requires any suit for professional negligence or malpractice usually be brought within two years after the incident that occurred gives rise to the suit. If the plaintiff (injured party/patient) is a minor, the statute is longer, usually several years after the injury or at least until the minor is 18 years of age. Likewise, if you as a nurse are alleged to have falsely imprisoned a patient (e.g., locked the patient in a room where there is no means of escape and there is no legal basis to do so), that statute may be one or two years, depending on the state. Cases filed under products liability (e.g., an infusion pump is allegedly the cause of the injury) usually enjoy a long statute of limitations (e.g., 10 years).

It may seem harsh that you or a person who has a seemingly valid case against a health care provider would be forever barred from bringing his or her suit because a statute of limitations was not met. The purpose of the limited time frame is to allow those who might be sued some closure to the possibility of a suit if it is not filed within the specified time period.

The law, however, understands that this harsh result should not be automatically applied to certain situations if the plaintiff had nothing to do with not meeting the statute. So, the law makes exceptions to meeting the requisite time frame.

One example of an exception is when the health care provider or facility conceals the injury that occurred or acts fraudulently in relation to the injury. (3) If either of these facts can be proven, the court will allow the case to proceed holding that the statute of limitations was "tolled" (stopped running) during the fraudulent or concealment conduct on the part of the defendant.

Another example of an exception to the applicable statute of limitation is if the relationship between the health care provider and the patient (plaintiff) is based on a breach of contract as opposed to the more usual health care provider-patient relationship. It may be, for example, that an individual enters into a "boutique" contract with a physician or nurse practitioner that spells out the duties and obligations of each of the parties governing the care of the patient. Should the patient believe that one of the terms of the contract were breached in some way (e.g., the hospitalized patient was not seen as was specified in the contract), then the patient has a longer period of time to file that suit (e.g., 5 years).

Also, keep in mind that most boards of nursing have a statute of limitations that applies to when it can bring an action against a nurse licensee for alleged violations of the nurse practice act. If your nurse practice act and/or rules does *not* have a time limit within which the board must take action against you when it receives a complaint, and there are no other state statutes of limitations that would apply to a board action, then an action against you by the board is *limitless.*

Statutes of limitations, then, do not prevent a patient from filing a lawsuit against you. Rather, they require a time frame within which that suit must be filed. For a general reference to identify statute of limitations by state, go to https://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html (resource updated March 21, 2019). Remember, though, that if you or a family member are concerned about when a statute of limitations runs, consult with a nurse attorney or attorney for specific, current information.

If you are concerned about a possible case that might be filed against you, contact your insurance carrier immediately about that possibility and obtain the statute information from the carrier and its legal team.

FOOTNOTES

1. Henry Campbell Black (1991). Black's Law Dictionary. Abridged Sixth Edition. St. Paul, MN: West Publishing, 639.
2. Id.
3. Robert Kane and others (2007). Illinois Practice Series: The Law Of Medical

Malpractice In Illinois. 3rd Edition. Eagan, MN: Thompson/West, 415-417.

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