

## Court Invalidates Exception to Tolling Provision for Medical Malpractice Cases Brought by Minors

In *Schroeder v. Weighall*, 2014 WL 172665 (Wa., Jan. 16, 2014), the Washington Supreme Court invalidated another portion of Washington's medical malpractice reform legislation. Specifically, the court invalidated RCW 4.16.190(2), which had eliminated the tolling of the statute of limitations for medical malpractice claims brought by those who alleged malpractice in their care as minors. The court held that the statute violated Article I, Section 12 of the Washington State Constitution, and reversed the trial court's summary judgment order dismissing Jaryd Schroeder's medical malpractice action.

In 2001, Jaryd Schroeder was nine years old and suffered from headaches, nausea, dizziness, weakness in his legs and double vision. He sought treatment from the defendants and underwent an MRI (magnetic resonance imaging), which was found to be normal. In 2009, he underwent a second MRI, which showed a brain-tissue malformation that protruded into his spinal column. At that time, his radiologist reviewed the 2001 MRI results and determined that the condition had been missed in 2001. On January 13, 2011, the day before he turned 19 years old, Jaryd brought negligence claims against his 2001 medical providers. They moved for summary judgment based on RCW 4.16.350, which requires a plaintiff to bring a negligence claim within three years of the act, error or omission, or within one year of the date of discovery, whichever is later. Since the acts occurred in 2001 and Jaryd had discovered his claim in November 2009, the defendants argued his January 2011 filing was too late.

In response, Jaryd argued that RCW 4.16.190 tolled the statute of limitations until he reached 18, and thus his claim was timely. However, the trial court disagreed and held that RCW 4.16.190(2) carved out an exception to the tolling provision for medical malpractice claims brought by those injured as minors. As a result, the statute of limitations was not tolled for Jaryd's claim and Jaryd's claims were dismissed as untimely.

On appeal, Jaryd argued that RCW 4.16.190(2) was unconstitutional and violated the privileges and immunities and equal protection clauses of the Washington Constitution. The Washington Supreme Court agreed and reinstated Jaryd's claims. In reaching its conclusion, the court observed the purpose of Article I, Section 12 of the Washington State Constitution is to carefully scrutinize "special interest" legislation. The court then held that there were no reasonable grounds for limiting the tolling rule for medical malpractice claims brought by patients who were injured while they were minors. The court observed that although the legislature may have intended to address escalating insurance rates, there was no evidence in the record or legislative history that demonstrated that RCW 4.16.190(2) would in fact reduce insurance premiums. The court also noted that there was no evidence demonstrating that the statute served the purpose of limiting stale medical malpractice claims. Finally, the court determined that RCW 4.16.190(2) impermissibly distinguished between those who were injured by medical malpractice when they were minors versus those who were injured while otherwise incapacitated.

In response to the defense argument that parents could bring claims on behalf of their minor children within the limitations period without the need for tolling, the court observed that RCW 4.16.190(2) would likely disproportionately affect those who were in foster care, children whose parents are themselves minors, and children whose parents are simply unconcerned. For these reasons, the court held RCW 4.16.190(2) invalid under Article I, Section 12 of the Washington Constitution.

Justice Johnson offered a thoughtful dissent and stated that the Legislature's decision to allow the tolling of the statute of limitations for certain types of claims but not others was reasonable. He noted that defending older medical malpractice claims is particularly difficult because the standard



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of care is constantly advancing in medicine. Therefore, the harm done by requiring a health care provider to defend against a stale medical malpractice claim is often more profound than it is for other types of claims. As a result, Justice Johnson found that there were reasonable grounds for the exception to the tolling provision and argued that the court should have affirmed the trial court's dismissal.

The import of the *Schroeder* decision is that those who allege they suffered medical malpractice as minors will be permitted to rely on the tolling provisions in RCW 4.16.190. However, we suspect that the argument over how long a minor plaintiff may wait to bring a medical-malpractice claim is not over. Notably, the court did not reach the question whether the eight-year statute of repose set forth in RCW 4.16.350(3) is valid.<sup>1</sup> Given that the court previously found an earlier version of the eight-year statute of repose invalid in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136, 141, 960 P.2d 919 (1998), there may be more litigation over this issue in the future.

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**To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Shauna Ehlert at [sehlert@cozen.com](mailto:sehlert@cozen.com) or (206) 224-1251 or Megan Kirk at [mkirk@cozen.com](mailto:mkirk@cozen.com) or (206) 373-7242.**

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<sup>1</sup> Jaryd's claim was not barred by the eight-year statute of repose because the statute was enacted in 2006 and was not given retrospective application.