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COURTS Medical Malpractice: Limitations of Actions

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COURTS

Medical Malpractice: Limitations of Actions

CODE SECTIONS:	O.C.G.A. §§ 9-3-71 (amended) and 9-3-72 (amended)
BILL NUMBER:	SB 170
ACT NUMBER:	424
SUMMARY:	The Act amends the Code to provide a two-year statute of limitations for medical malpractice actions which runs from the time of injury, rather than from the time of the negligent or wrongful act or omission. The Act provides that all medical malpractice actions must be brought within five years of the negligent or wrongful act or omission.

History

Prior law was subject to frequent attacks on due process and equal protection grounds. In 1982 the Georgia Supreme Court upheld this Code section against allegations that a separate statute of limitations for medical malpractice was arbitrary and without any rational basis.[1]

However, in 1983 the Georgia Supreme Court invalidated O.C.G.A. § 9-3-71 as applied to wrongful death actions because the statute created two classes of claimants — "(1) those whose spouse, child or parent died within two years of the negligent or wrongful act or omission, and (2) those whose spouse, child or parent died more than two years after the negligent or wrongful act or omission."[2] The first class could maintain an action while the second class was barred. The court found no rational basis for these classifications.

In 1984 the court sustained an equal protection challenge to O.C.G.A. § 9-3-71[3] regarding personal injury claims. Where the injury arose more than two years after the negligent act or omission an action was pre-

1. Allrid v. Emory Univ., 249 Ga. 35, 285 S.E.2d 521 (1982). *See* Hamby v. Neurological Assoc., 243 Ga. 698, 256 S.E.2d 378 (1979).

2. Clark v. Singer, 250 Ga. 470, 471, 298 S.E.2d 484, 486 (1983). (*Clark* dealt with a different type of medical malpractice: a failure to make a proper diagnosis, rather than foreign objects being left in a patient's body, as in *Allrid*.)

3. Shessel v. Stroup, 253 Ga. 56, 316 S.E.2d 155 (1984). *See generally* Thrash, *Medical Malpractice and the Statute of Limitations: An Update on the Discovery Rule*, GA. ST. B.J., Nov. 1985 at 60.

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cluded by the statute, but where the same injury occurred within two years of the negligent act or omission, then an action could be brought. The court held that, as in wrongful death actions, the statute of limitations may not bar a course of action before the cause of action has arisen, i.e., the injury has occurred.[4]

SB 170

O.C.G.A. § 9-3-71(a) provides a two-year statute of limitations which runs from the date of *injury* rather than from the date of the negligent or wrongful act or omission. The Act also creates a statute of ultimate repose and abrogation[5] which stipulates that in "no event may an action for medical malpractice be brought more than five years after the date on which the negligent or wrongful act or omission occurred."[6]

O.C.G.A. § 9-3-72 states that O.C.G.A. § 9-3-71 does not apply to cases in which a foreign object is left in a patient's body. Instead it provides that a cause of action can be brought within one year from discovery of the wrongful event. Foreign object does not include "a chemical compound, fixation device, or prosthetic aid or device."

The Act does not revive any action barred by Title 9. Actions which were not previously barred, but are barred by this Act are not barred until July 1, 1986.[7]

4. *Id.* at 58, 316 S.E.2d at 158.
5. O.C.G.A. § 9-3-71(c) (Supp. 1985).
6. O.C.G.A. § 9-3-71(b) (Supp. 1985).
7. SB 170 (AP), 1985 Ga. Gen. Assem. § 3 (Section 3 was not codified. *See* O.C.G.A. § 9-3-73 (Supp. 1985) Editor's notes).

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