

Medical Legal Forum: Rip Van Winkle and You: Implications of the Statute of Limitations for the Practicing Neonatologist

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You may recall the story of Rip Van Winkle, a farmer in the Catskill Mountains who falls asleep for twenty years after a magical drink. The short story by Washington Irving, published in 1819, is based on a German folktale. What does this have to do with a medico-legal column? Put simply, neonatologists need to be aware that the statute of limitations for their young patients may exceed the twenty-year slumber of Mr. Van Winkle.

What is the statute of limitations?

“Put simply, neonatologists need to be aware that the statute of limitations for their young patients may exceed the twenty-year slumber of Mr. Van Winkle.”

Black’s Law Dictionary defines the statute of limitations as the “time frame set by legislation where affected parties need to take action to enforce rights or seek redress after injury or damage.” (1) In practical terms, for a baby you care for, it is the time in which the parents (acting on behalf of the baby) or the patient themselves must file a medical malpractice lawsuit.

Why is there a statute of limitations?

The purpose of the statute of limitations is to prompt an injured party to pursue a claim in a reasonable period of time and while evidence is still available to allow a proper disposition of the case. For minors, however, there is also the consideration that they may not be able to testify or fairly represent themselves for several years, so the statute of limitations may need longer.

How long is the statute of limitations?

This is a very important issue. The states generally regulate medicine, and so the statute of limitations is set by state legislatures. Furthermore, almost every state legislature ‘tolls’ or functionally extends the statute of limitations for minors, with the longest tolling set for newborn patients. This period can range considerably,

with the average time to bring a claim for newborns being 12.3 years, ranging from 1 to 23 years. (2) Consequently, in some states, a medical malpractice lawsuit may be filed more than two decades after the alleged malpractice. Often in those states, the statute of limitations does not begin to run until a newborn patient reaches the age of majority.

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What does this mean for the practicing neonatologist?

It might be surprising to learn that the patient the baby you cared for today may file a lawsuit against you in the year 2042. What are the implications? First, as noted earlier, the statute of limitations varies considerably in different states, and it is advisable to know what it is in the state where you practice. Keep in mind that the legislature can and does sometimes change the statute of limitations in certain circumstances. Second, appropriate documentation is especially important when the care provided is called into question years later. It is often said that “if it was not documented, it was not done.” This is not necessarily true, but careful factual, professional documentation can be crucial years later when health care professionals may not recall what occurred. Finally, it is critical to have liability insurance coverage still in effect for the entire period in which you may be held liable. With the proper documentation and liability coverage, you can rest assured even longer than Rip Van Winkle.

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References:

1. <https://thelawdictionary.org/statute-of-limitations/>. Accessed July 17, 2022.
2. Shea, Kevin, Scanlan, Kevin, Nilsson, Kurt, MD, MS, Wilson, Brent, Mehlman, Charles, et al. (2008). *Interstate Variability of the Statute of Limitations for Medical Liability: A Cause for Concern?* *Journal of Pediatric Orthopaedics*, 28, 370-374.

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Disclaimer:

This column does not give specific legal advice, but rather is intended to provide general information on medicolegal issues. As always, it is important to recognize that laws vary state-to-state and legal decisions are dependent on the particular facts at hand. It is important to consult a qualified attorney for legal issues affecting your practice.