



Ohio Supreme Court closes loophole in the statute of repose for medical claims

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The Ohio Supreme Court recently [held](#) that Plaintiffs cannot rely on Ohio's savings statute to re-file medical malpractice cases more than four years after the medical care that gave rise to those claims occurred. The statute of repose provides an outside limit of four years for filing a medical claim. Although there are limited exceptions, the savings statute is not included among them. Nonetheless, courts throughout Ohio were not consistently applying the statute of repose where an action would be considered timely based upon the savings statute. The Ohio Supreme Court has put an end to that confusion.

In *Wilson v. Durrani*, the Plaintiff timely asserted a medical claim. That claim was voluntarily dismissed by the Plaintiff and then re-filed within one year. This re-filed claim did not violate the applicable statute of limitations because of the savings statute. However, it was re-filed more than four years after the medical care at issue was provided, in violation of the statute of repose. The Plaintiff argued that the statute of repose should not preclude them from re-filing more than four years after the care at issue, because the Defendants were on notice of the claims within the four year period. However, the Court followed the clear language of the statute that does not provide for such an exception. The Court recognized that the General Assembly had chosen to include an exception based upon the savings statute to the statute of repose applicable to products liability claims, but chose not to include that exception for medical, premises- liability and construction-defect claims.

Justice French wrote the Court's five-justice majority opinion, and Justices Stewart and Donnelly dissented. Judge Gwin of the Fifth District and Judge Klatt of the Tenth District sat for Justices DeWine and Fischer, and joined the majority opinion. The Ohio Hospital Association, Ohio Medical Association and other health care-affiliated groups had filed amicus briefs in support of the

Defendants in this case.

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