

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1839

By: Calvey

AS INTRODUCED

An Act relating to medical malpractice claims; amending 12 O.S. 1991, Section 95, as last amended by Section 1, Chapter 233, O.S.L. 1996 (12 O.S. Supp. 1998, Section 95), which relates to time limitations for bringing certain civil actions; providing time periods for filing claim, denial of claim and filing of action; providing limits of liability for certain medical malpractice claims; providing that limits apply to actions accruing on or after a certain date; prohibiting recovery of punitive damages; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 95, as last amended by Section 1, Chapter 233, O.S.L. 1996 (12 O.S. Supp. 1998, Section 95), is amended to read as follows:

Section 95. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

1. Within five (5) years: An action upon any contract, agreement, or promise in writing;

2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on

the ground of fraud - the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud;

4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation;

5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued;

6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by Section ~~845~~ 7102 of Title ~~24~~ 10 of the Oklahoma Statutes or incest can only be brought within the latter of the following periods:

- a. within two (2) years of the act alleged to have caused the injury or condition, or
- b. within two (2) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act or that the act caused the injury for which the claim is brought.

Provided, however, that the time limit for commencement of an action pursuant to this paragraph is tolled for a child until the child reaches the age of eighteen (18) years. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator. An action pursuant to this paragraph must be based upon objective verifiable evidence in order for the victim to recover damages for injuries suffered by reason of such sexual abuse, exploitation, or incest. The evidence should include both proof that the victim had

psychologically repressed the memory of the facts upon which the claim was predicated and that there was corroborating evidence that the sexual abuse, exploitation, or incest actually occurred. The victim need not establish which act in a series of continuing sexual abuse incidents, exploitation incidents, or incest caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse, exploitation, or incest. Provided further, any action based on intentional conduct specified in paragraph 6 of this section must be commenced within twenty (20) years of the victim reaching the age of eighteen (18);

7. An action to establish paternity and to enforce support obligations can be brought any time before the child reaches the age of eighteen (18);

8. An action to establish paternity can be brought by a child if commenced within one (1) year after the child reaches the age of eighteen (18);

9. Court-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations; ~~and~~

10. For medical malpractice actions, within six (6) months after a claim for relief, as provided for in this paragraph, is denied. Prior to any action being brought for medical malpractice, the party seeking relief shall present to the party against whom relief is sought a written claim stating the nature of the claim and the amount of compensation or other relief being demanded. Said claim must be presented within ninety (90) days after the occurrence of the injury which is the subject of the claim or within ninety (90) days after the injured party should reasonably have known of the injury, unless the party seeking relief is unable to make the claim due to incapacitation from the injury. An incapacitated person shall have ninety (90) days after the incapacitation ceases to file the claim. If the claim is presented more than ninety (90)

days after the injury occurs, more than ninety (90) days after the injured party should have known of the injury, or more than ninety (90) days after incapacitation ceases, any judgment in a lawsuit arising from the act which is the subject of the claim shall be reduced by ten percent (10%). The party against whom the claim is made shall have ninety (90) days after receiving the claim to approve or deny the claim. A claim is considered denied if the party against whom the claim is made fails to approve the claim in its entirety; and

11. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 73 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. The total damages recoverable against any practitioner of the healing arts or licensed hospital for any medical malpractice claim of personal injury not resulting in death shall not exceed Two Hundred Thousand Dollars (\$200,000.00).

B. Subject to the limitations of subsection A of this section, the total damages recoverable against any number of defendants in a medical malpractice claim of personal injury not resulting in death that arises out of a single occurrence shall not exceed One Million Dollars (\$1,000,000.00).

C. The provisions of this section shall constitute the total amount of damages recoverable. Exemplary or punitive damages shall not be awarded for medical malpractice actions.

D. The provisions of this section shall apply to actions filed on or after November 1, 1999.

SECTION 3. This act shall become effective November 1, 1999.

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