

New Statute of Limitations in Missouri for In-Home Personal Care Services

AUTHOR: JAMIE BRACEWELL

Vendors beware! Without an operating license or certificate from the State, entities in Missouri providing in-home personal care services face liability for up to five years, rather than the two-year statute of limitations, for claims against providers of health care services.

On October 5, 2021, the Missouri Court of Appeals in *Noelke v. Heartland* differentiated between vendors of in-home personal care services and providers of health care services.

The plaintiff in *Heartland* suffered second- and third-degree burns after her home health aide failed to check the water temperature while assisting the plaintiff during a shower. Two years and one day after the incident, plaintiff brought negligence claims against Heartland Independent Living Center. In granting Heartland's motion for summary judgment, the trial court agreed plaintiff had surpassed the two-year statute of limitations allowed for actions against entities providing health care services and their employees. Heartland further argued that it provided personal care services by way of its vendor contract with DHSS and subsequently had to comply with regulations as an entity regulated by the State.

The appellate court reversed the summary judgment decision, finding no evidence to show Heartland was a provider of health care services under Mo. Rev. Stat. § 538.205. As a result, the plaintiff's claims were not barred by the two-year statute of limitations. Instead, Heartland's vendor contract with DHSS - to provide in-home personal care services - availed the plaintiff of a five-year statute of limitations.

Two of the court's previous holdings guided its decision in *Heartland*. In those cases, the court based its rulings upon whether the defendants provided their services under a license or certificate from the State. In *Stalcup v. Orthotic & Prosthetic Lab*, the defendant-manufacturer of prosthetic limbs failed to meet the definition of a health care provider because it did not provide its services under a license or certificate from either the state or federal government. Conversely, in *Payne v. Mudd*, the court held that the defendant, a state-licensed hearing instrument specialist, qualified as a health care provider under § 538.205, further noting that defendant's profession required such a license.

Following this rationale, in addition to the requirements of § 538.205, the court found that Heartland's employee who caused plaintiff's injury did not belong to any of the professions listed in the statute. Likewise, Heartland failed to establish that it provided its in-home personal care services pursuant to a license or certificate from the state.

The court provided additional clarification in response to Heartland's arguments, which may prove decisive for many Missouri entities seeking to benefit from the two-year statute of limitations. First, the two cases relied upon by the *Heartland* court did not expand the definition of a health care provider. Rather, the *Stalcup* opinion equated state regulation with a license requirement, and *Payne* clarified that § 538.205's definition of a health care provider is satisfied by any person or entity providing professional services under a license required by the profession. Lastly, the court found it irrelevant that Heartland's employee was a certified nursing aide; not only did the plaintiff bring the claim solely against Heartland, but *Stalcup* also provides that certifications of the individual employee have no impact on whether the employer meets the definition of a health care provider.

If you have any questions about this topic or need assistance with any long-term care issues, please let us know.

Blog post written by Lami Mason, Jr.