

# Wyoming Court Sides with Minors in Striking Limitations on Medical Malpractice Claims

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In 1976, the Wyoming legislature enacted two statutes that effectively required all persons, including minors, to bring a medical malpractice claim within two years of treatment. The statute of limitations governing medical malpractice claims by minors required suit to be brought by the minor's eighth birthday or within two years of the alleged act, error, or omission, whichever occurs later. Wyo. Stat. Ann. § 1-3-107. Though the applicable tolling statute would otherwise allow a minor to bring suit within three years after reaching the age of majority, there was a specific carve-out for actions involving the rendition of healthcare services. Wyo. Stat. Ann. § 1-3-114<sup>1</sup>.

In *Kordus v. Montes*, 2014 WL 6065940 (Wyo. Nov. 14, 2014), the Wyoming Supreme Court found that the above statute of limitations and tolling statute, as applied to minors, were unconstitutional based on public policy grounds, persuasive reasoning from other jurisdictions finding similar statutes constitutionally infirm, and Wyoming precedents protecting minors' rights to pursue lawsuits.

The *Kordus* court weighed (on the one hand) the state's interest in protecting against the perceived crisis in malpractice insurance, and (on the other hand) the concern that a minor child's remedy would be barred if the child's parent, guardian, or next friend fails to timely act. The opinion found of greater weight the concern of protecting the minor's rights—as a number of other jurisdictions have found, including the Missouri Supreme Court in *Strahler v. St. Luke's Hosp.*, 706 S.W.2d 7, 10 (Mo. 1986) (holding that barring malpractice suits of minor plaintiffs who are “wholly innocent in failing to timely pursue their claims ... unfairly penalize[s] the blameless minor in order to protect the potentially negligent health care provider”).

In *Kordus*, the court ultimately found unwarranted the assumption that a minor's rights would be protected by parents or guardians. The court found unrealistic any reliance on parents who may be ignorant, lethargic, or lacking concern to bring the action. Even though dedicated guardians may have a variety of personal reasons for not bringing suit on a minor's behalf, the court believed restricting a minor's right to sue would be unfair and unreasonable. After nearly 40 years of being on the books, this statute of limitations as applied to minors was declared unconstitutional.

By Casey F. Wong

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<sup>1</sup>This statute provided as follows (emphasis added): "If a person entitled to bring any action **except for an action arising from error or omission in the rendering of licensed or certified professional or health care services** or for a penalty or forfeiture, is, at the time the cause of action accrues, a minor or subject to any other legal disability, the person may bring the action within three (3) years after the disability is removed or within any other statutory period of limitation, whichever is greater."