

Period of Prescription in Medical Malpractice: Comment on Two Cases with Disputes on Prescription Period

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Abstract

The period of prescription is a crucial element influencing the results of medical malpractice civil litigations. However, there is significant inconsistency among the courts in applying the rules of the prescription period. In this article, the author inspected two cases with disputes on the prescription period to exemplify these problems, including a case with vegetative state caused by an anesthetic accident and a case with recalcitrant pain after spine surgery. In the first case, the plaintiff sustained persistent vegetative state resulting from an anesthetic accident. This case demonstrated the discrepancies among the courts in determining the commencement of the prescription period in medical malpractice litigations. In the second case, the plaintiff suffered from recalcitrant pain after lumbar spine surgery. This case illustrated how the courts applied different prescription period rules depending on different claims initiated by the plaintiff, such as medical negligence or incomplete performance of the medical contract. Because of the divergences in determining the commencement of the prescription period and applying prescription period rules, it has been difficult for both the plaintiff and the defendant to predict the results of the lawsuits. These problems not only lead to surprising judgments for both parties occasionally, but also result in a lack of legal stability in the medical malpractice civil litigations.

The author proposes three solutions for these problems. First, to delineate the commencement of the prescription period accurately, the types of medical negligence and medical injuries should be categorized with precision. Second, the

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courts should standardize the application of prescription period rules in different claims, namely claims for medical negligence and claims for incomplete performance of the medical contract. Third, the prescription chapter of the current Civil Code should be amended for a more succinct and clear-cut application of the prescription period rules and a better protection against personal injuries.

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