

**JAMS ARBITRATION
CASE REFERENCE NO.**

Claimants,

**AMENDED - ORDER GRANTING MOTION TO
DISMISS DEMAND, WITH PREJUDICE, FOR
FAILURE TO FILE WITHIN STATUTE OF
LIMITATIONS**

vs.

- Arbitration No. 16495

Respondent.

On July 30, 2020, Respondent filed a “Demurrer” to the Demand for Arbitration that Claimant filed on January 27, 2020.

The Arbitrator deems the subject motion to be a Motion to Dismiss for Failure to State a Claim – on the grounds that the Demand was filed well after the statute of limitations had run and none of the possible bases for tolling the statute has been pled or otherwise invoked.

Claimant submitted his Opposition to Respondent’s Motion on August 10, 2020.

Respondent filed its Reply on August 12, 2020, and on August 24, 2020, the Arbitrator heard oral argument on this Motion.

In his Opposition, Mr. [redacted] contended that he had “six years . . . to file for arbitration.” He cited no authority, statutory or otherwise, to support this position.

During oral argument, Mr. [redacted] contended that it was unfair to penalize him for his parents’ failure to file a claim on his behalf within the three year period prescribed by statute. Mr.

[redacted] concedes that he suffered the injury caused by the alleged medical malpractice in January of 2015, but points out that at that time he was only 14 years old and knew nothing about time limits for bringing claims. He also argued that it was unfair to blame his parents for not filing within the statutory period because they were not sophisticated in legal matters and were pre-occupied, of necessity, by the demands of trying to make a living and support their family.

As the Arbitrator explained to Mr. [redacted], however, it is the responsibility of the state legislature to determine how long people have to file claims, i.e., how to balance the legitimate interests that are in tension when such lines must be drawn.

With respect to the medical malpractice claim that Mr. _____ would pursue in this arbitration, the legislature determined that, for children above the age of six, the statute of limitations is three years. California Code of Civil Procedure section 340.5.

In this same statute, the legislature identified three grounds, but only three, on which the three year statute could be tolled: (1) fraud, (2) intentional concealment, and (3) the presence of a non-therapeutic and non-diagnostic foreign body in the person of the injured person.

Mr. _____ has not alleged that any of the three statutorily recognized grounds for tolling the statute apply in his circumstances. Given the absence even of an allegation to any such effect, the statute of limitations expired three years after the date of his injury, which was in January of 2015.

Because Mr. _____ did not file his Demand in this action until January of 2020, five years after he suffered the injury in issue, his claim is barred, forever, by the statute of limitations.

Given the absolute bar the statute of limitation imposes, there is no reason to permit Mr. _____ to amend his

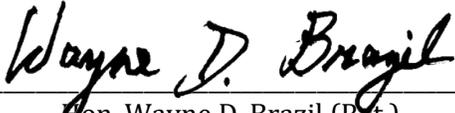
It is, therefore, the ORDER and JUDGMENT of the Arbitrator that Mr. _____
Demand is Dismissed with Prejudice and this case is concluded.

Respondent, by agreement, bears the costs associated with this proceeding.

Nothing in this arbitration decision prohibits or restricts enrollee from discussing or reporting the underlying facts, results, terms, and conditions of this decision to the Department of Managed Health Care.

IT IS SO ORDERED AND ADJUDGED.

Date: August 26, 2020.



Hon. Wayne D. Brazil (Ret.)
Arbitrator