

New Decision on Statutory Limitations on Noneconomic Damages in Medical Negligence Actions

March 08, 2010

On March 3, 2010, the Third District Court of Appeal released: [Weingrad v. Miles](#), No. 3D08-1592, 2010 WL 711801 (Fla. 3d DCA March 3, 2010) (*Not final until disposition of timely filed motion for rehearing*), holding non-economic damages limits in section 766.118, Florida Statutes (2003) may be applied to medical malpractice claims arising out of negligence that took place before the statute's effective date but for which the notice of intent to initiate litigation was not filed until after the statute's effective date.

The appellate court stated, "The Legislature unambiguously provided that section 766.18 was to operate retrospectively and apply 'to any incident for which a notice of intent to initiate litigation' was mailed on or after September 15, 2003, as long as the application would not be prohibited by the state or federal constitutions." The plaintiffs had not filed a notice of intent, filed a complaint, or obtained a judgment before the statute became effective, and the court held that, under those circumstances, the plaintiffs did not have a vested right to a particular damage award. The court concluded that applying the statutory cap to the plaintiffs' claims would not violate due process.

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