

# PERSPECTIVES ON THE LAW

Lachenmeier Enloe Rall & Heinson  
Attorneys at Law

## Medical Expenses for Minors: Whose Claim is it?

— by Tim Heinson

In bodily injury cases involving minors, a question sometimes arises as to who has the right to recover medical expenses incurred on behalf of minor children, the parents or the child. According to the Oregon Supreme Court in Palmore v. Kirkman Laboratories, 270 Or. 294, 305-306 (1974), the cause of action belongs to the parents of the child, not the child. Oregon statutes, however, provide a means for a claim for a child's medical expenses to be added to the lawsuit filed on behalf of the minor child. ORS 30.810 provides that when a guardian ad litem (a court-appointed guardian, usually a parent) of a child brings an action for recovery of damages to a child caused by a wrongful act, the parent, parents, or conservator of the estate may file a consent to accompany the complaint filed by the guardian. This allows the guardian to include in the cause of action the damages for doctor and medical expenses incurred on behalf of the child.

What happens when no consent is filed with the complaint? This issue was addressed in Barrington v. Sandberg, 164 Or. App. 292 (1999). In that case, the guardian filed suit without a consent. The trial court denied the defendant's motion to strike the claim for past medical expenses, agreeing with the plaintiff that the required parental consent should be implied in that case because the guardian was also a parent. The Oregon Court of Appeals disagreed and reversed on that issue, citing the express language of the statute and the plaintiff's failure to comply with it.

This rule may have statute of limitations

implications. The statute of limitations on tort actions is generally two years (ORS 12.110(1)). However, the statute of limitations is extended for minors by ORS 12.160:

“If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050, 12.070 to 12.250 and 12.276 is within the age of 18 years or insane, the time of such disability shall not be a part of the time limited for the commencement of the action; but the period within which the action shall be brought shall not be extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases.”

Translation: The period of time in which an action must be brought by a minor cannot be extended more than five years nor, in any case, longer than one year past the child's 18<sup>th</sup> birthday. If a plaintiff delays filing a claim on behalf of a minor in reliance upon this statute, any claim for past medical expenses will likely be barred since the claim belongs to the parent, who has a two year statute of limitations, and not to the child.

In evaluating claims for past medical expenses being made on behalf of minors, therefore, it is essential to keep in mind whose claim it actually is. This is important not only for the statute of limitations issues mentioned above but also in determining who you need to sign the release if you are able to settle the claim.