

MSC holds that defective AOMs in med-mal cases cannot be retroactively amended

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A defective affidavit of merit (AOM) in a medical malpractice case may not be retroactively amended after the limitations period has passed, from a July 29 opinion of the Michigan Supreme Court, found [here](#) (No. 139978). Moreover, a defective AOM does not toll a saving period given to personal representatives, according to the 4-3 bench in *Lignons v Crittenton Hospital*.

The infamous AOM statute, MCL 600.2912d(1), requires that medical malpractice claims be filed with an affidavit from a health care professional in the same specialty as the defendant and cover several specific points. The plaintiff was personal representative of the estate, and filed the complaint and necessary attachments after the limitations period expired but during the saving period provided for PRs in MCL 600.5852.

Justice Zahra wrote for the majority that the prior and applicable version of MCR 2.118, permitting amendments of “pleadings” only, was no help to plaintiff. (MCR 2.118 now covers AOMs.) The Court also held that a saving period cannot be tolled. Finally, the majority held that MCL 600.2301, permitting retroactive amendment, did not apply to defective AOM’s and thus salvage plaintiff’s complaint. So PRs who wait to file a medical malpractice claim during the saving period must file a sufficient AOM, or else be dismissed with prejudice.

The dissent, written by Justice Cavanagh, would have applied MCL 600.2301 and remanded for consideration under that statute.