

Health Law: Quality & Liability

Prof. Thaddeus Pope

Medical Malpractice –
SOR SOL Defenses



Affirmative Defenses



DEF can avoid
liability **even if**
PTF establishes
prime facie case



Good Samaritan
Statutes of Limitation
Statutes of Repose
Assumption of Risk
Comparative Negligence



SOL

Statute of limitations

SOR

Statute of repose



Effect & Impact



Bright-line
deadline for
filing lawsuit

Complete
bar to
liability

Length varies
from state to
state

Medical malpractice
1yr state A

Medical malpractice
2yr state B

Length varies
by COA within
a state

Medical malpractice
2yr state A

Battery
1yr state A

SOR / SOL Analysis

3 key inquiries
to determine if
your lawsuit is
time-barred

1. Date triggered
2. Length
3. Date lawsuit filed

SOL and SOR
differ in **trigger**
date

SOR

Date of
malpractice

Tenn. Code Ann. § 28-1-106

“no such action may be
brought more than three
years after the date on which
the negligent act or omission
occurred . . .”

SOL

Date injury
discovered (or
should have been)



Tenn. Code Ann. § 29-26-116

A medical malpractice
action must be brought
within one year after the
date upon which the
claimant **discovered** the
injury.



Example: 4yr SOR, 4yr SOL
“Oops. Oh, shit. I fuc*ed up.”

SOL

SOR



Example: 4yr SOR, 4yr SOL

SOR

SOL

0 1 2 3 4 5 6 7 8 9



Lawsuit barred as
soon as **either** SOR
or SOL runs,
whichever runs
first



Example: Laughlin v. Forgrave

4yr SOR, 2yr SOL

1951: surgical operation
(instrument left inside)

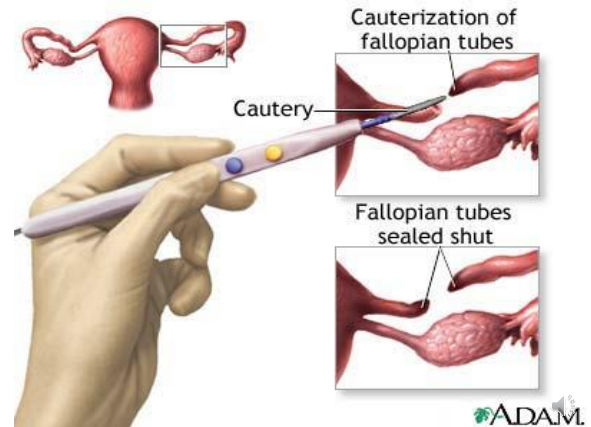
1962: plaintiff discovers
instrument

SOL runs 1964

SOR already ran 1955



Teeters v. Currey



06-05-70 Tubal ligation

12-06-72 Pregnant

03-09-73 Delivery


11-15-73 Lawsuit

Assume
1-year SOL

Discovered
malpractice
12-06-72, so
not barred by
SOL

Assume
1-year SOL +
3-year SOR

Malpractice
more than 3
years before
lawsuit, so
barred by SOR



Lawsuit barred
if **either** SOR
or SOL run

