



The **BOYK** LAW REPORT

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Golfer Falls Victim to Bad Driver on NC Course: Charles Boyk Law Helps Them Get To the Green

Our client was a retired man who was on a golfing trip with friends in North Carolina. He was putting on the green when his playing partner mistakenly ran him over with his gold cart. The partner panicked and backed over him a second time. The result was multiple surgeries. Further, our client was never able to play golf again and could only walk with a walker.

The first attorney was discharged, and we were retained 6 months before the North Carolina statute of limitations. We added value in the following ways:

- *We ordered all the medical records to date including the prior records.*
- *We did a nurse paralegal record review.*
- *We found the underlying homeowner's policy from the defendant and an applicable corporate policy from the golf course.*
- *When the treating orthopedic surgeon refused to cooperate we obtained an exam and file review with a new treating doctor who wrote a fantastic report.*

- *The 2 insurance companies admitted liability and coverage but could not agree on which was the primary insurance carrier.*
- *We retained co-counsel in North Carolina who we knew through common membership in a national Legal Mastermind Group.*
- *A lawsuit was filed, discovery was exchanged, and all the depositions were taken.*
- *A month before the trial we took part in a Zoom mediation in North Carolina where we obtained a confidential settlement.*

This settlement allowed our client to be financially secure in his retirement and improve the quality of his life.

As long as you have some form of insurance coverage, negligence of an individual, and some creativity a no value case can potentially become a policy limits case.



AUTO ACCIDENTS • MEDICAL MALPRACTICE
WORKERS' COMPENSATION • DOG BITES
WRONGFUL DEATH • PRODUCT LIABILITY
ATV & MOTORCYCLE ACCIDENTS
MASS TORTS • SEXUAL ASSAULT VICTIMS

Statute of Repose for Medical Malpractice Claims in Ohio



the underlying principle is that the one-year time period to file generally starts when the injury is discovered. The statute of repose, however, starts when the injury is incurred. So, what is the essential difference between these two statutes?

Medical negligence claims have drastically changed over the years. But one of the current, most controversial issues is the statute of repose. In the last five years, Ohio attorneys have experienced whiplash from the Ohio Supreme Court on this issue. The biggest change, and largest contested issue, is that the Ohio Savings Statute can no longer save a medical negligence claim if the “saved” claim is filed after the four-year period expires.

First and foremost, the statute of repose for medical negligence claims in Ohio is four (4) years. Comparatively, the statute of limitations for medical negligence claims is one (1) year. While there are exceptions to the statute of limitations,

A statute of limitations is a bar on recovery of damages, whereas a statute of repose is an absolute bar on bringing the claim itself. In other words, if the statute of limitations passes, the court can recognize the claim, but the injured party cannot recover damages. On the other hand, a statute of repose effectively extinguishes the entirety of the claim.

Prior to the Ohio Supreme Court’s decision in *Wilson v. Durrani*, 2020-Ohio-6827, the law in Ohio was that the Saving Statute applied to both statute of limitations and repose. However, after *Wilson*, the Ohio Supreme Court held that the saving statute cannot save a case if the statute of repose had expired. In doing so, the Court overturned the relation-back doctrine by calling it dicta. Despite years of reliance on this common law

doctrine, the Court held it was not binding and refiled matters do not relate back to the original filing as the refiled action acts as a new case entirely. The Ohio Supreme Court further found that since the new action does not relate back, any refiled (or newly filed) matter that is past the applicable statute of repose is barred.

Since its decision, the Ohio Supreme Court further expanded on this issue. First, if a defendant conceals himself or absconds from the jurisdiction of the court, the statute of repose does, in fact, toll. Second, the four-year statute of repose applies to wrongful death cases stemming from medical negligence and the saving statute cannot save these types of claims either.

According to Ohio legislature, the purpose for modifying the statute language to prevent the saving statute from applying was to promote businesses (i.e. doctors and medical professionals) to do business in Ohio. Creating a legal environment that is pro-business, however, has effectively burdened individuals who suffered at the hands of medical negligence. As this issue is controversial, it is something to keep an eye on as it appears to be a potential “malpractice trap” for plaintiffs’ attorneys.

Attorney-Client Conversations Are Confidential at Boyk Law

“If we continue to develop our technology without wisdom or prudence, our servant may prove to be our executioner.” -Omar Bradley, General of the United States Army.

We live in a society where the right to privacy have been burdened and consistently tested by social media and cell phones. Whether having a telephone conversation with your client or are walking down the street, one thing is prevalently clear: you cannot know for certain whether you are being recorded. Fortunately, there are laws in every state that can aid in protecting your privacy and that of your clients.

As of today, most states have adopted the “one-party consent” rule, however, some states still require all parties to a communication to consent to record or disclose. Ohio, being a one-party consent state, only requires that one party to a conversation consent to have a communication recorded or disclosed. This applies to both telephone conversations, in-person conversations, emails, or any other form of communication. However, just like with anything, there are restrictions to a person’s ability to record or disclose a seemingly private conversation. Pursuant to the Ohio Rev. Code, it is not unlawful for an individual who is a party to a communication, or has consent from a party to the communication, to record and/or disclose the content of said communication unless the person is doing so for the purpose of

committing a tortious or criminal act. For example, an individual cannot use the recording to blackmail or extort another person.

Another note of importance is interstate communications. What law controls if an Ohioan calls a Californian? If the individual in Ohio wants to record the call, can they do so without receiving consent from the person in California? It is generally presumed that the law where the recording device sits controls. The safest practice to avoid any ethical or legal consequences is to obtain consent from all parties if you are unsure. Another reason to be cautious is that interstate calls may subject you to federal liability, as well as state liability. Further, each state court’s interpretation may differ and have rules and regulations based on the factual circumstances. If you are not well-versed in all fifty (50) state’s case law and statutes, you may open yourself up to liability without knowing.

Penalties for violations of state and federal wiretapping and eavesdropping laws vary from misdemeanors to felonies, not including any repercussions from your state bar association. So, whether you, or your client, intends to record and disclose communications, make sure that you are following the laws of your state and the laws of the state where the recorded individual resides to ensure that you are protected.



Finding Third-Party Tort Claims In Workers' Compensation

Workers' Compensation claims offer an opportunity to look for third-party claims to fully compensate our clients. Whenever we see a potential safety violation, we request an OSHA (Occupational Safety and Health Administration) investigation. We use the OSHA investigation to try and find a VSSR (Violation of Specific Safety Requirement) claim under the Ohio Administrative Code. This allows us to have "free discovery" from 2 independent governmental agencies before filing a lawsuit. We can also check prior OSHA violations to see if there are prior similar safety violations.

An example of this is a case we settled in 2023. Our client was referred in with a worker's compensation case for losing 3 fingers in a table saw accident. We requested an OSHA investigation which discovered that the guard on the machine had been removed by the employer. We filed a VSSR claim that provided more evidence and photos and prior incidents. With that information we hired an expert witness and filed an intentional tort claim against the employer. After discovery we obtained a highly favorable confidential settlement of all the claims. Our client

was able to obtain a new job and start his life over at a new job with a substantial financial cushion.

Another case involved an over-the-road truck driver who was delivering at a manufacturing company. A forklift driver at the facility ran into our client resulting in a major shoulder injury. She has had shoulder surgery on her dominant arm, still has a frozen shoulder, and most likely will never be able to return to her prior employment. The lawsuit was filed with over a year left on the statute of limitations. That was fortunate because it was discovered that the party responsible was a subcontractor. That left plenty of time to amend the lawsuit with the proper party. Learning lesson: Give yourself plenty of time to find the correct party. You don't know what you don't know. This case is ongoing.

Our job is to maximize recovery for the client, make sure they get the best medical treatment, and provide them with all their legal options. We will be happy to review any potential claims for third-party torts.



Charles Boyk Law Offices Tops 1000+ 5-Star Google Reviews

Charles Boyk Law Offices recently earned its 1000th Five-Star Google Review. "This milestone reflects the dedication and commitment of everyone in our firm to providing excellent service to our clients." says Chuck Boyk.

"We work hard to earn those reviews, through communication and excellent customer service. Whether I'm hiring a mechanic or a plumber, I want to know what is going on," says Mr. Boyk. "My clients deserve the same treatment. So, I give them my office number and my mobile number. They know they can call or text me anytime, and I will respond to their questions and concerns immediately," he says.

Boyk Law's commitment to customer service also extends to clients referred to our firm by another attorney. We treat their clients like our own. We strive to keep them informed as the case progresses, and we maintain constant communication with referring counsel as well.

The drive to earn the acclaim of our clients and peers through 5-star Google reviews, begins and extends from the corner office to everyone on our staff. To learn more about Charles Boyk Law's commitment to customer service, contact our office at 419-241-1395 or visit www.charlesboyk-law.com/referral/

Co-Counsel Opportunities

Whether you have an injury case that is outside your core practice area, a case you do not have time or the resources to pursue on your own, or a case outside your geographic area, our firm would love to talk with you about a referral or being associated as co-counsel.

We are proud to work with co-counsel throughout the country. And when those cases resolve, we are honored to pay significant referral and co-counsel fees.

For more information about Co-Counsel Opportunities, contact Charles E Boyk Law Offices, by phone at 419-241-1395, email at referceb@charlesboyk-law.com or visit our website, www.charlesboyk-law.com/referral

ABOUT THE CO-COUNSEL NEWSLETTER

Charles Boyk Law was founded more than 20 years ago with the intent of helping people in need. Behind a team of outstanding lawyers, professional support staff, and state-of-the-art technology, our firm has grown to become one of the leading personal injury law firms in NW Ohio and SE Michigan.

We consider it an honor to be contacted by attorneys, both locally and across the U.S., who are seeking co-counsel to help litigate complex personal injury cases. It is an even greater honor when those attorneys refer us a case involving their loved ones or friends.

Our co-counsel newsletter is tailored to attorneys. It highlights examples of cases we are handling and provides updates on litigation. If you have a personal injury case you are looking to refer, we invite you to consider our firm. Our team of attorneys and professional staff have the experience, knowledge and resources to provide your clients with the best representation and maximize the recovery.



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Attorney Molly Blythe



“Working with the attorneys and staff at Boyk was a true pleasure. Highly recommend for anyone needing an experienced personal injury team.”

A Newsletter by Attorneys, For Attorneys

The **BOYK** LAW REPORT

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Mike Bruno's Top 3 Travel Destinations for Lawyers



1. Tuscany

This region of Italy offers the perfect blend of temperate climate, rolling hills, food, wine and

history. You can relax in a hilltop villa, overlooking vineyards or take daytrips to small historic villages like Sienna and San Gimignano. Plan at least a day in Florence to see the Uffizi or Accademia Galleries, The Duomo of Florence Cathedral and the Ponte Vecchio Bridge, followed by your favorite flavor of gelato!

2. Paris

I was prepared to hate Paris and the French people after hearing stories over the years. It is far and away my favorite city. I could live there. It is walkable. Paris offers bakeries, bistros, bars, shops, restaurants; all within a block or two of the hotels. The cultured will



enjoy The Louvre and Musee d'Orsay. The faithful can view Notre Dame Cathedral, still under construction following the 2018 fire. Romantics will enjoy a class of chardonnay while floating down the Sienne. Me? My happy place is the 5th

3. Lake Michigan Shoreline of the Leelanau Peninsula

(photo courtesy MI Dept of Natural Resources)

This one doesn't require a passport or travel agent and can be reached by car in 5 hours. Tucked away in the Northwest corner of Michigan's lower peninsula, this

area boasts 64 miles of beaches along the lake. The Sleeping Bear Dunes National Lakeshore is

spectacular. I never get tired of climbing the sand dunes or cycling the paved trails. Glen Arbor offers small town charm and "Arts Tavern", my favorite stop for a cheeseburger and beer. Traverse City is full of coffee shops, restaurants and gift shops. Moomer's overlooking the Plummer family dairy farm, has the very best ice



cream (outside Italy). This is where I go to make a quick getaway to recharge the batteries.



Attorney Mike Bruno

New address or phone number? Help us stay current by letting us know! Call 419.241.1395 or e-mail marketing@charlesboyk-law.com