

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.5838 Claim based on malpractice; accrual; commencement of action; burden of proof; limitations.

Sec. 5838. (1) Except as otherwise provided in section 5838a or 5838b, a claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.

(2) Except as otherwise provided in section 5838a or 5838b, an action involving a claim based on malpractice may be commenced at any time within the applicable period prescribed in sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The plaintiff has the burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim. A malpractice action that is not commenced within the time prescribed by this subsection is barred.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1975, Act 142, Imd. Eff. July 9, 1975;—Am. 1986, Act 178, Eff. Oct. 1, 1986;—Am. 2012, Act 582, Imd. Eff. Jan. 2, 2013.

Compiler's note: Section 3 of Act 178 of 1986 provides:

“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

“(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

“(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”