

## COA Opinion: If a notice of intent to file a medical-malpractice claim fails to include an individual later added as a defendant, it does not toll the statute of limitations as to that defendant.

14. January 2011 By Aaron Lindstrom

After a doctor at Walled Lake Medical Center misdiagnosed a 13-year-old boy's leg pain (concluding it was a pulled muscle when it was actually a serious bone infection), the boy's parents sent Walled Lake and a certain doctor (Dr. Fenton) a statutorily required notice that they intended to sue for medical malpractice. This notice tolled the limitations period, which otherwise would have expired in about two months, and simultaneously started the statutory 182-day notice period running. After the notice period passed, the parents filed their complaint. Walled Lake and Dr. Fenton responded about six months after receiving the notice of intent with a notice of nonparty at fault, which identified a different doctor (Dr. Ross) as the treating physician. The parents amended their complaint to add Dr. Ross as a defendant, but they amended it after the statute of limitations had run. In *Griesbach v. Ross*, No. 275826 (Jan. 13, 2010), the Court of Appeals held that while the notice of intent had tolled the statute of limitations with respect to the claims against the original two defendants, the notice of intent did not notify Dr. Ross that there would be a claim against him and therefore did not toll the limitations clock as to him. The Court of Appeals reached this decision following a remand from the Michigan Supreme Court directing the Court of Appeals to reconsider its initial decision (also holding the statute of limitations had run) in light of *Bush v Shabahang*, 484 Mich 156 (2009), and *Potter v McLeary*, 484 Mich 397 (2009), but the Court of Appeals concluded that *Bush* was "inapplicable" and that *Potter* was "irrelevant to the present matter."