



Malpractice by Chiropractor Governed by Three-Year Statute of Limitations

In a full-fledged opinion by Justice Sweeney, the First Department determined that a malpractice action against a chiropractor (Dr. Fitzgerald) is governed by the three-year statute of limitations (CPLR 214(6)), not the 2 ½ year statute of limitations (CPLR 214-a) governing actions against physicians and those providing medical services at the direction of a physician:

Here, plaintiff was not referred to Dr. Fitzgerald by a licensed physician and Dr. Fitzgerald's chiropractic treatment was not an integral part of the process of rendering medical treatment to a patient or substantially related to any medical treatment provided by a physician. Indeed, plaintiff did not even inform her physicians, including her primary care physician, that she was receiving chiropractic treatment for her neck and back. Further, the record establishes that the treatment provided by Fitzgerald, consisting of adjusting or applying force to different parts of the spine, massages, heat compression, and manipulation of plaintiff's neck, constituted chiropractic treatment (see Education Law § 6551). The fact that defendant provided treatment to the human body to address a physical condition or pain, which may be within the broad statutory definition of practicing medicine (Education Law § 6521), does not, by itself, render the treatment "medical" within the meaning of CPLR 214-a, since the use of such a broad definition would result in the inclusion of many "alternative and nontraditional approaches to diagnosing [and] treating . . . human disease" which are clearly nonmedical in nature

...Here, there is no doubt that Dr. Fitzgerald's treatment was separate and apart from any other treatment provided by a licensed physician and was not performed at a physician's request. Accordingly, as with the psychologist in *Karasek* [92 NY2d 171], and the optometrist in *Boothe* [107 AD2d 730], defendant is not entitled to invoke the benefit of the shortened limitations period applicable to medical, dental and podiatric malpractice, and is subject to the three-year statute of limitations of CPLR 214(6). [Perez v Fitzgerald, 2014 NY Slip Op 00744, 1st Dept 2-6-14](#)