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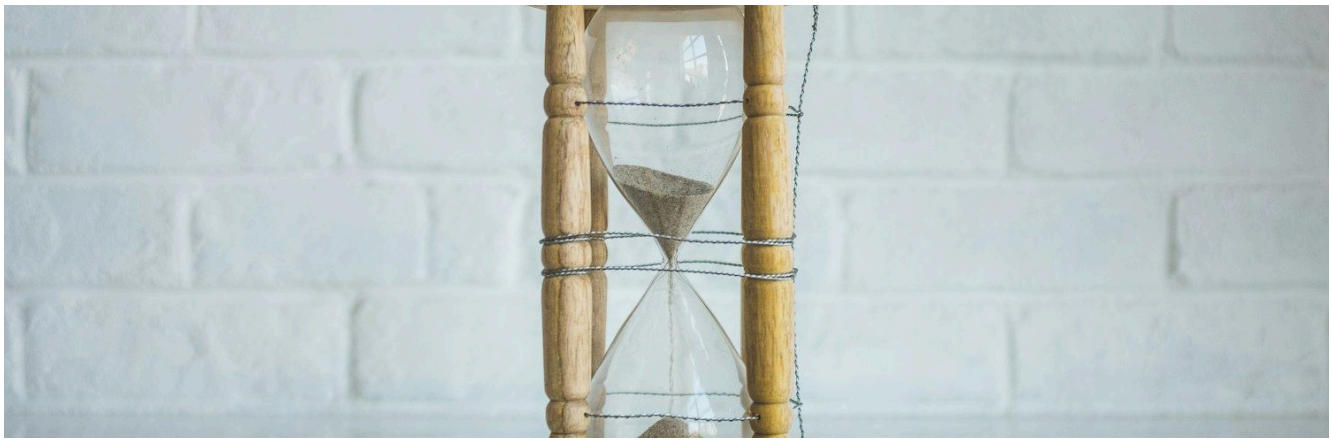
Statute of Limitations Under CCP § 340.5

Grand Park Law Group · 2026



A. The 1-Year-from-Discovery Rule

Cal. Code Civ. Proc. § 340.5 establishes a bifurcated statute of limitations that is among the most aggressive in California civil practice. The first prong requires that an action against a healthcare provider for professional negligence be commenced within "one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury."

The discovery rule under § 340.5 is more demanding than the general delayed-discovery doctrine in California civil practice. The clock begins running not when the plaintiff knows the precise mechanism of injury, nor when the plaintiff understands the legal theory, but when the plaintiff has reason to suspect that wrongdoing has occurred. In *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, the Supreme Court framed the inquiry as one of "suspicion of wrongdoing." A patient who experiences a poor outcome and harbors suspicions about treatment quality is on inquiry notice and must investigate diligently.

B. The 3-Year Outer Cap

The second prong of § 340.5 imposes a three-year outer cap measured from the "date of injury." This cap operates as a statute of repose: it bars claims regardless of when discovery occurred, except where one of the enumerated tolling exceptions applies. The "date of injury" for purposes of the three-year cap means the date of physical injury, not the date of the negligent act, where the two diverge.

C. Tolling Exceptions (Foreign Object, Fraud, Concealment)

Section 340.5 enumerates three exclusive tolling exceptions to the three-year cap:

1. **Foreign object.** Where the action is based upon the alleged presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person, the three-year cap does not apply. The classic example is the surgical sponge or instrument left in the patient.
2. **Fraud.** The three-year cap is tolled by the defendant's fraud.
3. **Intentional concealment.** The three-year cap is tolled by the defendant's intentional concealment.

These exceptions are construed strictly. In *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, the Supreme Court emphasized that the three-year cap reflects a deliberate legislative judgment to limit healthcare-provider exposure to "stale" claims, and that the enumerated exceptions are exclusive.

D. The Special Rule for Minors

Section 340.5 contains a separate and more protective limitations regime for minors. For injuries occurring **before the minor's sixth birthday**, the action must be commenced within three years of the date of injury or before the minor's eighth birthday, whichever is later. For injuries occurring **on or after the minor's sixth birthday**, the standard three-year/one-year framework applies.

Critically, § 340.5 expressly provides that the limitations period for minors **is not tolled** by the minor's lack of capacity, except for the specific minor-injury rule above. This is a significant departure from Cal. Code Civ. Proc. § 352, which generally tolls limitations during minority. The statute does, however, toll the period during any time the minor's parent or guardian and the defendant's insurer or healthcare provider have committed fraud or collusion in the failure to bring the action on the minor's behalf.

The minor-injury rules carry particular weight in birth-injury cases, where the injury occurs at or near birth and the parents may not appreciate the injury for years. The eighth-birthday cutoff functions as an absolute bar in many birth-injury matters and demands intake systems capable of identifying these claims well before the child's eighth birthday.

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