



# Nicolaou v. Martin, 195 A.3d 880 (Pa. 2018)

Topics Covered: Professional Liability, Tort Reform

## Outcome: Very Unfavorable

### Issue

The issue in this case was whether the discovery rule—a common law rule that stops the statute of limitations from running until the point when the complaining party knows or reasonably should know that she has been injured on account of another party’s conduct—tolled the two year statute of limitations in a medical malpractice case.

### AMA Interest

Medical liability reform is one of the AMA’s top priorities.

### Case Summary

Nancy Nicolaou claimed she was bitten by a tick in 2001 and sought medical treatment as a result of the bite. She was treated by three physicians, as well as various other practitioners, between 2001 and 2008. Each of her physicians ordered a test for Lyme disease, and each test came back negative. In 2006 Mrs. Nicolaou underwent an MRI test. The results of the MRI suggested she was suffering from either Multiple Sclerosis (MS) or Lyme disease. After the test, her physicians diagnosed Mrs. Nicolaou with MS and treated her accordingly.

Sometime in 2007, Mrs. Nicolaou sought treatment from a nurse practitioner—Rita Rhoads—who specialized in treating patients who had been diagnosed with MS. By 2008, Mrs. Nicolaou had stopped seeking assistance from her physicians.

Mrs. Nicolaou met with and was examined by Nurse Rhoads on five occasions between July 20, 2009 and February 1, 2010. During each of these appointments, Nurse Rhoads told Mrs. Nicolaou that she believed Mrs. Nicolaou was suffering from Lyme disease. Nurse Rhoads also told Mrs. Nicolaou that she was prescribing antibiotics to fight Mrs. Nicolaou’s Lyme disease.

Between 2009 and 2010 Nurse Rhoads also recommended that Mrs. Nicolaou undergo a test offered by a company called IGeneX, Inc. to confirm her diagnosis of Lyme disease. Mrs. Nicolaou declined to take the test until February 1, 2010. Nurse Rhoads received the results of the IGeneX test on February 12, 2010, and the next day she informed Mrs. Nicolaou that the test was positive for Lyme disease.

On February 10, 2012, Mrs. Nicolaou and her husband sued, *inter alia*, her physicians for medical malpractice and loss of consortium. The Defendants raised the affirmative defense that the statute of limitations had expired. The Nicolaous alleged the discovery rule exception applied, and the statute of limitations had been tolled (suspended).

The Defendants moved for summary judgment, which was granted. The court held that the discovery rule exception did not apply and the statute of limitations had expired by the time the Nicolaous filed suit.

The Nicolaous appealed to the Pennsylvania Superior Court. A divided three judge panel reversed the summary judgment, with one judge dissenting. The defendants requested rehearing *en banc*, which was granted, along with an order withdrawing the decision of the three judge panel.

In a five to three decision, the Superior Court, *en banc*, affirmed the trial court's grant of summary judgment to the defendants. In support of its decision, the *en banc* court held, "reasonable minds would not differ that Mrs. Nicolaou should have known as early as July 2009, and could have proven at that time, that she suffered from Lyme disease." Therefore, the discovery rule exception did not apply. The three dissenting judges argued that there was a question of material fact as to whether the Nicolaous were "reasonably diligent" in determining that the defendants had caused their injuries, and the question should be left for a jury to decide. The Nicolaous then appealed to the Pennsylvania Supreme Court.

On October 17, 2018, the Supreme Court reversed both the trial court and the Superior Court. It held that, while there was substantial evidence to suggest that Mrs. Nicolaou should have known of her Lyme disease more than two years before she sued, there was also evidence otherwise. It would therefore be for a jury to decide whether a person in Mrs. Nicolaou's circumstances acted reasonably.

### **Litigation Center Involvement**

The Litigation Center, along with the Pennsylvania Medical Society, filed an *amicus* brief before the Pennsylvania Supreme Court. The brief supported the defendant physicians and argued that the discovery rule exception to the statute of limitations should not apply in this case.

Pennsylvania Supreme Court brief