

CASE REPORT

PRE-SUIT NOTICE REQUIREMENTS—CONTINUED VALIDITY OF. Pre-suit notice requirements are a legitimate precondition of filing a tort lawsuit against a governmental agency and are constitutional. *McDevitt v. Harborview Medical Center*, Slip Op. No. 85367-3 (December 27, 2012).

I. Facts. A former patient filed a medical malpractice lawsuit against Harborview Medical Center, a public hospital. It was undisputed that the patient failed to comply with RCW 7.70.100(1), which requires medical malpractice claimants to provide 90 days advance written notice to the defendant before commencing a civil action. The Superior Court nevertheless refused to dismiss the case on this basis, reasoning that recent precedent from the Washington Supreme Court had effectively invalidated pre-suit notice requirements against public agencies [on constitutional grounds. Harborview appealed the Superior Court’s ruling directly to the Washington Supreme Court.

II. Applicable Law and Analysis. On appeal, the Washington Supreme Court reversed the Superior Court and ordered dismissal of the patient’s lawsuit. In reaching this conclusion, the Supreme Court noted that under Article II, section 26 of the Washington Constitution, the state Legislature is authorized to direct the manner in which lawsuits against the state and its political subdivisions may be brought. The Court reasoned that mandatory pre-suit notice requirements fall within the scope of this authority and are a valid statutory precondition of filing a damage action against governmental defendants. The Supreme Court distinguished the recent case precedent the Superior Court had relied upon by emphasizing that the hospital at issue in *McDevitt* was a public entity whereas the prior case had involved a suit against a private defendant. The Supreme Court also rejected the patient’s argument that the 90 day pre-suit notice requirement violated constitutional equal protection rights; the Court recognized that the challenged statute served several legitimate governmental interests, including facilitation of tort settlements and affording governmental defendants an opportunity to budget appropriately to account for pending claims.

III. Conclusion. Although the *McDevitt* decision did not involve a city *per se*, the case is significant because it reaffirms the constitutional validity of statutory pre-suit notice requirements for all public entities. These include the municipal claim filing statute codified at RCW 4.96.020, which requires claimants to provide 60 days written notice before commencing a tort action against a city. Failure to comply with this requirement results in dismissal of a claimant’s lawsuit. *McDevitt* preserves this important procedural step and legal defense for cities.