



Alerts

\$50M Jury Verdict Overturned on Appeal Because Evidence of Autism Excluded at Trial

December 17, 2020
Health Care Alert

This alert was featured in Hinshaw's Annual Guide to Illinois Medical Malpractice Decisions: 2020 Edition

Issue

Did a trial court err in excluding evidence of subsequent formal diagnosis of autism when potentially alternative cause of current condition of minor?

Julien Florez v. Northshore University Healthsystem d/b/a Evanston Hospital, NorthShore Physicians Group, LLC, et al., 2020 IL App (1st) 190465

Case Summary

Julien Florez was delivered via C-section in 2009. At birth, he had an Apgar score of 1, underwent neonatal resuscitation, and was eventually diagnosed with cerebral palsy. Fewer than 60 days before the trial date, plaintiff disclosed a report from a psychological evaluation performed for Julien, which showed that he met "full diagnostic criteria for Autism Spectrum Disorder." Just over 30 days before trial, defendants' filed supplemental disclosures in which experts opined that Julien's autism diagnosis supported their conclusions that his disabilities resulted from a chronic condition rather than an acute injury occurring at birth. The trial court granted plaintiff's motions to strike the supplemental disclosures as untimely and denied Defendants' motions to continue the trial date to conduct further discovery.

The trial court further granted plaintiff's motion *in limine* to bar any reference to autism at trial. At trial, plaintiff's pediatric neurology expert asserted that bradycardia at birth resulted in Julien's brain damage, an opinion he supported with EEG tracings showing bursts class for acute lack of oxygen and an MRI showing diffuse injury in the white matter. Plaintiff's pediatric neuroradiology expert testified that the MRI performed at five days of life showed brain swelling, and that therefore, the injury occurred at or near the time of birth, because swelling is visible for only five or six days after the injury. Defendants' presented expert testimony on causation from a neonatologist, who opined that blood gases read together with the tracing did not support the conclusion that minimal variability led to bradycardia, and that Julien suffered an in utero injury well in advance of the date of delivery. The neonatologist further noted that an echocardiogram showed thickened blood vessels in Julien's lungs that took weeks or months to develop and caused his inability to breath at birth. A hematology expert opined that the placental insufficiency due to a fetal-placenta ratio of 10:1 resulted in a chronic asphyxia in utero and hypoxic ischemic encephalopathy. Both experts stated that neonatal seizures occurring within five (5) hours of birth supported the conclusion that an acute hypoxic event occurred 12-36 hours previously, which was before labor.

Despite the *in limine* ruling, defendants made an offer of proof through expert testimony that autism, even if acquired, is consistent with a chronic uteroplacental oxygen insufficiency injury theory given the areas of the brain that were injured. Furthermore, defendants' experts believed that Julien's language deficits were the product of a neurodevelopmental disorder—such as autism—as opposed to an intellectual disability. A jury trial resulted in a judgment in favor of plaintiff in



the amount of \$50.3 million. Defendants appealed in part because the trial court excluded all evidence of Defendants' alternative causation defense, namely that Julien Florez had been formally diagnosed with autism.

On appeal, the *Florez* court considered whether the trial court erred in striking defendants' supplemental disclosure as untimely. In finding that the trial court erred in striking defendants' supplemental disclosure, the court reasoned that, while Illinois Supreme Court Rule 218(c) requires discovery to be completed 60 days before trial, it also requires the trial court "to do substantial justice between and among the parties." The court also noted that plaintiff supplemented prior disclosures with the autism evaluation report after the 60-day rule had run and that plaintiff was seeking to enforce the letter of Rule 218(c) while ignoring his own actions that contributed to the defendants' untimely filing. The *Florez* court further ruled that the trial court erred in excluding Defendants' expert testimony as it deprived the jury of relevant evidence in deciding both causation and the damages portion of the trial, all to the prejudice of defendants. Notably, the court explained that even if the jury had found that autism was not related to the brain injury caused by the defendants, it would still be relevant to the jury's consideration of Julien's speech and language deficits, his need for therapy, his schooling requirements, and future employment prospects, all of which factored into plaintiff's future damages calculations.

Takeaway

Vigilant investigation and discovery related to subsequent medical diagnoses which provide alternative explanations of patient plaintiff's current condition are critical in defending medical malpractice lawsuits.

[>> Return to Hinshaw's Annual Guide to Illinois Medical Malpractice Decisions: 2020 Edition](#)