



## Alerts

### Legal Expert Cannot Opine on Merits of Underlying Medical Malpractice Case

February 13, 2013

*Lawyers for the Profession® Alert*

*Labair v. Carey*, 2012 MT 312 (Dec. 27, 2012)

#### Brief Summary

The Supreme Court of Montana reversed summary judgment in favor of defendant attorney in a legal malpractice case because plaintiff clients established that they would have been able to survive summary judgment in an underlying medical malpractice action absent their attorney's negligence. The trial court improperly relied on the attorney's legal expert, who had opined that the underlying medical malpractice case could not be established.

#### Complete Summary

The clients sued the attorney for legal malpractice, alleging that he failed to timely file their medical malpractice action. The attorney admitted that he owed a duty of care to the clients and that he had breached the standard of care by failing to timely file the medical malpractice case within the statute of limitations. But he sought summary judgment, contending that his breach caused no damages to plaintiffs. The attorney relied on his legal expert, who opined that the clients' medical malpractice case could not be established, and that the clients therefore suffered no damages. The trial court granted summary judgment in favor of the attorney and found that the clients failed to establish medical causation and damages through admissible expert evidence.

The Supreme Court of Montana concluded that the trial court improperly relied on the opinion of the attorney's legal expert that the underlying medical malpractice case would not have been successful. The Court held that an attorney is not qualified to express an expert medical opinion. See *Maudling v. Hardman*, 257 Mont. 18, 27, 847 P.2d 292, 298 (1993), stating:

While we acknowledge [the attorney's expert's] legal expertise in medical malpractice cases, the fact remains that he is an attorney and not a medical doctor. His experience and knowledge may qualify him to offer his legal opinion regarding the standard of care for a legal professional and to discuss whether [the attorney's] actions conformed with that standard of care, but it does not qualify him to offer expert medical opinions on the merits of a medical malpractice case.

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The clients presented sufficient medical expert testimony to establish a medical malpractice action under Montana law that would have survived summary judgment. They also presented sufficient legal expert testimony to establish the applicable standard of care, breach and causation in support of their legal malpractice claim against their former attorney. The Court found that the clients' lost opportunity to obtain a favorable pretrial settlement or verdict was *prima facie* evidence of injury. Therefore, summary judgment was reversed and the case remanded.

### **Significance of Opinion**

Attorneys should be mindful that legal experts are not qualified to opine on the merits of a medical malpractice case. Where expert medical testimony is required to establish a cause of action, any subsequent action for legal malpractice requires medical expert testimony – rather than legal expert testimony – to establish the medical standard of care and breach. Legal experts can only establish the standard of care for legal professionals.

For further information, please contact [Terrence P. McAvoy](#).

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