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Newsletters

Medical Litigation Newsletter - September 2011

September 30, 2011

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Hinshaw Expands Medical Litigation Practice to Florida and California

Hinshaw is pleased to announce that the firm has expanded its Medical Litigation practice into Florida and California. This expansion now provides Hinshaw clients the ability to have medical malpractice cases defended coast-to-coast. The Medical Litigation Newsletter will be enhanced by featured legal developments in these new jurisdictions. Hinshaw's Medical Litigation Group continues to thrive and expand under the leadership of Group Leader.

Reporting Payments to the National Practitioner Data Bank

The Health Care Quality and Improvement Act of 1986 (HCQIA), 42 U.S.C. § 11101, et seq., was established, in part, to improve the quality of medical care throughout the nation. In furtherance of this goal, the HCQIA mandates that various health care entities report certain payments made in resolution of medical negligence cases to the National Practitioner Data Bank (NPDB).

Court Evaluates Abortion Remorse Case Through Lens of Doctrine of Informed Consent

On December 8, 2004, plaintiff, a 19-year-old woman who was approximately 12-weeks pregnant, sought counseling and assistance from defendant health care provider. The expectant mother asked a counselor employed by the health care provider whether an abortion "would terminate the life of a human being in the biological sense." The counselor replied in the negative, and the expectant mother underwent an abortion that same day. Two years later the formerly expectant mother sued the health care provider for failing to inform her that an abortion procedure would "terminate the life of the second patient, a living human being as a matter of biological fact." The counts of the complaint included wrongful death, negligent infliction of emotional distress and a violation of the Consumer Fraud and Deception Business Practices Act. The court evaluated the formerly expectant mother's claims through the lens of the doctrine of informed consent and ruled that the health care provider owed the formerly expectant mother no legal duty to offer opinions reflecting something other than the "scientific, moral, or philosophical viewpoint of [the health care provider] as an abortion clinic."

Doe v. Planned Parenthood Chicago Area, 2011 IL App 091849 (1st Dist. Aug.

Service Areas

Appellate

19, 2011)

Illinois Supreme Court Holds Federal Arbitration Act Preempts Nursing Home Care Act

Plaintiff, the administrator of a decedent's estate, sued a nursing home alleging that it had negligently provided services to the decedent that resulted in injuries and contributed to her death. The trial court denied the nursing home's motion to compel arbitration pursuant to two signed arbitration agreements, and the appellate court affirmed, holding that the arbitration agreements were void for being against the public policy set forth in the anti-waiver provisions of the Nursing Home Care Act (NHCA). The Supreme Court of Illinois reversed, holding that the Federal Arbitration Act (FAA) preempted the NHCA. The case had been remanded for consideration of other issues including whether the parties' arbitration agreements concerned a transaction "involving interstate commerce" within the meaning of Section 2 of the FAA; whether the arbitration agreements were void for a lack of mutuality; and whether the arbitration agreements applied to the administrator's claim under the Wrongful Death Act.

Court Upholds Bar of Cross-Examination of Defense Expert About His "Personal Practices" in Medicine

In a medical malpractice case based on alleged doctor negligence, the jury found in favor of defendants, doctors and others, and against plaintiff patient. The trial court had granted a motion in limine to bar a defense expert from being cross-examined about his "personal practices" in medicine. The appellate court affirmed, holding that the expert's preference to use one of the three treatment options that he opined were all within the standard of care to treat the ailment did not give rise to permissible impeachment testimony. The expert's preference for one method was ruled to be not inconsistent with his testimony that all three appropriate treatment options existed. The patient relied on *Gallina v. Watson,* 354 Ill. App. 3d 515 (2005) and *Schmitz v. Binette,* 368 Ill. App. 3d 447 (2006). The court ruled that unlike in Gallina, this expert did not state that he always used the treatment option advanced by the patient or that he never used the treatment option used by defendants. Thus his credibility on this issue was not affected. The patient also complained that one of defendant doctors failed to correctly define the legal standard of care and thus that his testimony was unreliable. The court held that the doctor's failure to comply verbatim with the Illinois Pattern Jury Instruction in defining "standard of care" was irrelevant given that his testimony clearly demonstrated his opinions were based on his education, training and experience.

Taylor v. County of Cook, 2011 WL 3112852 (1st Dist. July 21, 2011)

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