



Newsletters

Medical Litigation Newsletter - July 2011

July 22, 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.

The Death of Statutes of Limitations

A disturbing trend is developing among the plaintiffs' bar—namely, the use of “John Doe,” “Jane Doe” and/or “John Doe Corporation” as named defendants. In an attempt to circumvent statutes of limitations, attorneys are adding unidentified fictitious entities in hopes of convincing trial courts to allow joinder of new defendants substantially after the particular statute of limitations has expired. In Missouri, this tactic presently is centered on medical negligence claims (both personal injury and wrongful death); however, the practice will likely be used in other areas of the law.

Employers Should Be Aware of State Laws Prohibiting Marital Status Discrimination

Although no federal law prohibits discrimination by private employers based on marital status, a number of state laws include such status as a protected class. The Minnesota Supreme Court recently considered a case where a husband and wife worked for the same employer. The husband, employed as the company's president, offered to resign his employment. The wife, employed as a sales and marketing coordinator, was terminated shortly thereafter. The company's CEO told the wife that he would like to terminate her because “she would be uncomfortable or awkward remaining employed” after her husband left the company. The CEO also told her that her position was going to be eliminated because she would likely relocate with her husband. The wife then sued the employer, alleging marital status discrimination in violation of Minnesota law. The employer argued that a claim for marital discrimination must be supported by a finding that the termination was an act “directed at the institution of marriage” and claimed that the employee had been fired for legitimate business-related reasons. The Minnesota Supreme Court held that a claim for marital discrimination does not require that an employee prove a direct

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attack on the institution of marriage. The Court instead determined that “marital status” includes “protection against discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.” Importantly, this means that an anti-nepotism policy prohibiting employment of married couples by a company is illegal in Minnesota. Many other states, including California, Florida, Illinois and Wisconsin, also prohibit marital status discrimination. This decision is a reminder that all employers, and especially national employers, should review and update their anti-nepotism and anti-discrimination policies to ensure compliance with state laws.

Illinois Supreme Court Rules Common Fund Doctrine Does Not Apply to Health Care Services Lien Act

The Illinois Supreme Court recently held that the common fund doctrine does not apply to a health care professional or provider holding a lien under the *Health Care Services Lien Act*. *Wendling v. Southern Illinois Hospital Services* and *Howell v. Southern Illinois Hospital Services*, Nos. 110199, 110200 cons. (Ill. Mar. 24, 2011). The common fund doctrine is an exception to the general American rule that, absent a statutory provision or an agreement between the parties, each party to litigation bears its own attorneys' fees and may not recover those fees from an adversary. It provides that a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from every person who receives money from the fund.

Hinshaw Representative Matters

Gregory T. Snyder and Jennifer L. Johnson obtained a not guilty verdict for a defendant psychiatrist in Will County, Illinois. Plaintiff claimed the suicide death of a 34-year-old father of two minor boys was due the psychiatrist's conduct. Decedent had held a gun to his head in the early morning hours prior to his hospitalization for suicidal ideation. He was evaluated and admitted to the psychiatric floor of a Will County medical center where he was further evaluated and treated by the psychiatrist. Plaintiff attempted to criticize defendant for discharging decedent after approximately 48 hours. Defense counsel successfully argued the length of admission as well as the other care provided was tailored appropriately and reasonably to the patient's particular circumstances. Among those circumstances: the patient's wife provided assurances she would (a) monitor and supervise the patient, (b) take the decedent back into the family, and (c) participate in marital counseling. After his discharge, the patient's wife argued with him at length about a divorce, culminating in his suicide death. The jury endorsed the psychiatrist's care and returned a not guilty verdict.

Rhonda J. Ferrero-Patten secured a not guilty verdict in a medical negligence case in Peoria County, Illinois for a large regional health care system and its insured resident. Allegations were surgical error during a lumbar microdiscectomy where the femoral artery was severed and the vein injured, resulting in post operative hemorrhage and continuing problems with leg claudication.

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