

Medical Litigation Newsletter - December 2011 Edition

Hinshaw Newsletter | 3 min read

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2011 Year in Review: Significant Medical Malpractice Decisions

2011 was a year of many important and interesting case decisions affecting the law of medical malpractice. In this article, we will focus primarily on those cases involving medical malpractice fact patterns, as opposed to purely procedural decisions having an incidental effect upon medical malpractice cases.

A number of cases were decided this year on issues of personal jurisdiction, statutes of limitations, discovery and the Medical Studies Act, the concept of legal duty, issues that can arise during trial (hearsay, failure of board certification exams, and “personal practice” testimony), and jury instructions.

Medical Practice Noncompete Agreements After the Reliance Fire Equipment Case

For more information, please contact Dawn A. Sallerson or your regular Hinshaw attorney.

In determining whether to enforce the agreement of an employee not to compete with the employer following termination of employment, Illinois courts have long required a showing by the former employer of a legitimate business interest (other than simply excluding a potential competitor) requiring the protection afforded by the non-compete agreement. Historically, Illinois courts have examined two legitimate employer interests for this purpose: either “near-permanent” customer relationships or confidential business information.

Hinshaw Representative Matters

Dawn A. Sallerson of Hinshaw’s Belleville, Illinois office defended a surgeon in a case in which plaintiff patient claimed that a bile leak following a laparoscopic cholecystectomy resulted from the surgeon’s failure to control the cystic duct. The patient also alleged that the surgeon left town on a scheduled vacation following the patient’s surgical procedure without securing an appropriate surgical alternate. Defense counsel responded that: (1) the medical evidence contradicted the patient’s medical theory, and (2) as the only surgeon in the county at the time of the procedure, the surgeon did not have the luxury of securing another surgeon to care for his patients while he

was out of town, but he did fully inform the patient of the foregoing facts and directed her to report to the emergency room should any issues arise. The jury returned a verdict for the surgeon in less than one hour.

Paul C. Estes and Jesse A. Placher of Hinshaw's Peoria, Illinois office defended an urgent care physician and others in a medical malpractice case stemming from the death of a three-year-old boy. The child was treated at a prompt-care facility on seven different occasions in 2003 for complaints of cough, ear and upper respiratory infections. The physician saw the child on January 12, June 18 and July 9, 2003. On each visit, symptomatic treatment was provided with an instruction to follow-up with the primary care physician, which did not occur until July 14, 2003. On July 23, 2003, the child arrested and was discovered to have non-Hodgkin's lymphoma. The child remained comatose and died on August 18, 2003. Plaintiff sought \$1,275,000. The jury rendered a verdict for all defendants after deliberating for two hours.

Paul C. Estes of Hinshaw's Peoria, Illinois office defended an orthopedic surgeon in a case involving a 73-year-old male who had sustained a hip fracture. The surgeon operated, utilizing the Gamma nail construct, but a failure of the set screw was later discovered. Due to risks associated with the patient's fresh DVT and anticoagulation status, the surgeon elected to reinsert the lag screw and place bone cement on the side of the femur to act as a restrictor cap to prevent remigration. This use of bone cement is not supported by any literature. The patient sustained sepsis and later transferred care to another orthopedic group and required two additional surgeries, including right total hip arthroplasty. Plaintiff argued that the surgeon violated the standard of care. The jury returned a verdict for the surgeon after deliberating for one hour.

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