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Alabama Medical Malpractice Appellate Decisions

2017 YEAR IN REVIEW



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Exception to Rule That a Breach of the Standard of Care and Causation Must Be Establish by Expert Testimony

Collins v. Herring Chiropractic Ctr, LLC, 2017 Ala. LEXIS 14*; 2017 WL 656730

This case involved chiropractic care, particularly the use of a “cold pack” to treat a knee injury. On the subject occasion, following application of the cold pack the plaintiff developed blisters on her knee where the cold pack had been located and, later, developed scars in that same area. The Supreme Court of Alabama reversed summary judgment in favor of the chiropractor finding that expert testimony was not required to present evidence of a breach of the standard of care where the case required “only common knowledge and experience to understand what is akin to frostbite.” Likewise, the Court found no need to present expert testimony establishing causation stating that “[b]listering and subsequent scarring does not ordinarily occur following the application of a cold pack, absent negligence.”

Statute of Limitations Applicable to Indemnity Action

McNamara v. Benchmark Ins. Co., 2017 Ala. LEXIS 90*; 2017 WL 3931503

Benchmark Insurance Company brought an indemnity action against a pharmacist, McNamara, alleging that it was entitled to recover funds it had paid the underlying plaintiffs as settlement of their claims against Southern Medical, Inc., Benchmark's insured and McNamara's employer. The trial court granted Benchmark's summary judgment motion awarding it \$465,000 in damages against McNamara. However, the Supreme Court of Alabama reversed finding that Benchmark's action was not timely filed.

Even though Benchmark argued that its indemnity claim did not accrue until it paid the settlement amount, the Court applied the statute of repose contained in the Alabama Medical Liability Act which prohibits commencement of any action arising out of the alleged act or omission of a healthcare provider more than four years after such act or omission thus holding the filing was untimely.



Summary Judgment Affirmed in Case Where Patient Sought to Hold Hospital Vicariously Liable for Conduct of an Emergency Department Physician (1/2)

Bain v. Colbert Cnty. NW Ala. Healthcare Auth., 2017 Ala. LEXIS 9*; 2017 WL 541912

The Supreme Court of Alabama affirmed summary judgment in favor of the hospital against a claim that it should be held vicariously liable for the alleged acts and omissions of an emergency department physician in this significant February 10, 2017 opinion. In doing so, the Court rejected three common theories used to attempt to establish agency.

First, the Court rejected the plaintiff's claim that the physician could be found to be the agent of the hospital under the doctrine of apparent authority or apparent agency. In doing so, it confirmed that the test for determining whether agency existed by estoppel or apparent authority is based upon the potential principal's holding the potential agent out to third parties as having authority to act. More importantly, the Court also applied the often ignored obligation of the plaintiff to prove that she relied upon the alleged representation. The Court found that even the plaintiff's own affidavit submitted in opposition to the summary judgment motion failed to present evidence of this element since she testified that the question of whether the doctors working in the emergency room were hospital employees "never crossed our minds."

In addition, the Court rejected plaintiff's claim that the hospital owed her a non-delegable duty. In seeking to establish this claim, the plaintiff relied upon State Board of Health regulations holding, in part, that "[a] hospital shall have an effective governing authority that is legally responsible for the conduct of the hospital as an institution" and "[t]he governing authority shall ensure that the services performed under a contract were provided in a safe and effective manner." Finding that the physician did not tortiously perform one of the hospital's duties the Court held that the regulation did not establish a non-delegable duty. Similarly, the failure of the regulation to impose a specific duty upon the hospital to provide its patients with emergency medical physician services that are within the applicable standard of care also supported rejection of the claimed duty.



Summary Judgment Affirmed in Case Where Patient Sought to Hold Hospital Vicariously Liable for Conduct of an Emergency Department Physician (2/2)

Bain v. Colbert Cnty. NW Ala. Healthcare Auth., 2017 Ala. LEXIS 9*; 2017 WL 541912

The Court further noted that the two cited regulations are virtually identical to federal regulations promulgated by the Centers for Medicare and Medicaid Services. The federal regulations are used to determine whether a hospital would qualify for a provider agreement with Medicare and Medicaid as opposed to the creation of a new non-delegable duty for hospitals to provide emergency medical physician services within the applicable standard of care. According to the Court, the same was true for the State Board regulations.

Finally, the Court rejected plaintiff's argument that public policy required recognition of a non-delegable duty on hospitals for the conduct of their emergency room physicians. In doing so, the Court found that this was contrary to the public policy outlined in the Alabama Medical Liability Act in which the legislature specifically expressed that the public policy of the State was to "control the spiraling cost of healthcare and to ensure its continued availability." Supporting this holding was recognition that if the plaintiff felt that the hospital had acted wrongfully in allowing the emergency department physician to work in the hospital, she could have brought a claim for "corporate liability" alleging negligence in appointing an incompetent physician to the medical staff or failing to properly supervise the medical staff.



Complaint Made to the Alabama Board of Medical Examiners Held Non-Discoverable

Ex parte Hunte, 2017 Ala. LEXIS 84*

Citing *Alabama Code* § 34-24-60 (1975), the Supreme Court of Alabama granted a petition for writ of mandamus and issued a writ prohibiting discovery of a prior complaint to the Alabama Board of Medical Examiners sought by the plaintiff who had alleged that the defendant physician sexually abused her during his examination. The involved statute protects documents, including reports, statements, and memoranda prepared by, or provided to, the Board of Medical Examiners from discovery. Note, however, that the Court did not address whether the prior complaint would be discoverable from the patient who filed it, the original source.