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Alabama Medical Malpractice Decisions

2015 YEAR IN REVIEW

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Alabama Medical Liability Act Does Not Apply to Claims of Sexual Assault

Ex parte Vanderwall, 2015 WL 5725153 (Ala.)

The Alabama Medical Liability Act does not permit discovery of other acts and omissions. In a suit in which the plaintiff alleged a physical therapist sexually assaulted her, plaintiff sought discovery of other instances in which patients had claimed that the involved physical therapist had inappropriately touched them. The discovery was permitted by the trial court and Vanderwall filed a petition for writ of mandamus.

The Supreme Court of Alabama recognized that the determinative question was the applicability of the AMLA. In denying the request for mandamus relief, the court overruled *Mock v. Allen*, 783 So.2d 828 (Ala. 2000) and *O'Rear v. B.H.*, 69 So.3d 106 (Ala. 2011), both of which provided that claims related to alleged sexual misconduct by the defendant healthcare providers were governed by the AMLA. Under *Mock* and *O'Rear*, the key issues were whether the sexual assault occurred within the physician office or hospital, and whether it occurred while the defendant was providing professional services. In Vanderwall, the court noted that the AMLA "is not just concerned with who committed the alleged wrongful conduct or when and where that conduct occurred, but also with whether the harm occurred because of the provision of medical services". As sexual molestation is not a part of the provision of medical services, resulting claims are not covered by the AMLA which addresses only medical injuries.

Proof of Breach of the Standard of Care by Expert Testimony

Brookwood Health Services, Inc. v. Borden, 2015 WL 7104619 (Ala.)

The Supreme Court of Alabama reversed and rendered a $7.5 Million judgment following a jury verdict in a medical malpractice action. The key issue involved whether floor nurses were obligated to report neurovascular changes to the surgeon who had previously performed a lumbar laminectomy on the patient. The plaintiffs did not call a nursing expert witness; instead, they only offered the testimony of the two involved floor nurses.

As regards involved events, the initial floor nurse testified that she had been given a report by an emergency room nurse who advised, among other things, that the patient was incontinent and could not move his legs. The floor nurse whose conduct was at issue testified that the standard of care did not obligate her to either question or record this report and, therefore, she saw no evidence of a change in status or condition when she noted the patient was incontinent and unable to move. The court also rejected an assertion that the nurses should have called the physician about any neurovascular compromise as the physician order only required notification about changes and, again, the plaintiffs failed to present nursing expert testimony providing that the standard of care required more.