

PROFESSIONAL NEGLECTANCE LAW REPORTER

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PROFESSIONAL NEGLIGENCE LAW REPORTER

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RECENT CASES

CLERGY

Church liability: Sexual abuse by priest: Breach of fiduciary duty: Failure to warn of risk of clergy abuse: Emotional distress: Settlement.

Doe v. Roe Church, Cal., Los Angeles Co. Super., confidential dkt. no., Feb. 23, 2006.

Doe, 13, was a member of a church, which he regularly attended with his family. A visiting parish priest allegedly abused Doe in a car while the two were running errands. The alleged abuse included fondling, masturbation, and oral copulation. As a result, Doe suffered severe emotional distress, necessitating counseling.

Doe sued the church, alleging breach of fiduciary duty and negligent failure to warn him and other parishioners of the risk of clergy abuse. Defendant reportedly asserted that based on the priest's background and lack of previous misconduct, it could not have foreseen the abuse.

The parties settled at mediation for \$750,000.

Plaintiff's Counsel

David M. Ring, Los Angeles, Cal.

Robert R. Clayton, Los Angeles, Cal.

Comment: For other sexual abuse cases, see *Roman Catholic Diocese of Jackson v. Morrison*, 905 So. 2d 1213 (Miss. 2005), 20 PNLR 123 (Sept. 2005); *Doe v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22 (Tenn. 2005), 20 PNLR 44 (Apr. 2005), 21 PNLR 28 (Mar. 2006); *Doe v. Diocese of Palm Beach, Inc.*, 19 PNLR 128 (Sept. 2004); and *Leary v. Geoghan*, 17 PNLR 183 (Dec. 2002).

Documents in *Morrison*, *Nashville*, *Palm Beach*, and *Leary* are available through the Court Documents section at p. 16, courtesy of plaintiffs' counsel.

DENTISTRY

Wisdom tooth extraction: Air blown into socket of extracted tooth: Embolism: Hospitalization: Arbitration award.

Venturini v. W. Dental Servs., Cal., San Francisco Co. Super., No. CGC-03-423971, July 2006.

Venturini, 24, underwent a wisdom tooth extraction. After a tooth was extracted, a dental assistant blew air into the extraction socket to control Venturini's bleed-

ing. This caused an air embolism to form and travel into Venturini's neck and the space between his lungs.

As a result, Venturini was hospitalized for four days, three of which were in intensive care. He now suffers from a temporomandibular disorder and posttraumatic stress disorder that necessitates psychotherapy. He also required desensitization therapy before undergoing additional dental work. His medical expenses were about \$32,500. A commercial artist earning \$10 per hour, he missed about two weeks of work due to his injuries.

Venturini sued the dental practice, alleging its assistant negligently blew air into his tooth socket. The practice reportedly admitted negligence before binding arbitration but disputed the nature and extent of plaintiff's injuries and damages.

An arbitrator awarded about \$246,000, including interest and costs.

Plaintiff's psychiatry expert was Karin Hastik, San Francisco, Cal.

Defendant's psychiatry expert was Roger Freed, San Francisco, Cal.

Plaintiff's Counsel

Edwin J. Zinman, San Francisco, Cal.

Comment: In *Tice v. Heald*, Mich., Washtenaw Co. Cir., No. 04-563-NH, Apr. 27, 2006, Tice, 66, alleged that her long-term family dentist's failure to diagnose advancing periodontitis necessitated multiple tooth extractions and an upper denture. Before trial, Tice received an arbitration award of \$300,000, the dentist's policy limits. **Robert Gittleman**, Southfield, Mich., represented claimant in that case.

GROUP HOME

Sexual molestation of minors: Failure to prevent abuse: Emotional distress: Verdict.

Doe v. Masonic Homes of Cal., Cal., Los Angeles Co. Super., No. BC306444, Oct. 6, 2006.

While living at a group home as children, two girls were molested by two adult men who lived and worked at the home. The abuse, which took place in the 1960s and 1970s, lasted a year-and-a-half for both girls. One of the girls was allegedly abused by one of the men, and the

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other girl was molested by both.

Now in their 40s, both women suffer from emotional distress arising out of the abuse, which has necessitated therapy and caused them to experience problems with, among other things, forming and maintaining personal relationships.

They sued the group home, alleging failure to prevent the abuse despite knowledge of its existence. Plaintiffs claimed that various group home employees had witnessed some of the abuse but failed to report it or do anything about it.

The jury awarded approximately \$3.53 million, including \$1.92 million to the plaintiff who was abused by both men.

Plaintiffs' expert was Stefanie Peters, psychology, Los Angeles, Cal.

Experts for defendant in this case were Park Dietz, sexual abuse and social awareness, Newport Beach, Cal.; Gregg McCrary, community awareness, Arlington, Va.; and Jonathan French, psychology, San Francisco, Cal.

Plaintiffs' Counsel

David N. Bigelow, Los Angeles, Cal.

Graham B. LippSmith, Los Angeles, Cal.

LAW

Attorney is not liable to third-party beneficiaries for failing to make client's will invulnerable to will contest.

Caba v. Barker, 145 P.3d 174 (Or. 2006).

The Oregon Supreme Court held that an attorney who drafted a will that was contested after the client's death is not liable to several third-party beneficiaries who claimed that the attorney breached a duty to make the will incontestable.

Here, an attorney drafted a will for a client, who intended to leave assets to several beneficiaries. After the client's death, a will contest ensued and was later settled. Two of the client's intended beneficiaries sued the attorney for breach of contract and negligence, alleging defendant breached an implied promise to make the will impervious to attack.

The trial court dismissed plaintiffs' claim, but an intermediate appellate court reversed.

Reversing the lower appellate court, the state high court noted that since the alleged promise here was implied, the basis for that implication must be shown in fact or law. Here, the court found, the complaint alleges

no facts permitting such an implication.

Additionally, the court found, there is no legal basis for the alleged implied promise that plaintiffs claim. Promises implied in law are created “for reasons of justice,” the court said, noting that plaintiffs have not pointed to the existence of any such reason. Moreover, the court said that there is no situation where the law would, “for reasons of justice,” imply a promise to obtain a particular result as opposed to the promise to exercise a particular level of professional expertise in an attempt to achieve a desired result.

Thus, the court concluded, plaintiffs’ claims must fail.

Comment: For a case holding that a negligence suit against an attorney who drafted a complicated estate plan was not time-barred, see *Watkins v. Hedman, Hileman & LaCosta*, 92 P.3d 620 (Mont. 2004), 19 PNLR 149 (Oct. 2004). **Lee C. Henning** and Kathy M. Burch, both of Kalispell, Mont., represented plaintiff.

Documents in the *Watkins* case are available through the Court Documents section at p. 16, courtesy of Mr. Henning.

Attorney files suit against alleged debtor, family members: Falsification of amount owed: Emotional distress: Settlements: Verdict.

Plechaty v. Weltman, Ohio, Cuyahoga Co. Com. Pleas, No. CV04-518537, June 14, 2006.

Plechaty, a businessman, borrowed money from his aunt in exchange for stock in one of his companies. A bank was designated trustee on the note. Plechaty later settled with his aunt’s trust to pay off the balance of the note and went into bankruptcy.

A debt-collection attorney subsequently filed suit to collect money on the note, a debt that had previously been discharged. The attorney also filed suit against Plechaty’s family members.

Plechaty and his family sued the bank and the attorney and his firm, alleging falsification of the amount owed, negligent and intentional infliction of emotional distress, and abuse of process.

Plaintiffs settled with the bank before trial for a confidential amount. The family also settled with the attorney and firm before trial for a confidential amount.

The jury then awarded Plechaty about \$2.9 million against the attorney and his firm.

Plaintiffs’ Counsel

William P. Gibbons,

Daniel Ryan, and

Joseph Shucofsky, all of Cleveland, Ohio

MEDICINE

Pediatrics: Technician negligence: Negligent removal of ear wax: Hearing loss: Settlement.

Doe v. Roe Pediatrician, Fla., Broward Co. Cir., confidential dkt. no., July 20, 2006.

A pediatrician treated Doe, 4, for a cold. The physician attempted to examine Doe’s ear drum but was unsuccessful due to the child’s excessive ear wax. Two of the office’s medical technicians were called to remove the ear wax using a Waterpik.

When the water entered Doe’s ear, she began vomiting. She also bled from the ear. Doe was immediately transferred to a specialist, who performed surgery to repair an injured tympanic membrane and ruptured cochlea. Now 5, she suffers from unilateral hearing loss that will likely cause her future problems both educationally and psychologically.

Doe sued the pediatrician, the pediatrician’s practice, and the two technicians, alleging the technicians negligently activated the Waterpik without checking the water pressure. Plaintiff claimed that the technicians were not properly trained and should have placed an adaptive tip over the Waterpik to prevent a steady stream of water from damaging her ear. Plaintiff also charged that a Waterpik, although commonly used for ear lavage, is contraindicated by its manufacturer for this purpose. Plaintiff asserted that her mother should have been advised of the risks of the Waterpik procedure.

The parties settled for \$950,000, paid by defendants’ insurer.

Plaintiff’s experts were Wendy Chabot, pediatrics, Amherst, Mass.; Ron B. Mitchell, pediatric otolaryngology, Glen Allen, Va.; and Anne Tharpe, otology, Nashville, Tenn.

Plaintiff’s Counsel

Stephen A. Kandell, Miami, Fla.

Dialysis center owed duty to drivers seriously injured by patient shortly after leaving treatment.

Hardee v. Bio-Med. Applications of S.C., Inc., 636 S.E.2d 629 (S.C. 2006).

The South Carolina Supreme Court held that a kidney dialysis center had a duty to reasonably foreseeable third parties to warn its patient of the possible dangers of driving after receiving dialysis.

Here, a patient underwent dialysis and was involved in a car accident shortly after leaving treatment. Two

individuals who were seriously injured when their car was struck by the patient's car later sued the dialysis center, alleging defendant failed to warn its patient of the adverse effects from dialysis and perform adequate posttreatment monitoring before releasing the patient from the center. The trial court granted defendant summary judgment.

Reversing, the state high court held that a medical provider who provides treatment knowing of the detrimental effects it could have on a patient's capacities owes a duty to prevent harm to reasonably foreseeable third parties. Thus, if defendant here knew that its patient could experience ill effects following dialysis, then it owed plaintiffs a duty to warn the patient of these adverse effects and the possible risks of driving after treatment.

The court cautioned that its narrow holding was a limited exception to the general rule that medical providers do not owe a duty to third-party non-patients. Moreover, the court said that the duty owed to third parties is identical to that which is owed a patient.

Consequently, the court remanded.

Plaintiffs' Counsel

John D. Hudson, Myrtle Beach, S.C.

Comment: For a case holding that directors of a methadone treatment center may be held liable to third-party motorists who are injured in foreseeable accidents with patients, see *Taylor v. Smith*, 892 So. 2d 887 (Ala. 2004), 19 PNLR 88 (June 2004). **Gary Conchin** and Joe A. King Jr., both of Huntsville, Ala., represented plaintiffs in that case.

Documents in *Hardee* and *Taylor* are available through the Court Documents section at p. 16, courtesy of plaintiffs' counsel.

Expert witness may not testify that she consulted with colleagues and other experts when formulating her opinion in negligence case.

Linn v. Fossum, ___ So. 2d ___, 2006 WL 3093186 (Fla. Nov. 2, 2006).

The Florida Supreme Court held that an expert witness's trial testimony on direct examination stating she consulted with colleagues and others when formulating her opinion about the conduct of a physician named in a medical negligence suit was inadmissible.

Here, a defense expert in a medical negligence suit testified on direct examination that although she might have taken a different approach to the patient's treatment, after conferring with other physicians and experts she thought the defendant physician had met the stan-

dard of care. The trial court overruled plaintiffs' objections to the testimony, and a jury later found for defendant. An appellate court affirmed.

Reversing, the state high court noted that under state law, experts can rely on "facts or data" not admissible in evidence in forming their opinions. Nevertheless, the court found, where an expert solicits the opinions of other experts who lack firsthand knowledge of the case at hand, this information constitutes not facts or data, but unverifiable hearsay opinions.

The court added that an expert's testimony must not be used merely as a conduit for the introduction of otherwise inadmissible evidence. This would undermine the rules of evidence, mislead the jury, and allow for unfair prejudice because an opposing party would not be able to cross-examine the nontestifying experts conversing with the retained expert.

Since allowing the expert's testimony about her "curbside consultations" with others was not harmless error here, the court held, a new trial is warranted.

Plaintiffs' Counsel

Major B. Harding,

Martin B. Sipple, and

Jennifer M. Heckman, all of Tallahassee, Fla.

Nurse practitioner liability: Radiology: Failure to order biopsy, timely diagnose breast cancer: Mastectomy: Settlement.

Doe v. Roe Nurse Pract., Fla., confidential ct. and dkt. no., Aug. 2006.

Doe, 45, had a mass in her right breast. She went to a nurse practitioner, who referred her for a mammogram and ultrasound. Later, Doe was diagnosed as having a cyst and told to return in six months.

When Doe returned for the six-month follow-up visit, the mass had grown 11 centimeters. She then underwent breast cancer treatment—including chemotherapy, mastectomy, and a bone marrow transplant—and reportedly has not had a recurrence in the last five years.

Doe sued the nurse practitioner and the radiologist who reviewed the ultrasound, alleging failure to timely diagnose breast cancer. Plaintiff charged that the ultrasound was suggestive of malignancy, but the physician failed to report this. Additionally, plaintiff claimed that the nurse practitioner should have recommended a biopsy within one month if the mass persisted.

Plaintiff did not claim lost income.

Defendants claimed that plaintiff was comparatively negligent in not noticing that the mass had grown and that the delayed diagnosis did not harm plaintiff.

The parties settled for \$1.21 million. The nurse practitioner paid \$932,500, and the radiologist paid the rest.

Plaintiff's Counsel

James W. Gustafson Jr., Tallahassee, Fla.

Earl L. Denney Jr., West Palm Beach, Fla.

Obstetrics: Improper handling of shoulder dystocia: Failure to perform cesarean section: Brachial plexus injury: Verdict.

Johnson v. Gynecology Assocs., Va., Norfolk City Cir., No. L05-1362, July 14, 2006.

Johnson, who was obese, went to a hospital in labor. During the delivery, the attending obstetrician examined her and ordered Pitocin despite ominous signs on the fetal monitor, including lack of beat-to-beat variability and extreme tachycardia.

After the Pitocin was administered, the monitor revealed additional negative signs. Further, the fetus's left shoulder became stuck on Johnson's pubic bone. To relieve the problem, the obstetrician allegedly pulled the baby's head up and down.

As a result, the child suffered a brachial plexus injury at C5-8, which necessitated multiple surgeries and extensive therapy. Now 5, she has limited use of her left hand and arm and anticipates requiring additional surgeries in the future. Her medical expenses were about \$216,500.

Johnson and her daughter sued the obstetrician's employer, alleging failure to perform a cesarean section and use of excessive traction when shoulder dystocia was encountered. Among other things, plaintiffs charged that the obstetrician (1) should have ordered an ultrasound before the delivery to obtain an estimated fetal weight; (2) should not have ordered the Pitocin in light of the ominous fetal heart tracings; and (3) should have performed an appropriate procedure to relieve the shoulder dystocia, such as the "corkscrew" maneuver.

The jury awarded approximately \$2.72 million, including \$1 million to Johnson. The award was then reduced to \$1.55 million under the state damages cap.

Defendant has appealed.

Plaintiffs' experts included James E. Anderson, obstetrics, Reston, Va. Defendant's expert was Derwin Gray, obstetrics, Chesapeake, Va.

Plaintiffs' Counsel

Lewis T. Stoneburner, Richmond, Va.

Wallace B. Wason Jr., Richmond, Va.

Comment: For another shoulder dystocia case, see *Minton v. Savage*, 20 PNLR 6 (Feb. 2005). **Spencer G. Markle**, Bellaire, Tex., represented plaintiffs.

Documents in *Minton* are available through the Court Documents section at p. 16, courtesy of Mr. Markle.

Pathology: Failure to diagnose fungal infection: Kidney failure, transplant: Wrongful death: Post-verdict settlement.

Potter v. Schenk, Ill., Cook Co. Cir., No. 2003-L-166, July 18, 2006.

Potter, a 29-year-old who had undergone a kidney transplant, had a mass removed from her right armpit. A pathologist evaluated the sample and diagnosed inflammation of the apocrine glands.

Subsequently, Potter suffered kidney failure and required a second transplant. She later died of complications from the operation.

Potter is survived by her parents and adult brother.

Potter's mother, on behalf of Potter's estate and next of kin, sued the pathologist and his employer, alleging he misread the tissue samples and failed to diagnose histoplasmosis—a fungal infection—by conducting special stains of the samples. As a result, plaintiffs argued, the infection worsened and caused systemic complications, including the kidney failure.

The jury awarded about \$5.92 million, and the parties later settled for a confidential amount.

Plaintiffs' experts were Oscar Cummings, pathology, and George Sarosi, infectious disease and histoplasmosis, both of Indianapolis, Ind.; and Timothy Hammond, nephrology, New Orleans, La.

Defendants' experts were Perry Guariglia, pathology, and Loren Dari, pathology, both of Chicago, Ill.; Benjamin R. Pfleiderer, nephrology, Peoria, Ill.; and Donald Graham, infectious disease, Springfield, Ill.

Plaintiffs' Counsel

William R. Tapella, Mattoon, Ill.

Documents in this case are available through the Court Documents section at p. 16, courtesy of Mr. Tapella.

**Hospital liability: Failure to prevent, control ser-
ratia epidemic: Infection: Orthopedic problems:
Additional surgeries: Verdict.**

Riggs v. W. Va. U. Hosps., W. Va., Monongalia Co. Cir., No. 01-C-147, Sept. 5, 2006.

After Riggs, 14, suffered a knee injury while playing basketball in 1995, she underwent anterior cruciate ligament surgery at a hospital. During the procedure, staff

allegedly used an unsterilized metal device that was retrieved from outside the operating room.

This allegedly caused serratia bacteria to lodge inside Riggs's femoral tunnel, which in turn caused her to suffer major medical complications. In the four years following the initial knee surgery, Riggs underwent seven more surgeries, including one to clear an abscess in her thigh and one to cut out dead bone in her leg.

Riggs now has limited use of her right leg and has suffered physical and emotional distress resulting from her medical problems and the surgeries. Her medical expenses totaled about \$85,000.

Riggs and her parents sued the hospital, among others, alleging its infection control department's failure to prevent, monitor, and control a serratia epidemic at the facility in 1995 caused Riggs to contract a bacterial infection during the first surgery. Plaintiffs claimed that the hospital had other outbreaks in previous years and should have found the source of the germs and remediated the situation.

The jury awarded about \$10.08 million, including about \$85,000 to Riggs's parents for her medical expenses. The award was later reduced to \$1 million under the state's damages cap. Plaintiffs are appealing.

Plaintiffs' experts included James Snyder, microbiology; Martin Raff, infectious disease; and Ruth Carrico, infection control, all of Louisville, Ky.

Plaintiffs' Counsel

Paul T. Farrell Jr., Huntington, W. Va.

Wesley W. Metheny, Morgantown, W. Va.

Comment: For a case alleging improper treatment of a bacterial infection, see *Manship v. Coastal Emerg. Servs.*, 10 PNLR 151 (Oct. 1995). **Burton Craige** and John R. Edwards, both of Raleigh, N.C., represented plaintiff.

Documents in *Riggs* and *Manship* are available through the Court Documents section at p. 16, courtesy of Mr. Farrell and Mr. Craige.

Hospital liability: Twin pregnancy: Improper handling of fetal distress: Failure to perform timely cesarean section: Cerebral palsy: Settlement.

Doe v. Roe Hosp., confidential st., ct., dkt. no., and date.

While Doe's mother was pregnant with Doe and Doe's twin, she told her physician she felt decreased fetal movement. A non-stress test performed during this appointment was non-reactive as well as non-reassuring. Further testing was scheduled at a hospital that day.

When she arrived at the hospital, she underwent an ultrasonic biophysical profile, which was abnormal. The test was repeated two times over the next several hours

and yielded borderline and abnormal results.

Doe and her twin were delivered by cesarean section that evening. Now 13, Doe suffers from cerebral palsy and mental retardation. Doe's twin was not injured.

Doe sued the hospital and two physicians, alleging improper handling of fetal distress. Suit charged that (1) Doe's mother should have been sent immediately to the hospital for a bedside biophysical profile, instead of waiting for an afternoon appointment; and (2) the cesarean section should have been performed sooner in light of the abnormal test results, complaints of decreased fetal movement, and alleged evidence of possible twin size discordancy shown on an ultrasound performed several weeks before the delivery.

Defendants asserted that the child's injuries occurred before the mother arrived at the hospital, and an earlier cesarean section was not warranted.

The parties settled before trial for about \$1 million.

Plaintiff's Counsel

Russell Gregory, Bloomfield Hills, Mich.

Otolaryngology: Negligent performance of surgery to remove parotid gland tumor: Additional surgery: Facial paralysis: Verdict.

Bechtol v. Campbell, Ill., Cook Co. Cir., No. 02 L 013991, June 20, 2006.

Bechtol, 41, underwent an MRI, which indicated a recurrence of a benign parotid gland tumor that had previously been removed. Her treating otolaryngologist (ENT) recommended additional surgery to remove the new tumor, and about three months later, Bechtol underwent the recommended procedure.

The ENT was unable to remove all of the tumor, which expanded into the base of Bechtol's skull. She was subsequently referred for radiation therapy, but these treatments were unsuccessful. Consequently, the tumor continued to grow.

Bechtol required extensive surgery to remove the tumor about 20 months after the second surgery. The operation, which was performed by a skull base surgeon, involved removal of portions of Bechtol's facial nerve and jaw bone and a jaw bone reconstruction that necessitated use of nerves and bone from Bechtol's leg.

Bechtol now has paralysis on the right side of her face, speech impairment, and other problems resulting from the surgery.

She filed suit against the ENT and his employers, alleging the doctor negligently performed the second surgery. Among other things, plaintiff asserted that the doctor lacked the necessary skill to perform the

procedure and should have, among other things, performed an MRI right before the operation to ascertain the size and location of the tumor. Suit also charged that the doctor's failure to remove the entire tumor necessitated the subsequent surgery and its attendant complications.

Plaintiff did not claim lost income.

The jury awarded about \$7.27 million.

Plaintiff's experts were Dale Rice, otolaryngology, Los Angeles, Cal.; and Barry Wenig, skull base surgery, Evanston, Ill.

Defendants' expert was Michael Friedman, otolaryngology, Chicago, Ill.

Plaintiff's Counsel

Edward J. Walsh, Wheaton, Ill.

Bradley N. Pollock, Wheaton, Ill.

Obstetrics: Pediatrics: Hospital liability: Failure to properly treat choledochal cyst: Liver failure, transplant: Settlement: Verdict.

Yamada v. Northside Hosp., Inc., Ga., Fulton Co. St., No. 2005VS076354G, Aug. 17, 2006.

Yamada's mother underwent several ultrasounds during her pregnancy with Yamada. The testing revealed a cyst on Yamada's abdomen, and the treating obstetrician allegedly assured the mother and her husband that there would be follow-up after the baby's delivery.

After Yamada's birth, her treating pediatricians allegedly ran no tests on the cyst and told her parents that everything was fine before discharging the child from the hospital.

During the next two months, Yamada experienced nausea, vomiting, and diarrhea, among other problems. Her mother asked a pediatrician whether the problems were related to the cyst and had the ultrasounds sent to the physician.

Two months later, Yamada was taken to a new pediatric group and was later diagnosed as having a choledochal cyst and liver failure. She underwent a liver transplant at the age of 4 months and will require anti-rejection medication to prevent a second episode of liver rejection.

Yamada's mother, individually and on Yamada's behalf, and Yamada's father sued the obstetrician's practice, the hospital, and the first pediatric group, alleging improper treatment of the cyst and failure to properly communicate about it with each other. Among other things, plaintiffs asserted that the obstetrician failed to place an order for a postnatal ultrasound in the child's chart or advise the pediatricians about the cyst.

Moreover, plaintiffs charged that the pediatricians failed to run postdelivery tests on the cyst before discharging Yamada from the hospital and failed to follow up on the cyst in light of the child's symptoms during the first two months of her life. Had Yamada undergone a "Kasai" procedure to drain accumulated bile the month after she was born, plaintiffs asserted, she would not have suffered liver failure.

Defendants argued that they had communicated properly through Yamada's medical records and that earlier diagnosis would not have avoided the need for the liver transplant.

The hospital and pediatric defendants settled during trial for a confidential amount. The jury then awarded \$16.5 million, finding the obstetrics group liable for \$12.5 million.

Plaintiffs' experts were Joel E. Lavine, pediatric hepatology, San Diego, Cal.; Tracy L. Trotter, pediatrics, San Ramon, Cal.; Frank A. Manning, obstetrics, New York, N.Y.; and Linda Rueckert, nursing, Largo, Fla.

Defendants' experts were Peter F. Whittington, liver transplantation, Chicago, Ill.; David Cronin, liver transplantation, New Haven, Conn.; Deborah Lee, obstetrics, Atlanta, Ga.; and David Glasgow, pediatrics, Birmingham, Ala.

Plaintiffs' Counsel

Thomas W. Malone, Atlanta, Ga.

Adam Malone, Atlanta, Ga.

A document in this case is available through the Court Documents section at p. 16, courtesy of Mr. Thomas Malone.

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Anesthesiology: Agency liability: Negligent administration of interscalene block: Partial arm paralysis: Neurological deficits: Settlements.

Marquardt v. Dragisic, Ill., Cook Co. Cir., No. 02 L 8738, Sept. 25, 2006.

Marquardt, 44, underwent surgery at an outpatient surgical facility to repair a torn rotator cuff. During the procedure, the treating anesthesiologist intended to give Marquardt an interscalene block but instead injected a needle into her spinal cord.

As a result, anesthetic entered Marquardt's spinal cord and caused her to suffer permanent partial paralysis of her arms and lost sensation in her trunk area. Marquardt had been a deli manager earning about \$17,100 annually but is unable to return to that job.

Marquardt and her husband sued the anesthesiologist and his practice, alleging he negligently injected the spinal cord with the anesthetic. Suit also alleged that the surgical center was liable under an apparent agency theory and that one of its nurses had provided the physician with a needle twice as big as the one he requested.

The anesthesiologist and his practice reportedly contended that it was unlikely that the needle was injected into Marquardt's spinal cord during the administration of the interscalene block. The surgical center asserted that the physician did not specify what size needle he wanted to use and that he should have noticed that the needle that was provided was larger than what he sought.

Before trial, plaintiffs settled with the anesthesiology defendants for the policy limits of \$1 million. The sur-

gical center also settled for \$1.2 million.

Plaintiffs' experts were Michael Ault, anesthesiology, and Ruth G. Ramsey, neuroradiology, both of Chicago, Ill.; and Linda J. Winterer, nursing, Schaumburg, Ill.

Defendants' experts were Tonia Kent, nursing, Burr Ridge, Ill.; and Thomas Cutter, anesthesiology; Jeffrey Katz, anesthesiology; and Jeffrey Frank, neurology, all of Chicago, Ill.

Plaintiffs' Counsel

Edmund J. Scanlan, Chicago, Ill.

A document in this case is available through the Court Documents section at p. 16, courtesy of Mr. Scanlan.

General surgery: Retained surgical towel: Negligence: Failure to inform: Additional surgeries: Pain: Abdominal discomfort: Verdict.

Hodesh v. Korelitz, Ohio, Hamilton Co. Com. Pleas, No. A-0205071, Oct. 27, 2006.

Hodesh, 54, underwent surgery performed by a general surgeon. The physician used an unmarked, uncounted surgical towel to pack Hodesh's small intestines during the procedure. Hodesh became ill after the surgery and underwent an X-ray. This reportedly revealed a woven object, but Hodesh was not told. He underwent a second surgery, which revealed the presence of the unmarked towel and an abscess. Hodesh developed a second abscess, which required drainage, and also developed an incisional hernia.

A businessman, Hodesh was in pain and unable to work for over a year, incurring about \$85,000 in lost earnings. He now suffers from ongoing abdominal and gastrointestinal problems, including cramps and occasional bowel incontinence.

Hodesh sued the surgeon and the hospital, alleging the surgeon negligently failed to retrieve the unmarked surgical towel during the first surgery. Plaintiff also charged that the physician failed to tell him that the cause of his adverse symptoms after the surgery related to a retained surgical towel.

The surgeon asserted that the hospital was at fault for failing to count the surgical towels used in plaintiff's first surgery. In response, the hospital retained a surgical expert, who testified in a deposition that, among other things, most surgeons do not use towels to pack the small intestines and the surgeon had an ethical and professional responsibility to inform plaintiff that a towel had been left in his abdomen.

The jury awarded \$775,000, finding the surgeon solely liable. The surgeon's motion for remittitur, judgment n.o.v., and new trial were denied.

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Plaintiff's expert was Nancy Marie Phillips, nursing, Kirtland, Ohio. The surgeon's expert was Stephan R. Myers, general surgery, Mansfield, Ohio. The hospital's experts were Colleen Lindell, nursing, Osceola, Wis.; and Gerald Bechamps, surgery, Winchester, Va.

Plaintiff's Counsel

Bruce B. Whitman, Cincinnati, Ohio

Christian B. Stegeman, Cincinnati, Ohio

Comment: For a case involving a retained surgical sponge, see *Roberson v. Hernandez-Pombo*, 20 PNLR 11 (Feb. 2005). **William A. Dean**, Miami, Fla., represented plaintiff. Documents in *Hodesh* and *Roberson* are available through the Court Documents section at p. 16, courtesy of plaintiffs' counsel.

Obstetrics: Improper artificial rupturing of membranes: Prolapsed umbilical cord: Brain damage: Structured settlement.

Peraza v. Orange Co. Med. Ctr., N.Y., Orange Co. Sup., No. 4083/04, Oct. 2, 2006.

At the end of her pregnancy, Peraza's obstetrician asked her if she wanted an artificial rupture of membranes (AROM). Peraza did not give consent, but the physician performed the procedure anyway. Afterward, the fetus's umbilical cord prolapsed, necessitating an emergency cesarean section about 32 minutes later.

Peraza's son suffered hypoxic brain damage and was born with Apgar scores of one at one and five minutes. Now 3, he cannot speak or swallow normally.

Peraza, on her child's behalf, sued the obstetrician, alleging he performed an unnecessary and unwanted AROM. Defendant argued that Peraza had consented to the procedure and that AROM was good practice.

The parties structured a confidential settlement.

Plaintiff's Counsel

Mark R. Bower, New York, N.Y.

NURSING HOME

Patient's wound site becomes infested with maggots: Unsanitary conditions: Improper treatment: Below-the-knee amputation: Verdict.

Stewart v. Renop, LLC, Fla., Palm Beach Co. Cir., No. 50-2005-CA-6508-AN, June 2006.

Stewart, 72, underwent foot surgery and was admitted to a nursing home for postsurgical care. Almost three

weeks later, she went to her treating physician, who noticed that Stewart's foot had become infested with maggots. As a result, Stewart required a below-the-knee amputation. She now must use a wheelchair and is unable to enjoy previous activities, such as gardening.

Stewart sued the nursing home's operator and management company, alleging that the home's unsanitary conditions attracted flies, which entered her wound site, and staff failed to adequately dress the wound and change the dressings.

The jury awarded about \$1.27 million, finding defendants equally liable. Added costs increased the award to about \$1.3 million.

Plaintiff's experts included Jerry Butler, insects, Gainesville, Fla.; and Charlotte Sheppard, elder care, Tampa, Fla. Defendants' experts were Richard Neville, vascular surgery, Washington, D.C.; Richard Patterson, insects, Gainesville, Fla.; and Jonathan Zenilman, infectious disease, Baltimore, Md.

Plaintiff's Counsel

Scott M. Fischer, Palm Beach Gardens, Fla.

Patient's tracheostomy tube becomes clogged: Failure to adequately clean, suction tube: Respiratory arrest: Wrongful death: Verdict.

Albores v. Healthcare & Ret. Corp. of Am., Ill., Cook Co. Cir., No. 02 L 7024, Aug. 11, 2006.

Carrasco, 57, developed scar tissue in her throat after undergoing radiation treatment. She underwent placement of a tracheostomy tube and was later admitted to a nursing home for several weeks of rehabilitation. Staff were responsible for cleaning and suctioning the tube several times a day to avoid mucous buildup.

During Carrasco's five days at the home, her tube was suctioned only two times and cleaned only once. As a result, the tube became progressively filled with mucous, obstructing Carrasco's breathing. Consequently, she suffered respiratory arrest and brain damage leading to a coma and death several days later. Carrasco is survived by several children, including two adult daughters.

One of the daughters, on behalf of Carrasco's estate, sued the home's operator, alleging negligence and statutory and regulatory violations for, among other things, failing to adequately staff the nursing home, provide adequate training, implement a care plan for Carrasco, and properly care for her tracheostomy tube.

Defendant admitted liability before trial. The jury then awarded about \$2.98 million, including \$680,000 to each daughter for loss of society.

Plaintiff's experts were Robert Kemp, pulmonology,

RECENT CASES

Olympia Fields, Ill.; and David M. Systrom, pulmonology, Boston, Mass. Defendant's expert was Jesse Hall, pulmonology, Chicago, Ill.

Plaintiff's Counsel

Steven M. Levin, Chicago, Ill.

Michael F. Bonamarte IV, Chicago, Ill.

PSYCHOTHERAPY

Psychiatrist who performed independent medical examination for city is not liable to examinee.

Joseph v. McCann, 147 P.3d 547 (Utah App. 2006).

A Utah appellate court held a psychiatrist performing an independent medical examination (IME) of a former police officer did not owe him a duty of care.

Before performing an IME of Joseph, a former police officer, a psychiatrist required him to sign a statement acknowledging that the purpose of the evaluation was to provide an assessment to the city, not to offer treatment. The psychiatrist completed his report and expressed an opinion that Joseph was not psychologically fit to perform the duties of a police officer. The city then terminated Joseph's employment.

Joseph sued the psychiatrist, alleging failure to perform a competent evaluation. The trial court granted defendant summary judgment, holding that he owed no duty of care to plaintiff.

Affirming, the appellate court noted that to maintain a medical negligence action against a health care provider, plaintiff must prove the existence of a physician-patient relationship. Under state law, the court found, a patient is defined as someone who, among other things, is under the care of a health care provider and has a contractual relationship with the provider, either express or implied.

Here, the court said, the statement plaintiff signed

before undergoing the examination made clear that plaintiff was not receiving treatment from defendant. The fact that the statement referred to plaintiff as a "patient" is immaterial, the court added, noting that this reference was merely an improper label. Moreover, the court said, the contract for psychiatric services underlying the IME was between defendant and the city, not plaintiff.

Agreeing with a majority of jurisdictions that adhere to the general rule that a physician retained by a third party to examine someone and report findings to the third party does not enter into a physician-patient relationship with the examinee, the court held that summary judgment was proper here.

Comment: For a case holding that a psychologist performing an IME during litigation owed a limited legal duty to plaintiff-examinee, see *Harris v. Kreutzer*, 624 S.E.2d 24 (Va. 2006), 21 PNLR 56 (Apr. 2006). **Stephen M. Smith**, Hampton, Va., represented plaintiff in that case.

Documents in *Harris* are available through the Court Documents section at p. 16, courtesy of Mr. Smith.

SECURITIES

Improper allocation of retirement account: Failure to supervise broker, portfolio: Lost assets: Settlement.

Doe v. Roe Brokerage Firm, Ohio, settled before arb., Apr. 2006.

Doe, 62, had over \$400,000 in his retirement account held at a brokerage firm. He paid a management fee to the firm in exchange for closer scrutiny of his portfolio. From 1999 to 2005, Doe's account value decreased by half. When he complained to his broker about this, he was allegedly told to "just ride it out."

Doe claimed the brokerage firm was liable for negligent supervision of the broker, and the broker and firm were liable for concentrating Doe's assets in inappropriate, high-risk technology stocks, in violation of the duty to "know your client." The broker and firm reportedly countered that Doe was a sophisticated investor who understood his level of risk. The parties settled before arbitration for a confidential amount.

Doe's expert was Joseph Manning, securities regulation, Cleveland, Ohio.

Claimant's Counsel

Justin F. Madden, Cleveland, Ohio
Rebecca J. Castell, Cleveland, Ohio

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Employers want hospitals to agree to waive costs related to egregious medical errors

Organizations representing businesses that purchase health coverage for their employees called on hospitals in November to agree to waive costs associated with so-called “never events”—medical errors that providers agree should never happen. The initiative also requires hospitals to apologize to patients or their families when the errors occur and report and investigate the event.

The Leapfrog Group, joined by the Midwest Business Group on Health and large companies such as IBM, UPS, and Dow Chemical, says hospitals that adopt the policy will be given public recognition in Leapfrog’s annual Hospital Quality and Safety Survey. The waiver of costs would occur only if there is a never event as defined by the National Quality Forum (NQF), a nonprofit organization focusing on healthcare quality, and would be determined on a case-by-case basis. NQF has created a list of 28 errors it classifies as never events, including performing surgery on the wrong body part, leaving foreign objects inside a patient, and discharging an infant to the wrong party. Press Release, *The Leapfrog Group Issues Call for Hospitals to Commit to New Policy on Health Care “Never Events,”* Leapfrog Group, Nov. 15, 2006, available at www.leapfroggroup.org.

Typically, patients or their health care plans are responsible for treatment costs, even when the treatment is necessary to correct a health care provider’s errors. But the employers argue that hospitals must be held accountable for the serious errors their providers cause. Part of the problem, patient advocates say, is that although Leapfrog and other advocates estimate there are tens of thousands of never events annually, few states require hospitals to report medical errors. Bruce Japsen, *Backlash at Bills for Medical Mistakes: Firms Tired of Paying for Low-Quality Care*, Chi. Trib., Nov. 16, 2006, available at <http://pqasb.pqarchiver.com/chicagotribune>.

Under Leapfrog’s policy, hospitals would be required to apologize for the error to the patient, perform a thorough investigation into the cause of the error, and report the error to a reporting program. Responding to arguments that apologies might lead to more medical negligence suits, Leapfrog points out that research shows lawsuits are often the result of the hospital’s failure to communicate with the patient about what happened and apologize for any harm it caused.

In May 2006, the U.S. Centers for Medicare & Medicaid Services (CMS) announced that it is investigating measures to reduce or eliminate never events, including refusing to pay for the errors and providing information to the public when they occur. Press Release, *Eliminating Serious, Preventable, and Costly Medical Errors—Never Events*, CMS, May 18, 2006, available at www.cms.gov.

Los Angeles charges hospital for “dumping” homeless patient on Skid Row; patient files suit

The Los Angeles city attorney filed criminal and civil charges in November against Kaiser Foundation Hospitals, alleging its hospital dropped a homeless patient off in the city’s Skid Row wearing only a hospital gown and socks. The patient also filed suit against the hospital. The city is investigating other hospitals as well.

Carol Ann Reyes, a 63-year-old homeless woman, was taken by ambulance to a Kaiser hospital and treated for a sodium imbalance. Despite staff notations that Reyes’s blood pressure was high and she seemed disoriented, the hospital discharged her without assessing or providing treatment for those symptoms. Hospital staff put her in a taxi wearing two hospital gowns and hospital socks without waiting until they found her clothes. They instructed the taxi to take her to a homeless rescue mission in the city’s dangerous Skid Row neighborhood, even though Reyes did not request it and had never been to that part of town.

A video camera outside the rescue mission captured images of what happened next: The taxi driver dropped her off without escorting her into the building, and she wandered the streets for several minutes until a mission employee helped her. She did not have personal belongings or hospital discharge instructions, and she was so disoriented that she could not tell them what hospital she had been in or how she got to Skid Row. Three days later, she collapsed and was taken to a different hospital, which diagnosed her as having high blood pressure, chronic anemia, pneumonia, and dementia, requiring a 45-day hospital stay.

In an unprecedented move, City Attorney Rocky Delgadillo filed criminal charges against Kaiser, alleging false imprisonment and dependent adult endangerment. The city also filed a civil suit claiming unlawful and unfair business practices in violation of state law. Before filing the complaints, Delgadillo met with the hospital chain, but they could not agree on reform measures.

Reyes, with the help of AAJ members Thomas V. Girardi, Howard B. Miller, and Shawn McCann, all of Los Angeles; the American Civil Liberties Union of Southern California; and the pro bono legal organization Public Counsel, filed suit against the hospital chain and its parent companies in November. *Reyes v. Kaiser Found. Hosps.*, No. BC362075 (Cal., Los Angeles Co. Super. filed Nov. 16, 2006). The complaint alleges elder abuse and neglect, breach of fiduciary duty, false imprisonment, and intentional infliction of emotional distress, among other claims.

City officials have been investigating 10 hospitals for

about a year and have found 15 potential cases. Richard Winton & Cara Mia DiMassa, *L.A. Files Patient "Dumping" Charges*, L.A. Times, Nov. 16, 2006, available at <http://pqasb.pqarchiver.com/latimes>. In October, Los Angeles police were called to Skid Row after ambulances attempted to drop off five patients at a shelter that could not take them. None of the patients asked to go there, and one specifically asked to be taken to his children's home. The city is considering charges in that case as well. Ina Jaffe, *Hospital Dumped Patients on Skid Row, Police Say*, NPR, Dec. 11, 2006, available at www.npr.org.

Other states have also had to deal with patient "dumping." In Colorado, residents called 911 last October after watching hospital staff roll a woman on a gurney into an apartment parking lot, flip it over by a dumpster, and leave her on the ground. *Witnesses: Hospital Employees Dump Homeless Woman*, Denver Channel, Oct. 6, 2006, available at www.thedenverchannel.com. And in Washington, the state settled a suit in 2005 filed by a county that alleged the state mental hospital was routinely releasing mentally unbalanced patients onto the streets. Philip Dawdy, *Mental-Patient Lawsuit Settled*, Seattle Weekly, Mar. 16, 2005, available at www.seattleweekly.com.

Congress, GAO investigating whether SEC curtailed insider trading probe for political reasons

The Senate Finance and Judiciary Committees are investigating whether the SEC purposefully hindered a staff attorney who suspected that a high-profile, politically connected executive engaged in insider trading and then fired the attorney for complaining about it. At the request of Senator Charles E. Grassley, of Iowa, the Government Accountability Office (GAO) is also looking into the effectiveness of the SEC's enforcement and investigation departments.

In September 2004, the SEC began investigating suspected insider trading by Pequot Capital Management, a large hedge fund. According to the staff attorney assigned to the case, Gary J. Aguirre, during the investigation he began suspecting that the fund's CEO received insider information from a prominent investment banker. Ltr. from Gary J. Aguirre to Chairman Chuck Hagel and Ranking Member Christopher J. Dodd, Subcomm. on Secs. & Inv., Comm. on Banking, Housing, and Urb. Affairs (May 30, 2006).

When Aguirre initially shared his intention to obtain testimony from the banker, John J. Mack, his supervisor was supportive of the idea, e-mail records show. Aguirre was even authorized to talk to the FBI about a possible criminal inquiry. But three days later, after it became apparent that Mack was being considered to head the powerful Morgan Stanley investment bank, Aguirre says the atmosphere changed. Unlike before, he was excluded from senior staff meetings about the investigation, and his

superiors denied his repeated requests for permission to interview Mack. E-mails from Aguirre's supervisor mention that Mack, a prominent supporter of the Republican party, had "political clout" and "juice" but are careful to say that politics are not involved in determining whether to take someone's testimony. SEC officials reportedly argued that Aguirre should not be allowed to depose Mack because he could not demonstrate that Mack possessed inside information or a motive for sharing it. Walt Bogdanich & Gretchen Morgenson, *S.E.C. Inquiry on Hedge Fund Draws Scrutiny*, N.Y. Times, Oct. 22, 2006, available at www.nytimes.com.

In early September 2005, Aguirre, a probationary employee, was fired just 11 days after receiving a two-step merit increase based on a positive evaluation. He allegedly later discovered that a negative evaluation had been placed in his file after he left the commission. When Aguirre complained of whistle-blower retaliation, the SEC inspector general opened an investigation but failed to interview Aguirre before dismissing the charges. After Aguirre publicized the issue, the investigation was reopened. Under congressional scrutiny, the SEC later interviewed Mack but closed the case in December without finding any impropriety.

In May 2006, Aguirre began sending letters informing senators in various committees about the alleged favoritism. Aguirre has also turned over SEC documents to Congress. In early December, the Senate Finance and Judiciary Committees began a joint hearing led by Senator Grassley and Senator Arlen Specter, of Pennsylvania. On the first day of the hearings, which are expected to resume in 2007, Grassley and Specter expressed anger at the SEC. "The more I look, the more troubled I get," said Grassley, while Specter said the agency's actions are "troubling" at best and could have "the overtone of a possible cover-up." Liz Moyer, *Congress Takes on SEC*, Forbes, Dec. 5, 2006, available at www.forbes.com.

The SEC maintains that Aguirre was fired because he resisted supervision and clashed with other staff attorneys. During the hearing, however, another SEC staff investigator, Eric Ribelin, testified that he did not like the way the Pequot investigation was handled and that he wrote an e-mail to his supervisor during the investigation that said, "Something smells rotten here." Walt Bogdanich, *2nd Official Dissented over Pequot Inquiry*, N.Y. Times, Dec. 5, 2006, available at www.nytimes.com.

In September, Senator Grassley requested that the GAO review the SEC's Enforcement Division and Office of Compliance, Inspection, and Examination to determine whether they are "faithfully adhering to [the SEC's] mission" of protecting investors. The GAO is expected to issue a final report in June 2007. Ltr. from Charles E. Grassley, Chairman, Comm. on Fin., to David M. Walker, Comptroller Gen., U.S. GAO (Sept. 19, 2006).

The Professional Negligence Law Reporter is unable to supply copies of articles. It does provide addresses of publications that may not be available at your local library.

Applying aviation safety principles to health care

In recent years, hospitals have hired professional pilots to train staff members on applying principles of aviation safety to health care, and research suggests that the hospitals that have applied such measures have fewer medical negligence suits. Kate Murphy, *What Pilots Can Teach Hospitals about Patient Safety*, N.Y. Times, Oct. 31, 2006, available at www.nytimes.com.

Doctors often fail to provide patients with important details about new prescriptions

An observational study of physician communication finds that physicians often fail to communicate critical information about new prescription medications to patients, such as side effects and dosing information. Derjung M. Tarn et al., *Physician Communication When Prescribing New Medications*, 166 Archives Internal Med. 1855 (2006).

Efforts to shield nursing homes from liability

Caps on damages, binding arbitration agreements, and business restructuring are ways that nursing homes are making it more difficult for people to sue and collect awards for negligent patient care. *Suing a Home Is Getting More Difficult*, ConsumerReports.org, Aug. 2006, available at www.consumerreports.org.

External catheters reduce risk of infections

A recent study finds that, among male hospital patients, external catheters reduce the risk of urinary tract infection and other adverse events by 80 percent and are more comfortable and less painful than indwelling catheters. Sanjay Saint et al., *Condom Versus Indwelling Urinary Catheters: A Randomized Trial*, 54 J. Am. Geriatrics Socy. 1055 (2006).

Gastric bypass surgery is safer, more effective than gastric banding surgery

A comparison of outcomes of two types of bariatric surgery finds that obese patients who undergo gastric bypass surgery have fewer complications and lose more weight than patients who undergo gastric banding surgery. Wilbur B. Bowne et al., *Laparoscopic Gastric Bypass Is Superior to Adjustable Gastric Band in Super Morbidly Obese Patients*, 141 Archives Surgery 683 (2006).

More research is needed to determine potential of spreading mad cow disease through surgical tools

A recent study calls for more research on the likelihood that variant Creutzfeldt-Jakob disease, usually caused by

consuming beef infected with bovine spongiform encephalopathy, might be spread through the reuse of surgical tools. Tini Garske et al., *Factors Determining the Potential for Onward Transmission of Variant Creutzfeldt-Jakob Disease Via Surgical Instruments*, 3 J. Royal Socy. Interface 757 (2006) available at www.journals.royalsoc.ac.uk.

Nursing homes that evacuated during hurricanes met regulations but had transportation-related problems

According to a recent report by the U.S. Department of Health and Human Services Office of Inspector General (OIG), nursing homes along the Gulf Coast had emergency evacuation plans in place that met federal and state regulations during four hurricanes, but the homes that evacuated residents encountered many problems, such as unavailability of buses and inadequate staffing. Office Inspector Gen., *Nursing Home Emergency Preparedness and Response during Recent Hurricanes*, OEI-06-06-00020 (OIG 2006), available at www.oig.hhs.gov.

Privacy concerns and the Nationwide Health Information Network

The Nationwide Health Information Network will link electronic health records in hospitals and doctors' offices and allow health care providers to have ready access to patient information, among other benefits, but as work begins on the initial system design, compelled disclosure of sensitive health information and other privacy and confidentiality concerns should be considered. Mark A. Rothstein & Meghan K. Talbott, *Compelled Disclosure of Health Information*, 295 JAMA 2882 (2006).

Rheumatologists' role in treating osteonecrosis of the jaw in patients taking bisphosphonates

Rheumatologists should be aware of the risk that their patients who take bisphosphonates to treat bone diseases may develop osteonecrosis of the jaw and have a plan for early diagnosis and prevention of further complications. Franco Capsoni et al., *Bisphosphonate-Associated Osteonecrosis of the Jaw: The Rheumatologist's Role*, 8 Arthritis Research & Therapy 219 (2006).

Texas laws limiting damages awards have affected both plaintiff and defense firms

Changes in state law that limit noneconomic damages in Texas have caused plaintiffs' attorneys to drop medical negligence cases in favor of other areas of law, as was expected, but the new laws are also forcing defense attorneys to practice in other areas because the number of medical negligence suits that are filed has decreased. Terry Carter, *Tort Reform Texas Style*, ABA J., Oct. 2006, at 30.

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UPDATES

DEVELOPMENTS

BANKING: *Miller v. Bank of Am., NT & SA*, 19 PNL 88 (June 2004): *rev'd*, 51 Cal. Rptr. 3d 223 (Cal. App. 1st Dist. 2006). In this case in which a jury awarded class action plaintiffs damages against a bank that, among other things, allegedly improperly set off account funds to cover banking fees, an intermediate appellate court reversed. The court found that the trial court misapplied case law in holding that the bank was prohibited from clearing overdrafts and other monetary claims

from accounts that have government funds directly deposited.

SOCIAL WORK: *Amora v. Fla. Dept. of Children & Fams.*, 20 PNL 196 (Dec. 2005): *aff'd*, ___ So. 2d ___, 2006 WL 3300000 (Fla. 4th Dist. App. Nov. 15, 2006). An intermediate appellate court affirmed the verdict in this case alleging that a state agency was liable for failing to properly investigate a case of child abuse and protect the child involved. **Joe Nusbaum** and **Marc C. Brotman**, both of Boca Raton, Fla., represented plaintiffs.

COURT DOCUMENTS

Documents can be downloaded from the Exchange at www.exchange.justice.org.

DOCUMENTS \$50

DOE V. DIOCESE OF PALM BEACH, INC., p. 3 (plaintiff's complaint in a case alleging negligent hiring, retention, and supervision of a priest). No. PN702.

MARQUARDT V. DRAGISIC, p. 10 (deposition of plaintiffs' anesthesiology expert in a case alleging negligent administration of an interscalene block). No. PN774.

ROBERSON V. HERNANDEZ-POMBO, p. 11 (deposition of plaintiff's general surgery expert in a case alleging negligent performance of bowel surgeries on a patient in whom a surgical sponge had been left). No. PN711.

TAYLOR V. SMITH, p. 6 (plaintiffs' brief in a case holding directors of methadone treatment centers may be liable to third-party motorists injured in foreseeable accidents with drug treatment patients). No. PN701.

YAMADA V. NORTHSIDE HOSP., INC., p. 9 (deposition transcript of plaintiffs' obstetrics expert in a case alleging improper treatment of an infant's choledochal cyst). No. PN775.

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DOE V. ROMAN CATHOLIC DIOCESE OF NASHVILLE, p. 3 (plaintiffs' Rule 11 supplemental and reply briefs in a case holding that a claim of reckless infliction of emotional distress need not be premised upon conduct that was directed at a specific person or that occurred in a plaintiff's presence). No. PN721.

HARDEE V. BIO-MED. APPLICATIONS OF S.C., INC., p. 5 (plaintiffs' appellate briefs in a case holding that a dialysis center owed a duty to drivers injured by a patient shortly after the patient left treatment). No. PN776.

HARRIS V. KREUTZER, p. 12 (the parties' appellate briefs in a case holding that a psychologist performing an independent medical examination of a plaintiff in a civil lawsuit could be liable to her for medical negligence). No. PN753.

HODESH V. KORELITZ, p. 10 (expert deposition transcripts in a case alleging failure to retrieve an unmarked surgical towel). No. PN777.

LEARY V. GEOGHAN, p. 3 (plaintiffs' complaint and first amendment to the complaint in a case alleging sexual abuse by a Roman Catholic priest). No. PN667.

MANSHIP V. COASTAL EMERG. SERVS., p. 8 (plaintiff's memoranda in opposition to defendants' summary judgment motions in an emergency medicine case alleging failure to treat a bacterial infection). No. PN480.

MINTON V. SAVAGE, p. 7 (depositions of plaintiffs' and defendants' obstetrics experts in a case alleging negligent handling of shoulder dystocia). No. PN712.

POTTER V. SCHENK, p. 7 (depositions of experts and defendant in a case alleging failure to timely diagnose a fungal infection). No. PN778.

RIGGS V. W. VA. U. HOSPS., p. 7 (expert witness disclosures and plaintiffs' petition for appeal in a case alleging a hospi-

tal's infection control department failed to prevent and control a serratia epidemic at the hospital). No. PN779.

ROMAN CATHOLIC DIOCESE OF JACKSON V. MORRISON, p. 3 (plaintiffs' appellate brief and an amicus curiae brief on behalf of the Survivors Network of Those Abused by Priests in a case holding that enforcing the duty to protect children from molestation by clergy does not excessively entangle the judiciary in religious matters). No. PN734.

WATKINS V. HEDMAN, HILEMAN & LACOSTA, p. 5 (plaintiff's opening brief and reply brief in a case holding that a legal negligence suit against an attorney who drafted a complex estate plan was not time-barred under the applicable three-year limitations period for such claims). No. PN706.

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BASS V. STOLPER, KORITZINSKY, BREWSTER & NEIDER, S.C., 40 ATLA L. Rep. 210 (Aug. 1997) (plaintiff's brief in a case holding the payment obligation arising from a dishonored check is a debt under the FDCPA). No. LR3210.

CLOMON V. JACKSON, 8 PNL 105 (July 1993) (plaintiff's brief on whether collection letters implying a lawyer has reviewed them violate the FDCPA). No. PN357.

DOCUMENT SETS \$95

AGAN V. KATZMAN & KORR, P.A., 20 PNL 169 (Nov. 2005) (the class notice, as well as plaintiffs' amended complaint and motion and brief for class certification in a class action lawsuit alleging use of improper debt collection tactics in violation of the FDCPA). No. PN741.

DUFFY V. LANDBERG, 13 PNL 65 (May 1998) (plaintiffs' briefs in a case holding that an attorney whose letterhead was used to collect payment on dishonored checks could be liable under the FDCPA). No. PN588.

ONG V. AM. COLLECTIONS ENTERS., INC., 42 ATLA L. Rep. 131 (May 1999) (the parties' memoranda of law on plaintiff's motion for summary judgment as well as defendant's motion to dismiss in a case holding that a written notice requirement for a consumer disputing a debt violates the FDCPA). No. LR3430.

RYAN V. WEXLER & WEXLER, 40 ATLA L. Rep. 211 (Aug. 1997) (plaintiff's appellate briefs in a case holding that the FDCPA applies to third-party collectors of dishonored checks). No. LR3253.

SCOTT V. JONES, 7 PNL 186 (Dec. 1992) (plaintiff's appellate briefs on whether a lawyer who files lawsuits seeking collection of debts may be liable as a debt collector under the FDCPA). No. PN332.

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DOCUMENTS \$50

BROWN v. H.C.A. HIGHLAND HOSP. SERVS., 10 PNL 148 (Oct. 1995) (plaintiffs' supplemental petition on breach of contract, damages, attorney fees, medical negligence, and loss of consortium in a case in which plaintiffs alleged hospital liability for failure to monitor fetal distress). No. PN462.

JACKSON v. U.S., 13 PNL 191 (Dec. 1998) (deposition of plaintiffs' perinatology expert in a case alleging use of excessive traction during a delivery). No. PN590.

KARNEY v. ARNOT-OGDEN MEML. HOSP., 12 PNL 71 (May 1997) (plaintiff's brief in a case alleging failure to timely diagnose preterm labor and administer tocolytic therapy). No. PN544.

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