South Florida Hospital News® and Healthcare Report
Volume 10 • Issue 11 May 2014
THE REGION'S MONTHLY NEWSPAPER FOR HEALTHCARE PROFESSIONALS & PHYSICIANS

Malpractice Insurance Expert Advice

Med Mal Caps Held Invalid-Now What?

By Matt Gracey and Michael Petruccelli, Esq.

The Florida Legislature, during a special session in 2003, passed landmark legislation placing caps on non-economic damages in medical negligence cases, which became effective on September 15, 2003. The legislature believed as a basis for the legislation that a medical malpractice crisis existed that affected both the medical profession and liability insurance rates.

However, in a long awaited decision, the Florida Supreme Court ruled on March 13th that the caps on non-economic damages, as codified in section 766.118 of the Florida Statutes, are unconstitutional in violation of the equal protection clause of the Florida Constitution. In Estate of McCall v. United States of America, ., --- So.3d ----, 2014 WL 959180 (Fla. 2014)(1), the Court, in a 5-2 opinion, felt that the caps in this medical malpractice action under the wrongful death act, violated the constitution in that the statute treated multiple claimants differently by placing an aggregate limit on their total recovery, irrespective of the number of claimants involved. Additionally, both the plurality opinion of Justice Lewis and the concurring opinion of Justice Pariente felt that the legislature did not have a rational basis in passing this legislation, albeit for different reasons. The concern is that from a legal standpoint, the language of the decision can be used to argue that the entire caps statute is unconstitutional.

From an industry perspective, the concern is that obviously cases with substantial damages will cost more to settle. Additionally, there is a concern that without the caps, there will be a "return of the old days" in Florida where medical malpractice filings were far more prevalent than today. It is clear statistically that after the malpractice caps were passed in 2003, medical malpractice filings were reduced significantly on a statewide basis. Whether there will be a surge in the filings of med mal claims, of course, remains to be seen. Should that occur, undoubtedly insurance premiums will increase and one can expect a return to the hard market with much higher premiums in the early to mid 2000s.

The McCall decision at present only applies to caps on non-economic damages in wrongful death cases, although the opinion likely applies to personal injury cases involving medical malpractice as it relates to multiple claimants and the aggregate limit. The Florida Supreme Court is hearing oral argument on June 4th in the case of Miles v. Weingrad, which may address the constitutionality of section 766.118 in a non wrongful death medical negligence action. It may be at that time that we have a definitive answer on the issue of whether caps on non-economic damages even exist in Florida.

Accordingly, it remains the authors' opinion that healthcare practitioners should be prudent by maintaining liability coverage with financially sound companies. Additionally, recall that before there were caps on non-economic damages, medical negligence cases were successfully defended through trial, even in cases with substantial damages. Thus, physicians, hospitals, and their respective carriers should be consistent in holding the position that the filing of a malpractice claim should not be considered an automatic indemnity payment and that physician and nursing care that is consistent with community standards will be defended accordingly.

Matt Gracey is a medical malpractice insurance specialist with Danna-Gracey, an independent insurance agency based in downtown Delray Beach with a statewide team of specialists dedicated solely to insurance coverage placement for Florida's doctors.To contact him call (800) 966-2120, or email: Matt@dannagracey.com.

South Florida Hospital News and Healthcare Report, the region's only healthcare newspaper, reports in-depth on the trends, issues and people that impact the region's healthcare community. We are dedicated to disseminating information related to improving patient care. We are an information exchange medium for healthcare professionals who are, equally, users of consumer-related products and services. Our controlled circulation is via direct mail to more than 30,000 healthcare professional monthly.