



Winter 2006

Virginia Limits Physician Civil Immunity

The Supreme Court of Virginia held that a physician does not enjoy immunity from civil suits for failing to obtain the results of certain laboratory tests requested by another physician, expressly overruled their holding in Auer v. Miller

Code § 8.01-581.18(B) provides for civil immunity “for any failure to review, or to take any action in response to the receipt of, any report of the results of any laboratory test...which test or examination such physician neither requested nor authorized in writing.” In this case, Defendant physician asked for consultation for his patient and knew that the consultant requested tests. The patient was discharged prior to the return of the test results and the physician never reviewed them. The patient died.

The results of the blood test contained information that the physician knew would directly affect the treatment of the patient. The physician argued that the code provided him with immunity. The Circuit Court for Fairfax County refused to grant the physician immunity.

The Supreme Court upheld the circuit court’s decision, and interpreted the statute as one creating a mechanism for handling reports of laboratory testings requested by an individual or patient, but did not pertain to tests, as in this case, requested or authorized by a physician. Oraee v. Breeding

Maryland Allows Experts to Infer Negligence from the Evidence

Maryland has had a long history of not allowing the doctrine of res ipsa loquitur to be used in a Medical Negligence case. This evidentiary theory allows a jury to infer negligence when an injury occurs that generally does not occur in the absence of negligence. However, the Maryland Court of Special Appeals has now held that an expert witness may draw inferences of negligence from the evidence and testify regarding those inferences. This is very close to an expert utilizing the doctrine and providing the inference to the jury.

Decedent’s family sued the hospital for negligence after the patient received a lethal dose of a narcotic. The Circuit Court for Baltimore City granted the hospital summary judgment on the grounds that plaintiff’s expert testimony was insufficient since he did not specifically identify negligent conduct. The Court of Special Appeals held that the expert testimony presented by the Plaintiff was legally sufficient to establish negligence. While the expert could not identify a specific act of negligence, it was proper for the expert witness to infer negligence, based on his knowledge and expertise, and from evidence that was in the record. Presumably, the jury does not

have sufficient knowledge of medical issues to draw the inference itself. The testimony and inference must come from an expert. Tucker v. University Specialty Hospital

But ... the District of Columbia Does Allow Res Ipsa Loquitur in a Medical Negligence Action

The District of Columbia Court of Appeals held that the doctrine of res ipsa loquitur may be used to establish negligence in a medical malpractice suit. Plaintiff suffered from nerve injury subsequent to surgery performed by defendant health care providers. While there were several theories regarding the nerve damage, Plaintiff was never able to obtain an explanation of the injury from the defendants. The plaintiff’s experts could not identify a specific cause of the injury but testified the injury would not have occurred in the absence of negligence. Thus, Plaintiff wanted to proceed based on the doctrine of res ipsa loquitur. The trial court refused to instruct the jury on the doctrine.

The District of Columbia Court of Appeals held that the trial court erred in refusing to instruct the jury on the doctrine of res ipsa loquitur. The Court ruled that if the plaintiff can present expert testimony that the injury does not ordinarily occur in the absence of negligence, then the jury should be instructed that they may infer negligence. Gubbins v. Hurson

If you are experiencing any confusion about the difference between these two cases, join the club.

These articles are necessarily short descriptions of complex areas of law. If you have any questions or would like additional information, please contact us:
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