



# Bailey v. Mercy Hospital (Ill. S. Ct.)

Topics Covered: Professional Liability, Tort Reform

## Issue

The issue in this medical malpractice case is whether a trial court erred in rejecting jury instructions on informed consent and loss of chance.

## AMA Interest

Medical liability reform is a high legislative priority for the AMA, and the AMA opposes lawsuit abuse against physicians.

## Case Summary

Jill M. Milton-Hampton sought treatment in the Mercy Hospital emergency department. Her treating physicians told her she had viral gastroenteritis and advised further observation and admission, but Ms. Milton-Hampton refused and went home. Hours later, she returned to the ER. Various treating doctors continued to believe she had gastroenteritis. The next morning, she went into cardiopulmonary arrest and died.

The representative of Milton-Hampton's estate sued. Plaintiff's theory was that the patient had died of toxic shock syndrome and sepsis, which could have been treated with antibiotics. Defendants' theory was that she died of acute viral myocarditis, which could not be treated with antibiotics. Each party presented experts supporting its respective theory. Plaintiff proposed jury instructions on informed consent and loss of chance, both of which the trial court rejected. After a four-week trial, the jury found for the defendants.

The Illinois Court of Appeals reversed the verdict in favor of most of the physician defendants. On informed consent, the court opined that an instruction was warranted because Plaintiff alleged that one physician did not disclose that leaving the hospital could result in grave injury or death. The court stated that a specific instruction on loss of chance was warranted.

Defendant physicians have now appealed to the Illinois Supreme Court.

## Litigation Center Involvement

The Litigation Center and Illinois State Medical Society filed an *amicus* brief in the Illinois Supreme Court supporting the physician defendants.

Illinois Supreme Court Brief