



# Bastiampillai v. Metcalf (Ariz. S. Ct.)

Topics Covered: Abusive Litigation Against Physicians

## Issue

The issue in this case is whether, in a wrongful death lawsuit, the defendant can discover medical records relevant to a plaintiff's life expectancy when the plaintiff is seeking future damages.

## AMA Interest

The AMA supports efforts to curb lawsuit abuse against physicians.

## Case Summary

A patient died from alleged medical malpractice. His heirs brought a wrongful death action against his physician (Nicholas Bastiampillai, D.O.) and others. Pursuant to the Arizona wrongful death act, they sought damages for their reasonably expected future losses, including future mental anguish.

During the trial court proceedings, the defendants sought discovery of the plaintiffs' medical records. The defendants asserted that the plaintiffs' life expectancies could bear on the amount of damages they might recover if successful. For instance, if a plaintiff had a condition that limited her life expectancy, the length of future anguish and distress may be less than for someone without such health risks.

Over the plaintiffs' objections, the trial judge (Hon. D. Douglas Metcalf) ruled that the medical records were discoverable. The trial court limited the discovery to five years of records from the plaintiffs' primary care physicians, which were to be produced under a confidentiality order.

The plaintiffs filed a special action with the Arizona Court of Appeals challenging the discovery ruling. The appellate court reversed the lower court and held that the plaintiffs' records were not discoverable.

The defendants have now asked the Arizona Supreme Court to review the case.

## Litigation Center Involvement

The Litigation Center and the Arizona Medical Association filed an amicus brief to support the defendants.

Arizona Supreme Court brief