

Carillo v. Alvarez (Cal. App. 5th Dist.)

Topics Covered: Abusive Litigation Towards Physicians, Professional Liability, Tort Reform

Issue

The issue in this case is whether a physician's failure to supervise a student, who was learning to be a physician assistant (PA), is considered "professional negligence" by the physician, as that term is defined in California's Medical Injury Compensation Reform Act (MICRA).

AMA Interest

The AMA supports caps on non-economic damages in medical malpractice lawsuits. Also, the AMA opposes abusive lawsuits against physicians.

Case Summary

On October 12, 2011, Karla Carrillo, a minor, presented to Valley Medical Group ("VMG"), a clinic owned by Dr. Carlos Alvarez, complaining of intense, sporadic headaches. Carrillo was examined by a VMG employee, Carlos Flores, who was a licensed PA, and, Alfred Tobias, a student studying to become a PA who was not a VMG employee but was acting under VMG's supervision. She was not examined by a physician.

Based upon a series of questions they posed to her, Flores and Tobias concluded that Carrillo was suffering from tension headaches due to stress. They did not order such procedures as a CT scan, MRI, or lumbar puncture, which might have been used to detect an alternative, more serious cause of the headaches. They advised Carrillo to go home, take Tylenol for the headaches, and return to the clinic if the headaches became constant or continuous.

Carrillo's headaches worsened, and she experienced additional symptoms. She presented to the emergency department of Bakersfield Memorial Hospital on October 30, 2011, complaining of problems with her vision, intermittent confusion, and constant headaches. As the emergency room physician was preparing to perform a lumbar puncture, her status changed abruptly; her pupils dilated, and she started convulsing uncontrollably. CT and MRI scans revealed that Carrillo had suffered numerous strokes, causing permanent brain damage and leaving her functionally quadriplegic.

Carrillo and her mother sued Flores, Alvarez, and VMG (and other defendants, who settled). The plaintiffs argued that Alvarez and VMG were not only professionally negligent for failure to have a physician examine Carrillo, but they were also negligent for failing to supervise Tobias, the PA student. The trial court refused to allow plaintiffs to pursue the failure to supervise claims against Alvarez and VMG.

The jury returned a verdict for defendants, finding that none of the defendants were negligent in their direct conduct vis-à-vis Carrillo. It did not consider the claim of failure to supervise, which was not before it.

In accordance with the jury verdict, judgment was entered for the defendants. The plaintiffs appealed to the California Court of Appeal, the intermediate level appellate court.

On appeal, the plaintiffs have argued, inter alia, that the trial court erred in precluding them from presenting their failure to supervise claim against Alvarez and VMG. Had the trial court allowed them to do so, they would have offered additional evidence, and they might then have prevailed.

Litigation Center Involvement

The Litigation Center joined an *amicus* brief with the California Medical Association California Hospital Association, and the California Dental Association.

California Court of Appeal Brief