



# O'Rourke v. Buckmaster, 755 N.W.2d 570 (Minn. App. 2008)

Topics Covered: Professional Liability

## **Outcome: Very Favorable**

### **Issue**

The issue in this case was whether an Agreement for Corrective Action (ACA) between a podiatrist and the Minnesota Board of Podiatric Medicine should have been excluded from evidence in a malpractice case against the podiatrist.

### **AMA Interest**

The AMA supports the rehabilitation of professionals whose practices are below acceptable standards.

### **Case Summary**

Podiatrist Roy Wayne Buckmaster performed a complicated surgery on patient Sandra O'Rourke's foot. After O'Rourke continued to complain of pain, Buckmaster performed a second surgery, which was similarly unsuccessful. Another podiatrist then criticized both the type and manner of the surgery Buckmaster had performed.

O'Rourke filed a complaint with the Minnesota Board of Podiatric Medicine, which was referred to the Board's Complaint Resolution Committee (CRC). The CRC essentially agreed with the second podiatrist's opinion. To resolve the complaint, Buckmaster and the CRC entered into an ACA under which Buckmaster agreed to improve his clinical proficiency. The ACA contained neither an admission nor denial of wrongdoing and it included a specific statement that the ACA did not constitute disciplinary action against Buckmaster.

Shortly after the ACA was signed, O'Rourke filed a malpractice action against Buckmaster. Buckmaster moved (prior to the start of trial) to exclude the ACA from evidence on the ground that it was an excludable settlement agreement under Rule 408 of the Minnesota Rules of Evidence. The trial court denied the motion, and Buckmaster filed an interlocutory appeal in the Minnesota Court of Appeals. On September 10, 2008, the Minnesota Court of Appeals reversed the trial court and held that the corrective action agreement could not be used as evidence in the malpractice suit.

### **Litigation Center Involvement**

The Litigation Center joined the Minnesota Medical Association, the American Podiatric Medical Association and the Minnesota Podiatric Medical Association in an amicus curiae brief supporting Buckmaster's position.

Minnesota Court of Appeals brief