



Parker v. Southern New Hampshire Medical Center, 164 N.H. 319 (N.H. 2012)

Topics Covered: Professional Liability, Screening Panels and Tort Reform

Outcome: Very Favorable

Issue

The issue in this case was whether a New Hampshire law that creates pre-judicial screening panels for medical injury claims was constitutional.

AMA Interest

Medical liability reform is the AMA's highest legislative priority.

Case Summary

According to the complaint, Sheila Parker, who was suffering from meningitis, went to the emergency room at Southern New Hampshire Medical Center (SNHMC), a hospital in Nashua, New Hampshire. She was admitted to the hospital, but she developed "a cerebral infarct," which ultimately led to her death. While in the emergency room and later during the course of her hospital stay, she came under the care of several medical personnel, who allegedly failed to diagnose or treat her condition properly.

Ms. Parker's estate sued for damages arising from medical negligence. In addition to SNHMC, the estate sued three physicians, a physician assistant, and a medical practice group.

The New Hampshire statutes authorize screening panels for medical injury claims. The panels are to identify claims that merit compensation and encourage early resolution of those claims prior to commencement of a lawsuit and encourage early withdrawal of non-meritorious claims. Following evidentiary hearings, the panels is to make written determinations on the following questions: (1) did the defendants' conduct meet the applicable standard of care? (2) did the defendants' conduct cause the plaintiffs' injuries? and (3) if issues (1) and (2) are found adversely to the defendant, did the plaintiffs contribute, by their own conduct and by a greater factor than the defendants' conduct, to the injury? If the panels have unanimously decided any of the three issues before, then those findings are admissible in the subsequent trial of the case. If the panel decisions is not unanimous on an issue, then the decisions is not admissible.

In the case at bar, the screening panel made findings on the questions put to it. Following its decision, the plaintiff moved to exclude the panel's findings from consideration by the jury because, it argued, the screening panel law was unconstitutional. The trial court denied the motion.

Both sides appealed to the New Hampshire Supreme Court. Initially, the Supreme Court indicated that it would consider only whether the pre-judicial panel screening law violated the

separation of powers provision of the New Hampshire Constitution. Subsequently, however, the Supreme Court decided that it would also consider whether the screening law violated the right to equal protection of the laws, the right to trial by jury, or the right to due process of law.

On October 30, 2012, the New Hampshire Supreme Court upheld the majority of the pre-judicial screening panel law. It did, however, say that the trial courts will be allowed to hear evidence on certain of the processes by which the screening panels reached their decisions. To this limited extent, the Supreme Court found portions of the screening panel law invalid.

Litigation Center Involvement

The Litigation Center, along with several state medical societies, filed an initial *amicus* brief in the New Hampshire Supreme Court to support the screening panel law. The amici subsequently filed a supplemental brief, which argued that the law also satisfied the constitutional guarantees of equal protection, trial by jury, and due process. After discussion with the New Hampshire Medical Society, the Litigation Center will not challenge the continued seal of the court file. The briefs will not be unsealed until the case is concluded.