



Pressey v. Children’s Hospital Colorado (CO S.Ct.)

Topics Covered: Professional Liability, Tort Reform

Issue

The issue in the case is whether, in the calculation of anticipated expenses arising from medical negligence, the injured party must reduce her claim by her anticipated Medicaid benefits. The case is likely to hinge on the correct interpretation of the Colorado Health Care Availability Act (HCAA), a tort reform statute.

AMA Interest

Medical liability reform is one of the AMA’s highest legislative priorities. Further, the AMA supports state medical associations’ efforts to curtail lawsuit abuse.

Case Summary

Four days after birth, Naomi Pressey, a patient at Children’s Hospital Colorado, suffered cardiopulmonary arrest, which led to irreversible brain damage. Through her mother, she sued the hospital. She alleged that her nurses had improperly administered medicine to her and this caused the cardiopulmonary arrest.

A jury found the hospital liable and awarded Naomi \$17,839,784.60. Initially, the trial court reduced her damages to \$1,000,000, based on HCAA. However, although HCAA normally caps damages at \$1,000,000, it also allows the court to exceed the cap, if “the present value of past and future economic damages would exceed such [\$1,000,000] limitation and ... the application of the limitation would be unfair.”

In a post-trial motion, Naomi contended that her economic damages, based on normal anticipated medical billing rates, would far exceed the \$1,000,000 cap. Based on this contention, she argued that the cap would be unfair to her. In counter to this motion, the hospital asserted that Naomi would qualify for Medicaid benefits and after considering those benefits her economic damages would be less than \$1,000,000.

The court rejected the hospital’s argument. It found for Naomi and revised the judgment to \$14,341,538.60 in her favor.

The hospital appealed to the Colorado Court of Appeals, which found that Medicaid benefits should not be used to reduce the medical expense damages. Accordingly, it held, the trial court was correct in finding that economic damages would exceed \$1,000,000, notwithstanding Naomi’s likely qualification for Medicaid benefits.

Based on other considerations, the Court of Appeals reduced the judgment by slightly under \$2,500,000, but it affirmed as to approximately \$10,000,000.

On May 25, 2017, the hospital petitioned the Colorado Supreme Court to hear the case. That petition is undecided. Several health care organizations, including the Colorado Medical Society (CMS), have asked the Supreme Court for leave to file an amicus brief to support the hospital's petition.

The parties are discussing settlement.

Litigation Center Involvement

If the case does not settle, the Litigation Center will ask the Colorado Supreme Court for leave to join the proposed CMS amicus brief. The Litigation Center will also contribute toward the cost of the amicus brief.