



Sullivan v. DeJong (Ill. App. Ct. 2003)

Topics Covered: Professional Liability, Abusive Litigation Against Physicians, Affidavit of Merit, Certificate of Merit and Expert Witnesses

Outcome: Somewhat Unfavorable

Issue

The issue in this case was whether a physician who has been sued for medical malpractice pursuant to the certification of another physician can learn the identity of the physician who certified that he committed the alleged malpractice.

AMA Interest

The AMA strives to avoid the expansion of liability theories against physicians, which can lead to abusive malpractice litigation.

Case Summary

William Sullivan, D.O. was an emergency room physician. When Mary Weiland was seriously injured in an automobile accident, she was brought to the hospital emergency room and was immediately attended by the hospital's trauma team, which did not include Dr. Sullivan. Due to various medical complications, the trauma team was unable to insert an intravenous needle in Mrs. Weiland. Because Dr. Sullivan was experienced in obtaining the necessary central venous access, the trauma team asked him to insert an emergency central venous catheter in her. He did this successfully. That was the only procedure he had been asked to perform for Mrs. Weiland. Subsequently, Mrs. Weiland died.

Mrs. Weiland's estate then brought a wrongful death action against ten osteopathic physicians (including Dr. Sullivan), one allopathic physician (i.e., an M.D.), two nurses, and the hospital. The estate alleged that Dr. Sullivan and the other physicians had failed to (i) diagnose that she had been suffering from internal bleeding, (ii) interpret her CT scan properly, (iii) appreciate the signs and symptoms of shock, and (iv) perform necessary surgery and other treatments relating to her bleeding.

Pursuant to Illinois law, 735 ILCS § 5/2-622, Mrs. Weiland's estate affixed a statement to the complaint, allegedly signed by an experienced trauma surgeon, which asserted that "a reasonable and meritorious cause exists for filing a suit against [the physicians and the hospital] for failing to appreciate the signs and symptoms of hypovolemic shock, and of internal bleeding, and for failing to surgically repair the bleeding." Also pursuant to Illinois law, the trauma surgeon's name was not shown on the report.

The trial court dismissed most of the defendant physicians on motion. The plaintiff's law firm offered to dismiss Dr. Sullivan voluntarily, without prejudice (i.e., leaving open the possibility of

plaintiff filing another suit against him), but Dr. Sullivan refused. He said that he was going to be dismissed with prejudice (i.e., foreclosing the possibility of a similar future lawsuit) or not at all.

Dr. Sullivan then filed an affidavit and a motion to be dismissed from the Weiland case. He stated that, although he had been the hospital emergency physician on duty, Mrs. Weiland was not primarily his patient. Rather, she was considered a “trauma code” patient. Trauma code patients are registered under the trauma service attending physician and are exclusively managed by the trauma team. Upon presentation of the affidavit, the trial court dismissed Dr. Sullivan with prejudice.

Dr. Sullivan, acting as his own attorney, then sued Mrs. Weiland’s lawyer for malicious prosecution. He also sued “Dr. Doe,” the unnamed trauma surgeon. His complaint charged that, had Dr. Doe properly investigated the medical records and the circumstances surrounding Mrs. Weiland’s emergency department care, he would have seen that the allegations raised against Dr. Sullivan and at least four of the other physicians were made without reasonable cause. He also alleged that Dr. Doe’s report had been made in reckless disregard for the truth, and “in bad faith.” According to Dr. Sullivan, an experienced trauma surgeon should have recognized that he was not a part of the trauma team, and that his role in Mrs. Weiland’s care was, under accepted medical practice, limited to the insertion of the intravenous catheter. Further, Dr. Sullivan alleged that had he attempted to make the diagnoses and perform the surgery that Dr. Doe claims he should have provided, it would have interfered with Ms. Weiland’s care.

After he filed his complaint, Dr. Sullivan filed a verified petition for discovery, as part of the same lawsuit. In this petition, he indicated that he had asked Mrs. Weiland’s law firm to disclose Dr. Doe’s identity but the law firm had refused to do so. Mrs. Weiland’s law firm moved to dismiss the complaint and the petition for discovery, and the trial court granted the motion.

Dr. Sullivan appealed. His appellate brief concentrated on his right to learn Dr. Doe’s identity, so that he could ascertain whether Dr. Doe was, in fact, an experienced trauma surgeon and whether Dr. Doe had some basis for his charge that Dr. Sullivan had failed to care properly for Mrs. Weiland.

Mrs. Weiland’s former attorney filed an answer brief, and the Illinois Trial Lawyers Association filed an amicus curiae brief opposing Dr. Sullivan. Dr. Sullivan then filed a reply brief.

The Illinois Appellate Court, without hearing oral argument, affirmed the trial court decision against Dr. Sullivan. In an extensive and carefully worded decision, it held that his legal arguments were essentially correct, but he had not been sufficiently specific in his factual statements to the lower court. Thus, Dr. Sullivan was correct in principle, but he lost on a procedural technicality. If the opinion were to be published, it would essentially serve as a blueprint for how Illinois physicians can sue an expert witness who signed a certificate of merit in bad faith. A physician then would be able to use more effectively Dr. Sullivan’s general legal theories in the setting forth of facts.

However, the Illinois Appellate Court issued its order in an unpublished format, so the decision is neither known to the legal or medical community nor citable as precedent in other cases. Dr. Sullivan filed a motion for reconsideration, urging the Appellate Court to publish its order, but that motion was denied.

Litigation Center Involvement

The Litigation Center engaged an experienced lawyer to represent Dr. Sullivan in his appeal.