



Haviland v. Lourdes Medical Center (N.J. S. Ct.)

Topics Covered: Professional Liability, Affidavit or Certificate of Merit

Issue

The issue in this case is whether the New Jersey Affidavit of Merit (AOM) Statute requires the filing of an AOM in a lawsuit brought under the theory of *respondeat superior* against a medical center.

AMA Interest

Medical liability reform is a high legislative priority for the AMA, and the AMA opposes lawsuit abuse against physicians.

Case Summary

Troy Haviland claimed that he had been injured at Lourdes Medical Center. He asserted that a technician instructed him to hold weights during a radiological examination, which caused him to injure his shoulder and required surgical repair.

Haviland sued Lourdes based on the purported negligence of the radiological technician. Because the technician was an employee of Lourdes, Haviland asserted that Lourdes should be liable for the technician's negligence under the doctrine of *respondeat superior*.

The New Jersey AOM Statute requires the filing of an AOM before suit can be brought against a medical facility. However, Haviland had not done so. He claimed that the AOM Statute did not apply. Lourdes moved to dismiss, based on Haviland's failure to comply with the AOM Statute. The trial court granted this motion and dismissed the case. Haviland appealed to the New Jersey Superior Court.

The Superior Court reversed, holding that the AOM Statute did not apply for a claim based on vicarious liability arising from an employee who was not specifically identified under the AOM Statute. The court observed that the AOM Statute was "designed to strike a fair balance between preserving a person's right to sue and controlling nuisance suits." The law resulted from the legislature's recognition that certain types of suits would necessarily require a plaintiff to procure expert testimony. If the perpetrator did not fit within one of the enumerated categories, expert testimony might not be necessary. Therefore, the legislature had not determined that cases of this type were likely to be unmeritorious without the assurance of supporting expert testimony.

Lourdes has now appealed to the New Jersey Supreme Court.

Litigation Center Involvement

The Litigation Center and the Medical Society of New Jersey filed an *amicus* brief in support of Lourdes Medical Center.

New Jersey Supreme Court Brief