



Kirksey v. Children’s Hospital of Pittsburgh, 243 A.3d 4 (Pa. S. Ct. 2020)

Topics Covered: Abusive Litigation Against Physicians

Outcome: Favorable

Issue

The issue in this case was whether, in a medical malpractice action, the trial judge should have instructed the jury that assumption of the risk was not an applicable defense.

AMA Interest

The AMA opposes abusive lawsuits against physicians.

Case Summary

Robert Kirksey, Jr. suffered from seizures. His physician reduced his previous dosage of Depakote and paired the remaining dosage with another drug, Lamictal. About one month after this change in medication, Kirksey was diagnosed with Stevens-Johnson Syndrome. Kirksey sued for medical malpractice. He filed a pretrial motion to exclude evidence that rash could occur as a side effect of taking Lamictal. The court denied Kirksey’s motion and permitted testimony about his physician’s warning of the risk of rash. It also rejected Kirksey’s request for a jury instruction that assumption of the risk was not an applicable defense, as assumption of the risk had not been introduced as a defense during trial. Ultimately, the jury and then the court found for the defendants.

Kirksey appealed to the Pennsylvania Superior Court, which affirmed the trial court. Kirksey then appealed to the Pennsylvania Supreme Court, where he claimed the denial of the jury instruction was improper. On December 10, 2020, the court dismissed the appeal as being improvidently granted.

Litigation Center Involvement

The Litigation Center joined with the Pennsylvania Medical Society in an *amicus* brief to support the defendants.

Pennsylvania Supreme Court Brief