



Administrative Office of the Courts

FOR IMMEDIATE RELEASE

Dec. 2, 2021

Contact: Barry Massey, public information officer

bmassey@nmcourts.gov

505-827-4805; 505-470-3436

Supreme Court: Malpractice law does not stop another party from taking over hospital's claim against a medical provider

SANTA FE – New Mexico law allows a hospital sued for medical malpractice to assign to another party its claim for reimbursement from a health care provider for a share of damages paid by the hospital in a settlement, the state Supreme Court ruled today.

In a divided opinion, a majority of the state's highest court held that the Medical Malpractice Act (MMA) does not prohibit nonpatients from assigning their indemnity claims to someone else although Section 41-5-12 of the statute does bar a patient from assigning their claims for compensation for damages.

"We conclude that the plain meaning of Section 41-5-12 is specific, clear, and unambiguous in restricting only patients' claims from assignment and is consistent with the legislative purposes of the MMA," the Court's majority wrote in an opinion by Justice Briana Zamora.

District Court Judges Jane Levy and Karen Townsend concurred in the majority opinion. District Judge James Hudson and retired Justice Judith Nakamura dissented. The district judges were designated to participate in the case after justices recused themselves.

"Our sole task in this case is to give effect to the Legislature's intention," the Court's majority stated. "In so doing, we must be attentive not only to what the Legislature has said, but what it has chosen not to say. Section 41-5-12 contains no language barring assignment of an indemnity claim and we find no justification for judicially inserting such language."

The majority's decision reversed a state Court of Appeals ruling that would have blocked Presbyterian Healthcare Services from assigning its right to sue Dr. Richard Gerety and his employer, the New Mexico Heart Institute, over the death of 17-year-old Michael Thoemke. He died in 2010 while being treated at Presbyterian Hospital in Albuquerque.

The teenager's estate and father filed a wrongful death and malpractice lawsuit against Presbyterian alleging that the hospital, its employees and Dr. Gerety, a cardiothoracic surgeon

consulted about the case, were negligent. Presbyterian separately filed a third-party claim against Dr. Gerety and the Heart Institute for indemnification of damages Presbyterian was liable for because of their actions.

Presbyterian later settled the malpractice lawsuit and assigned its indemnification claim to the personal representative of the teenager's estate, Dr. Gerety and the Heart Institute appealed the ruling by the district court in San Miguel County that allowed the assignment of the indemnity claim.

The majority's opinion in the case represented the first time the Supreme Court addressed the issue of assignability of a third-party indemnification claim under the state's medical malpractice law.

In a dissenting opinion, Judge Hudson wrote that "permitting the assignment will needlessly complicate medical malpractice litigation in the future and contravene the spirit and reason of the MMA." Retired Justice Nakamura joined in the dissenting opinion, which interpreted the law to prohibit all malpractice claims from being assigned to another party.

"Neither the MMA's purpose nor the legislative intent underlying Section 41-5-12 supports the distinction between a patient's and a nonpatient's malpractice claim that the majority advances today," the dissenting opinion reasoned.

The Court's majority wrote that the assignment of Presbyterian's indemnity claim will not subject Dr. Gerety and the Heart Institute to "double liability" for their alleged negligence, but "a decision to bar the assignment might well have the effect of allowing negligent tortfeasors to evade liability — an outcome at odds with the balanced approach taken by the Legislature in creating the MMA."

The state's medical malpractice law offers certain legal protections to health care providers that maintain malpractice insurance coverage and pay into a patient compensation fund. Among those protections are a cap on certain types of damages and a limit on how long a lawsuit can be filed after the alleged malpractice occurred.

###

To read the decision in *Leger v. Gerety*, No. S-1-SC-367450, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/516945/index.do>