Bullet Removal Not Subject To Malpractice

A physician attempting to remove a bullet from a patient's head without his consent is not a medical malpractice issue, a plaintiff will argue before an appeals court in Beaumont, TX later this month.

Joshua Bush has filed a lawsuit against Christus Health Southeast Texas and Dr. David Parkus after the doctor tried to remove a bullet from his skull against his will. Police wanted the bullet because they believed it linked 17-year-old to a robbery and shootout with the owner of a used car lot. He was eventually cleared of any criminal charges.

In the civil suit, defendants Christus and Dr. Parkus argued in a motion to dismiss that the suit because Bush was unwilling or unable to provide a medical expert to report on his behalf - a requirement under Texas civil law in all medical malpractice cases. A judge agreed and awarded the defendants thousands of dollars to cover their attorneys' fees.

The ruling led Bush's attorney to appeal. The case is set for January 25 before the Texas Ninth District Court of Appeals. The plaintiff’s lawyer will argue that an expert report was not needed because Dr. Parkus’ operation on Bush “did not create a physician-patient relationship” between the two.

Furthermore, “the trial court should not have dismissed plaintiff's claims because his claims are not health care liability claims and do not fall under Chapter 74 of Texas Civil Code, and plaintiff was therefore not required to produce an expert report.”

Conversely, the defendants contend that a physician-patient relationship is created any time a physician lays hands on a patient for the purpose of providing a medical procedure.

On Oct. 29, 2006, Bush was taken by the Port Arthur Police Department to the emergency department at Christus Hospital. PAPD had a search warrant authorizing Dr. David Parkus to remove the bullet, however in his original lawsuit Bush claims he did not consent to undergo this procedure and verbally prohibited Dr. Parkus from performing the surgery. Dr. Parkus still performed a surgical procedure in an attempt to remove the bullet.

According to the complaint, as he began to work to remove the bullet, Dr. Parkus discovered that bone had begun to grow around the bullet and removal would require an operating room and additional equipment. Bush alleges Dr. Parkus made “offensive physical contact” when he cut into his forehead with a scalpel, and claims he was strapped to a gurney during the procedure. The suit also charges Christus with vicarious liability for allowing Dr. Parkus to perform the procedure.

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