Ohio Justices Make Key Malpractice-Case Ruling

Sympathetic statements by a doctor over a patient's unexpected medical outcome can't be admitted as evidence in medical malpractice cases filed after the date a law intended to outlaw their use went into effect in 2004, the Ohio Supreme Court ruled Tuesday.

In a unanimous decision, justices reversed an 11th District Court of Appeals ruling that found such a "medical apology" should have been admitted in a case filed in 2007 because the doctor's statement was made in 2001, before the law went into effect.

Justices said lawmakers were "clear and unambiguous" that the prohibition applied to all suits filed after the effective date of Sept. 13, 2004, regardless of the date of the medical conduct in question.

The law prohibited introduction of sympathetic statements or gestures made by a health care provider in any lawsuit brought by an alleged victim of an unanticipated outcome of medical care.

The case involved complications in the gall bladder surgery of Portage County resident Jeanette Johnson. She sought to admit a statement by her doctor, Randall Smith, taking "full responsibility."

It happened a month after her surgery when Johnson returned to the hospital because of complications resulting from a bile-duct injury that occurred during surgery, one of the procedure's known risks.

While Johnson was upset and emotional over her predicament, Smith took her hand and attempted to calm her by saying, "I take full responsibility for this. Everything will be OK."

Johnson initially argued that Smith's statement wasn't an apology or expression of sympathy and therefore wasn't covered under the statute. She said it was an admission of negligence. Later, she argued the medical sympathy statute didn't apply because the incident occurred before it was enacted.

A trial court ruled that any evidence regarding the doctor's statement would be inadmissible at trial. A jury returned a general verdict in favor of Smith on Johnson's two claims.

The 11th District reversed the trial court, ruling it had applied the medical apology statute retroactively when lawmakers had not expressly stated that was the law's intent.

In Tuesday's ruling, justices affirmed that Smith's statement was an apology falling under the statute and said that the date of the lawsuit, not the event, is what's significant under the law.

"The trial court had determined that Dr. Smith was faced with a distressed patient who was upset and made a statement that was designed to comfort his patient," Justice Judith Ann Lanzinger wrote for the majority. "This is precisely the type of evidence that (the medical apology statute) was designed to exclude as evidence of liability in a medical-malpractice case."

Lanzinger's opinion was joined by Chief Justice Maureen O'Connor and Justices Sharon Kennedy, Judith French and William O'Neill. Justices Paul Pfeifer and Terrence O'Donnell concurred in judgment only.

Source URL (retrieved on *12/29/2014 - 6:43am*):
http://www.surgicalproductsmag.com/news/2013/04/ohio-justices-make-key-malpractice-case-ruling?qt-recent_videos=0