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The West Virginia Medical Professional Liability Act Applies Broadly to Services Encompassing Patient Care – Not Just the Care Itself

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The Supreme Court of Appeals of West Virginia issued a new opinion that finds that litigants cannot characterize claims as “corporate” or “general” negligence in an attempt to circumvent the West Virginia Medical Professional Liability Act (“MPLA”). In *State of West Virginia, ex rel. West Virginia University Hospitals, Inc. v. Scott, et al.*, No. 21-0230 (November 22, 2021), the Court granted Petitioner’s writ of prohibition, vacating the Circuit Court’s (1) order denying Petitioner’s motion to dismiss, and (2) order denying declaratory judgment. In doing so, the Court clearly explained that “anchor” health care claims and “ancillary” health care claims that arise “in the context of rendering health care” are governed by the MPLA and litigants cannot avoid its application with “creative pleading.”

Respondents, Sarah F. and Daniel F., filed a lawsuit alleging that one of their twins was neurologically impaired eleven hours after delivery as a result of the negligent introduction of air bubbles into the infant’s intravenous tubing by a nurse employed at Ruby Memorial Hospital in Morgantown, West Virginia. Petitioner, West Virginia University Hospitals, Inc. (“WVUH”), filed an answer and petition for declaratory judgment asking the Circuit Court of Monongalia County to declare that the MPLA applies to the “corporate negligence” claims asserted by Respondents in their Complaint. Prior to the ruling on the petition for declaratory judgment, Respondents filed an Amended Complaint, adding additional “corporate negligence” allegations—namely failure to purchase and utilize air filters, failure to document, failure to report, and spoliation of evidence—against WVUH. Prior to filing the Amended Complaint, Respondents failed to provide WVUH with a new notice of claim and screening certificate of merit in accordance with the pre-suit notice requirements of the MPLA.

WVUH filed a writ of prohibition after the Circuit Court of Monongalia County denied both its petition for declaratory judgment to declare that Respondents’ Complaint was subject to the MPLA and its motion to dismiss the Amended Complaint for failure to comply with the pre-suit notice requirements of the MPLA. The Circuit Court found that that the Respondent’s original “corporate negligence” claims— negligent hiring, negligent staffing, negligent failure to train, negligent failure to supervise, negligent failure to have proper protocols, failure to protect, and failure to correct—required factual development prior to finding that they were subject to the MPLA. The Circuit Court likewise denied

WVUH's motion to dismiss.

On appeal, Respondents argued that the alleged corporate conduct at issue in their Amended Complaint did not constitute health care services under the MPLA, and therefore, was not subject to the pre-suit notice requirements of the MPLA. In support of their argument, they relied on *Manor Care, Inc. v. Douglas, 234 W. Va. 57, 763 S.E.2d 73* (2014).

The Supreme Court of Appeals of West Virginia disagreed with the Respondents' interpretation of *Manor Care, supra*, holding that the alleged corporate negligence claims fall within the purview of the MPLA. In its analysis, the Court emphasized that the 2015 amendments to the MPLA expanded the definitions of (1) "health care" to include "[a]ny act, service or treatment provided under, pursuant to or in the furtherance of a physician's plan of care, a health care facility's plan of care, medical diagnosis or treatment"; and (2) "'medical professional liability' … [to include] other claims that may be *contemporaneous to or related to* the alleged tort or breach of contract or otherwise provided, *all in the context of rendering health care services*." W. Va. Code §§ 55-7B-2(e)(1), 55-7B-2(d) (emphasis added). Based on its interpretation of the new version of the MPLA, the Court held that the Legislature intended for the MPLA to apply broadly to services encompassing patient care—not just the care itself. As the Court explained, "[f]inding that the MPLA does not apply to Respondents' corporate negligence claims would be contrary to the Legislature's intent in enacting—and amending—the MPLA, and it would also be contrary to this Court's prior holdings…. Respondents cannot avoid the MPLA with creative pleading."

The Court laid out an analysis for future cases in which plaintiffs attempt to circumvent the pre-suit notice requirements of the MPLA: "…[Y]ou must have the anchor claim (fitting the definition of "health care") and then make the showing that the ancillary claims are (1) contemporaneous with or related to that anchor claim; and (2) despite being ancillary, are still in the context of rendering health care." The Court determined that corporate negligence claims brought by Respondents in their Amended Complaint—failure to purchase and utilize, failure to document, spoliation of evidence and failure to report—all arise from and are factually related to the medical care and treatment provided to the minor child by WVUH—the anchor health care claim. Thus, the Circuit Court was devoid of subject matter jurisdiction to consider the claims in Respondents' Amended Complaint because the Respondents failed to comply with the pre-suit notice requirements of the MPLA.

Similarly, the Supreme Court of Appeals of West Virginia held that the Circuit Court committed clear error in denying WVUH's petition for declaratory judgment because the corporate negligence causes of action in Respondents' original Complaint—negligent hiring, negligent staffing, negligent failure to train, negligent failure to supervise, negligent failure to have proper protocols, failure to protect, and failure to correct—all fall within the purview of the MPLA as they relate to "staffing" and *"[t]he process employed by health care providers and health care facilities for the appointment, employment, contracting, credentialing, privileging and supervision of health care providers"* (emphasis in original). The Court emphasized that the "determination of the MPLA's applicability is a threshold legal issue, and to defer the ruling – as the circuit court suggested in its order – would 'amount to a judicial repeal of W.Va. Code § 55-7B-6.'"

This opinion is a step in the right direction for West Virginia health care providers defending artfully pled non-medical negligence claims which attempt to bypass the statutory requirements of the MPLA.

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