



Coleman v. Deno, 813 So.2d 303 (La. 2002)

Topics Covered: Abusive Litigation Against Physicians, EMTALA and Tort Reform

Outcome: Somewhat Favorable

Issue

The issue in this case was the correctness of a finding that a treating physician was liable for intentional malpractice because of his discharge and order of transfer to another hospital, of a patient who presented in an emergency room complaining of swelling and pain in his arm.

AMA Interest

The AMA strives to avoid the expansion of liability theories against physicians, which can lead to abusive litigation.

Case Summary

Louis Coleman presented himself at Jo Ellen Smith Hospital ("JESH") emergency room at 8:10 p.m., complaining of swelling and pain in his left arm. Dr. Richard Deno examined Coleman and determined that he should receive in-patient intravenous antibiotic therapy.

Instead of admitting Coleman to JESH, though, Dr. Deno elected to transfer him to the emergency room at Charity Hospital of New Orleans ("CHNO"), which had superior and more immediately available services for treatment of Coleman's arm. Dr. Deno contacted the CHNO emergency room and was advised that they would accept Coleman for treatment. Dr. Deno determined that Coleman was in good condition and did not require an ambulance. He therefore ordered the transfer at 10:00 p.m. and discharged Coleman. He did not order the antibiotic therapy, because it would have contaminated the blood cultures that CHNO would need to take.

Coleman arrived at CHNO at 12:21 a.m. At 8:00 a.m., CHNO administered intravenous antibiotics. After further evaluation, the CHNO physicians determined that Coleman's arm was irrevocably damaged and required amputation to save his life.

Coleman sued JESH, CHNO, and various physicians who had treated him, including Dr. Deno. The hospitals settled for nominal payments, and the claims against them were subsequently dismissed. Following a trial, a jury found Dr. Deno liable. He appealed.

The Louisiana Medical Malpractice Act limits damages against a negligent physician to \$100,000. However, the Court of Appeal held that Dr. Deno had intentionally discharged Coleman from JESH without providing appropriate treatment. Therefore, the appellate court reasoned that his supposed error went beyond ordinary negligence, and the damage cap in the statute would not apply. The Court of Appeal affirmed the jury award of \$4.4 million against Dr. Deno.

The Louisiana Supreme Court reversed the appellate court's finding of intentional wrongdoing but affirmed the finding of negligence. The majority held that Dr. Deno was liable for medical

malpractice and that the Medical Malpractice Act should limit the damages against him. A dissenting opinion argued that the jury verdict was completely in error, that Dr. Deno had done nothing wrong, and that judgment should have been entered for him on all counts.

Litigation Center Involvement

The Litigation Center joined a Louisiana State Medical Society amicus curiae brief in an attempt to curb such abusive litigation against physicians.

The amicus brief argued that Dr. Deno's decisions were made for legitimate reasons, and that he should not have been found liable at all. The main focus of the brief, however, was that the Court of Appeal had created a new cause of action, based on speculative evidence, that allows plaintiffs and their lawyers to avoid the statutory cap on damages in medical negligence suits. The amicus brief cautioned that the Court of Appeal decision was unsound and would seriously undermine the Medical Malpractice Act.

Louisiana Supreme Court brief