



Fullerton v. Florida Medical Association, 938 So.2d 587 (Fla. Dist. Ct. App., 1st Dist 2006)

Topics Covered: Peer Review, Abusive Litigation Against Physicians and Expert Witnesses

Outcome: Somewhat Unfavorable

Issue

The primary issues in this case are (a) whether members of medical societies should be able to consult with those societies if they feel they have been harmed by false expert witness testimony and (b) whether medical societies should be able to investigate physicians who have been accused of giving false expert witness testimony, for the purpose of taking appropriate action.

AMA Interest

The AMA supports the right of physicians to consult with their medical societies when they believe they have been harmed by another physician's false expert witness testimony. The AMA also supports the right of medical societies' peer review programs to investigate complaints of false expert witness testimony by physicians.

Case Summary

The case arose out of expert witness testimony that Dr. John Fullerton had given for the plaintiff in a professional liability suit against three physicians. The court found that the physicians were not liable. Subsequently, these physicians complained to the Florida Medical Association ("FMA") that Dr. Fullerton's testimony fell "below reasonable standards" and had been provided "for the sole purpose of propagating a frivolous lawsuit for financial gain." They asked FMA to review the testimony under its expert witness peer review program and determine whether it comported with professional standards. They further asked that, if the testimony was found to be substandard, FMA submit its findings to the Florida Board of Medicine for proper disciplinary action.

In response, Dr. Fullerton sued FMA and the three physicians in the Circuit Court of Leon County, Florida. He stated that the defendants-physicians' assertions were not true and contended that the FMA expert witness peer review program was "intimidating, hindering, and deterring persons, including Plaintiff Fullerton, from appearing as expert witnesses on behalf of plaintiffs in cases involving medical malpractice." He did not allege, however, that the defendants-physicians' letter of complaint to FMA had been sent in bad faith or that they lacked a reasonable basis for their belief that Dr. Fullerton had testified "below reasonable standards" and in support of a frivolous lawsuit.

The trial court dismissed the lawsuit for failure to state a cause of action but granted Dr. Fullerton the right to file an amended complaint. Dr. Fullerton then filed an amended complaint against only FMA.

A final and appealable judgment was entered in favor of the individual physicians, which Dr. Fullerton appealed. The District Court of Appeal reversed the trial court, finding that neither FMA nor the three physicians were immunized from liability by the state peer review law or the Federal Health Care Quality Improvement Act. In this ruling, the court did not discuss whether the three physicians' complaint was a non-actionable statement of opinion or whether they were protected under state and federal constitutional guarantees of free expression and free association.

After FMA and the three physicians asked the District Court of Appeal to reconsider its decision, the court entered a revised ruling, which largely restated the court's earlier decision, but also specified that FMA and the physician defendants would be allowed, on remand to the trial court, to argue a defense based on protections provided by the constitution and case law precedent.

Litigation Center Involvement

The Litigation Center contributed to the defense costs of the defendant physicians and filed a brief as amicus curiae to support the individual physician defendants in Dr. Fullerton's appeal.

Florida Court of Appeal brief