



Siebert v. Okun (NM Ct.App.)

Topics Covered: Professional Liability, Tort Reform

Issue

The issue in this case is whether the New Mexico statutory cap on medical malpractice damages, NMSA § 41-5-6(A), is constitutional.

AMA Interest

Medical liability reform is a high legislative priority for the AMA, and the AMA opposes lawsuit abuse against physicians.

Case Summary

Rebecca C. Okun, MD, an OB/GYN and an employee of Women's Specialists of New Mexico, LTD., performed a hysteroscopy (visual examination of the cervix and interior of the uterus with an endoscope) on Susan L. Siebert. Unfortunately, the procedure created a hole in Siebert's uterus and intestine. Dr. Okun failed to notice these holes and sent Siebert home after the procedure.

Siebert then became infected because of the perforations. She required numerous surgeries, followed by extensive in-patient hospital and rehabilitation center care. She spent months on a ventilator and a feeding tube. She lost her job and suffered permanent brain damage.

Siebert sued Okun and Women's Specialists of New Mexico in the Bernalillo County District Court. A jury found for Siebert and against the defendants in the amount of \$2,600,000. The court then entered judgment on the verdict.

Following entry of judgment, the defendants moved for a reduction in the judgment, based on § 41-5-6(A). This statute provides that "[e]xcept for punitive damages and medical care and related benefits" medical malpractice damages are to be capped at \$600,000. While the motion was pending, defendants and the New Mexico Patient Compensation Fund (NMPCF) paid Siebert the undisputed portion of the judgment. Siebert opposed the motion, contending that the cap is unconstitutional.

The trial court agreed with Siebert and held the cap unconstitutional. It primarily found that the cap abridged the right of trial by jury, but it also found that other constitutional rights might be "implicated," including equal protection, due process, and separation of powers. It denied the motion to reduce the judgment.

The defendants appealed to the New Mexico Court of Appeals, the intermediate level appellate court in New Mexico. They have since asked to have the case transferred directly to the New Mexico Supreme Court, without need for a ruling on the merits by the Court of Appeals. That motion remains pending.

Litigation Center Involvement

The Litigation Center will join the New Mexico Medical Association, either to the Court of Appeals or to the Supreme Court, in an amicus brief to support the defendants and the cap on non-economic damages.