



Smith v. Providence Health & Services – Oregon, 393 P.3d 1106 (Ore. 2017)

Topics Covered: Abusive Litigation Against Physicians, Loss of Chance

Outcome: Very Unfavorable

Issue

The issue in this case was whether Oregon should recognize the “loss of chance” doctrine as a theory of recovery in a medical malpractice suit.

AMA Interest

The AMA opposes lawsuit abuse in medical malpractice claims, and the contemplated cause of action would lend itself to such abuse.

Case Summary

Joseph Smith presented at the emergency room of a hospital owned by Providence Health & Services – Oregon, complaining of a headache and distorted vision. The emergency room physician, Linda Desitter, MD concluded that his symptoms had been caused by his taking a sleep aid earlier that day, and she discharged him. The following night, he returned to the emergency room, with the same complaints. Dr. Desitter prescribed Vicodin and again discharged him. Dr. Desitter never prescribed aspirin.

Two days later, Smith met with another physician, Michael Harris, MD, complaining of the same symptoms. Dr. Harris ordered an MRI, but, like Dr. Desitter, he did not prescribe aspirin.

Smith’s symptoms worsened. When the MRI was ultimately performed, it showed substantial brain damage from a stroke. These damages turned out to be permanent.

Smith then sued the hospital, Dr. Desitter and Dr. Harris (and their medical practice groups) under the “loss of chance” theory. While Smith did not dispute that he probably would have suffered the stroke in any event, he alleged that he might have had a better outcome, but for what he claimed to be the defendants’ negligent diagnoses and treatment. He estimated the likelihood of a better outcome at 33%. The defendants moved to dismiss the suit for failure to state a claim, and the trial court granted the motion. Smith appealed, but the Oregon Court of Appeals affirmed.

Smith then appealed to the Oregon Supreme Court.

On May 11, 2017, the Supreme Court reversed both the trial court and the Court of Appeals. It held that, in a suit for medical malpractice, the loss of a substantial chance of a better medical outcome can be a cognizable injury. The court observed that proof of the lost chance would be unduly speculative.

Litigation Center Involvement

The Litigation Center, along with the Oregon Medical Association filed an amicus brief to support the defendants and oppose adoption of the loss of chance doctrine.

Supreme Court of Oregon brief