



Weaver v. Myers, 229 So.3d 1118 (FL 2017)

Topics Covered: Tort Reform

Outcome: Very Unfavorable

Issue

The issue in this case was whether a Florida law, Fla. Stat. § 766.1065, which required a potential plaintiff to authorize the release of otherwise confidential health information as a condition of bringing a lawsuit for medical negligence, was valid.

AMA Interest

Medical liability reform is one of the AMA's highest legislative priorities. Further, the AMA supports state medical associations' efforts to curtail lawsuit abuse.

Case Summary

The Florida Medical Malpractice Act provided that, before filing suit for medical malpractice, a potential plaintiff must authorize the release of his or her relevant health information. The authorization was to be sent to each potential defendant and was to allow information to be disclosed to the defendant, the defendant's liability insurer, and the defendant's attorney. The authorization was to cover the patient records of all medical providers who had examined or treated the patient in connection with the claimed injury, and it was also to permit *ex parte* verbal communications between the defendant (and the defendant's representatives) and the plaintiff's health care providers regarding the plaintiff's medical condition. If the plaintiff failed to provide this authorization, the medical malpractice lawsuit could be dismissed.

Emma Gayle Weaver, the widow and representative of Thomas C. Weaver, sued her late husband's physician, Stephen C. Myers, MD, for a declaratory judgment. She claimed she wished to sue Dr. Myers for medical negligence but did not want to release her deceased husband's medical information. She asserted that the Florida Constitution, as well as 45 CFR § 164.512(e), a regulation promulgated under HIPAA to protect patient privacy, invalidated the Florida law. The State of Florida, through its Attorney General, intervened as a defendant to uphold the Florida law.

On cross-motions for summary judgment, the trial court ruled in favor of the defendants and against Mrs. Weaver. She then appealed to the First District Court of Appeal, which upheld the Florida law and affirmed the trial court. Mrs. Weaver appealed to the Florida Supreme Court.

On November 9, 2017, by a split decision, the Florida Supreme Court reversed. It found that the Florida statute violated Florida Constitutional guarantees on privacy and access to the courts.

Litigation Center Involvement

The Litigation Center joined the Florida Medical Association and the Florida Hospital Association in an amicus brief in favor of Dr. Myers. The brief argued in favor of the validity of the Florida tort reform law.

Supreme Court of Florida brief