



# Capanna v. Orth, 432 P.3d 726 (Nev. 2018)

Topics Covered: Professional Liability

## Outcome: Neutral

### Issue

The issue in this case was whether allowing a jury to receive evidence of collateral source payments of health care costs violates equal protection guarantees of the United States or Nevada Constitutions.

### AMA interest

Medical liability reform is one of the AMA's top priorities.

### Case summary

Beau R. Orth was a football player in his freshman year at the University of Nevada, Las Vegas (UNLV). After developing back and leg pain, UNLV referred Orth to the team neurosurgeon, Dr. Albert H. Capanna. Dr. Capanna recommended surgery on the lumbar region of Orth's spine, specifically the L5-S1 disc, to which Orth consented. Dr. Capanna then operated on Orth.

Following the surgery, Orth's condition deteriorated. Orth met again with Dr. Capanna, who noticed swelling and possible infection around the site of surgery. Orth sought out second opinions from other physicians, who indicated that Dr. Capanna had performed surgery on the L4-5 disc, not the L5-S1 disc.

Orth sued Dr. Capanna for medical malpractice, claiming that Dr. Capanna had operated on the wrong disc, leaving him permanently injured. One of Orth's pre-trial motions included a petition to the trial court to declare NRS 42.021 unconstitutional. Orth contended that allowing the jury to hear evidence of his health insurance coverage might unfairly prejudice the jury. The trial court denied this motion.

NRS 42.021 was adopted by Nevada voters as part of a tort reform initiative. This statute modified the common law rule and permitted defendants to introduce evidence of third party, or collateral source payments to the jury, while also allowing plaintiffs to submit evidence of the cost of premiums or other payments made to obtain health insurance coverage.

The case proceeded to trial. Orth claimed medical expenses of \$136,300.49. The defense presented evidence of collateral source payments by Orth's medical insurance company, which would have covered Orth's full medical expenses. Regardless, the jury returned a verdict including the full amount of Orth's medical costs.

Dr. Capanna appealed the trial court decision to the Supreme Court of Nevada. Orth filed a cross-appeal alleging that NRS 42.021 is unconstitutional because it allegedly violates constitutional guarantees of equal protection of the laws.

The Nevada Supreme Court affirmed. It found the constitutional issue moot and did not rule on it, as the jury had not reduced its award because of Orth's insurance recovery.

### **Litigation Center involvement**

The Litigation Center and the Nevada State Medical Association filed an *amicus* brief in the Nevada Supreme Court in support of Dr. Capanna.

Nevada Supreme Court brief