



# Swank v. Valley Christian School, 2017 Wash. LEXIS 746 (Wash. 2017)

Topics Covered: Professional Liability, Tort Reform

## **Outcome: Very Favorable**

### **Issue**

The principal issue in this appeal was whether the State of Washington could assert jurisdiction (i.e., legal power) over an Idaho physician who rendered medical services in Idaho to a Washington resident, who then suffered injury in Washington, allegedly as a result of the physician's negligence.

### **AMA Interest**

The AMA believes a plaintiff should be able to sue for medical negligence only in the state of the defendant's residence or the state where at least a substantial element of the alleged negligence arose.

### **Case Summary**

Andrew Swank was a high school junior. He lived in Idaho, but he attended and played football for Valley Christian School (VCS) in Spokane Valley, Washington.

Swank sustained a head injury during a high school football game. He was immediately taken out of the game. A few days later, his mother took him to see his regular physician, Timothy Burns, MD, in Coeur D'Alene, Idaho. Swank told Dr. Burns he attended VCS and about what had happened during the game. He also told Dr. Burns that he had been suffering from headaches since the football injury.

Dr. Burns diagnosed Swank as having incurred a mild concussion. Dr. Burns prescribed ibuprophen and instructed Swank to stay out of contact sports for a few days. After a week, Swank reported that his headaches had stopped. Dr. Burns then wrote a note clearing Swank for football eligibility.

During the next football game, Swank became sluggish and was frequently out of position. After an opposing player hit him, he shuffled off the field and then collapsed. Two days later, he died.

Swank's parents, individually and as representatives of his estate, sued VCS, three school officials, and Dr. Burns in a Washington state court. They claimed negligence and also violation of a Washington statute specifically intended to provide youth sport participants from concussions and other head injuries (the "Zackery Lystedt law").

Dr. Burns moved for summary judgment, arguing that, because he was an Idaho resident and the action or omission giving rise to the alleged malpractice had occurred in Idaho, he was not subject to the jurisdiction of the Washington courts.

The trial court ruled for Dr. Burns and entered summary judgment in his favor. The Swanks appealed, and the Washington Court of Appeals affirmed. The Swanks then appealed to the Washington Supreme Court.

On July 6, 2017, the Supreme Court affirmed the lower court rulings on long arm jurisdiction over Dr. Burns. It held that assertion of long arm jurisdiction based on the rendition of health care services could unduly hamper the ability of out-of-state patients to obtain necessary medical care.

### **Litigation Center Involvement**

The Litigation Center, along with the medical associations for Washington, Oregon, and Idaho and the Idaho Academy of Family Physicians, filed an *amicus* brief to support Dr. Burns and argue against the exercise of long-arm jurisdiction.

Washington Supreme Court brief