Florida Supreme Court to Decide on Damages Caps

The health care debate is heating up in Florida as the state’s highest court weighs the constitutionality of a law that places caps on non-economic damages in medical malpractice cases. The case, known as McCall v. U.S., concerns 20-year-old Michelle McCall, who bled to death while giving birth to her son.

In the lawsuit, McCall’s family alleged that if it were not for the negligence of the medical staff on hand, the young woman would be alive today. A federal district court judge agreed and awarded her estate nearly $3 million, $2 million of which was for non-economic damages, including compensation for her son’s pain and suffering. However, due to a Florida law placing caps on non-economic damages, the award was reduced to only $1 million.

McCall’s family is now appealing to the Florida Supreme Court that this cap is a violation of the state’s constitution, including the section that grants citizens access to the courts.

“The Florida judiciary has already determined in the past that damages caps violate the state constitution because they don’t provide access as everyone has understood it,” says Robert Peck, the lawyer representing McCall’s estate in the case. “Access means full redress for the injury received. So a person who receives $1 million when full compensation should have been $2 million did not have that access.”

If the plaintiffs win, the state’s current cap on non-economic damages in medical malpractice cases could be lifted. In addition, such a win may send a message to legislators, who are poised to vote on a new health care law that will have further implications on Floridians’ rights to sue physicians.

Caps and the Kruger Test

When the Florida legislature placed non-economic damages caps on medical malpractice claims, it was able to sidestep the issue of constitutionality by passing what is known as the “Kruger test”. Under the Kruger test, the legislature can place statutory limits on damages under two conditions.

"Generally, the caps have been approved in situations where another remedy is given in exchange,” says John Leighton, managing partner at Leighton Law. “Examples of this include workers’ compensation.”

Under the Kruger test, if the legislature does not provide an alternative remedy, then it must prove that the caps legitimately fulfill some overpowering public necessity and that there is no other means to achieve this need. This is the route the Florida legislature took, and it did so by claiming that the financial burden placed on health care providers by medical malpractice claims was turning into a health care crisis.

“There was no crisis; there is no crisis,” Leighton says. “The reason insurance premiums are going up is because most physicians don’t carry insurance in the
South Florida area.”

Peck agrees that the so-called crisis is a fabrication.

“As we pointed out in court, the number of medical malpractice claims has actually been going down, while the number of doctors has been going up,” Peck says.

### Paying for Reform

Florida’s legislators passed the caps in 2003 under the frequently used guise of tort reform, a movement often spearheaded by corporate interests to influence elected officials and voters to pass laws that restrict consumers’ access to the courts.

“What is important for people to understand is that these laws are passed by legislators in Tallahassee that are generally controlled by the medical industry,” Leighton says.

In fact, the Florida legislature is attempting to further bar their constituents’ access to the courts through a new statutory initiative that, among other things, would allow physicians to have patients sign waivers to give up their rights to file a medical malpractice claim in court. Instead, injured patients would have to arbitrate their cases.

“Courts have favored arbitration because it clears the dockets,” Leighton says. “Unfortunately, arbitration inherently favors corporations, businesses and the ones who seek to have it in place.”

Additionally, Florida’s laws regarding physician insurance requirements are some of the most lax in the country, allowing many medical providers to practice without insurance at all. This means that even if you were to prove your medical malpractice claim, actually receiving compensation could be a challenge.

“In Florida, obtaining compensation from an uninsured doctor is a very difficult process,” Leighton says. “For one thing, the state is a debtor’s haven. And even though a physician is supposed to have $250,000 worth of financial responsibility under Florida law, the doctor could declare bankruptcy.”

### You Better Shop Around

Whether you live in Florida or are just visiting, if you need medical care you should choose your physician wisely. Legal experts recommend you ask any Florida doctor prior to receiving care if they have professional malpractice insurance.

“Having medical malpractice insurance is a sign of someone who takes their practice seriously and who is willing to stand behind their mistakes,” Leighton says.

If your physician does not have insurance, search for a specialist in the area who does.

You will also want to research your doctor’s background, including where he received his degrees, whether he’s suffered any disciplinary action and whether he’s had to pay any substantial claims.

“Look for those that have been educated in the U.S. and those that are board certified in the field they are practicing in,” Leighton says.

If you believe you have been injured due to the negligence of a health care provider, you should contact a medical malpractice attorney, who can gauge whether you have a case. In addition, always go to the doctor with a patient advocate, who can be a friend, a relative or someone you know in the health care field.

“Also, ask questions to help prevent mistakes from happening,” Leighton says. “There’s no such thing as a stupid question, especially when it comes to your health.”

Tagged as: damages caps, Florida Supreme Court, John Leighton, Leighton Law, medical malpractice, noneconomic caps, Robert Peck, tort reform