

Legal Alert

Michigan Supreme Court Decision a Win for Healthcare Providers

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By Stephanie C. Hoffer, Attorney

The Michigan Supreme Court has issued its long-awaited decision in *Jilek v Stockson*, and it is a victory for healthcare providers.

The Supreme Court summarily reversed the Court of Appeal's holding that the applicable standard of care for a physician board-certified in family practice medicine but practicing in an urgent care facility was that of an emergency medicine physician. The Supreme Court succinctly held, "[T]he appropriate standard of care was 'family practice' because the defendant physician is board-certified solely in family practice." The Supreme Court added that it was proper to allow the jury to consider the setting in which the physician was practicing, i.e., urgent care as opposed to an emergency medical facility.

The Supreme Court also reversed the Court of Appeal's holding that the urgent care center's internal policies and procedures could be used as evidence of a breach of the standard of care. Interestingly, the Court did not author its own reasoning on this point but rather, incorporated by reference the dissent contained in the Court of Appeals opinion. It reasoned that this case was indistinguishable from prior case law holding that policies and procedures were inadmissible for

purposes of establishing the standard of care. This rationale is consistent with long established public policy arguments in favor of protecting and encouraging best practices without fear of having those efforts used against them in court.

What this Means for Healthcare Providers

Health care providers can be reassured that courts will not be allowed to sanction the use of experts whose qualifications do not match the specialty in question; rather, their conduct will continue to be judged by someone with similar knowledge, skill and experience, in a setting- specific context.

Hospitals can be reassured that their internal policies and procedures remain inadmissible to establish the standard of care. While plaintiffs' attorneys will likely continue their efforts to seek admission of policies and procedures for other reasons, they must still overcome a relevancy objection. Notably, *Jilek* does not address the threshold discoverability of policies and procedures.

For a complete copy of the Court's opinion, please contact any member of the Medical Malpractice Department at Smith Haughey Rice & Roegge.

Stephanie practices in the area of medical malpractice defense. She can be reached directly at 616.458.6458 or shoffer@shrr.com.

Smith Haughey's Medical Malpractice Attorneys



Albert J. Engel, III, Chair
616.458.6247
aengel@shrr.com



Cindy C. Boer
616.458.1331
cboer@shrr.com



Carol D. Carlson
616.458.9289
ccarlson@shrr.com



Cheryl L. Chandler
734.913.2031
cchandler@shrr.com



Gary S. Eller
734.913.1075
geller@shrr.com



Christopher R. Genther
616.458.0222
cgenther@shrr.com



Megan M. Hard
616.458.2362
mhard@shrr.com



Dale L. Hebert
734.913.1057
dhebert@shrr.com



Stephanie C. Hoffer
616.458.6458
shoffer@shrr.com



Brian J. Kilbane
616.458.0296
bkilbane@shrr.com



John M. Kruis
616.458.8304
jkruis@shrr.com



Brian A. Molde
616.458.1499
bmolde@shrr.com



John C. O'Loughlin
616.458.9370
joloughlin@shrr.com



Paul M. Oleniczak
616.458.5461
poleniczak@shrr.com



L. R. Roegge
616.458.7425
lroegge@shrr.com



Jason R. Sebolt
616.458.3628
jsebolt@shrr.com



Robert W. Tubbs
231.486.4535
rtubbs@shrr.com



Paul Van Oostenburg
616.458.9462
pvanoostenburg@shrr.com

OF COUNSEL

William McCandless
239.262.7740
wmccandless@shrr.com

Edward R. Stein
734.913.5387
estein@shrr.com