The Less – Than – Perfect Doctor - Patient Relationship

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Today’s Focus
1) How do we reduce the risk of litigation arising from care provided to non-complaint patients and/or provided in an “imperfect relationship”, and
2) In reducing that risk, if termination of the relationship becomes the only option, how is termination best achieved?

Reality of Non-Compliance
• Fact: Almost ____% of all hospital admissions are attributable to medication non-compliance
• Fact: 125,000 people die each year from non-compliance, twice the number killed by auto accidents
• Fact: Poor compliance with medication regimens costs society $150 billion per year
• Fact: About one-half of the 1.8 billion prescriptions dispensed annually are not taken correctly, contributing to prolonged or additional illnesses
• (Source: Archives of Internal Medicine; Biomedical Business International)

Part I: How do we reduce the risk of litigation and adverse litigation results arising from care provided to non-complaint patients

Improve the “Imperfect” Doctor-Patient Relationship:
• Better Documentation of Non-Compliance, Informed Consent, etc., and
• Better Communication

Purpose of Medical Record
• Memorializes care, orders, tests
• Communication to other care-givers
• Continuity of care
• Protects the provider: most important witness in court
The record should paint the clinical picture

Essential Charting Tips

- Use Pen (or electronic medical record)
- Date & Time
- Sign and Initial
- If Hospital Accepted Abbreviations (JCAHO)

Document the Status of the “Imperfect Relationship” in Detail

- Staff must document every instance of non-compliance by both patients and/or their primary caregivers regardless of the risk associated with the non-compliant behavior.
- Documentation must be very specific. It is not sufficient to document as follows: “Patient (or primary caregiver) non-compliant.”
- Staff must discuss with patients and/or primary caregivers regarding each instance of non-compliance and document that they have done so.

Documentation Issues

- True or False: If it’s not charted, it didn’t happen! **FALSE**!
- All aspects of patient can’t always be charted
- Independent memory of case, may supplement record
- Your habit/routine will supplement record
- BUT......

Tools to Use: Letter of Concern

**FIRST LETTER OF CONCERN**

Date: [ ]
Name and address of patient: [ ]

Dear [Patient’s Name]: [ ]

We are writing this letter to bring to your attention a recent occurrence that we believe is important for you to be aware of. The event involved non-compliance in your care and we feel it necessary to document this for the future. The health and well-being of our patients is our primary concern, and we take our responsibilities very seriously.

We would like to inform you that [describe the non-compliance event]. It is crucial that all patients understand the importance of following our instructions and the consequences that can arise from non-compliance.

We have discussed this situation with your care team, and they agree that this action is important to ensure that you are fully aware of the implications. Your cooperation in following our guidelines will contribute to a successful recovery and a more efficient return to a healthy lifestyle.

If you have any questions or concerns regarding this matter, please do not hesitate to contact us. We are always here to support you and guide you towards a successful recovery.

Sincerely,
[Your Name]

**SECOND LETTER OF CONCERN**

Date: [ ]
Name and address of patient: [ ]

Dear [Patient’s Name]: [ ]

We are following up with a second letter of concern regarding the matter discussed in our previous letter. We wanted to reinforce the importance of adhering to our guidelines and the consequences of non-compliance.

The health and well-being of our patients remain our top priority. We understand that these guidelines may sometimes feel restrictive, but we assure you that they are in place to ensure your safety and well-being.

We have discussed this situation with your care team and they have reinforced the need for adherence to our guidelines. We strongly believe that following these instructions will contribute to a successful recovery and a more efficient return to a healthy lifestyle.

We want you to know that we are committed to helping you achieve your health goals. We encourage you to contact us if you have any questions or concerns regarding this matter. We are always here to support you.

Sincerely,
[Your Name]
Examples of Poor Documentation

Q: Doctor, can you tell me what the purpose of a medical record is?
A: It’s the method we use to capture the chronology of the events. It has nothing to do with patient care, just documents the care rendered.

Q: Doesn’t the medical record serve the purpose of the conduit of communication between physicians.
A: Yes.
Q: I mean, you don’t speak with every other consulting physician or the attending physician, do you? You rely on what is written in the patient’s chart.
A: I would agree with that.
Q: And if you can’t read a colleague’s writing, that note is futile.
A: I wouldn’t say the whole note is futile.
Q: Here’s my point. If the physician writes something important in the record, and you can’t read it, and you haven’t personally spoken with the physician, important information may be missed.
A: Yes. That can happen.
Q: Can you turn Dr. ______’s progress note dated August 29, 2006?
A: I’m there.

Q: Can you read the writing after impression. By the way, impression is another word for diagnosis.
A: It’s what the physician believes what may be causing the patient’s presentation.
Q: Is that different than diagnosis?
A: No.
Q: What is written after impression.
A: I’m sorry. I can’t decipher that writing.
Q: Did you speak to Dr. _____ about that note?
A: I don’t recall doing so.
Q: And that wouldn’t have been your practice either, would it?
A: Generally not.
Q: So can you and I agree that that particular writing, following impression, that information which should communicate Dr. ______’s diagnosis is futile.
A: I can’t read it.
Q: And if you can’t read it, you can’t get the benefit of his impression.
A: True.
Q: So it’s futile.
A: I can’t disagree with that.
### As you can see…

- Better documentation would lead to better defenses during litigation, and better proof of quality care provided.
- This includes better proof of patient’s non-compliance. Which, as you know, often contributes to “bad outcomes.”
- Important when arguing contributory negligence.

### Better Communication Also Improves The “Imperfect Relationship” and Reduces Risk of Litigation!

- Often times, the major reason for professional liability lawsuits is that the patient feels disconnected with their physician and do not truly understand their course of treatment and care = aspect of “imperfect relationship.”
  - Follow-ups
  - Medication
  - Other orders
  - Appreciating risks
  - Informed consent
  - Patient’s perception of reality and/or care provided
  - TO AVOID PIT FALLS – USE VERBAL AND WRITTEN COMMUNICATION.

### Communicate

- Two simple and practical ways to avoid lawsuits (especially in cases involving non-compliant patients):
  - Call and/or send written notice to patient with lab results and other tests ordered
  - Call and/or send written notice to patient when appointments are missed
    - AND OF COURSE, DOCUMENT THIS ACTION!
    - Documentation and Communication go “hand in hand.”

### Case Law Example of Good Documentation and Communication resulting in Defense Verdict, Involving Case Brought by Non-compliant Patient

#### Non-Compliance - Case Law Example

- Faber, (Ohio App. 8th Dist):
  - Patient admits to hospital and refuses recommended cardiac catheterization, but agrees to less intrusive stress test.
  - Consent form for stress test indicates that “alternative methods of treatment” have been explained.
  - Negative results of stress tests leads to discharge and prescription of medicine for patient’s colitis.
  - Once at home, patient calls doctor to discuss continued chest pain. Doctor asks if prescribed medicine had been started, and patient responds that it had not. Doctor instructs patient to take medicine. (Plaintiff argues at trial that Doctor should have asked patient to return to hospital).
  - Patient did eventually returned to hospital later, with continued chest pain, and sees new doctor, who also believes pain is related to ulcerative colitis.
  - Patient later dies of heart attack.
  - COURT FINDS IN FAVOR OF DOCTORS AND ALLOWS EVIDENCE OF NON-COMPLIANCE.
  - Patient never took medicine, or recommended advice. Accordingly, what is to suggest that patient would have returned to hospital/doctor, and what is to suggest that patient wasn’t also careless about warning signs of heart issues.

### So... I've been communicating and I've been documenting, and I know how that can help me avoid trial and/or win at trial, but what if the patient’s non-compliance is serious enough that I cannot provide further care for the patient!

**THEN WHAT?**

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4
Termination of Relationship

- When is it time to terminate doctor – patient relationship?
- What is the best approach for termination?

Terminating the Doctor/Patient Relationship

The physician is obligated to continue treating the patient until one of the following occurs:
- The patient’s condition no longer warrants treatment
- The physician and patient mutually agree to discontinue treatment by the physician
- Either the patient or the physician terminates the relationship

Terminating patient relationships appropriately

- Patients that are just difficult for the physician or the staff to handle are probably not appropriate candidates for discharge. These individuals will always be a certain percentage of your patient population.
- Trying to rehabilitate these patients if at all possible is the best policy.

Terminating patient relationships appropriately

- Patients who are continually “non-compliant” or unwilling to follow the treatment path you have prescribed puts you and them at great risk and is an appropriate circumstance to consider discharge.
- Other appropriate circumstances for discharge include:
  - chronic missed appointments
  - sexual advances

Understanding Non-compliant Behavior: Definitions

Definition of noncompliant behavior involves four criteria:
1. The patient’s medical problem is potentially serious and poses a clinically significant risk to length or quality of life;
2. At least one treatment exists that if followed correctly, will markedly reduce this risk;
3. The patient has easy access to the treatment or treatments; and
4. The patient deviates significantly from most patients (with similar medical problems) in degree of compliance with medical advice, treatment, or follow-up in a way that directly or potentially jeopardizes the patient’s health or quality of life.

How to Terminate

- Be specific as to the reasons, whether they are missed appointments, advice not followed, medications not taken or non-participation in therapy.
- Give the name of a hospital hotline that provides information about physicians or your local medical society’s phone number.
- Let the patient know that they need to continue to seek treatment for their underlying illness or follow up as necessitated by the circumstances.
- Let the patient know that you will help with this new transition once an appropriately executed release is received.
More Specifically, How Do I Terminate the Relationship?

• Are there laws on this?
  – Yes, follow the Ohio Administrative Code.

OAC 4731-27-01: Termination of the physician-patient relationship

A physician-patient relationship is established when the physician provides service to a person to address medical needs, whether the service was provided by mutual consent or implied consent, or was provided without consent pursuant to a court order. Once a physician-patient relationship is established, a person remains a patient until the relationship is terminated.

OAC 4731-27-01: Termination of the physician-patient relationship

Except as provided in paragraph (B) of this rule, in order to terminate a physician-patient relationship, a physician shall comply with the following requirements:

1. Mail to the patient via regular mail and certified mail, return receipt requested, a letter containing the following information:
   (a) A statement that the physician-patient relationship is terminated;
   (b) A statement that the physician will continue to provide emergency treatment and access to services for up to thirty days from the date the letter was mailed, to allow the patient to secure care from another licensee; and
   (c) An offer to transfer records to the new physician upon the patient's signed authorization to do so.

2. For each letter sent in accordance with paragraph (A)(1) of this rule, the physician maintains in the patient record a copy of the letter, the original certified mail receipt, and the original certified mail return receipt.

B The requirements of paragraph (A) of this rule do not apply in the following circumstances:

1. The physician rendered medical service to the person on an episodic basis or in an emergency setting and the physician should not reasonably expect that related medical service will be rendered to the patient in the future, or
2. The physician has formally transferred the patient's care to another health care provider who is not in the same practice group, or
3. The physician who is leaving a practice, selling a practice, or retiring from practice, with retirement evidenced by the relinquishment of all clinical privileges and either termination of or conversion of medical liability insurance to extended reporting period coverage, has provided notice of retirement, leaving the practice, or the sale of the practice no later than thirty days prior to the last date the physician will see patients, via the following methods:
   (a) Mailing a notice, sent by regular mail addresses to the last known address, to all patients seen by the physician within the immediately preceding three years;
   (b) Publishing a notice in the newspaper of greatest circulation in each county in which the physician has practiced and in a local newspaper that serves the immediate practice area, and
   (c) Posting a sign in a conspicuous location in or on the facade of the physician's office. The required notices and sign shall advise the patients of their opportunity to transfer or receive their records and, for patient records remaining in the physician's possession once the physician is no longer seeing patients, the contact information for obtaining the records.
OAC 4731-27-01: Termination of the physician-patient relationship

(C) A physician-patient relationship shall be considered terminated by the patient if both of the following requirements are met:

1. The patient terminated the relationship, either verbally or in writing, or has transferred care to another physician for the same or a related condition.

2. The physician maintains documentation in the patient record of the patient's action terminating the relationship.

(D) A physician assistant or anesthesiologist assistant may not independently terminate the physician-patient relationship.

(E) A physician's termination of a physician-patient relationship other than in accordance with the provisions of this rule, as determined by the state medical board of Ohio, shall constitute a "departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

(F) For purposes of this rule, "emergency setting" means an emergency department or urgent care center.

(G) Nothing in this rule shall limit the board's authority to investigate and take action under section 4731.22 of the Revised Code.
When sending termination letter, remember:

- A reason for the dismissal may be given but is not necessary;
- Include the telephone numbers of the local physician referral service and county medical society whenever possible;
- Send this letter to patient by certified mail with return receipt requested and regular mail;
- File copy of letter and delivery receipt in patient’s chart;
- If unable to reach the patient by mail, or in the alternative, the letter may be hand-delivered and documented in the medical record;

Conclusion

- Non-compliant patients are a reality and unavoidable.
- There are actions doctors can take to improve such relationships and to avoid the risk of such relationships resulting in negative litigation results.
  - Communicate and Document
- If the non-compliance of the patient results in the need to terminate the relationship — make sure to do so in accordance with the Ohio Administrative Code.

BRIEF BONUS PRESENTATION:
Current Medical Malpractice Climate in Ohio

Good News:

- The number of lawsuits appear to be going down:
  - Most importantly, medical malpractice lawsuits/filings are going down

Bad News

- The number of lawyers continues to go up.

From a Supreme Court of Ohio Oct. 30, 2009 press release:

“Nearly 1,000 Applicants Pass July 2009 Ohio Bar Exam.”
And the “UGLY”

As an aside, Lawyers Must Sometimes Terminate Client Relationships Too…

Recent Significant Case Decisions

PEER REVIEW

Vistein v. The American Registry of Radiologic Technologists, 2009 U.S. App. LEXIS 18173 (6th Cir.)

• ARRT is a national credentialing agent of radiologic technologists
• Court found ARRT was a “health care entity” as defined by R.C. 2305.25
**PEER REVIEW (CONT.)**

*Vistein (cont)*

- ARRT’s ethics committee was a “peer review committee” as defined by R.C. 2305.25 because it:
  - Reviewed plaintiff’s conduct relating to her certification and registration;
  - Determined to revoke plaintiff’s certification; and
  - Provided that information to plaintiff’s employer upon request

*Lowrey v. Fairfield Medical Ctr., 2009-Ohio-4470*

- Doctor argued that Hospital waived the peer review privilege (R.C. 2305.252) by failing to object to peer review documents that Doctor attached to a motion filed under seal
- Inaction did not waive the peer review privilege

**EXPERT TESTIMONY**

*Griffin v. State Medical Bd. of Ohio, 2009-Ohio-4849*

- Plaintiff argued that defendant’s expert testimony was unreliable because the expert lacked familiarity with the relevant standard of care
- An expert is not competent to testify unless he practices in the same or substantially similar specialty

**EXPERT TESTIMONY (CONT.)**

*Griffin (cont.)*

- In order to testify, experts must show:
  - The standards of care and practice in the two specialties are similar and
  - The expert has substantial familiarity with both

**“I’M SORRY” STATUTE**


- Defendant sought to exclude statements under R.C. 2317.43
- Plaintiff claimed Fed. R. Evid. applied
- R.C. 2317.43 controls because it is “intimately bound up” with the state’s substantive policy of allowing doctors to express sympathy to patients without penalty

**MEDICAL CLAIM**

*Estate of Stevic v. Bio-Med, App. of Ohio (2009), 121 Ohio St. 3d 488*

- Plaintiff alleged that defendant dropped or allowed decedent to fall from a lift used for dialysis
- A “medical claim” under R.C. 2305.133(E)(3) is a claim that both arises out of the medical diagnosis, care, or treatment and is asserted against one or more enumerated medical providers
**MEDICAL CLAIM (CONT.)**

*Hill v. Wadsworth-Rittman Area Hosp.*, 2009-Ohio-5421

- Plaintiff was injured while leaving the hospital in a wheelchair
- Court found that this was not a “medical claim” as defined in the R.C. 2305.113 because:
  - The transport was not ancillary to an inherently necessary part of her care or treatment
  - Injury did not occur in the course of prevention or alleviation of physical or mental illness

**AFFIDAVIT OF MERIT**

*Oglesby v. Consolidated Rail Corp.*, 2009-Ohio-1744

- Affidavit of merit requirement under Civ. R. 10 (D)(2) is constitutional

**AFFIDAVIT OF MERIT (CONT.)**

*Whipple v. Warren Correctional Inst.*, 2009-Ohio-4841

- Court properly dismissed complaint due to plaintiff’s failure to file an affidavit or merit
- See also, *Fletcher v. Univ. Hosps. of Cleveland* (2008), 120 Ohio St. 3d 167; *White v. Summa Health System*, 2008-Ohio-6790

**STATUTE OF LIMITATIONS**


- Injury arose in December of 2005; action was filed in August of 2007
- Plaintiff claimed action was timely filed under R.C. 2305.113 because of the “termination rule”

**“BORROWING” STATUTE**

*Executone of Columbus, Inc. v. Inter-Tel, Inc.*, 2009 U.S. Dist. LEXIS 91660 (S.D. Ohio)

- Ohio’s “borrowing” statute, R.C. 2305.03, does not apply to claims that accrued prior to the effective date of the statute, regardless of the filing date

**WRONGFUL DEATH**

*Harshbarger v. Moody*, 2010-Ohio-103

- Claims must be presented to an estate within 6 months under R.C. 2117.06
- Claim is not contingent and does not fall within statutory exception under R.C. 2117.37
- Tort claimant is a “creditor” within R.C. 2117.06
- Discovery rule does not extend 6 months requirement
## Wrongful Death (Cont.)

**Eppley v. Tri-Valley Local School Dist. (2009), 122 Ohio St. 3d 56**

- Wrongful death savings statute found in R.C. 2125.04 is constitutional

## Collateral Source Rule

**Jaques v. Manton, 2010-Ohio-1838**

- A Plaintiff is entitled to recover reasonable medical expenses incurred for injuries
- The amount accepted by medical provider as full payment for treatment of Plaintiff is admissible, even when that amount is less than amount originally billed.

## Comparative Fault

**Schnetz v. Ohio Dept. of Rehab & Corr., 2009-Ohio-1573 (Cl. Cl.)**

- Secondary assumption of risk is merged with contributory negligence under R.C. 2315.34
- Secondary assumptions of risk is not a complete bar to plaintiff’s recovery

## Economic Damages

**Eastman v. The Stanley Works, 2009-Ohio-634**

- Plaintiff failed to prove by sufficient evidence that he was reasonably certain to incur future wage loss
- Plaintiff was not entitled to future economic loss damages under R.C. 2315.18

## Punitive Damages

**Cox v. Cox, 2009-Ohio-1446**

- $100,000 in compensatory damages and $200,000 in punitive damages was not an excessive award
- R.C. 2315.21 (D)(2)(a) allows plaintiff to recover punitive damages of two times compensatory damages
- Calculation is constitutional (citing Arbino)

**Faieta v. World Harvest Church, 2008-Ohio-6959**

- Plaintiffs were awarded $600,000 in non-economic damages, capped at $250,000
- Plaintiffs were entitled to two times the uncapped compensatory damages as punitives
PREJUDGMENT INTEREST
Ross v. St. Elizabeth Health Ctr., 2009-Ohio-1506
• Plaintiff sent a settlement demand letter to defendant for $475,000
• Jury returned a verdict in the amount of $754,649
• No offer made

PREJUDGMENT INTEREST (CONT.)
Ross (cont.)
• Award of prejudgment interest was proper because:
  – Defendants failed to rationally evaluate the risks of the case
  – Defendants failed to make a good faith effort to settle

PREJUDGMENT INTEREST (CONT.)
Ross (cont.)
• Prejudgment interest statute (R.C. 1343.03) does not violate right to a trial by jury

CONTRIBUTION
Swisher v. Wyatt, 2009-Ohio-1561
• R.C. 2307.25 - a joint tortfeasor who has paid more than its proportional share may bring a contribution claim against other tortfeasors who are jointly and severally liable
• Settling tortfeasors must first obtain a release of the common liability for other tortfeasors

FINAL APPEALABLE ORDERS
Hanners v. Ho Wah Genting Wire & Cable SDN BHD, 2009-Ohio-6481
• Entry denying a defendant’s motion to bifurcate plaintiff’s claims for compensatory damages from punitive damages is a final, appealable order
• R.C. 2315.21 (B) is constitutional

FINAL APPEALABLE ORDERS (CONT.)
Sliwinski v. Village at St. Edwards, 2009-Ohio-3006
• A trial court’s ruling granting a good faith motion under R.C. 2323.42 is not a final, appealable order until the trial court awards attorney’s fees and costs.
Schelling v. Humphrey, 123 Ohio St. 3d. 387; 2009 Ohio 4175; 916 N.E.2d 1029; Aug. 26, 2009; Decided (4-3)

Overview: When a doctor files for bankruptcy, a plaintiff can pursue a negligent-credentialing claim against a hospital without first obtaining a finding that the injury was caused by a doctor's negligence.

The dissenters (Stratton, O'Donnell, Lanzinger) argued against creation of this exception, stating that this ruling burdens the hospital with defending against an allegation of negligence against a doctor who is not a hospital employee, but rather a nonparty with no stake in the outcome and no duty to cooperate or participate in the defense of the case.

W. Broad Chiropractic v. Am. Family Ins., 122 Ohio St. 3d 497; 2009 Ohio 3506; 912 N.E.2d 1093; July 23, 2009, Decided (4-3)

Overview: A party injured in an automobile accident but who did not file suit or obtain a judgment against the tortfeasor may not assign to a chiropractor her right to proceed from a prospective settlement or judgment in exchange for medical care she received for injuries resulting from the accident.

The chiropractor could not sue the tortfeasor's insurer pursuant to the assignment contract because the patient had no existing right to then assign. (Dissenters Moyer, Pfeifer and Cupp would have allowed the assignment).

Hageman v. Southwest Gen. Health Ctr., 119 Ohio St. 3d 185; 2008 Ohio 3343; 893 N.E.2d 153; July 9, 2008, Decided (5-2)

Overview: An attorney may be liable for civil damages for the unauthorized disclosure of a party's medical information obtained through litigation in a divorce action where custody was an issue. Hageman sued for damages for the unauthorized release of his records, naming his doctors, his ex-wife, his attorney and Southwest General Health Center as defendants. The attorney had violated Hageman's right by sharing his psychiatric records with the prosecutor to use in a criminal action. Hageman admitted that he made his health an issue in the divorce action by seeking custody of his and his ex-wife's minor child. He was required to demonstrate that he was capable of caring for his child in order to be granted custody. For that reason, he waived his medical privilege for the purposes of that case but a waiver for a specific, limited purpose is not a waiver for another purpose. (O'Donnell and Stratton dissent).

Theobald v. Univ. of Cincinnati, 111 Ohio St. 3d 541; 2006 Ohio 6208; 857 N.E. 2d 573; Dec. 13, 2006, Decided (6-1)

Overview: A physician performing a medical procedure on a private patient while also employed as an instructor at a state university medical school and engaged in teaching one or more medical students or hospital residents is acting within the scope of his public employment, and thus immune from personal liability for negligence. "R.C. 9.86 is inclusive and makes no exception for persons who may simultaneously have other employment interests.

Patient's Bill of Rights" provision of Ohio law requiring that persons committed to a mental hospital shall be given "reasonable protection from assault or battery" does not supersede the separate explicit provision of Ohio law requiring the finding of a threat of imminent harm in order to sue a state mental hospital for negligent when a patient injures someone. (Resnick and Pfeifer dissent.)

Campbell v. Ohio State Univ. Med. Ctr., 108 Ohio St. 3d 376; 2006 Ohio 1192; 843 N.E. 2d 1194; Mar. 29, 2006, Decided (5-2)

Overview: A patient injured by a fellow patient at a state-run mental hospital must establish that the attacker had explicitly threatened "imminent and serious physical harm" in order to sue for recovery against the hospital.

"Patient's Bill of Rights" provision of Ohio law requiring that persons committed to a mental hospital shall be given "reasonable protection from assault or battery" does not supersede the separate explicit provision of Ohio law requiring the finding of a threat of imminent harm in order to sue a state mental hospital for negligent when a patient injures someone. (Resnick and Pfeifer dissent.)

Schirmer v. Mt. Auburn Obstetrics & Gynecological Assocs., 108 Ohio St. 3d 494; 2006 Ohio 942; 844 N.E. 2d 1160; Submitted, Mar. 3, 2006, Decided (2-3-3)

Overview: Parents of an unhealthy child born following negligent genetics counseling or a negligent failure to diagnose a fetal defect or disease may bring a medical malpractice action to recover costs arising from the pregnancy and birth of the child. No recovery is available for consequential economic and noneconomic damages of the cost of raising the child. (O'Connor and Moyer joined majorly, majorly causing create of action and limited damages; Pfeifer and Resnick would also allow additional and noneconomic damages; Stratton, O'Donnell and Lanzinger dissent would not have created a tort.)
Overview: A court does not usurp the role of the jury in contravention of Section 5, Article I of the Ohio Constitution or the Seventh Amendment to the U.S. Constitution when it applies a statutory limit on noneconomic and punitive damages in tort cases. (Pfeifer dissenting and O'Donnell dissenting in part.)