WHEN IS A CLINICAL FACULTY PHYSICIAN IMMUNE FROM LIABILITY?

Physicians providing education to residents or medical students have been claiming immunity for their actions by arguing that their service as a faculty member for a state medical college entitles them to immunity as a state employee or appointed officer pursuant to Ohio Revised Code §9.86. This theory initially developed from cases involving physicians who were compensated both as a faculty member and as a member of a private physician group. Physicians holding volunteer clinical faculty designations have been seeking personal immunity under the statute. As the Ohio Court of Claims holds exclusive jurisdiction over disputes involving sovereign immunity, the failure of a plaintiff to timely sue the state entity through which a physician sought his sovereign immunity could result in a time bar due to expiration of the statute of limitations. Therefore, parallel lawsuits were being filed both in state courts and in the Ohio Court of Claims on the chance that a named defendant physician would raise the defense of sovereign immunity.

The Ohio Supreme Court recently defined when a physician is entitled to immunity in *Engel v. University of Toledo College of Medicine*, Slip Opinion No. 2011-Ohio-3375. The Ohio Supreme Court held a physician must be a “state officer or employee” as defined below to be immune from malpractice lawsuits.

In *Engel*, a defendant physician argued he was entitled to personal immunity in a medical malpractice suit based upon his argued status as an officer or employee of the state. The care at issue was provided at a private hospital which was not affiliated with any college of medicine or other state sponsored institution. However, the defendant physician did hold a volunteer clinical faculty position at a state university, the University of Toledo. The physician argued that since a third-year medical student from the University of Toledo College of Medicine was observing the surgeries he performed on the plaintiff, he was entitled to personal immunity pursuant to Ohio Revised Code §8.66. As the Ohio Court of Claims has exclusive jurisdiction over personal immunity claims, Plaintiff Engel filed an action in that court against the University of Toledo College of Medicine. The Court of Claims concluded, despite the University of Toledo’s opposition, that the defendant doctor by having a medical student observe him performing procedures had “performed the operations as a state employee” and was therefore entitled to personal immunity.

In reversing the Ohio Court of Claims, the Ohio Supreme Court clarified the appropriate inquiry to evaluate a claim for personal immunity. The first test is to determine whether the person claiming immunity is a state officer or employee. That inquiry is now to include whether a contractual relationship exists between the state and the alleged employee; whether the state exercised control over the actions of the purported employee; and whether the state made a payment for services to the alleged employee. Finally, the Ohio Supreme Court determined that a volunteer clinical faculty position does not constitute an “elected or appointed office or position with the state” within the meaning of Ohio Revised Code §109.36(A)(1)(a) and absent such a position the defendant physician was not entitled to personal immunity.

The Ohio Supreme Court’s ruling is important because it narrows an exception which was placing state institutions at risk for the conduct of physicians providing private medical care. In addition, the proliferation of this defense created an abundance of filings in the Ohio Court of Claims in conjunction with parallel state court actions as a legal malpractice prevention tactic by lawyers representing plaintiffs. This decision should decrease the number of Ohio Court of Claims actions filed, while still protecting physicians that are state employees and entitled to immunity.

If you have any questions or would like a copy of the full opinion, please call a member of our Medical Malpractice Group as listed below.

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