



American Medical Association Litigation Update

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Overview:

78 Current AMA Advocacy Cases

**Seven Cases to be Discussed Today
(Time Permitting)**



78

Current AMA Advocacy Cases



7 Important Cases



1. AMA/Stewart v. Cigna (D. Conn.)

Plaintiffs: AMA, Washington State Medical Association, Medical Society of New Jersey, AMA Litigation Center

Defendant: Cigna

Background: Cigna underpays physicians who provide medical care to patients whose insurance cards show the logo of a third-party network company, MultiPlan; Cigna then gives the patients misleading EOB forms

Causes of Action for Patient Class: ERISA

Causes of Action for Medical Societies: Misrepresentation, Tortious Interference, Promissory Estoppel, Washington State Consumer Protection Act

Procedural Status: Motion to Dismiss Amended Complaint filed 10/26/22

2. Montana Medical Association v. Knudsen (9th Cir.)

Plaintiffs: Montana Medical Association, Montana Nurses Association, various Montana hospitals, medical clinics, and patients with compromised immune systems

Defendant: Montana Attorney General, Montana Commissioner of Labor and Industry

Background: Montana passed a law that prohibits physician offices and hospitals from requiring their employees to be vaccinated.

Principal Causes of Action : Preemption by or conflict with the public accommodation section of the Americans with Disabilities Act, OSH Act, Medicare Conditions of Participation, state, and federal constitutions

Procedural Status: Plaintiffs obtained a favorable judgment in the trial court. Defendants appealed, and briefing is underway in the 9th Circuit.

Litigation Center Involvement: The Litigation Center is paying the Montana Medical Association litigation expenses. The Litigation Center also submitted an *amicus* brief, but the court has not decided whether it will accept the proffered brief.

3. Mississippi v. Becerra (D. Miss.)

Plaintiffs: **States of Mississippi, Alabama, Arizona, Arkansas, Kentucky, Louisiana, Missouri, and Montana**

Dismissed Plaintiff: **Amber Colville**

Defendants: Various federal officials and agencies, plus the United States of America

Background: The Centers for Medicare and Medicaid Services is incentivizing physicians to implement “anti-racism plans” as part of the Merit-based Incentive Payment System (“MIPS”).

Claim: The CMS rule is itself racially discriminatory and is therefore unconstitutional. Moreover, plaintiffs claim, Congress did not authorize the challenged CMS regulation, as it does not improve physicians’ clinical practices.

Procedural Status: Defendants moved to dismiss under Rule 12(b)(6)

AMA Involvement: The AMA submitted an *amicus* brief, along with the National Medical Association. The brief describes the value of anti-racism plans in improving medical practice.

4. In re Caitlin Bernard, MD (Indiana Medical Board)

Plaintiff: **Indiana Attorney General**

Defendant: **Indiana OB/GYN**

Background: During a public rally for abortion rights in Indianapolis, Dr. Bernard told another physician and then a newspaper reporter that she was going to provide an abortion for a 10-year-old rape victim from Ohio.

Claim: Dr. Bernard violated her professional obligations by improperly disclosing confidential patient information

AMA assistance for Dr. Bernard: The Litigation Center provided an expert witness, who testified that Dr. Bernard's actions were consistent with medical ethics.

Result: The Indiana Medical Board reprimanded Dr. Bernard and fined her \$3000. She did not appeal. However –

The Indiana Attorney General subsequently sued Dr. Bernard's employer, Indiana University Health, in federal court for violating HIPAA and an Indiana regulation on patient confidentiality.

5. Alliance for Hippocratic Medicine v. FDA (N.D. Tex., 5th Cir., S. Ct.)

Plaintiffs: Four medical organizations and four physicians, all ideologically slanted against abortions

Defendant: The US Food and Drug Administration

Claim: Starting in 2000 and continuing through the present, the FDA has wrongly approved mifepristone for termination of pregnancies, in violation of the Administrative Procedure Act.

Procedural Status: On a motion for preliminary injunction, the trial court found that the plaintiffs had standing to sue, as the physicians and the members of the medical societies might have to treat patients who could suffer adverse side effects from their mifepristone treatments. It went on to hold that the FDA had wrongly approved the drug, and it entered a nationwide ban on its further distribution. Various issues have been appealed to the Fifth Circuit and to the Supreme Court.

AMA Involvement: The AMA, along with other medical associations, submitted *amicus* briefs to support the FDA. More such briefs are anticipated.

6. Wit v. United Behavioral Health (9th Cir.)

Plaintiffs: A class of approximately 66,000 health insurance plan beneficiaries, who required mental health and/or substance abuse benefits

Defendant: United Behavioral Health (UBH), a third-party administrator for self-insured plans

Claim: UBH relied on flawed guidelines, contrary to good medical practice (and arguably contrary to the policy terms), to deny benefits. UBH breached its fiduciary obligations under ERISA.

Procedural Status: Following a lengthy trial, the trial court found the guidelines defective. UBH then discontinued their use. The trial court ordered UBH to recalculate the benefits that allegedly should have been paid to the plaintiffs.

UBH appealed, based on the primary contention that it had the discretion to use flawed guidelines in determining benefits. The Ninth Circuit reversed in a cursory opinion. Following a petition for rehearing, the same Ninth Circuit panel issued a somewhat more expansive opinion, still finding generally for UBH. Following a second petition for rehearing, the same panel issued a new decision, but again finding generally for UBH.

AMA Participation: The Litigation Center, along with the California Medical Association and the American Psychiatric Association, submitted *amicus* briefs in support of the plaintiffs. The Ninth Circuit denied their motion for leave to file the last of these briefs.

7. Palmer v. Bonta (C.D. Cal.)

Plaintiffs: Three California nurses who hold doctor of nursing degrees

Defendants: The California Attorney General, the President of the California Medical Board, and the Executive Director of the California Board of Registered Nursing

Claim: A California statute makes it a misdemeanor for persons other than physicians to identify themselves as a doctor or physician without a medical license. Plaintiffs claim that the statute violates their Freedom of Speech.

Status: Plaintiffs filed an amended complaint, after the court dismissed two of the plaintiffs for lack of standing and ripeness.

The Litigation Center and the California Medical Association filed an *amicus* brief in support of the defendants' motion to dismiss the original complaint.

Questions & Discussion





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