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SUPREME COURT AGAIN RULES A PATIENT'S INJURY FALLS OUTSIDE THE MEDICAL MALPRACTICE ACT

The Louisiana Supreme Court's recent pronouncement in *Blevins v. Hamilton Medical Center Inc.*, 07-127 (La. 6/29/07), 959 So.2d 440, delivers yet another blow to the protection and predictability provided by the Louisiana Medical Malpractice Act. In *Blevins*, a patient who was admitted for treatment of a groin infection, fell when his hospital bed moved as he attempted to get out of bed to use a bedside commode. The patient filed a lawsuit against the hospital, alleging, among other things, that his fall was caused by the fault of the hospital in: 1) failing to furnish him with equipment in proper working condition; 2) failing to keep his bed in the lowest position with the wheels locked; and, 3) failing to properly instruct him on the proper use of and safety with regard to his bed. The hospital argued that such allegations fell under the Act and, thus, were premature pending a review by a medical review panel. To the dismay of many, the Louisiana Supreme Court disagreed and held that these allegations did not fall under the Act.

The application of the Act is defined very broadly as applying to "all malpractice claims against health care providers." "Malpractice" is then broadly defined as "any unintentional tort . . . based on health care . . . rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient. . ." In turn, "health care" is also broadly defined as "any act, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during a patient's medical care, treatment or confinement." Instead of relying upon the plain language of these definitions, the court applied the standard of whether or not the alleged wrongful conduct was "integral to the rendering of care and treatment by the health care provider to the patient." In answering this question in the negative, the court applied the six *Coleman* factors, which it adopted in 2002, and which have been used by courts in various cases which held that the patient's injuries fell outside the Act.

Two justices, Justice Weimer and Justice Victory, dissented, arguing the broad and plain language in the Act's definitions dictated that the alleged wrongful conduct fell under the Act. While this analysis and application of the Act would provide predictability, unfortunately, it was not the ruling of the Court. Instead, hospitals are now facing a growing uncertainty and unpredictability as to which patient injuries will or will not fall under the Act. The *Blevins* case is another step in the ongoing assault on the Louisiana Medical Malpractice Act.

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