



Washington doctors face exposure to malpractice and battery during IMEs

By Christy A. Doornink ■ April 23, 2019

Did you know that independent medical examiners face exposure in the State of Washington for medical malpractice and medical battery causes of action when doing an examination?

Independent medical examiners beware—Division II of the Washington Court of Appeals recently concluded a physical examination during an independent medical examination that causes injury to the person being examined constitutes “health care” and paves the way for medical malpractice and medical battery causes of action.¹

The plaintiff in this case, Ms. Reagan, instituted a medical malpractice lawsuit against Dr. St. Elmo Newton, alleging Dr. Newton injured her while conducting an independent medical examination (IME) of her. The Washington Department of Labor and Industries had arranged for Dr. Newton to conduct an IME of Ms. Reagan to assess any work restrictions; opine if treatment had concluded; assess whether further treatment was needed; and assess whether there was any permanent impairment due to her work-related injury. Ms. Reagan asserted Dr. Newton was negligent when manipulating her hip during the IME, which caused her further injury.

The court first determined whether Dr. Newton provided “health care” during the IME, such that the requirements to prove Ms. Reagan’s case delineated in the medical malpractice statute would apply. RCW Chapter 7.70 is the medical malpractice statute and exclusively governs any action for damages based on an injury resulting from health care. To recover damages for injuries occurring as the result of health care, a plaintiff must establish at least one of three propositions:

1. That injury resulted from the failure of a health care provider to follow the accepted standard of care;
2. That a health care provider promised the patient or his or her representative that the injury suffered would not occur; or
3. That injury resulted from health care to which the patient or his or her representative did not consent.

To show failure to follow the accepted standard of care, a plaintiff must prove, generally by expert testimony, that the health care provider “failed to exercise

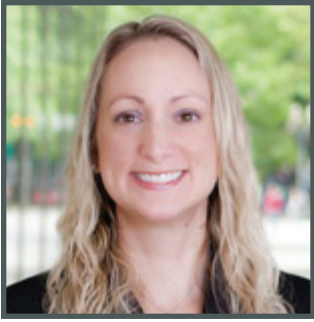
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Washington doctors face exposure to malpractice (continued)

that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances” and that such failure was a proximate cause of the plaintiff’s injuries.³

Using the definition of “health care” demarcated in prior cases for purposes of the medical malpractice statute, the court concluded that despite the absence of a traditional physician-patient relationship between Dr. Newton and Ms. Reagan, Dr. Newton provided health care during the IME. Dr. Newton had utilized his medical skills when examining Ms. Reagan. The court held that a person being examined in an IME is the IME doctor’s “patient,” with regard to injuries sustained in the physician examination.

The court also found that Ms. Reagan could pursue a common law medical battery claim against Dr. Newton. A battery is an intentional harmful, or offensive bodily contact with another person, and a person is liable for such if he or she intends to cause a harmful or offensive contact, and such a contact directly or indirectly results.⁴ A person commits battery only if the person receiving the contact has not consented, though there can be limitations on consent to a medical procedure if communicated.⁵

The court ultimately upheld dismissal of Ms. Reagan’s medical malpractice claim against Dr. Newton because she did not present expert testimony addressing the applicable standard of care or whether Dr. Newton had breached that standard of care. Ms. Reagan’s claim for medical battery was remanded to the trial court for further proceedings, as it was not previously addressed on its merits.

This ruling by the Court of Appeals is eye-opening for physicians who conduct independent medical examinations, as they likely did not consider themselves to be providing “health care” in the traditional sense during IMEs and open to liability for medical malpractice and medical battery causes of actions. Time will tell whether fewer physicians will now agree to conduct IMEs in Washington for workers’ compensation or personal injury cases.

Please contact the attorneys at Reinisch Wilson Weier PC if you have any questions about IMEs or other claims administration issues. ■

¹ Denise Reagan v. St. Elmo Newton, III, M.D., Dckt. No. 50662-9 (Wash. Ct. App. Div. II, March 5, 2019).

² RCW 7.07.030.

³ RCW 7.70.040(1).

⁴ Kumar v. Gate Gourmet, Inc. 180 Wn.2d 481, 504 (2014).

⁵ Id. at 505; Bundrick v. Stewart, 128 Wn.App. 11, 18 (2005).

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