

A TEACHING RESOURCE FOR PSYCHIATRY RESIDENTS

VIEW FROM THE JURY BOX:

Clark v. Stover

A Psychiatric Malpractice Mock Trial

THE LITIGATION PROCESS

THE BURDEN OF PROOF

Following opening statements, the plaintiff will go about proving its case. In order to prevail, there are four elements it must prove: duty, breach, damages and causation. Just as with criminal trials, the defendant is presumed innocent until proven otherwise but in a civil case it is not guilt that is determined but liability. The burden of proof is on the plaintiff. However, whereas in a criminal trial the burden of proof is “beyond a reasonable doubt,” in a civil trial it is by “a preponderance of the evidence.” In other words, the plaintiff must convince the jury that it’s version of the facts are more probable than not.

Duty

The first thing that must be established is that you had a duty of care to the patient in question. This is often established by proving the existence of a physician-patient relationship. For the most part this is relatively straight-forward but there may be situations where it is less clear. For example, the patient who was under your care but stopped coming to appointments and was not given notice of termination or the patient who was only seen by the nurse practitioner you supervised or the patient whom the ER physician called to discuss one evening when you were on call.

Breach

Once you are determined to have a duty of care to a patient, the presumption is that you will treat the patient within the standard of care. Thus element number two, is establishing that you have breached that duty by failing to meet the standard of care in your treatment of the patient. The standard of care is a legal principle but it is defined by the medical community. Although each state may define the standard of care in a slightly different way, generally speaking, the definition is the average degree of skill, care, and diligence exercised by similar physicians practicing in light of the present state of medicine.

In order to determine the standard of care in a particular situation, each side will rely upon the expert witnesses. The expert will testify not only as to what was the standard of care at the time of treatment but also whether the defendant physician deviated from that standard of care. Depending on the issues in question, several experts may be needed. Each side’s expert(s) will base his or her opinions on personal training and experience and may also cite other evidence such as: state and federal statutes

and regulations, learned treatises, journal articles, a facility's own policies and procedures, medical board statements, etc.

Damages

Damages are the third element that must be proved. Even if it is determined that you breached the standard of care, unless the patient was actually damaged by your action or inaction, the plaintiff will not prevail. Damages may be awarded for physical, emotional, or monetary injury. In some jurisdictions a plaintiff may not claim emotional injury without also sustaining a physical injury. There are three types of damages that may be awarded by a jury:

- Economic damages such as for previous and future medical care and expenses as well as past and future lost wages
- Non-economic damages such as for patient's pain and suffering, permanent impairment, wrongful death, disfigurement, and loss of consortium
- Punitive damages which are awarded to punish the defendant for willfully committing a wrongful act which harmed the patient. Punitive damages are typically not covered by malpractice insurance.

Causation

The final and often most difficult element to prove is that of causation. Here again we must rely upon the testimony of experts. It is not sufficient to establish that the defendant physician deviated from the standard of care. It must also be shown that this deviation was the proximate cause of the patient's damages.

