Analysis

The Biggest Med Mal Decisions And Verdicts Of 2017

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Law360, Los Angeles (December 21, 2017, 6:02 PM EST) -- Record jury awards and major court rulings caught the attention of medical malpractice attorneys in 2017, including a Florida Supreme Court decision boosting patient privacy rights and another barring caps for noneconomic damages, a U.S. Supreme Court ruling affecting nursing homes, and a $62 million verdict in the nation's smallest state.

Here, Law360 looks back at some of the year's top verdicts and decisions.

Top Verdicts

Injured patients and their families won a number of hefty verdicts last year, with at least 10 cases ending in awards of more than $20 million.

At the top of the list is a **$61.6 million judgment** in Rhode Island awarded to a patient who sued two doctors and a hospital for taking him off blood-thinning drugs, a decision that led to severe blood clots in his legs and lungs and required the amputation of his right leg. The September verdict was the largest medical malpractice or personal injury award in the state's history.

The patient, Peter Sfameni, was awarded $40 million, plus another $21.6 million pursuant to Rhode Island's plaintiff-friendly statute on prejudgment interest, according to court papers.

In March, an Arkansas jury **awarded $46.5 million** to the family of an infant who suffered brain damage, finding that doctors at a hospital were negligent by failing to undertake procedures to prevent a skin condition the child had from worsening.

Following a bench trial, a Pennsylvania federal judge ruled in April that the federal government

must pay **$41.6 million** to a couple after finding that a doctor at a federally funded health clinic negligently used forceps to deliver the couple's baby, which caused permanent brain damage.

While not at the high end of the list, a **$6 million verdict** that a New Jersey jury awarded in September was the first ever against an advanced life support services provider, which are afforded qualified immunity to civil lawsuits and require an additional finding of bad faith to be found liable. Jurors found that emergency medical technicians failed to properly place a breathing tube in a patient, which substantially contributed to her death.

Florida Justices Give Boost to Patient Privacy Rights

The Florida Supreme Court in November ruled unconstitutional a 2013 state law that they said violated a citizen's right to privacy as guaranteed by the Florida Constitution.

The law allowed doctors facing medical malpractice suits to conduct ex parte interviews with a patient's previous treating physicians as part of the informal discovery process prior to the filing of a lawsuit.

November's decision overturned an intermediate appellate ruling in the case, in which the lower court ruled that the law was not a violation of the Health Insurance Portability and Accountability Act.

"The ex parte secret interview provisions of [the 2013 law] fail to protect Florida citizens from even accidental disclosures of confidential medical information that falls outside the scope of the claim because there would be no one present on the claimant's behalf," the high court said.

The justices noted that the potential invasion of privacy could discourage people from filing claims, and also held that the privacy protections remain in place even after a patient's death.

"The ruling is a pretty significant decision because it's grounded in the constitutional right to privacy," Florida appellate specialist Bryan Gowdy of Creed & Gowdy PA told Law360. "It was specifically addressing the ex parte interview provision under the presuit requirements for medical malpractice, but I think it has broader implications because it recognizes privacy rights in the physician-patient relationship. Just because you file a lawsuit doesn't mean you forfeit all your rights to privacy."

Some experts said the ruling could have a significant impact beyond prefiling requirements, as it may prevent behind-the-scenes collaborations between defendant health care providers and potential witnesses.

“It was really a disadvantage to the plaintiff because the defense would meet with treating physicians and say God knows what to them and perhaps skew their version of the case in the defense’s favor from the get-go,” Matthew K. Schwencke of Searcy Denney Scarola Barnhart & Shipley PA told Law360 last month.

Robert Peck of the Center for Constitutional Litigation, one of plaintiff Emma Weaver’s attorneys in the case, said the 2013 law improperly abrogated all doctor-patient privilege.

“It was clearly designed to discourage people from bringing cases in the first place, and because of that chilling effect we brought the declaratory judgment action,” he said.

The case is Weaver v. Myers et al., case number SC15-1538, in the Supreme Court of Florida.

Florida High Court Strikes Down Malpractice Damages Caps

The Florida Supreme Court in June struck down a 2003 state law that imposed a cap on noneconomic damages in medical malpractice suits, expanding the scope of a similar ruling the state high court reached in 2014.

In North Broward Hospital District v. Kalitan, the justices ruled 4-3 that the law limiting noneconomic damages at $500,000, or $1 million in the most egregious cases, violated the equal protection clause of the Florida Constitution because it arbitrarily reduced damages awards for patients with the most serious injuries.

The court said the impetus behind the law, a medical malpractice insurance crisis in Florida that purportedly drove physicians out of the state, either never existed or has since abated, so the caps aren't justified.

While a significant ruling, some court watchers said the outcome was somewhat expected given the high court’s 2014 ruling in McCall v. U.S., which struck down caps in wrongful death cases for many of the same reasons. What was left to be determined after McCall was whether the ruling could also be applied in personal injury and medical malpractice cases.

“There was language in [the McCall] opinion that said there could be a different outcome in the personal injury context, and the court clarified in Kalitan that the same rule of law would apply in personal injury cases,” Gowdy said. “While in some circles McCall was criticized, it is binding precedent at this point, and the justices found that the caps didn’t withstand constitutional scrutiny in light of McCall,” Gowdy added.

The case is North Broward Hospital District et al. v. Kalitan, case number SC15-1858, in the Supreme Court of Florida.

U.S. Supreme Court Says FAA Preempts State Arbitration Rule

The U.S. Supreme Court ruled in May that the Kentucky high court’s refusal to send to arbitration two wrongful death suits against a nursing home ran afoul of the Federal Arbitration Act, saying arbitration agreements should be handled no differently from other contracts.

The Kentucky Supreme Court had ruled that an arbitration agreement signed by an individual with power of attorney improperly waives the principal’s “sacred and God-given right” to a jury trial unless explicitly authorized in a “clear statement.” But in a 7-1 ruling, the U.S. Supreme Court said if that were the case, then every deal to sell furniture under the power of attorney would be subject to the state’s “clear-statement rule,” since rights to acquire and protect property are covered by the Kentucky Constitution.

Steven Vinick, a plaintiffs attorney with Joseph Greenwald & Laake in Maryland, told Law360 the nearly unanimous decision is consistent with the Supreme Court’s arbitration-friendly rulings in a long line of cases beginning with the landmark 2011 ruling in AT&T Mobility LLC v. Concepcion.

“It’s been the same thing every time. The question was becoming whether an arbitration clause can be looked at differently than a contractual clause,” he said. “At the end of the day, if the clause says it's being sent to arbitration, that’s where it’s going.”

The case is Kindred Nursing Centers LP v. Clark et al., case number 16-32, in the Supreme Court of the United States.

New Jersey Court OKs Privacy Claims Based on HIPAA Violations

In July, a New Jersey appeals court allowed to move forward a suit accusing a doctor of unlawfully disclosing a patient's HIV status. Experts said that ruling could help other patients use invasion of privacy claims to go after health care providers for alleged violations of HIPAA, which doesn't allow for private lawsuits.

The state Appellate Division in a precedential opinion kept alive a suit accusing Dr. Arvind Datla of disclosing a patient's HIV-positive status to another person without consent, affirming a trial court's finding that a two-year statute of limitations governs claims of invasion of privacy, violation of the New Jersey AIDS Assistance Act and medical malpractice.

Even though the patient, using the pseudonym John Smith, had originally alleged a HIPAA violation for Datla's unauthorized disclosure, the appellate court said his amended complaint alleging a common-law invasion of privacy claim was adequately pled and could move forward.

Since patients can't sue health care providers for HIPAA violations because the federal statute does not confer a private right of action, the ruling may prompt some to seek civil damages for improper disclosures of medical information under the banner of invasion of privacy, according to Lani Dornfeld, a Roseland, New Jersey-based health attorney and member of Brach Eichler LLC.

"This case is significant because it is a reminder that a breach of a patient's privacy in the medical setting is not just a violation of HIPAA, for which a person cannot bring a private cause of action, but can spur a lawsuit nonetheless based upon allegations that the health care provider breached the common law duty of privacy," Dornfeld told Law360 in July.

A few months after the ruling, Dornfeld lodged a suit on behalf of Aetna Inc. customers accusing the health insurance company of breach of privacy related to mailings that revealed the customers' HIV statuses. The mailings themselves were sent as part of a settlement of prior privacy-based class actions. The suit alleges violations of the NJ AIDS Assistance Act and common-law privacy claims.

The case is John Smith v. Arvind R. Datla et al., case number A-1339-16T3 in the Superior Court of New Jersey Appellate Division.

--Editing by Mark Lebetkin and Kelly Duncan.