



Court of Appeals Holds that a Notice of Intent Must Name Individual Physicians and Must Identify the Standard of Care for Each Specialty Involved in a Plaintiff's Care

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In a published opinion, the Michigan Court of Appeals enforced the pre-filing requirement of a sufficient notice of intent in medical malpractice cases. *Sember v University of Michigan Medical Center* (No. 276515)(August 22, 2008). The court affirmed the dismissal of an action brought against nine physicians who treated the plaintiff at the University of Michigan Hospital. (*The writer represented the University and the nine physicians.*)

The plaintiff came to the emergency department on July 24, 2003, complaining of severe new onset pain in the left side of her neck and left shoulder, radiating to her back and left arm. She was seen by an emergency medicine physician and two otolaryngologists. CT scans were reviewed by two radiologists. On July 30, 2003, the patient returned to the ED with progressive neurological deterioration, severe pain in her left shoulder and arm, and fever. She was evaluated by two emergency medicine physician and an internist. On July 31, 2003, plaintiff underwent surgery at the defendant-hospital to drain a cervical epidural abscess. She allegedly developed left hemiplegia before the surgery, which left her without the use of her left arm and leg.

The plaintiff sent a notice of intent (NOI) addressed to the University, twenty named physicians practicing in six specialties (emergency medicine, internal medicine, physical medicine and rehabilitation, otolaryngology, neurosurgery, and radiology), and all other health care professionals involved in her care. Five of the defendant physicians were named. The NOI stated that all of the "health care providers mentioned in this Notice" were subject to the same standard of care.

An amended NOI was sent, deleting fifteen of the physicians named in the original notice and adding four more physicians. The amended notice was more specific in describing the standard of care applicable to various specialties. The amended NOI was sent more than two years after the alleged malpractice.



The Court of Appeals held that the four physicians who were not named in the original NOI were entitled to summary disposition because the statute of limitations had expired. To comply with the statutory requirement, a notice must specifically identify the health care professionals who may be named as defendants. A notice addressed to physicians by category or function is insufficient.

As to the five physicians named in the original notice, the Court of Appeals held that a notice must state the specific standard of care applicable to the specialists treating the plaintiff. A notice stating that all physicians involved in the plaintiff's care were governed by the same standard of care was not a good faith effort to identify the particular standard applicable to each individual defendant. As a result, the NOI did not toll the statute of limitations and the physicians were entitled to summary disposition. The court also held that the plaintiff could not attempt to correct the deficiencies by sending an amended NOI after the limitations period expired.

Finally, the Court of Appeals held that a notice of intent that fails to comply with the statutory requirements does not operate to toll the statute of limitations. The court declined to follow two recent decisions which held that the limitations period is tolled until a defendant successfully challenges the sufficiency of a NOI. The holding in *Sember* is consistent with the Supreme Court's recent opinion in *Boodt v Borgess Medical Center*.

Sember, along with *Boodt*, signals that trial and appellate courts should continue to enforce the pre-filing notice requirement. Both decisions indicate that the standard established in *Roberts v Mecosta Co General Hospital* remains valid.