MARTIN CLEARWATER & BELL LLP

DEFENSE PRACTICE UPDATE

FALL 2006

THE LITIGATION OF AN INFORMED CONSENT CLAIM: SUBSTANCE BEYOND THE WRITTEN FORM

BY: ELLEN B. FISHMAN

Medical malpractice complaints often include a claim that the defendant did not obtain properly informed consent by making the patient aware of the potential risks of a recommended treatment before signing the consent form. Naturally, whatever went awry will be the very risk that patients do not recall having been discussed or that they will allege was not disclosed in sufficient detail. Although multiple claims arising out of the same set of facts may be intertwined, informed consent claims present special challenges to both plaintiffs and the defense. This article will provide an overview of the law governing the trial of informed consent claims and illustrations from appellate decisions in this area.

A STATUTORY CAUSE OF ACTION

The cause of action for lack of informed consent is a creature of statute. In New York, it is governed by Public Health Law § 2805-d ("Limitation of medical, dental or podiatric malpractice action based on lack of informed consent"). As a statutory cause of action, lack of informed consent is subject to special limitations.

To begin with, § 2805-d defines lack of informed consent as "the failure of the person providing the professional treatment or diagnosis to disclose to the patient such alternatives thereto and the reasonably foreseeable risks and benefits involved as a reasonable medical, dental or podiatric practitioner under similar circumstances would have disclosed, in a manner permitting the patient to make a knowledgeable evaluation." To establish a cause of action for lack of informed consent, the plaintiff must show "that a reasonably prudent person in the patient's position would not have undergone the treatment or diagnosis if he had been fully informed and that the lack of informed consent is a proximate cause of the injury or condition for which recovery is sought."

Thus, when a patient contends that a doctor, dentist, or podiatrist failed to get a good informed consent, plaintiff's attorney will have to show what a reasonable practitioner in the relevant community would have disclosed to a like patient regarding the relevant risks and benefits of the proposed procedure, as well as any appropriate alternatives. It is not enough for plaintiffs to assert they would not have pursued the treatment had they known the true risks. Instead, it is the combination of the patient's testimony and the expert's opinion testimony as to those risks that should have been disclosed which

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establishes a case for lack of informed consent.

If plaintiff presents sufficient proof, after the defendants present their evidence (including their own medical expert), the jury will be asked to apply an objective standard. The jury must decide whether "a reasonably prudent person in the patient's position" would have pursued the practitioner's recommendation if there had been appropriate disclosure. In light of the objective nature of the standard, the patient's testimony is relevant, but not determinative of the informed consent issue.

Plaintiff's Expert Testimony Is Critical

In assessing the sufficiency of the plaintiff's proof of an informed consent claim, another statute comes into play. Section 4401-a of the Civil Practice Law and Rules was enacted by the Legislature as part of a comprehensive medical malpractice reform package. It is specifically addressed to actions seeking compensation for the alleged lack of informed consent. This statute allows defense counsel to make a motion to dismiss the informed consent claim if plaintiff's proof at trial does not include the testimony of a medical expert. Specifically, §4401-a directs the trial judge to dismiss any informed consent cause of action if the plaintiff has failed to present "expert medical testimony in support of the alleged qualitative insufficiency of the consent."

"...the jury cannot consider the informed consent claim without testimony."

The critical testimony about "qualitative insufficiency" refers to opinion evidence by plaintiff's medical expert as to what the defendant supposedly failed to disclose that a reasonably prudent practitioner would have discussed in order to secure the patient's informed consent. Even when the patient testifies that no discussion of potential risks took place, the plaintiff's case cannot go to the jury without supporting expert testimony as to what the discussion should have been before the patient was asked to sign the consent form. Despite the fact that a jury might credit the patient's testimony that there was no preoperative discussion of the risk of the outcome that left the plaintiff dissatisfied, the jury cannot consider the informed consent claim without expert testimony to back it up with proof of the risks that should have been discussed.

For example, in one case in which Senior Partner John L.A. Lyddane defended a hospital, the plaintiff did not offer the testimony of a medical expert to show what risks should have been disclosed to that patient before undergoing corneal transplant surgery. By neglecting to present expert opinion testimony, plaintiff failed to prove that his consent was not properly obtained, i.e., that he was not informed of risks such as infection, hemorrhage and loss of vision, which are associated with that type of procedure. On appeal, the Court ruled in the hospital's favor, finding that the case should have been dismissed mid-trial, at the close of plaintiff's case. The key to this result was defense counsel's timely motion to dismiss, based on the plaintiff's failure to present expert medical testimony in support of the alleged qualitative insufficiency of the patient's consent.

Senior Partner William P. Brady made a similar motion during a jury trial in the United States District Court. Again, the patient claimed there had been no preoperative discussion of the risks, but failed to present the expert testimony needed to support the claim for lack of informed consent of this patient, who had developed a staph infection after a spinal fusion. Applying the state statutes on informed consent, the federal judge granted the defendant's motion and dismissed the consent claim at the close of plaintiff's proof. The United States Court of Appeals affirmed this dismissal.

A Recent Appellate Decision

A New York County action against a plastic surgeon was the recent subject of a plaintiff's appeal to the Appellate Division, First Department. The patient claimed that she was not informed of the risk of hair loss before signing the consent for a facelift. Although plaintiff was supposed to provide pre-trial disclosure as to the substance of the credentials and opinion testimony that would be offered at trial by her expert, her attorney never gave any notice that she would call an expert to testify. As the matter was about to go to trial, it became apparent that plaintiff's counsel was unable to retain any medical expert to support her case.

In a proactive move, the defense made a written motion asking the trial judge to dismiss the action before the trial because plaintiff would never be able to prove her case without expert testimony. The plaintiff dropped her medical malpractice cause of action, but hoped to go to trial on her informed consent claim without an expert. Plaintiff's counsel was relying on a Court of Appeals decision that the plaintiff in a malpractice action may call the defendant doctor and examine that physician as an expert to establish the generally accepted practice. After reviewing the signed consent form and the parties' deposition testimony in this case, however, an experienced trial judge agreed that it was pointless to start a jury trial that would be subject to dismissal under §4401-a. The judge dismissed the action after concluding that proceeding to trial without a plaintiff's medical expert would be a "waste of judicial resources" because the defendant surgeon could not be expected to give testimony supporting plaintiff's case.

On appeal from that dismissal, the plaintiff's attorney persisted in the attempt to dispense with the need to retain an expert. In opposition, Partner Ellen B. Fishman argued that the plaintiff should have retained an expert to establish the relevant standard of care, i.e., that the risk of hair loss had to be included on the consent form and discussed with this patient. Her counsel asked the Court to assume that because the defendant doctor included the risk of hair loss on the consent form and testified that he had included this risk in his discussion with the patient, he established the standard of care for her informed consent claim. Without an independently retained expert, however, plaintiff could not carry her statutory burden of proof. That is, an expert must testify for the plaintiff that a reasonable medical practitioner in this community would have informed the patient of the risk of hair loss and that this plastic surgeon's alleged failure to do so prior to surgery was a departure from the standard of care.

The Appellate Division thoroughly reviewed the parties' contentions in light of the relevant statutes. Despite plaintiff's claim that the consent form had been changed to add further risks after she signed it, the Court saw no reason to let plaintiff proceed to trial without an expert of her own or let her counsel try to elicit testimony from the defendant in place of an expert witness. In an unusually pithy comment, the unanimous five-judge panel concluded:

> "[D]efendant's deposition plainly states that he did discuss all the risks of plastic surgery with plaintiff, including the risk of hair loss resulting from her facelift. It is therefore clear from defendant's deposition that if called as an expert witness, he would testify that the consent he obtained from plaintiff was adequate. To hold otherwise would require that we accept the entirely unlikely possibility of a Perry Mason moment where defendant under cross-examination repudiates his entire deposition testimony. We decline to indulge in such speculation."

Lessons to Learn

The above case is an example of the patient's notoriously poor, post-operative recall of the informed consent discussions she had with her treating physician. Under the circumstances, it can be difficult to counter a "he said, she said" dispute as to what really happened before the patient underwent an invasive procedure. This highlights the importance of good documentation of what was discussed. In addition to the detailed, consent form itself, the prudent practitioner keeps notes of pre-operative discussions with the patient and family.

As the facelift at issue was purely elective surgery, the plastic surgeon saw the patient on multiple occasions in his office as she considered what procedures to undergo. Defense counsel was thus able to argue that this physician exceeded the standard of care required of a reasonable practitioner. Of course, such a protracted period of reflection is only possible when there is no emergency. (Emergency treatment and non-invasive procedures can be undertaken without documenting an informed consent.)

Significantly, in an appropriate case, a patient may recover damages under an informed consent theory regardless of whether there are any actual departures from accepted medical care. This means that a jury can render a verdict finding that the procedure in question was properly performed, but there was a failure to obtain a good informed consent ahead of time.

The general rule is that a doctor must obtain informed consent for procedures that he or she actually performs. The referring physician does not have an obligation to obtain the patient's informed consent; however, the patient's discussion with a prior treating physician or the referring physician may contribute to the patient's knowledge and understanding of the proposed procedure.

In addition, when an informed consent claim goes to trial, defendants can seek to show the jury that a reasonable person who knew the risks and benefits would have undergone the procedure or treatment. On occasion, it can be established that the patient was so desirous of the procedure that he or she would have gone forward with it regardless of the warnings given. Where appropriate, defendants can argue that the risk not disclosed is too commonly known to warrant disclosure. In the alternative, the risk may be so remote as not to have been reasonably foreseeable or one that a reasonable physician would not have disclosed under similar circumstances.

A consent form with signatures of the patient, the person who obtained the consent and the witness, with dates, is intended to document that the patient gave consent after a full discussion and after having had an opportunity to ask questions. The form is not a substitute for fully informing the patient of relevant risks, benefits and alternatives.

Ellen B. Fishman is a Partner at Martin Clearwater & Bell LLP and head of the Firm's Appellate Department. Ms. Fishman has handled hundreds of complex appeals at every level of the state and federal courts, including numerous cases of first impression.

MCB PARTNER SPOTLIGHT:
SEAN F.X. DUGAN

Economic challenges facing the healthcare profession in recent years have fostered an interest in individual physicians combining their resources and forming large practice groups in order to meet the needs of their patients. While these groups often practice a single area of medicine, multi-specialty groups continue to emerge in an effort to lower overhead, and achieve increased leverage with managed care organizations and medical institutions. The representation of physician groups also presents defense counsel with unique issues and considerations.

... experience shows that existing personal animosities, petty disputes or other distracting issues must be set aside in order to properly defend the medical care provided by former colleagues.

The common business structure for medical groups is a Professional Corporation (P.C.), and the professional liability coverage available to each of its healthcare providers may vary depending on the group, i.e., individual physicians may have their own insurance coverage, excess insurance may be provided by the Hospital where the physician practices, and the P.C. itself may have professional liability insurance for the physicians within the group. Accordingly, an initial evaluation of the coverage available is a crucial issue for each defendant in a medical malpractice action.

Conflict of interest issues not only between the individually named physicians within the group and, in particular, those with different medical specialties, but between the physician and the group itself, are another area warranting early assessment. As with any business relationship, healthcare practitioners may sever ties with the group under disagreeable circumstances. Senior Partner Sean F.X. Dugan says experience shows that existing personal animosities, petty disputes, or other distracting issues must be set aside in order to properly defend the medical care provided by former colleagues.

For multi-specialty practices or groups with several different offices, access to the information contained within a patient's chart must be readily available for effective treatment, as well as an effective defense. Mr. Dugan explained that at trial, the defendant-physician must establish that he/she exercised reasonable and appropriate medical judgment in the care of the patient based upon, for example, prior laboratory and diagnostic results, as well as the input provided by the other specialists within the group who previously treated the patient. Without the benefit of the office record or substantive materials contained therein, a physician's judgment may well be viewed as based on incomplete information and thus, not entitled to legal recognition. With the advent of sophisticated yet user-friendly information technology, physicians and other healthcare providers can have almost immediate, secure access to current records and a more efficient method of retrieving former patients' electronically stored information.

The avoidance of litigation is, of course, a paramount concern for medical groups, and Mr. Dugan is often requested by his clients to provide them with risk management strategies toward that goal. His lectures to physicians and staff encompass retrospective analyses of previously litigated case scenarios, in addition to the identification of emerging issues of liability within the group.

In his twenty-eight years with the Firm, Mr. Dugan has managed the defense of complex litigation involving large groups of specialists and multi-specialty practice groups. An example of this was his successful representation of a dermatological group sued in over forty cases based on allegations surrounding the improper utilization of liquid injectable silicone in the treatment of their patients. Mr. Dugan has also defended cases involving exposure to other substances, such as mold and lead, and in 1991, he obtained a Master's Degree in Environmental Law.

In order to meet the needs of large, regionally-based practice groups, Mr. Dugan has also become licensed to practice law in New Jersey and Pennsylvania, and he has been certified in Civil Trial Advocacy by the National Board of Trial Advocacy.

SEAN F.X. DUGAN

His experience in defending malpractice actions involving neurosurgery, oncology, obstetrics and other diverse fields of medicine affords the multi-specialty group with comprehensive medico-legal representation.

Mr. Dugan obtained his J.D. from Brooklyn Law School in 1977, and is admitted to practice law in the states of New York, New Jersey and Pennsylvania, the District Courts, both Southern and Eastern Districts, as well as the Circuit Court of Appeals and Supreme Court of the United States. He obtained his Master of Laws degree in Environmental Law from Pace University in 1991. Mr. Dugan attended the Program on Negotiation offered by Harvard University, and volunteers his time as a mediator for cases pending in the United States District Court, Southern District of New York. He is a member of the Defense Research Institute, and he was elected by his peers before the bar to become a member of the American Board of Trial Advocates. Mr. Dugan is a member of the American Bar Association, Section of Dispute Resolution; New York State Bar Association, Professional Liability Section, Committee on Professional Discipline; Association of the Bar of the City of New York and the Westchester County Bar Association. He is listed in Who's Who in American Law, and he is A-V rated by his peers in Martindale-Hubbell.

US SUPREME COURT SETS STANDARD FOR WORKPLACE RETALIATION CLAIMS

BY: STEVEN M. BERLIN

The recent Supreme Court decision, *Burlington Northern & Santa Fe Railway Co. v. White ("Burlington Northern")*, has provided needed guidance for applying the anti-retaliation provision of Title VII of the Civil Rights Act of 1964, the federal workplace anti-discrimination law. Now, actionable retaliation includes harm to a plaintiff employee even if that harm is not related to employment or does not occur in the workplace, but the harm must be materially adverse to the plaintiff in the eyes of the "reasonable employee." The decision both broadens and narrows the standard used until now by courts in New York and New Jersey for evaluating such federal based retaliation claims and is likely to have a similar impact on state based retaliation claims.

A prima facie retaliation claim is established by showing the plaintiff employee participated in a protected activity known to the defendant (such as complaining about discriminatory conduct in the workplace), an adverse employment action by the employer and a causal connection between the protected activity and the employment action. Until the Supreme Court decided *Burlington Northern*, there was a split among the circuits of the United States Court of Appeals as to whether an adverse employment action needed to be workplace related in order to be actionable. In other words, did the action taken against an employee for engaging in protected Title VII activity have to be directed at the employee in the workplace? Also in dispute was how severe such actions needed to be.

The Court in *Burlington Northern* ruled that Congress did not intend to limit the scope of the anti-retaliation provision to work related actions. Noting that the anti-discrimination provision of Title VII limits a claim to actions affecting or altering the workplace, the Court found that to the contrary, the specific anti-retaliation language of Title VII does not have such limiting language. The Court cited to decisions of the lower courts, providing examples of those actions not related to employment that qualified as actionable retaliation. In one instance, retaliation was actionable when an employer filed false criminal charges against a former employee who made complaints of discrimination. In another case, the FBI's refusal to investigate death threats that a prisoner made against an agent and his wife, constituted actionable retaliation. Both cases concern acts made outside the scope of employment. The Court further found consistency between the broader language of the anti-retaliation provision and the purpose of the provision, which is to maintain access to the statutory remedies of Title VII by prohibiting harm to an employee that is reasonably likely to deter the employee from engaging in protected activity, even if that harm occurs outside the workplace.

This leads into the second issue analyzed by the Court, regarding the severity of the employer's conduct in order for it to qualify as actionable retaliation. The Court ruled that Title VII does not protect an employee from all retaliation, only retaliation that produces an injury or harm. Choosing an objective standard, the Court ruled the conduct complained of must be "materially adverse to a reasonable employee or job applicant." The Court reasoned that this standard will limit the type of action to

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significant claims based on conduct that will likely dissuade a reasonable worker from making or supporting Title VII claims. This standard disallows claims based on simple, petty annoyances that occur in every workplace from time to time, as well as claims based on what the Court termed as the subjective employee emotions that are immeasurable for determining the scope of the alleged harm. The standard of a reasonable person is also intended by the Court to allow for a case by case analysis of Title VII retaliation claims. *Burlington Northern* emphasized the idea that context matters.

Burlington Northern will greatly impact Title VII retaliation claims brought in New York and New Jersey, as well as retaliation claims under other federal employment laws such as the Americans with Disabilities Act and the Age Discrimination in Employment Act. The decisions of federal courts in both states have conflicted over the issues resolved by this case. Until *Burlington Northern*, courts decided case by case whether a challenged action reached the level of "adverse employment action" required by Title VII, but there was no standard for determining which actions qualified as "adverse." *Burlington Northern* provides an answer by expanding retaliation claims to adverse employment actions not related to the workplace, but limiting claims to conduct that the reasonable employee would consider to be materially adverse.

Burlington Northern provides an answer by expanding retaliation claims to adverse employment actions not related to the workplace, but limiting claims to conduct that the reasonable employee would consider to be materially adverse.

Contrary to the Court's decision, prior to *Burlington Northern*, the Second Circuit Court of Appeals, which includes New York, held that to be actionable, retaliatory adverse employment actions had to affect working conditions or employment, although the Second Circuit did not require the conduct to be an ultimate action such as termination or reduced wages. The approach of the Third Circuit, which includes New Jersey, was arguably even more narrow, holding that adverse employment actions required a deprivation or alteration of employment conditions or opportunities. Now, the broader approach of *Burlington Northern* will be followed in those circuits since retaliatory conduct does not have to specifically relate to the workplace or employment conditions to be actionable.

The Court's holding in *Burlington Northern* will also likely impact retaliation causes of action brought under state law in a similar manner. New York state courts have generally applied the same standard as federal courts when determining whether a plaintiff has established a prima facie case of retaliation under the Human Rights Law ("NYSHRL"), the state's anti-discrimination and anti-retaliation statute. The language of NYSHRL's anti-retaliation provision is very similar to the general language of Title VII's anti-retaliation provision. NYSHRL provides that "it shall be unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article..." Both provisions left room for interpretation with regard to retaliation claims and Burlington Northern now provides mandatory precedent for federal courts and guidance for state courts.

The holding in *Burlington Northern* may also impact how New Jersey courts apply that state's Law Against Discrimination ("NJLAD"), which contains generalized language mandating that it is unlawful for "any person to take reprisals against any person because that person has opposed any practices or acts forbidden under the act..." New Jersey state courts have also applied the federal standard for establishing retaliation claims under the NJLAD so it is also probable they will now apply the broader *Burlington Northern* standard to such claims.

On the other hand, *Burlington Northern* will likely have less of an impact on retaliation claims under the New York City Human Rights Law ("NYCHRL"), which is the City's anti-discrimination law. NYCHRL provides a much more specific description of the requirement for retaliation causes of action than did Title VII or New York or New Jersey state law. The City's statute requires the action to "be reasonably likely to deter a person from engaging in protected activity". This is similar to *Burlington Northern*'s "reasonable person" standard, in that it requires an objective analysis. It also coincides with the standard set forth in *Burlington Northern*, because it requires the action to dissuade a person from making or supporting a discrimination claim. NYCHRL further mandates that the activity does not have to result in an ultimate action or materially adverse change with respect to employment terms and conditions. Note, however, NYCHRL does not define whether the action must be related to employment or occur in the workplace. As to this issue, *Burlington Northern* may have an impact on the interpretation of the New York City law governing retaliation.

Burlington Northern marks a significant change in retaliation claims established under Title VII of the Civil Rights Act and it is likely to similarly impact New York and New Jersey law as well. Employers should review their polices and handbooks to make sure they are now in compliance with *Burlington Northern's* broader scope for retaliation claims and that supervisors and management are trained on its impact.

Steven M. Berlin is a Partner at Martin Clearwater & Bell LLP and head of the Firm's Employment and Labor Practice Group. Mr. Berlin has over 20 years of litigation experience and is a frequent author and lecturer in New York and New Jersey on employment issues.

MCB ATTORNEY NEWS

MCB PARTNER ADMITTED TO AMERICAN COLLEGE OF TRIAL LAWYERS

Senior Partner Bruce G. Habian has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in America. Mr. Habian joins MCB Senior Partners John L.A. Lyddane and Peter T. Crean, who are also members of the College.

The induction ceremony took place in September before an audience of 1,020 people during the 2006 Annual Meeting of the College in London, England.

Founded in 1950, the College is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only and and only after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of fifteen years trial experience before they can be considered for fellowship.

BRUCE G. HABIAN

Mr. Habian has represented the Firm's core clients in professional liability defense litigation for more than 30 years. He also heads the Firm's Legal Professional Liability Practice Group representing law firms and major insurance carriers in litigation matters including personal injury, bankruptcy and commercial litigation, domestic relations and criminal law.

He received his J.D. from Villanova University School of Law and his B.A. from Boston College. He currently serves on the Firm's three partner Executive Committee for Firm governance.

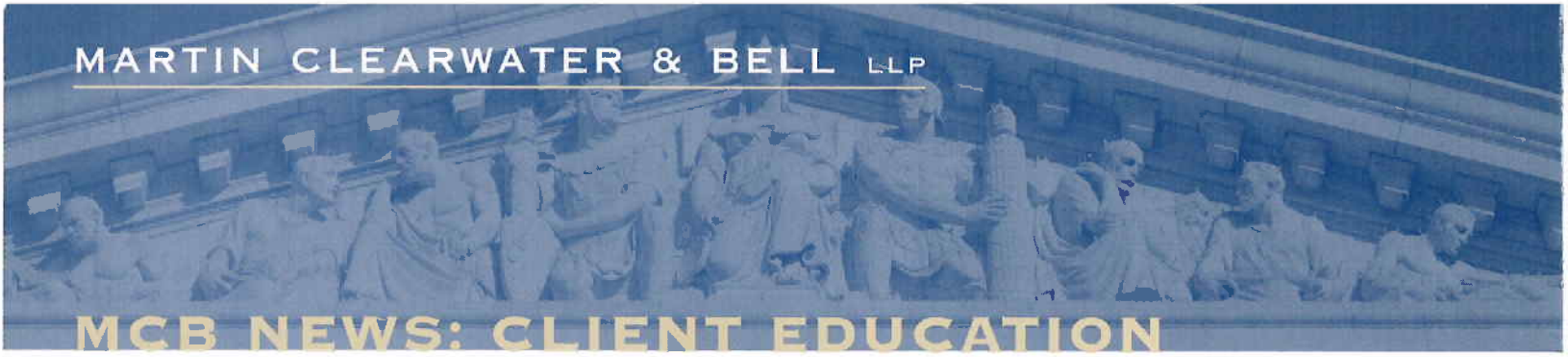
MCB WELCOMES THOMAS CONLON AS COUNSEL

Thomas Conlon has joined MCB's New Jersey Office as Counsel. Mr. Conlon has extensive experience in defending a variety of health care providers and focuses his practice on the defense of physicians and medical institutions in medical malpractice and professional negligence matters across the State. Mr. Conlon is a senior trial attorney and has conducted pre-suit investigations of potential claims through trial and the appellate process. He represents physicians of virtually every specialty, as well as nurses, radiological technicians and physician's assistants. He also represents long-term care facilities and staff in professional negligence and general liability matters, as well as commercial enterprises in premises liability matters. He is a member of the Firm's Medical Malpractice, Professional Liability and Employment and Labor Practice Groups.

Mr. Conlon began his legal career at Martin Clearwater & Bell LLP in 1993, and returned to the Firm in 2006, after working as a Senior Associate and trial attorney with Orlovsky, Moody, Schaaf & Gabrysiak, P.C. in West Long Branch, New Jersey and Leyhane & Cunningham, which acts as staff counsel for the New Jersey medical professional insurance carrier, MIXX. At these firms, he specialized in the defense of health care providers at all stages of litigation. Mr. Conlon has also assisted in the defense of physicians involved in the New York State breast implant litigation.

THOMAS CONLON

Mr. Conlon received his J.D. from Fordham University School of Law in 1993, where he was Editor-in-Chief of the Moot Court Board. He received his B.S., magna cum laude, in economics/finance from the University of Scranton in 1990, and was the recipient of the Award for Excellence in the Fields of Economics and Finance. He is admitted to practice before the State Courts of New York and New Jersey and the New Jersey Federal Courts.



MCB NEWS: CLIENT EDUCATION

UPCOMING EVENTS

Common Misconceptions in Human Resources

Tues. Dec. 5, 2006 8:30 a.m. - 4:30 p.m.
Parsippany Holiday Inn – Parsippany, NJ
Presented by Lorman Education Services

MCB Partner Steven M. Berlin and Associate Dana L. Mahoney will present a seminar on common misconceptions in the human resources field, including an employer's ability to inquire about an employee's criminal arrest record, as well as issues such as at-will employment, credit checks, employee discipline and termination and wage and hour pitfalls. This seminar is presented by Lorman Education Services. To register, go to www.lorman.com.

NOTEWORTHY RECENT EVENTS

Representing Physicians and Other Health Care Practitioners in the Professional Disciplinary Process

Friday, April 7, 2006
Hilton Huntington - Melville, NY
Presented by the New York State Bar Association

MCB Senior Partners Kenneth R. Larywon and Joseph L. DeMarzo presented as part of a panel at a half-day NY State Bar Association program that focused on the professional disciplinary process and how it works, what strategic decisions must be made at critical stages and how to effectively defend the healthcare professional.

5th Advanced National Forum on Preventing, Managing and Defending Claims of Obstetric Malpractice

Tues., June 20, 2006 - Wed., June 21, 2006
Philadelphia, PA
Presented by the American Conference Institute

MCB Senior Partner Bruce G. Habian was part of a panel of recognized experts concerning managing obstetric malpractice at the 5th National Forum on Preventing, Managing and Defending Claims of Obstetric Malpractice.

The Value of Organized Mentoring to the Trial Lawyer

Tuesday, August 22, 2006
Cooperstown, NY
Presented by: New York State Bar Association

MCB Senior Partner John L.A. Lyddane spoke as part of the NY State Bar Association's Summer Meeting and 50th Anniversary of the Trial Lawyers Section in Cooperstown, NY on Tuesday, August 22, 2006. Mr. Lyddane's presentation focused on the value of establishing an organized mentoring system to the development and retention of strong associate talent in the litigation context, while highlighting the roles of the mentor and mentee.

Ethics in the Context of Medical Malpractice Defense: 2006 Update

Thurs., Nov. 16, 2006 - 8:30 a.m. - 12:30 p.m.
Grand Central Hyatt – New York, NY
Presented by: Martin Clearwater & Bell LLP

MCB's Biennial Fall Ethics CLE will be held on Thursday, November 16, 2006 from 8:30 a.m. - 12:30 p.m. at the Grand Central Hyatt (42nd Street at Park Avenue). The program, which will be presented by MCB Senior Partner John L.A. Lyddane and Anthony Davis and Hal Lieberman of Hinshaw & Culbertson LLP, will focus on a variety of issues facing the defense bar and its clients today. It will include discussions about the ethical issues involved when lawyers make lateral moves, "moonlighting", ethical constraints of dealing with the media, rules governing witness preparation, communications with former employees of represented parties and with non-clients. **This program is accredited for 4 NY State CLE Ethics credits.**

North Shore University Hospital OB/GYN Grand Rounds

Wed., September 13, 2006
Presented by Martin Clearwater & Bell LLP and North Shore University Hospital

Senior Partner Anthony M. Sola participated in a mock trial of an obstetrical case demonstrating how a defense can be structured when it can be shown that the obstetrician made a reasoned judgment decision. The mock trial highlighted the need for timing—not just dating—notes, and including in the notes the factors considered by the obstetrician in formulating a plan of delivery.

Advanced Topics in the Family and Medical Leave Act in New York

Tues. Oct. 24, 2006 8:30 a.m. - 4:30 p.m.
The Warwick – New York, NY
Presented by Lorman Education Services

MCB Partner Steven M. Berlin and Associate Dana L. Mahoney presented a seminar on issues related to the Family Medical and Leave Act in New York. This seminar was presented by Lorman Education Services.

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