HMO Held Liable for Doctor’s Negligence

In November 1996, 25-year-old Jane Doe chose a doctor from her employer’s HMO plan for her annual gynecological examination. During the exam, her doctor detected an ovarian tumor. The doctor performed exploratory surgery, which indicated a rare, dangerous ovarian tumor, called a granulose theca cell tumor. If properly treated and closely monitored, this type of tumor is unlikely to cause death. Unfortunately, her doctor did not properly treat the tumor during surgery, did not explain the diagnosis to Jane Doe and did not provide any follow-up care. As a result, Jane Doe is likely to die before her 35th birthday, leaving behind a husband and son.

Jane Doe retained attorneys Jack Scarola and Pat Quinlan to handle her case. Because the doctor lacked the financial resources or insurance coverage to fully compensate Jane Doe for her losses, Mr. Scarola and Mr. Quinlan focused on establishing liability of the HMO through which Jane Doe received her medical care. HMOs generally label their plan doctors as “independent contractors” in an attempt to shield themselves from any responsibility for the doctors’ potential negligence. However, it was shown that Jane Doe’s HMO retained enough control over the doctor’s practice of medicine that the jury could decide whether the doctor was a true “independent contractor.”

More importantly, Mr. Scarola and Mr. Quinlan showed the presiding judge that the HMO was liable for the doctor’s negligence, as a matter of law, pursuant to the Florida Statute that permits HMOs to operate within the state. Mr. Scarola and Mr. Quinlan argued that the Statute, which speaks repeatedly of an HMO’s obligation to ensure “the delivery of quality healthcare, creates a non-delegable duty to provide quality care to plan members.” In a precedent setting decision, the Court agreed.

Mr. Scarola, Mr. Quinlan and the firm’s attorneys have championed for years the effort to hold HMOs accountable for their doctors’ negligence.

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Accolades...

John Shipley Elected to Inn of Court LIV

On Aug. 12, John Shipley was elected as a member of the Craig S. Barnard American Inn of Court LIV. The local Inn of Court is made up of approximately 100 lawyers, judges, and law students, all with the purpose of fostering and promoting the ethical and professional practice of law. Members are also asked to help promote excellence in legal advocacy and to preserve and transmit ethical values from one generation of legal professionals to the next. Membership into the Inn is very selective.

The formation of the West Palm Beach American Inn of Court LIV began in 1988. Florida Supreme Court Judge Harry Lee Anstead and United States District Court Judge Daniel T. K. Hurley were founding members. Craig S. Barnard was also a founding member, nationally recognized for his work defending death row prisoners. After his untimely death at the age of 39, the West Palm Beach American Inn of Court LIV, became known as the Craig S. Barnard American Inn of Court LIV.