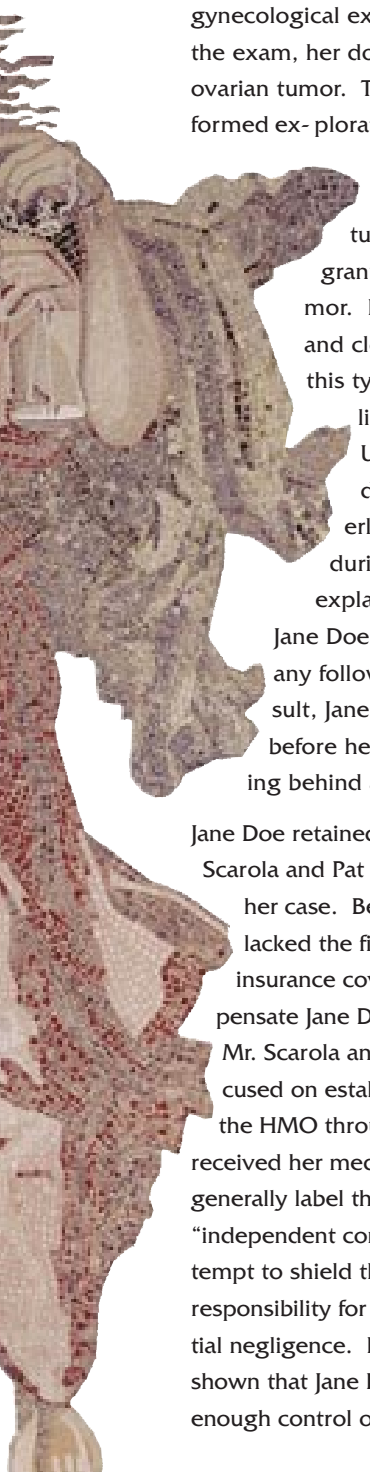


## HMO Held Liable for Doctor's Negligence

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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 granulosa 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 35<sup>th</sup> 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.

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Mr. Scarola, Mr. Quinlan and the firm's attorneys have championed for years the effort to hold HMOs accountable for their doctors' negligence. The Florida decision, holding an HMO liable for malpractice under the theory of non-delegable statutory duty, appears to be the first such ruling in the state. The case was resolved as to all defendants shortly after this landmark legal ruling. As the Doe family faces the uncertainties of Jane's medical prognosis, they will at least have the limited comfort of financial security. ■