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Texas SC finds health care provider's policies & procedures fall outside of scope of pre-report discovery

Staff reports

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AUSTIN - A health care provider's general policies and procedures fall outside the narrow scope of pre-report discovery permitted in medical-liability cases, the Texas Supreme Court recently opined.

The high court granted Signature Pointe Senior Living Community's petition for mandamus relief on Feb. 25, reversing a lower appellate court's judgment.

The Supreme Court held that discovery of a health care provider's policies and procedures is impermissible before the plaintiff files an expert report detailing the alleged negligence and how it caused the plaintiff's damages.

The case drew the interest of several groups and associations, such as the Texas Alliance for Patient Access (TAPA).

Court records show the state of Texas also filed an amicus brief in support of Signature Pointe, which argued that health care claimants can satisfy their obligation to serve expert reports without access to health care providers' internal policies.

TAPA's brief urged the Supreme Court not to broaden the very limited circumstances under which early discovery could continue.

According to TAPA, the high court's ruling let stand an important plank of Texas' 2003 landmark medical liability reforms that attempted to rein in non-meritorious lawsuits.

Justices found that the very narrow provision that allows discovery for information "related to the patient's health care" does not include policies and procedures, and that any other interpretation "would swallow the very discovery limitation" the Texas Legislature intended.

By granting Signature Pointe's petition, the Supreme Court curtailed the practices of plaintiff's attorneys trying to circumvent the statute and upheld its purpose, says attorney Jennie Knapp, who authored TAPA's brief.

According to TAPA, before 2003, plaintiff's attorneys routinely drove up the litigation costs of med-mal cases by sending expansive sets of discovery when the lawsuit was filed. A key component of the 2003 reforms was preventing costly early discovery.

"Some plaintiff's attorneys have been sending voluminous early discovery anyway, hoping that a favorable judge would permit it," said Knapp, an attorney at the Underwood Law Firm in Amarillo. "Friday's Signature Pointe ruling should put a stop to that practice."

Case No. 20-0694