

STATE OF INDIANA)
)ss:
COUNTY OF MARION)

MARION SUPERIOR COURT
CIVIL DIVISION 10

VICKI L. SANDERS, et.al.) CAUSE NO. 49D10-0008-CT-1135
)
 vs.)
)
 THE PATIENT'S COMPENSATION)
 FUND, et.al.)

MICHAEL T. THOMAS, et.al.) CAUSE NO. 49D10-0010-MI-1551
)
 vs.)
)
 SALLY McCARTY, et.al.)

JEFFERY KOEHL, et.al.) CAUSE NO. 49D10-0101-CT-0096
)
 vs.)
)
 INDIANA PATIENTS')
 COMPENSATION FUND.)

**ORDER ON CONSOLIDATED
MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

I. STATEMENT OF CASE

Plaintiffs Thomas, Sanders, and Koehl (“Patients”) all seek damages, in their individual cases, for injuries to multiple persons from a single act of medical malpractice. In each case, one doctor or hospital (“Provider”) has paid one Indiana liability limit of One Hundred Thousand Dollars (\$100,000.00), or other amount to qualify. Defendants, largely the Indiana Patients Compensation Fund (“Fund”), move for summary judgment claiming the damage cap under the Indiana Medical Malpractice Act (“Act”) allows only one recovery in each case from the Fund, but a Provider is liable separately to each

injured person. Patients, and Koehl's motion for summary judgment, argue the Act allows separate recoveries for each injured patient from the Fund, but a Provider is liable only once in each case for a single act of malpractice.

The Court finds the Act allows separate recoveries for each injured patient, but the Providers are liable only once for a single act of malpractice, regardless of the number of injured patients.

II. ISSUES

Does the Act allow multiple recoveries from one act of malpractice?

Does the Act require a Provider to pay multiple limits for a single act of malpractice if there are multiple recoveries?

III. FACTS AND PROCEDURAL HISTORY

Sanders

Vicki Sanders and her husband allege a doctor committed an act of malpractice during labor and childbirth of twins resulting in the death of one child, and permanent injuries to the surviving child and mother.

In January 1997, Dr. Stanley Drake delayed delivery of twin children during labor period. After severe hemorrhaging, one child died, one was brain damaged, and the mother suffered personal injuries. Dr. Drake paid the Provider's limit of One Hundred Thousand Dollars (\$100,000.00). The Sanders sued the Fund for Two Million Nine Hundred Thousand Dollars (\$2,900,000.00), that is, four (4) claims for the applicable limit of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for each parent and child,

less one paid Provider's limit for one act of malpractice. The Fund moves for partial summary judgment to establish one recovery, but four Provider limits.

Koehl

Karla Koehl and husband allege a doctor committed an act of malpractice during Karla's pregnancy with twins, resulting in permanent damage to each child.

In April 1997, Dr. Jerry L. Kight treated Karla with radioactive iodine for Grave's Disease without checking for pregnancy. Karla was approximately three months pregnant with twins, but unaware until August 1997. Her twins were delivered premature in September 1997, and still suffer from hypothyroid disease from the radioactive poisoning. Dr. Kight paid the Provider's limit of One Hundred Thousand Dollars (\$100,000.00). The Koehl's sued the Fund seeking separate damages for each child. The Koehl's move for partial summary judgment to establish two separate recoveries under the Act.

Thomas

Michael T. Thomas alleges a single act of malpractice during labor and childbirth resulted in the death of his wife, the mother, and permanent damage to the child.

In September 1998, Caylor-Nickel Medical Center, through its employee-nurse Pat Peterson, performed an epidural on mother preparing for delivery of the child. Mother had cardiopulmonary arrest and died one month later without regaining consciousness. The child, Jacob Thomas, suffers severe permanent neurological damage. Caylor-Nickel Medical Center paid the Provider's the limit of One Hundred Thousand Dollars (\$100,000.00). Thomas sued the Fund for One Million Four Hundred Thousand Dollars (\$1,400,000.00), that is, two claims for the applicable limit of Seven Hundred

Fifty Thousand Dollars for mother and child, less one paid Provider's limit. The Fund moves for partial summary judgment to establish one recovery, but two Provider limits.

IV. LAW

The total amount recoverable for an injury or death of a patient may not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00). I.C.34-18-14-3 (a) (emphasis supplied).

A Provider qualified under the Act is not liable for an amount in excess of One Hundred Thousand Dollars (\$100,000.00) for an occurrence of malpractice. Id. at (b) (emphasis supplied).

Any amount due from a judge or settlement that is in excess of the total liability of all liable health care providers . . . shall be paid from the Patients Compensation Fund. Id. at (c).

If a statute is clear and unambiguous, the court should only construe its words and phrases in their plain, ordinary, and usual sense. Poehlman v. Feferman (1999), Ind., 717 N.E. 2d 578. If it is unambiguous, this court cannot resort to other rules of construction nor apply unusual or stylized meanings to commonly understood words. Sholes v. Sholes (2001), Ind., 760 N.E. 2d 156; Brownsburg Area Patrons Affecting Change v. Baldwin (1999), Ind., 714 N.E. 2d 135. If a statute is ambiguous and its meaning is not clear from its words, the court should interpret its words to accomplish the end for which it was enacted. Sue Yee Lee V. Lafayette Home Hospital (1980), Ind. App., 410 N.E. 2d 1319. The Act is in derogation of common law and must be strictly construed. Cacdac v. West (1999), Ind. App., 705 N.E. 2d 506.

Indiana courts have interpreted the Act in various cases involving multiple acts of malpractice and multiple injuries. In St. Anthony Medical Center v. Smith (1992), Ind.App., 592 N.E. 2d 732, a patient suffering a single injury after two separate acts of malpractice was limited to a single recovery under the Act. In Bova v. Roig, (1992), Ind. App., 604 N.E. 2d 1, a patient also suffered multiple acts of malpractice resulting in a single injury, that is, blindness in one eye. The court found the patient was entitled to recover only once under the Act. A few years later, in Miller v. Memorial Hospital of South Bend, (1997), Ind. 679 N.E. 2d 1329, the Indiana Supreme Court found two separate acts of malpractice resulting in two separate injuries to the same patient allows two separate recoveries under the Act. Similarly, Haswell v. Kramer, (1995), Ind. App., 659 N.E. 2d 146 held nothing in the Act precludes recovery for separate injuries sustained as a result of more than one act of malpractice. Most notably, Patel v. Barker, (2001), Ind. App., 742 N.E. 2d 28, determined multiple acts of malpractice during a single procedure can lead to multiple injuries and, therefore, multiple recoveries. The Patel Court of Appeals analysis also shows a recovery under the Act applies separately to each “injury or death,” and is not determined by the “occurrence,” or act of malpractice. 742 N.E. 2d at 33.

Apparently, there is no authority in Indiana or elsewhere addressing the circumstance in these cases: one act of malpractice resulting in injuries to multiple patients.

But in other areas of the law, Indiana courts have found one “occurrence” regardless of the number of injuries. For example, General Casualty of Wisconsin v. Diversified Painting Service, (1992), Ind. App., 603 N.E. 2d 1389 found a single

“occurrence,” when a painting company accidentally sprayed ninety automobiles, regardless of the number of individual claims for damage.

“Occurrence” is most commonly defined as a singular “event” or “episode.” Webster’s New Collegiate Dictionary; Black’s Law Dictionary.

V. ANALYSIS

The Act Allows A Recovery For Each “Injury”

Indiana law clearly allows multiple recoveries for multiple acts of malpractice. Miller v. Memorial Hospital of South Bend, supra.; Haswell v. Kramer, supra.; Patel v. Barker, supra. The courts properly interpret the limit for “an injury” to allow a recovery for each injury. The patient’s injury is the determinative focus, not the number of acts of malpractice. Patel v. Barker, supra. at 32.

Hardly a single Indiana case interpreting the Act has found it ambiguous, and this Court agrees. The holdings above are easily supported by the plain meaning of the words of the Act: “The total amount recoverable for *an injury or death* is . . . “ I.C. 34-18-14-3 (a). Indeed, we are clearly bound by the Indiana Supreme Court’s conclusion upon this unequivocal language in Miller v. Memorial Hospital of South Bend, “. . . there is no dispute that, if there are two separate and distinct injuries caused by two separate occurrences of malpractice, the statute does not preclude two separate recoveries . . .” 679 N.E.2d at 1332. While Miller’s facts include two purported occurrences of malpractice, the logic remains the same, so separate and distinct injuries are allowed separate and distinct recoveries under the Act.

Therefore, each injured patient in these consolidated cases is entitled to a separate recovery under the Act.

There Is A Single “Occurrence” of Malpractice In Each
Case and a Single Provider’s Limit

Here again, the Act is unambiguous. The Act’s limitation on a Provider’s liability applies to each “occurrence” of malpractice. In these cases, a single act of malpractice caused multiple injuries to multiple patients. So, how many “occurrences” are there in each case?

The plain meaning of “occurrence” is a single event or episode regardless of the number of injuries it causes. More importantly, Indiana courts above correctly find the Act plainly provides one limit for each injury. Consistent logic can only allow one interpretation: one limit for each occurrence as well. This consistency is not even limited to medical malpractice cases. As shown above, one act of negligent painting can damage ninety cars, like one act of malpractice can cause multiple injuries. But it is still only one “occurrence.” General Casualty of Wisconsin v. Diversified Painting Service, *supra*. There is only one act of malpractice in each case, so the Act, strictly construed, allows only one Provider’s limit in each case.

The Fund argues Bova v. Roig precludes such a finding by declaring “occurrence” cannot be less comprehensive than “injury,” therefore multiple “injuries” are multiple “occurrences.” Despite this assertion, Bova does not support the Fund’s conclusion. The Bova court interprets the Act where two acts of malpractice cause one injury. Bova found one “occurrence” for two acts of malpractice, and one recovery for

one injury. All in all, Bova's "comprehensive" comparison is simply not applicable to these cases where there is only one act of malpractice. In addition, the Fund's argument contradicts the long line of reasoning from authorities above, and Patel's central rule: the number of "occurrences" is not determined by the number of "injuries" under the Act.

The Act allows only one Provider limit in each case here because there is only one act of malpractice in each case. Holding otherwise contravenes the clear meaning of "occurrence" and the consistent logic of Indiana cases interpreting the Act.

VI. CONCLUSION

The Act allows a separate recovery for each injured patient.

The Act allows only one Provider limit for each act or "occurrence" of malpractice, regardless of the number of injuries it causes.

VII. ORDER

The Court denies the Fund's motions for partial summary judgment in Thomas and Sanders. The Court grants Koehl's motion for partial summary judgment.

Dated this 14th day of March. 2003.

David J. Dreyer, Judge
Marion Superior Court