
FOR IMMEDIATE RELEASE

DATE: February 20, 2009
CONTACT: John Vail, 202-944-2887

Trial Lawyers Help Defamed Doctor Win Case Against Colleagues

Two physicians who complained to a professional organization about a fellow doctor who testified in a malpractice case are liable for defamation, a Minnesota jury has found.

The jury in *Yancey v. Weis* (Court File No. 27-CV-07-15651) found the defendants defamed plaintiff Charles Yancey, M.D. when they claimed to the American Academy of Ophthalmology (AAO) that his testimony against them was misleading.

The case highlights the controversy over how doctors who testify against other doctors in malpractice suits should be treated by medical professional societies.

Some physicians believe expert witness testimony of doctors should be subject to review by other doctors outside of the court system – a system they call “peer review.” Some physicians also believe that medical societies should have the power to discipline physicians who testify against other doctors.

“Peer review of expert witness testimony is simply a bad idea,” says Center for Constitutional Litigation, P.C. Vice President John Vail, who argued on behalf of Dr. Yancey. “Expert witness testimony should be judged in the court system. That is what the courts are for. Medical society peer review of expert witness testimony intimidates witnesses.” Vail says.

Doctor Yancey appeared as an expert witness for a patient in a medical negligence suit against Dr. Weis and a refractive surgery center. After Dr. Weis was found liable in the malpractice trial, Weis and his expert witness, Dr. Hardten, sent a letter to the AAO. The letter stated that “many of the statements made by Dr. Yancey” mislead the jury.

The jury found that statements Drs. Weis and Hardten made defamed Dr. Yancey. The jury awarded him \$350,000, including \$200,000 in compensation for “future harm to his reputation, mental distress, humiliation, and embarrassment.”

Significantly, Dr. Yancey won two summary judgment motions against the defendants before proceeding to trial, including a key ruling that their actions were not immunized by the federal Health Care Quality Improvement Act (HCQIA).

The Minnesota court said in its order on motion for summary judgment that nothing in HCQIA “provides or reasonably implies [a] professional body is empowered to review the quality of a physician’s testimony in a medical malpractice proceeding.” The Minnesota court’s reasoning followed that of a case in Florida that also examined peer review, *Fullerton v. Florida Med. Ass’n. Inc.*, in which Vail also served as Counsel.



777 6th Street NW, Suite 520
Washington, DC 20001-3723
Tel: (202) 944-2803
Fax: (202) 965-0920
Email: infoccl@cclfirm.com

“Parties in court have every incentive to root out bad testimony already,” Vail says. “They have at their disposal the most power tool available – cross examination under oath.”

Vail and Minneapolis trial attorney Mike Zimmer argued at trial on behalf of Dr. Yancey. The case was heard in Minnesota’s Fourth Judicial District. Center for Constitutional Litigation firm attorneys Lou Bograd and Francine Hochberg contributed to written arguments in the case.

The Center for Constitutional Litigation, P.C. argues complex appellate cases involving access to justice in state and federal courts, including the U.S. Supreme Court.

###