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NJ PURE Executive Appears Before Supreme Court and Helps Secure Victory Towards Curbing Frivolous Medical Malpractice Lawsuits

August 1, 2020 – Princeton, New Jersey – New Jersey Physicians United Reciprocal Exchange (NJ PURE), a leading medical malpractice insurer in New Jersey, applauds the Supreme Court of New Jersey on its reversal of the Appellate Division’s decision in the matter of Cowley v. Virtua Health System (A-47-18; 081891). In brief, the State’s highest Court was asked to analyze the “common knowledge exception” to the Affidavit of Merit statute, which requires a sworn statement by a medical professional that the defendant physician deviated from the standard of care. This statutorily-required statement is a prerequisite to maintaining a malpractice action against a healthcare provider.

In this case, the plaintiff’s physician ordered the nursing staff to insert a Nasogastric Tube (NG Tube). The patient, who removed the tube herself and refused reinsertion, alleged that the nursing staff deviated from the standard of care, resulting in damages. At the trial, the complainant failed to file an Affidavit of Merit, but rather relied upon the “common knowledge exception,” arguing that no Affidavit of Merit was required to establish a deviation from the standard of care. The trial court disagreed and dismissed the complaint; however, the Appellate Division reversed this decision, holding that the exception applied, despite the complicated issues that arise when there is a standing order but a patient refuses treatment. The matter was appealed to the Supreme Court of New Jersey.

NJ PURE applied for and was granted status as Amicus Curiae (friend of the court) and, along with the New Jersey Doctor-Patient Alliance (NJDPA), also participating as Amicus Curiae, shared the important perspective of the medical provider and insurance communities.

On May 4, 2020, the New Jersey Supreme Court issued its opinion, reversed the Appellate Division's decision, and upheld the protections enacted to shield healthcare providers from frivolous litigation by significantly limiting the scope and application of the "common knowledge exception." The Court focused on the numerous medical questions and the patient's refusal of treatment, finding that an expert is required to determine the appropriate balance between patient autonomy and the prescribed treatment. The Supreme Court resoundingly supported the fundamental premise that the medical arena is complicated and complex. As such, they concluded an expert opinion was required.

Said Eric S. Poe, Esq., CPA, Complex Claims Litigation Officer for NJ PURE: "This is a great victory and important one. Abbey True Harris, Esq. and our team worked hard to highlight the complexities of treating patients and the real-world impact that the Affidavit of Merit requirement has on medical professionals and patient care. The protections enacted by the Legislature in the Affidavit of Merit statute are crucial in establishing any deviation from the standard of care and curtailing frivolous lawsuits."

Headquartered in Princeton, N.J., NJ PURE is a medical professional liability insurance provider that was founded by James J. Sheeran, a former New Jersey state insurance commissioner, and Lena Chang, PhD, an award-winning insurance actuary and expert, during the medical malpractice crisis in 2002. For more information about NJ PURE, visit www.njpure.com.

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