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NEWSLETTER

Sexual Abuse Is Not "Professional Service" under Malpractice Policy

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The Supreme Court of Rhode Island has held that a medical malpractice policy does not afford coverage for sexual abuse by the insured pediatric neurologist because the sexual abuse was not a professional service. *Sanzi v. Shetty*, 2005 WL 106619 (R.I. Jan. 20, 2005).

Beginning in 1978, the insurer issued a series of occurrence-based policies to a pediatric neurologist. The policies provided that the insurer would "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of . . . injury arising out of the rendering of or failure to render during the policy period professional services." "Occurrence" was defined as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured." In addition, beginning in 1980, the policies contained an exclusion that precluded coverage for "injury arising out of the performance by the insured of a criminal act."

The family of a former patient of the insured sued the physician for wrongful death after the patient committed suicide, alleging that the physician had sexually molested the patient for a number of years dating back to 1979, causing mental turmoil that ultimately led to her suicide. After the insurer denied coverage, litigation ensued.

The Rhode Island Supreme Court held that insurer properly denied coverage because the complaint did not "allege injury arising from the rendering or failure to render professional services." According to the court, "intentional sexual abuse does not fall within the rendering of professional services for the purposes of insurance coverage unless the facts are so inextricably intertwined with medical treatment that coverage must be afforded." The court reasoned that sexual abuse by a doctor is not intertwined with medical treatment, particularly where, as here, the doctor's skills are in the field of pediatric neurology. The court stated that "[h]ere, professional services are remotely incidental to what is alleged in the complaint, since [the physician's] professional status merely served the function of allowing the perpetrator access to the victim."

The court also held that, even if the sexual abuse did fall inside the realm of professional services, coverage would still be barred by the "inferred intent" doctrine. Under this doctrine, insurers have no duty to defend or indemnify insureds in civil actions resulting from acts of child molestation if the policy at issue contains an

intentional acts exclusion, or if the policy provides coverage only for an "occurrence," and "occurrence" is defined as an "accident." The court explained that since the policies at issue in this dispute are triggered by an "accident," there is no coverage for the sexual abuse of a minor "[b]ecause the alleged sexual abuse carries with it an inferred intent to harm" so that "there is no accidental nature to the resulting injuries."

The court also rejected the argument that the 1978–1980 policies impliedly provided coverage for criminal acts because they did not contain a criminal act exclusion. The court explained that "[w]e see nothing in the earlier policies that would lead the ordinary reader to conclude that criminal-acts or sexual-abuse coverage was included. The simple fact that later policies provide a specific exclusion does not mandate the inclusion of that coverage in the earlier policies."