



Legal Corner

Use of Clinical Practice Guidelines in Medical Malpractice Litigation



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This article addresses the evidentiary use of clinical practice guidelines in malpractice litigation, and discusses the advantages and disadvantages of employing clinical practice guidelines for that purpose.

During the past 20 years, several states have adopted demonstration projects that established clinical practice guidelines as statutory standards of care and foundations for physicians to

use as defenses in malpractice suits. The most famous project was the Maine Medical Liability Demonstration Project, which expired in 1999. The Maine project created special advisory committees in four areas of medicine and directed each committee to develop clinical practice guidelines, which were incorporated into the Code of Maine Rules. If a physician in one of the four areas of practice elected to participate in the project, that physician could introduce the guidelines into evidence as an affirmative defense in any malpractice action against the physician. Plaintiffs in such actions, however, could not introduce the guidelines into evidence to argue that failure to comply with a guideline was malpractice.¹

Unfortunately, the Maine project had little practical effect. The superintendent of the Maine Bureau of Insurance explained that “the medical demonstration project had no measurable effect on medical professional liability claims, claims settlement costs, or malpractice premiums.”²

Florida adopted a similar demonstration project, but it garnered relatively little support among physicians—only 20% of physicians eligible to participate chose to do so.³ The project ended in 1998. Three other states (Kentucky, Maryland, and Minnesota) adopted test projects in the 1990s, though none of the projects is fully operational today (the Maryland and Minnesota projects have fully expired).⁴⁻⁶

Even in the absence of such demonstration projects or other statutory authority, clinical practice guidelines may be admitted as evidence in a malpractice suit. Physicians and patients have both

introduced guidelines as evidence, with varying results. For example, in *Washington v Washington Hospital Center*, a patient sued a hospital, alleging that a physician there was negligent by failing to use a certain monitor.⁷ Although this issue was not ultimately dispositive in the case, a Washington, DC, court upheld that the American Association of Anesthesiology’s guidelines (which recommended the use of that type of monitor) were sufficient grounds for a jury to find that the physician was negligent.

By contrast, the physician defendant in *Levine v Rosen* cited guidelines to defend against a negligence claim.⁸ As in *Washington v Washington Hospital Center*, this was not the deciding issue in the case, but a Pennsylvania court did note that the American College of Obstetrics and Gynecology guidelines supported the physician’s actions. The court explained that “a physician will not be held responsible if in the exercise of his judgment he followed a course of treatment advocated by a considerable number of recognized and respected professionals in his given area of expertise.”⁷

From a policy perspective, the use of clinical practice guidelines in medical malpractice litigation carries advantages and disadvantages. On the positive side, the use of clinical practice guidelines can promote efficiency in malpractice litigation by eliminating the need to establish the appropriate standard of care anew in each case. This increased efficiency can conserve litigation costs for both plaintiff and defendant. On the negative side, there may be situations in which the specter of reference to clinical practice guidelines in malpractice litigation could hamper a physician’s discretion in determining what course of treatment is appropriate under particular circumstances. This could conceivably compromise the quality of care that a patient receives.

Because states differ in their evidentiary rules and practices, clinical practice guidelines may carry varying weight in malpractice litigation, depending on the applicable jurisdiction. In addition, because the use of clinical malpractice guidelines as evidence is an evolving trend, current knowledge of a jurisdiction’s stance on the issue is essential for the most effective defense against a medical malpractice claim.

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References

1. Me Rev Stat Ann Tit 24 §§ 2971-2979
2. Me Bureau of Ins and Bd of Lic in Med, Medical Liability Demonstration Project 2 and 5 (2000)
3. Fla Agency for Health Care Admin, Practice Guidelines as Affirmative Defense: The Cesarean Demonstration Project Report (1998)
4. Ky Rev Stat Ann §§ 216B. 145 and 342.035. (Michie 1995)
5. Md Code Ann Health-General §§ 19-1601 to 19-1606 (1993)
6. Minn Stat § 62J 34 (1993)
7. *Washington v Washington Hospital Center*, 579, 627 A 2d 177 (DC 1990).
8. *Levine v Rosen*, 616 A 2d 623 (Pa 1992)