

vital signs

DIAGNOSING THE CHANGING

STATE OF MEDICAL MALPRACTICE & NURSING HOME LIABILITY

Alleged failure to order appropriate diagnostic testing to monitor an abdominal aortic aneurysm was a new breach of duty in every year that the defendant doctor failed to do so.

By: MaryEllen McLeod

October 18, 2016

In March of 2007, the primary plaintiff was diagnosed with a small abdominal aortic aneurysm (~3.7 cm). His gastroenterologist advised his primary care physician (PCP) of this discovery. During an April 2007 office visit, plaintiff's PCP told plaintiff that he had the abdominal aortic aneurysm, "which we'll have to keep an eye on." For the next seven years, neither the PCP nor his physician's assistant ordered any diagnostic testing on the status of the abdominal aortic aneurysm, despite plaintiff's annual physical examinations. Plaintiff's abdominal aortic aneurysm had grown to ~7 cm when it burst on April 10, 2014, causing injury.

On May 1, 2015, plaintiffs sued the PCP, alleging an ongoing duty to monitor the abdominal aortic aneurysm by ordering the appropriate test every year or by referring him to a specialist for such testing. Defendants contended that the alleged failure to test in the years after 2007 constituted a wrong based upon an omission dating to 2007, not a separate omission for each year thereafter, for the purpose of determining the accrual date of the medical malpractice claim. Defendants argued that each annual examination without diagnostic testing simply constituted another occurrence of the original omission. Defendants filed a dispositive motion on the basis that the plaintiffs' complaint was time-barred. The trial court agreed.

The Court of Appeals reversed the trial court's order, and remanded the matter to the trial court for further proceedings. The appellate court agreed with the plaintiffs that their claim was not based on an initial misdiagnosis and an erroneous treatment plan, but, rather, on separate and independent acts of malpractice

SECRET WARDLE NOTES

In medical malpractice cases, the loss accrues not only from the date of the initial failure to treat, but in every subsequent year that the doctor fails to take action by ordering the appropriate testing.

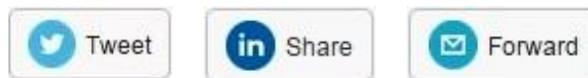
Based upon the recent Court of Appeals' reversal of the trial court's order in *Krueger v Spectrum Health Sys.*, No. 328787, an unpublished decision, decided September 27, 2016, the statute of limitations may not afford the medical professional protection in such situations.

in every year after diagnosis that the defendant doctor did not order the appropriate diagnostic testing to monitor the aneurysm.

PLEASE CLICK HERE TO SIGN UP FOR SECREST WARDLE NEWSLETTERS PERTINENT TO OTHER AREAS OF THE LAW



We welcome your questions -
Please contact MaryEllen McLeod at
mmcleod@secrestwardle.com
or (248) 539-2833





Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secretwardle.com

CONTRIBUTORS

Professional Liability Practice Group Chair
Mark E. Morley

Medical Malpractice Practice Group Chair
John G. Mitchell

Nursing Home/Assisted Living Practice Group Chair
Lisa Anstess

Editors
Linda Willemsen
Sandie Vertel

This newsletter is for the purpose of providing information and does not constitute legal advice and should not be construed as such. This newsletter or any portion of the newsletter is not to be distributed or copied without the express written consent of Secret Wardle.

Copyright © 2016 Secret Wardle. All rights reserved.