

FOR IMMEDIATE RELEASE

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U.S. SUPREME COURT IS ASKED TO PROTECT PATIENT RIGHTS BY CORRECTING PHYSICIAN- HOSPITAL PEER REVIEW PROCESS

Dallas, Texas. In August 2004, a Dallas federal court jury awarded an interventional cardiologist a total of \$366 million in damages against Presbyterian Hospital of Dallas, the chief of internal medicine, the chief of cardiology, and the chief of the cardiac cath lab, related to the suspension of privileges at the hospital in May 1998. Dr. Lawrence Poliner, a board-certified cardiologist and former medical school faculty member, was a solo practitioner at the hospital. The federal trial court reduced the award to \$22.5 million and entered judgment for Dr. Poliner.

Defendants appealed to the Fifth Circuit. On July 23, 2008, the Fifth Circuit reversed and rendered judgment in favor of defendants, holding that as a matter of law, the defendants were immune from money damages under the Healthcare Quality Improvement Act of 1986, the federal law providing for medical peer review immunity (the "HCQIA"). In its ruling, the Fifth Circuit ignored the jury's find that the peer review was malicious and was based on subjective motives unrelated to health care. The Fifth Circuit, in applying the "objective reasonableness" test for determining immunity stated that "the good or bad faith of the reviewers is irrelevant." The Fifth Circuit disregarded "bad motives or evil intent" and "anti-competitive motives" in its analysis.

Dr. Poliner has filed a petition for certiorari to the U.S. Supreme Court (Cause No. 08-543) asking the highest court in the nation to review the case and determine whether the Fifth Circuit was wrong. "Without the grant of certiorari by the U.S. Supreme Court, lower courts will continue down the current path of blatant judicial misinterpretation, providing, in effect, absolute immunity for medical peer review. The Court must step in and fix how the courts are interpreting the law. The current misinterpretation encourages sham peer review, negatively affects patient care, and results in devastation to the careers of good physicians across this country," says counsel for Dr. Poliner, Karin Zaner of Kane, Russell, Coleman & Logan in Dallas.

According to Michael Logan, lead counsel in the trial, Dr. Poliner filed the lawsuit "to stop the abuse of the peer-review process in the future by holding the hospital and the other

participants in his peer review accountable for their malicious actions." Dr. Poliner proved to a jury that his summary suspension was imposed with "malice," which means with knowledge of its falsity or with reckless disregard of its truth or falsity. "The peer-review process in this country is essential to protect patients, but only if it is carried out with honesty and integrity. Hospitals and the doctors who participate in peer review must realize that peer review cannot be conducted for reasons other than patient care," states Dr. Poliner. "Consideration of the Fifth Circuit's erroneous ruling by the U.S. Supreme Court is essential for patient care and quality assurance."

The jury's verdict has been a public vindication for Dr. Poliner and a warning to other hospitals that peer review must be conducted in a fair and honest way, and not for anticompetitive, economic, political, personal, or other improper reasons. "The Fifth Circuit's recent reversal of the jury's verdict, which throws out the jury's clear findings of malice and effectively sanitizes the facts of the case, seriously threatens the message that peer review must be fair and honest," says Ms. Zaner. "That is why the U.S. Supreme Court must take this case." A decision from the Court is expected in late January.