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**OPERATORS OF PSYCHIATRIC FACILITY
OWE DUTY OF CARE TO THOSE SENT
TO THEM FOR HEALTH SCREENING**

Maudsley v. Meta Services (Ct. Appeals, Div. One, June 23, 2011)

A psychiatrist filed a petition for court-ordered evaluation to require Plaintiff to submit to an inpatient psychiatric evaluation. ASU police officers received a call about a suspicious person on campus, and contacted Plaintiff. Plaintiff appeared to have hurt his ankle, and told officers he was mentally ill. A representative from a crisis care organization arrived and took Plaintiff to the Defendant mental health facility. The co-defendant doctor employed by the facility spoke with Plaintiff and told another employee to take Plaintiff to an emergency room for treatment of his ankle. The doctor also instructed Plaintiff to return to the mental health facility after he received the ankle treatment. After going to the ER, Plaintiff left the waiting room before being treated. That night, a witness saw Plaintiff causing a scene at an intersection. Eventually, Plaintiff attempted to cross the street against traffic, was hit by a car and injured. Plaintiff eventually died from the injuries. Plaintiff's estate sued the doctors and the facility for negligence and wrongful death.

The court of appeals reversed the summary judgment in favor of the Defendants, holding that Defendants owed Plaintiff a duty of reasonable care based on Arizona mental health statutes. These statutes reflect a public policy that imposes certain obligations on licensed mental health facilities. Also, Defendant might have owed a duty of reasonable care to Plaintiff if it had a doctor-patient relationship with him. The existence of such a relationship is a factual inquiry, and the finder of fact should have the opportunity to make this preliminary determination.

**COMPARATIVE FAULT PRINCIPLES DO
NOT APPLY TO CONTRACT CLAIMS**

Fidelity and Deposit Company of Maryland v. Bondwriter Southwest (Ct. Appeals, Div. One, July 28, 2011)

Fidelity sued Bondwriter for breach of contract and negligence, after Bondwriter delivered unapproved bonds to a contractor. An agency agreement authorized Bondwriter to solicit applications for surety bonds on Fidelity's behalf. The agreement limited Bondwriter's authority to those transactions that Fidelity specifically authorized. In one transaction, Bondwriter mistakenly delivered a bond to a contractor before Fidelity had authorized the bond. When Bondwriter employees realized their mistake, they were unable to retrieve the original bond before the contractor made copies of the bond and delivered it to their customer, the City of Flagstaff. In another misstep, the City accepted a copy of the bond rather than the original. When the project was not completed, and the City attempted to collect the unapproved bond, Fidelity determined that it had to pay the City. Fidelity then sued Bondwriter for breach of contract and negligence. The trial court found Bondwriter only partially responsible and reduced Bondwriter's liability accordingly. The parties agreed that the trial court had apportioned damages pursuant to A.R.S. § 12-2506. On appeal, the court found that based on the plain language of that statute, which applies comparative fault principles

to actions for personal injury, property damage, and wrongful death, comparative fault principles do not apply to an action for breach of contract. Further buttressing its conclusion, the court noted that contract law "generally operates without regard to fault."

COUNTY DOES NOT OWE NON-DELEGABLE DUTY TO PERSON UNDERGOING OUTPATIENT TREATMENT AFTER BEING RELEASED FROM INVOLUNTARY CUSTODY

Cohen v. Maricopa County (Ct. Appeals, Div. One, August 16, 2011)

A man was involuntarily held in a hospital because he was a danger to self due to depression and repeated drug overdose. After inpatient treatment was completed, he was discharged from the hospital to begin court-ordered outpatient treatment with ValueOptions, the company that contracts with the State. While undergoing outpatient treatment, the man was found passed out with the drug Soma in his pocket. The man was medically cleared at the scene, but taken to an urgent care facility run by Meta Services pursuant to a subcontract with ValueOptions. The physician at the facility determined that medical detention was not necessary, and sent the man home. The next morning, the man was found unconscious at home, and was pronounced dead at the hospital, apparently due to an overdose of the drug oxycodone. Plaintiff, the man's surviving parent and personal representative of his estate, sued ValueOptions, Meta Services, and the County, alleging the County owed non-delegable duties to the decedent and asserting claims for medical negligence, failure to provide psychiatric screening, and violation of the Adult Protective Services Act.

The court of appeals affirmed summary judgment for the County, holding that the County did not owe the decedent a non-delegable duty of care based on Arizona mental health statutes. Once he was released from involuntary custody, the County no longer had exclusive control over him and could not reduce the risk associated with his environment. Further, because the County did not directly contract with others to provide for the man's care (the State did), the County did not have the ability via contract to mandate how the care would be provided. There was no evidence in the record that the County

was in any contractual relationship with ValueOptions, and even if there were, there was no evidence ValueOptions was negligently selected as a provider.

DISCLOSURE STATEMENTS ARE ADMISSIBLE BUT NOT CONCLUSIVE AS TO FAULT; PRELIMINARY EXPERT AFFIDAVITS CAN BE USED AS SUBSTANTIVE EVIDENCE

Ryan v. San Francisco Peaks Trucking Company, Inc. (Ct. Appeals, Div. One, August 25, 2011)

Tana and Patrick Ryan were riding a motorcycle when they collided with a tractor-trailer owned by San Francisco Peaks Trucking ("SFP"). Both were injured, and Patrick later died. Tana sued SFP, passengers in a separate vehicle involved in the accident, and multiple medical facilities and medical professionals, for negligence and wrongful death. Tana's disclosure statements included four expert reports which opined that medical personnel acted negligently. Tana settled as to two healthcare providers, dismissed the rest of the providers (leaving SFP in the lawsuit), and withdrew her medical experts as trial witnesses.

SFP named the dismissed medical providers as nonparties at fault, for "the reasons set forth in Plaintiffs' pleadings [and] disclosure statements." SFP intended to call Tana's previously-named experts to testify at trial, and asserted it would rely on Tana's pleadings and disclosure statements as admissions.

Tana moved for summary judgment, arguing that (1) because SFP lacked its own medical expert, it could not present a prima facie case of negligence against the nonparty healthcare providers; and (2) SFP could not rely on Tana's disclosure statements and expert reports in support of SFP's non-party at fault allegations. The trial court ruled for SFP on both arguments.

The court of appeals held that an opposing party's disclosure statements can be admissible as an admission of a party-opponent, as the disclosure statements were prepared by Tana's attorney as her agent. But they are not automatically conclusive as to fault, and must still be weighed by the jury. This rule ensures that parties are held accountable for their pleadings and disclosure statements, and prevents a party from reaping the benefits of asserting inconsistent arguments - such as a plaintiff

who first alleges negligence against a non-party and obtains the benefits of settlement, but subsequently minimizes the fault of the settling non-party in a trial against a remaining defendant.

In holding that SFP could use Tana's expert witness affidavits to prove a prima facie case of negligence against the nonparties, the court noted that although a party with the burden of proof in a medical malpractice case typically will present live testimony, Arizona law does not necessarily preclude use of an admissible expert opinion affidavit as substantive evidence.

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