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February 12, 2007

TO ALL INTERESTED CLIENTS:

The Supreme Court of Kansas recently issued a decision in *Williamson v. Amrani* which will likely be of interest to you. In the decision, the Court ruled that a physician providing care or treatment to a patient can be found to have violated the Kansas Consumer Protection Act (KCPA), found at K.S.A. § 50-623 et. seq.

The case arose from a claim by a patient, Williamson, against her orthopedic surgeon, Dr. Amrani, following unsuccessful back surgery. Williamson alleged that Dr. Amrani engaged in deceptive acts and practices and unconscionable acts and practices in violation of the KCPA by making representations to Williamson that the surgery he would perform would have benefits that, in fact, it did not have. Williamson alleged that Dr. Amrani represented that the surgery he was recommending had a high degree of successfully relieving back pain when, in fact, the surgery had been unsuccessful in the majority of cases where Dr. Amrani had utilized the same procedure. Williamson alleged that Dr. Amrani had willfully misrepresented or concealed material facts in that he knew, or should have known, that the surgery he was recommending had produced "bad results" for the majority of his patients.

In deciding the case, the Supreme Court noted that the KCPA must be liberally construed to bring consumer transactions within its scope and that the Act is broad enough to encompass the providing of medical care and treatment services in a physician-patient relationship.

The Court went on to hold that expert testimony would be required to establish whether the failure to make an affirmative disclosure constitutes a deceptive or unconscionable practice under the Act.

The impact of this case will be that patients will likely claim violations of the KCPA, which has an attorney's fee provision, to expand the scope of their claims and, perhaps, in an effort to extend the statute of limitations by one year. Claims arising out of the rendering or the failure to render professional services by a health care provider are governed by the two year statute of limitations found at K.S.A. § 60-513. The three year statute of limitations for an action upon liability created by statute found at K.S.A. § 60-512(2)

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normally applies to actions brought under the KCPA. In issuing its decision in Williamson, the Supreme Court stated in dicta that although it was not concerned with the applicable statute of limitations under the facts of the case, prior case law "reinforces" the point that actions under the KCPA are statutorily created causes of action. The inference is that the three year statute of limitations may apply to claims against a physician under the KCPA.

It should be noted that under the particular facts of the Williamson case, the Court addressed whether the KCPA applies to a physician's professional conduct by knowingly making misrepresentations regarding the proposed medical treatment or willfully concealing or failing to make disclosures of material facts. We believe that this is a higher standard than mere negligence and would recommend careful scrutiny of the particular facts of each case to analyze such a claim.

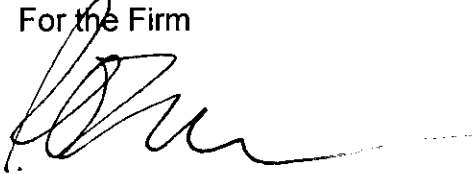
As has been our practice in the past, I have not included a copy of the Opinion with this letter. However, if you would like a copy of the Opinion, you will find it posted on our website at www.wsabe.com/html/News.php under Legal Alerts.

If you should have any further questions regarding this matter, please do not hesitate to contact either one of us.

Very truly yours,



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