

Appellate Decisions of Interest

Monir v. Khandakar, Appellate Division, Second Department (June 13, 2006).

Guiding Principle: Medical professionals who practice together may be held liable for each other's actions. If that is the case, a timely lawsuit against one professional may subject another to suit, even after the statute of limitations has expired.

Brief summary of the facts: The patient was treated at various times between August 2000 and November 2000 by husband and wife dentists. The wife (dentist A) and husband (dentist B) both practiced in the same office, counseled the patient on possible treatment options, and performed work on the patient's teeth. Dentist B's treatment of the patient stopped after September 2000. Dentist A treated the patient until November 2000. In October 2000, dentists A and B incorporated their practice by forming a professional corporation.

The patient began a timely lawsuit against dentist A alone. After the statute of limitations expired, the patient sought to add dentist B and the professional corporation as additional defendants. The question was whether dentist B and the corporation could be belatedly brought into the lawsuit as defendants after the expiration of the statute of limitations period.

Ruling of the court: The patient could not bring a late claim against dentist B because dentists A and B were not liable for each other's professional acts. The patient could, however, bring a late claim against the professional corporation because it was vicariously liable for the acts of the dentists.

Reasoning: If a timely lawsuit is commenced against one physician, another physician may be brought into the lawsuit on an untimely basis if certain conditions are met. One of those conditions is that the physicians are so "united in interest" that one physician is vicariously liable for the other. In that case, the patient may bring the belatedly-sued physician into an existing suit notwithstanding that the statute of limitations against that physician has expired.

In *Monir*, although both the husband and wife dentists participated in the patient's overall course of treatment, each administered distinct treatments to the patient on different dates over the course of several months. The mere fact that they were married and shared the same office space did not necessarily make them liable for each other's professional acts. Therefore, the husband dentist (dentist B) could not be belatedly brought into the lawsuit.

The result was different, however, as to the professional corporation. Since the corporation could be held vicariously liable for the malpractice of its employees committed within the scope of the corporation's business, the corporation could be belatedly brought into the lawsuit.

Commentary: This case illustrates issues commonly raised when medical professionals practice together. Your lawyer can explain the differences among the various types of business entities and the legal ramifications of each type of entity.

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