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Late breaking news on medical-legal development affecting physicians and health care professionals

Physician Who Prescribed Opiates Not Liable for Robbery and Murder Committed by Patients: In *Ferguson v. Laffer*, No. 02967, slip op. (N.Y. App. Div., 2d Dept. Apr. 19, 2017), the Supreme Court of New York, Appellate Division, Second Department, reversed the trial court's denial of a motion to dismiss an action against a physician, Stan Xuhui Li, who had prescribed opiates to patients later convicted of first degree murder and first degree robbery. David Laffer and Melinda Brady conspired to commit a robbery at Haven Drugs Pharmacy. During the course of this robbery, the pharmacist, Raymond A. Ferguson, Jr., was shot and killed. Laffer was convicted of first degree murder and Brady was convicted of first degree robbery. The administratrix of the pharmacist's estate brought a lawsuit against a number of defendants, including Dr. Li. The lawsuit alleged that Dr. Li had, in the years leading up to the crime, prescribed excessive amounts of addictive prescription pain medications to Laffer and Brady, to which they became addicted, and that the crime resulting in pharmacist Ferguson's death occurred as a result of this addiction.

Dr. Li's counsel moved to dismiss the lawsuit against him, and the Supreme Court denied the motion. On appeal, the Appellate Division reversed, ruling that the motion should have been granted. The appellate court found that the plaintiff did not allege that Li had "the authority or the ability to control Laffer" or Brady (*Malone v. County of Suffolk* (128 AD3d at 653), that Li had any relationship with the plaintiff or the decedent (*see Purdy v. Public Adm'r of County of Westchester*, 72 N.Y.2d 1, 8; *Malone v. County of Suffolk*, 128 AD3d at 653), or that Li's treatment of Laffer or Brady "necessarily implicate[d] protection of ... identified persons foreseeably at risk because of a relationship with [the plaintiff or the decedent]" (*Tenuto v. Lederle Labs., Div. of Am. Cyanamid Co.*, 90 N.Y.2d 606, 613; *see Malone v. County of Suffolk*, 128 AD3d at 653). Therefore, the Appellate Division held that the complaint failed to state causes of action against Dr. Li for either negligence or loss of services. In addition, the Appellate Division found the complaint did not state a cause of action under General Obligations Law § 11–103, as it did not allege that Laffer or Brady was "impaired by the use of a controlled substance" at the time they committed their crimes.

Anthem Drops Plans for $54 Billion Merger With Cigna: In more health insurance merger news, Anthem will drop its $54 billion purchase of Cigna after losing an application in state court in Delaware seeking a temporary injunction to block for sixty (60) days Cigna's efforts to terminate the deal. The United States Department of Justice, Antitrust Division, had successfully challenged the merger in Federal District Court on antitrust grounds, and recently received a favorable ruling from the United States Court of Appeals for the District of Columbia Circuit. Anthem has recently petitioned the United States Supreme Court for a writ of certiorari seeking review of the D.C. Circuit's opinion. Cigna and Anthem are trading allegations in Delaware state court, each blaming the other for breaches which led to the end of the proposed deal. Anthem has now said that, instead of pursuing efforts to consummate the merger, it will now pursue a lawsuit against Cigna for damages. Cigna is seeking damages itself against Anthem from the court in Delaware, claiming entitlement to a $1.8 billion termination fee and $13 billion in damages, following the federal court's antitrust rulings in favor of the Department of Justice.

United States Supreme Court Issues Significant Ruling Favoring Arbitration: The Federal Arbitration Act ("FAA") mandates that contracts to arbitrate disputes must be enforced, unless such provision runs afoul of state laws which apply to contracts in general. In reliance upon this exception to the FAA, many states have enacted laws or judicial policies intended to help consumers in situations where arbitration clauses are seen as "unfair." However, a ruling issued by the United States Supreme Court on May 15, 2017 has reaffirmed long-standing policy under the FAA that arbitration clauses are to be favored under the law. In Kindred Nursing Centers LP v. Clark, No. 16-32, slip op. (U.S. May 15, 2017), the United States Supreme Court reversed the Supreme Court of Kentucky's ruling refusing to enforce an arbitration clause in a wrongful death action against a nursing home. In that case, two arbitration agreements had been entered into by attorneys-in-fact, holding general powers of attorney giving express authority for them to enter into contracts on behalf of their principals. The Kentucky Supreme Court held that, under state law, a general power of attorney granting the right to execute contracts does not provide a right to enter into arbitration contracts, unless the power of attorney specifically and explicitly mentions arbitration contracts, since an agreement to arbitrate waives the principal's "'sacred,' 'inviolate' and 'God-given' right to a jury trial." The U.S. Supreme Court held, in a 7-1 vote, that the Kentucky ruling stated precisely what the FAA prohibits – "a legal rule hinging on the primary characteristic of an arbitration agreement." This decision provides an additional means of attack against state laws which disfavor agreements to arbitrate disputes.

For more information on the above items, contact Kern Augustine, P.C. at 1-800-445-0954 or via email at info@DrLaw.com