

# Minnesota "Shock Verdict": \$111 Million Medical Malpractice Jury Verdict

June 13, 2022

On May 17, 2022, in *Thapa v. St. Cloud Orthopedic Associates*, a federal jury awarded a landmark \$111 million in damages to a patient due to St. Cloud Orthopedic Associates' (SCO) alleged failure to diagnose and appropriately treat compartment syndrome. This is Minnesota's largest medical malpractice verdict to date and it is feared by many to make Minnesota a member of the undesired "shock" verdict club - the prior high Minnesota medical malpractice verdicts ranged from \$20 to \$28 million.

In *Thapa*, the 17-year-old Plaintiff presented to St. Cloud Hospital with a leg injury after being side tackled during an indoor soccer game. The Plaintiff was treated by an SCO-employed orthopedic surgeon. Following surgery, the Plaintiff developed acute compartment syndrome. The Plaintiff alleged that SCO, through its employed providers, was negligent in its care by allegedly failing to diagnose and treat the Plaintiff's acute compartment syndrome. The jury ultimately found for the Plaintiff, awarding ~\$500,000 for past medical expenses, ~\$800,000 for future medical expenses, \$10 million for past pain and suffering, and \$100 million for future pain and suffering. Notably, there was no claim for lost wages or lost earning capacity.

The impact of an award this size is compounded by the Minnesota Supreme Court's decision in *Popovich v. Allina Health*. In *Popovich*, the Supreme Court held that a hospital may be held vicariously liable for the negligence of independent contractors, reversing a rule that had been in place for more than 30 years that provided that a hospital could only be held liable for the conduct of its employees. A patient may now hold a hospital liable for the acts of its independent contractors by showing: 1) the hospital held itself out as the provider of the relevant services, and 2) the patient looked to the hospital to provide care and select medical personnel.

In *Thapa*, the Plaintiff originally brought suit against both SCO and St. Cloud Hospital under a *Popovich* theory of apparent authority. The Plaintiff dismissed the claim against St. Cloud Hospital shortly before trial, but it was dismissed "without prejudice". As a result, the Plaintiff could still look to St. Cloud Hospital in an effort to recover the full \$111 million dollar verdict.

The *Thapa* case stands to have a significant impact on providers. We anticipate seeing an increase in medical malpractice claims simply due to the staggering verdict as well as a rise in insurance premiums as insurers struggle to evaluate their risk exposure. It is also likely to test the *Popovich* theory of apparent



authority and further influence contractual arrangements and business collaborations between hospitals and independent physician groups.

While we expect the verdict in *Thapa* to be appealed, or possibly settled, Providers should not wait to take action and should take the following steps to assess and mitigate exposure:

- Review insurance coverage policies and limits to ensure they are adequately protected;
- Consider whether independent contractors, credentialed medical staff members, and other third parties should be required to increase their insurance coverage;
- Analyze and evaluate contractual indemnification obligations;
- For hospital/physician group collaborations, ensure there is clear information about who employs each provider. This includes:
  - Reviewing the method of visually distinguishing contractors from employees through dress, badges, or by other means;
  - Installing signage in areas where independent contractors provide service to alert patients that care is not being provided by the facility;
  - Updating patient-facing documents (e.g., patient consent forms) to explicitly inform patients that care is being provided by independent contractors; and
  - Evaluating advertising, branding, and other marketing materials and agreements.

Verdicts like this one may encourage the legislature to consider tort reform to ensure not only that there is accountability in the system, but also that results are fair to plaintiffs, defendants, and health care consumers.

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If you have questions regarding the implications of the *Thapa* decision or risk mitigation strategies generally, please contact Jennifer Reedstrom Bishop, Julia Reiland, or any member of the Lathrop GPM Health Law Team.