

**Second District Court of Appeal Affirms Summary Judgment Based On Ruling Of No Legal Duty On The Part Of A Medical Device Manufacturer And Its Clinical Technician On Which Claims For Ordinary And Medical Negligence Could Be Founded**

On January 14, 2011, Florida's Second District Court of Appeal affirmed summary judgment in favor of Defendants Advanced Neuromodulation Systems, Inc. ("ANS") and Wendy Bolin, R.N. ("Bolin").

The issue presented by the motion for summary judgment and argued on appeal was whether the medical device manufacturer, ANS, and its clinical technician, Bolin, had a legal duty to Plaintiff upon which a claim for medical negligence could be based. The Appellate Court affirmed the Circuit Court's ruling that no legal duty existed as a matter of law.

Plaintiff claimed that, following the implantation of an implantable pulse generator ("IPG") for spinal cord stimulation, Plaintiff developed an infection which went untreated and resulted in permanent paralysis extending from his thoracic region down. Plaintiff made ordinary and medical negligence claims against ANS and Bolin. Plaintiff did not assert that the device was defective, nor did Plaintiff assert the device was mis-programmed. Rather, Plaintiff claimed that Ms. Bolin and ANS undertook a duty to "specifically inform and explain to Plaintiff . . . that the discharge that was seeping from the site of his incision could be a sign that he had a serious infection that could result in paralysis" and to ensure he received medical treatment.

Although Bolin was licensed as a Registered Nurse by the State of Florida, her role as clinical technician responsible for programming and reprogramming the IPG device did not involve her utilization of "specialized knowledge, judgment and nursing skill." Indeed, Bolin was employed for the purpose of providing technical programming or reprogramming of the device – her duties did not include or require nursing diagnoses or treatment. Defendants argued that imposing the duties asserted by Plaintiff would be improper under the laws regulating the medical profession and would cause interference in the specially protected doctor-patient relationship.

Defendants also argued in the alternative that even if, *arguendo*, Bolin had a duty to Plaintiff, she had no duty to ensure that he was treated by the implanting physician because such a conclusion is unreasonable and has no foundation in the law. Upon learning that Plaintiff had discharge in the area of his incision site, Bolin repeatedly advised him to seek treatment from the implanting physician which Plaintiff admittedly understood and agreed to do. As such, Bolin discharged any arguable legal duty as a matter of law.

In affirming the lower court's ruling, the Appeals Court rejected the application of the undertaker's doctrine in this instance. It found that "Bolin's actions in observing and assessing Mr. White's incision site did nothing to increase the risk of harm to Mr. White. Nor did Bolin's actions cause other people to refrain from rendering aid. . . . Bolin's voluntary actions did not impose an affirmative duty on her to do any more than she had already done."

*See White v. Advanced Neuromodulation Sys., Inc., et al.*, No. 07-CA-001720 (Fla. 20th Cir. Ct. Oct. 20, 2008 and Mar. 5, 2009); *White v. Advanced Neuromodulation Sys., Inc., et al.*, No. 2D09-1568 (Fla. 2d DCA 2011).