SUPREME COURT OF LOUISIANA

No. 97-C-0188

MELVIN GRAHAM

versus

WILLIS-KNIGHTON MEDICAL CENTER ET AL.

ON WRIT OF CERTIORARI
SECOND CIRCUIT COURT OF APPEAL

CALOGERO, Chief Justice, dissenting.

In my view, the majority's interpretation of LSA-RS 40:1299.4(C)(5) renders the statutorily imposed admission of liability meaningless. The majority concludes that the phrase "the court shall consider the liability of the health care provider as admitted and established" in LSA-RS 40:1299.44(C)(5) means only that a "payment of $100,000 in settlement admits liability for the malpractice and for damages of at least $100,000." Slip op. at 15. Thus, the majority concludes that in a subsequent suit against the PCF, the medical malpractice plaintiff would bear "the burden of proving that the admitted malpractice caused damages in excess of $100,000." *Id.*

The fallacy of the majority's interpretation becomes evident in the following

hypotheticals. Assume that a medical malpractice plaintiff files suit against a qualified health care provider, alleging that the doctor's negligence caused the permanent loss of his eyesight. The plaintiff settles with the doctor's insurer for $99,000 and reserves his right to recover excess damages against the PCF. In this instance, the statutory admission of liability in LSA-RS 40:1299.44(C)(5) is not triggered. Therefore, when this plaintiff sues the PCF for all or a portion of the PCF's $400,000 exposure, the plaintiff must prove fault, causation, and damages. This is the result that the Legislature intended when it enacted the Medical Malpractice Act.

Assume, however, that this medical malpractice plaintiff settles with the doctor's insurer for $100,000 (his maximum exposure under the Medical Malpractice Act), that he reserves his right to recover excess damages against the PCF, and that this settlement is approved by the district court judge. In this instance, the statutory admission of liability found in LSA-RS 40:1299.44(C)(5) *is* triggered. The plaintiff, thus, is entitled to receive the benefit of the *only* pro-patient provision of the Medical Malpractice Act--an Act which limits every claimant's general damages to $500,000 irrespective of the actual value of the claims. In my view, and under *Pendleton*, the statutory benefit found in LSA-RS 40:1299.44(C)(5) is that liability is established on the part of the PCF, thereby precluding the PCF from contesting fault or causation as to the primary harm--that is, the harm that prompted the settlement payment--where the plaintiff proceeds against the PCF in a suit for damages in excess of $100,000.

According to the majority, however, the statutory benefit is that malpractice and damages of "at least" $100,000 is admitted, but in a suit against the PCF for excess damages, the plaintiff must then prove "that the admitted malpractice caused

damages in excess of $100,000." The majority characterizes its interpretation of LSA-RS 40:1299.44(C)(5) as providing a "very significant benefit to the medical malpractice victim." Slip op. at 15. This begs the question: Where is this "very significant" benefit of statutorily admitted liability to this hypothetical plaintiff who must now prove, in order to recover any additional damages from the PCF, that the doctor caused his blindness? In other words, what benefit to the plaintiff is an "admission" of malpractice if the plaintiff must nonetheless prove causation? In my view, the majority's interpretation of LSA-RS 40:1299.44(C)(5) provides absolutely *no* benefit to the medical malpractice plaintiff and, in fact, renders the only pro-patient benefit under the severe Medical Malpractice Act non-existent.

The proper interpretation of LSA-RS 40:1299.44(C)(5), as I explained when writing for the Court in *Pendleton v. Barrett,* 95-2066 (La. 5/31/96), 675 So. 2d 720, can only be ascertained by adhering to certain tenets of statutory interpretation:

> First, . . . the Medical Malpractice Act is to be strictly construed against limiting the tort claimant's rights against the wrongdoer. Second, *the admission of liability clause in LSA-RS 40:1299.44(C)(5) was arguably enacted to offset in part the advantages to health care providers of the $500,000 damages cap*. Third, settlements are favored in our law, so we should not discourage plaintiffs from settling medical malpractice cases by interpreting a statute so as to create a post-settlement burden of proof when another interpretation is reasonable. Fourth, a plaintiff does not have to prove what has been admitted.

Id. at 728-29 (emphasis added). With those tenets in mind, this Court in *Pendleton* held that "when a health care provider admits and establishes liability by payment of $100,000 . . . under LSA-RS 40:1299.44(C)(5), claimant is relieved of the obligation to prove a causal connection between the admitted malpractice and claimant's original and primary harm. However, if claimant is asserting claims for secondary damages, then he has the burden . . . to prove that this secondary harm was caused by the medical negligence." *Id.* at 730.

This *Pendleton* approach was the result of the careful balancing of two competing interests: (1) If the plaintiff were required to prove the causal connection between excess damages and the admitted malpractice, then the statutory admission of liability under LSA-RS 40:1299.44(C)(5) is rendered meaningless, and (2) If the plaintiff were relieved of proving a causal connection regarding all medical consequences alleged with respect to the malpractice, then the statutory admission of liability might trigger PCF exposure for secondary or sequential medical conditions that are unrelated to the health care provider's negligent conduct. In *Pendleton*, we reached a middle ground that gave effect to the statutory admission of liability and that also protected the PCF from unnecessary exposure from any alleged secondary harm that may not be causally related to the medical negligence.

Under our *Pendleton* standard, our hypothetical plaintiff would not bear the burden of proving causation as to the loss of eyesight at all. Rather, because the loss of eyesight would be his primary harm from the medical malpractice, the plaintiff would only have to prove the value of his claim. Suppose, however, that our hypothetical plaintiff alleges damages for a broken hip, which he sustained because his blindness caused him to trip and fall. In that instance, the broken hip would constitute secondary harm, and plaintiff would bear the burden of proving both causation and damages.

Of course, the qualified health care provider and the PCF could avoid this statutory admission of liability with regard even to the original harm by settling for one dollar less than $100,000. Moreover, if a doctor's insurer were willing to settle for the full $100,000 exposure without regard for the PCF's additional exposure, it would still be within the district court judge's power to prevent the statutorily imposed admission of liability. To illustrate, LSA-RS 40:1299.44(C)(5) permits the

district court judge to consider "relevant evidence to enable the court to determine whether or not the petition [for settlement] should be approved [even] if it is submitted on agreement without objections." LA. REV. STAT. ANN. 40:1299.44(C)(5) (West 1992). Thus, if the district court judge should find insufficient evidence of liability on the part of the doctor, he would simply desist from approving a settlement for the full $100,000 triggering amount.

In the instant case, the primary harm is the loss of the plaintiff's leg. Therefore, I would apply the *Pendleton* approach and require only that plaintiff establish the value of his claim for excess damages against the PCF. However, the majority, comprised of a newly constituted panel of the Court, finds it necessary to overrule *Pendleton,* just fifteen months after this Court issued that decision, thereby placing beleaguered medical malpractice plaintiffs in a position where they receive *nothing* in the Medical Malpractice Act, except, of course, a $500,000 cap on actually suffered general damages. Perhaps this Court's struggle in interpreting LSA-RS 40:1299.44(C)(5) will invite the Legislature to take another hard look at the statute.

For the reasons given above, I respectfully dissent.