

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **LIABILITY - KANSAS**

### **Nash v. Blatchford**

**Court of Appeals of Kansas - January 4, 2019 - P.3d - 2019 WL 102254**

Patient brought action against physician, who practiced at municipal hospital, for medical malpractice alleging physician negligently performed surgery.

The District Court granted physician's motion for summary judgment. Patient appealed.

The Court of Appeals held that:

- Physician was an employee of hospital;
- Provision of Health Care Provider Insurance Availability Act did not apply in patient's claim;
- Amendments to statutory notice requirement applied to patient's claim; and
- For purposes of equal protection, rational basis existed for statutory notice requirement that medical malpractice victims provide written notice to municipal hospital prior to filing suit against employee physicians.

Health care provider was not excluded from the definition of employee under the Kansas Tort Claim Act (KTCA) as required for patient's claim against physician for medical malpractice to fall under the KTCA; definitions in tort statute specifically excluded independent contractors as employees which suggested that the list of employees was not exclusive, and tort statute specifically included "employee" in its definition of employee, which meant the legislature intended to provide a broad definition of the term.

Physician working for municipal hospital was an employee of hospital, not an independent contractor, for purposes of the Kansas Tort Claims Act and written notice requirement for patient's medical malpractice claim, despite physician's contract stating hospital could not direct, supervise, or control physician's care of individual patients; hospital had final authority over physician's acceptance of new patients and could remove a patient from his care, hospital required physician to comply with the rules and regulations, work full time, obtain and maintain his privileges, and perform his work up to community professional standards, and hospital had long-term contractual relationship with physician which paid him an annual salary with bonuses, paid for his medical malpractice insurance, and provided facilities, equipment, supplies and support staff.

Provision of Health Care Provider Insurance Availability Act, which stated health care provider shall have no vicarious liability or responsibility for injuries arising out of the rendering or failure to render professional services by any other health care provider, did not apply in patient's medical malpractice claim against physician who was employed by municipal hospital; patient asserted no claims against municipal hospital, and thus, the case did not involve another health care provider's potential vicarious liability for physician's alleged negligence for his acts or omissions while performing surgery or when providing patient's care and treatment.

Amendments to statutory notice requirement requiring that patient provide written notice to municipal hospital of claim against physician employee prior to filing the medical malpractice suit

against physician applied to patient's claim, despite the alleged malpractice occurring prior to enactment of the amendments; patient had about one and a half years after the enactment of the amendments to comply with the notice requirements before his medical malpractice suit was barred by the statute of limitations.

Rational basis existed for statutory notice requirement that medical malpractice victims bringing claim against municipally employed physician provide presuit written notice of the claim to the municipal hospital, despite fact it cannot be held vicariously liable, and thus, notice requirement did not violate equal protection; notice requirement afforded a municipality 120 days to investigate a claim, obtain legal advice and conduct discovery, and approve or deny a claim before a suit was filed, and even though concern about costly litigation was greatly mitigated by the fact municipal hospital could not be held liable for physician's actions hospital had a legitimate competency and patient care interest that justified notice.