

## Insights

### Recent Indiana Supreme Court Medical Malpractice Ruling

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The Indiana Supreme Court recently held in *Charles McKeen, M.D. v. Billy Turner* that a plaintiff's theory of negligence at trial need not be identical to the plaintiff's theory in his or her submission to the Medical Review Panel ("Panel"), *so long as* evidence relating to the theories of malpractice was before the Panel. The Court's opinion re-affirms precedent established in a 1997 Indiana Supreme Court decision in *Miller v Memorial Hospital of South Bend* and expressly disapproves the Indiana Court of Appeals 2011 decision in *K.D. v Chambers*.

In *K.D. v Chambers*, the Indiana Court of Appeals held that "a malpractice plaintiff **cannot** present one breach of the standard of care the Medical Review Panel ("MRP") and after receiving an opinion, proceed to trial and raise claims of additional, separate breaches of the standard of care that were not presented to the panel and addressed in its opinion." In *McKeen*, the Indiana Supreme Court examined the intent of the Indiana Legislature in the Medical Malpractice Act and the Court's own prior decision in *Miller*. The Court wrote that a submission of a proposed complaint and evidence to the MRP is "intended to be informal and limited; it is also intended to place little to no risk on the participants." The Act does not require the plaintiffs to present *each and every possible theory of negligence* to the MRP and be bound by those allegations. In order for the plaintiff to raise new theories breaches of the standard of care after the Panel process has been concluded two things are required: "First, under the rules of notice pleading, the proposed complaint must encompass the theories regarding the breach sought to be raised at trial. Second, 'evidence,' as defined by the Act, related to the theories must have been submitted to the MRP. If the plaintiff has complied with both of these requirements, then evidence related to the new theories of negligence may be admitted during litigation following the MRP process."

The case is significant because it once again enables plaintiffs to modify their theories of recovery against providers as discovery following the Panel process evolves. If you have any questions about this article or its impact, please contact Robert A. Anderson (219) 227-6104.