

## **Court of Appeals' Decision Will Help Avoid Jury Confusion in Medical Malpractice Cases, Michigan Attorney Says**

*By throwing out a trial court's 'hybrid standard of care' instruction, the Michigan Court of Appeals has recognized the need to give clear and concise directions to juries hearing complex medical malpractice cases, Bloomfield Hills personal injury lawyer Thomas L. Stroble says.*

Bloomfield Hills, MI ([PRWEB](#)) August 31, 2010 -- A key aspect of any medical malpractice case is to make sure complex medical and legal issues can be readily understood by jury members, Michigan personal injury attorney [Thomas L. Stroble](#) says.

That's why Stroble applauds the Michigan Court of Appeals' rejection of a "hybrid standard of care" jury instruction in its July 29 decision in the case of *Jilek v. Stockson* (No. 289488).

In a 2-1 ruling, the appeals panel held that where a board-certified family doctor was engaged in the practice of emergency medicine at the time of the alleged malpractice, the jury should have been instructed on the standard of care that applies to emergency medicine specialists.

According to the appeals panel, the trial court made a mistake when it told the jury that the applicable standard of care was that of a "physician specializing in family practice and working in an urgent care center."

"In medical malpractice cases, the central issue often concerns whether a medical professional's treatment of a patient fell below the commonly accepted standards of his or her specialty," says Stroble, whose Bloomfield Hills-based [personal injury](#) law firm, The Stroble Law Firm, P.C., represents [medical malpractice victims](#) throughout the state of Michigan.

"In this case, it appears the jury could have been confused. Was the jury being asked to consider the standards that apply to family medicine or emergency medicine?" Stroble says.

"Juries are asked to apply the law to the facts. So, when a court gives an instruction on the applicable law, it should be clear and consistent. A hybrid standard of care instruction, however, can easily confuse juries and deny the parties a fair trial."

In *Jilek*, the estate of a deceased patient filed a wrongful death lawsuit, alleging that a doctor had been negligent in her evaluation, diagnosis and treatment when she saw the patient at the Maple Urgent Care Center in Ann Arbor, Michigan, in March 2002.

In a majority opinion written by Judge Douglas B. Shapiro, the Court of Appeals found that the doctor had been improperly granted judgment because the trial court had allowed the jury to hear evidence on an inapplicable standard of care and had given the incorrect standard of care instruction.

The Court of Appeals also found that the patient's estate should have been allowed to present evidence of the internal guidelines and policies adopted by Maple Urgent Care for the emergency care of patients.

"This is a very important aspect of this decision," Stroble says. "The Court of Appeals has clarified that no privilege applies to the guidelines or policies of medical providers that are in place at the time a case arises. As



long as they are relevant, a jury should be allowed to hear and consider this evidence.”

About The Stroble Law Firm, P.C.

[The Stroble Law Firm, P.C.](#) is a full-service law firm based in Bloomfield Hills, MI, which represents medical malpractice victims and their families throughout the state of Michigan, including Macomb County, Warren, Clinton Township, Sterling Heights, St. Clair Shores, Mount Clemens, Utica and Roseville. The firm’s personal injury practice areas also include truck accidents, car accidents, motorcycle accidents, birth injuries, slip and fall, dog bite and wrongful death. To learn more about The Stroble Law Firm, P.C. call (248) 454-0800 or (888) 454-0801 or use the firm’s [online contact form](#).

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