

01/25/02 "See News Release 007 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 01-C-1517 c/w 01-C-1519 c/w 01-C-1521

LOUIS COLEMAN, INDIVIDUALLY AND  
AS FATHER OF LOUIS FRANK COLEMAN

Versus

DR. RICHARD DENO, DR. IVAN SHERMAN AND  
JOELLEN SMITH HOSPITAL

JOHNSON, J., concurring in part and dissenting in part:

I join the majority in affirming the finding of medical malpractice liability on the part of Dr. Deno, but I dissent from the majority's finding that plaintiff's claim of "patient dumping" is one of medical malpractice, rather than an intentional tort. This court has already determined that "patient dumping" is governed not by the Medical Malpractice Act, but rather by general tort law. *See Spradlin v. Acadia-St. Landry Med. Found.*, 98-1977 (La. 2/29/00), 758 So.2d 116. Although the federal and state anti-dumping statute prohibit action by hospitals and not physicians, a hospital can only act through agents/employees and can be held accountable under a theory of vicarious liability.

The court of appeal correctly concluded that the Medical Malpractice Act only encompasses *unintentional* acts of negligence and contractual issues. It is impossible for a physician to negligently or *unintentionally* transfer an uninsured patient from a private hospital to a public hospital because of an inability to pay. Therefore, it is clear that plaintiff's claim for "patient dumping" falls outside the scope of the Medical Malpractice Act.

Moreover, Dr. Deno's testimony that he transferred plaintiff from JoEllen Smith to Charity Hospital because Charity has a better trauma center is clearly pretextual and not worthy of belief. Plaintiff was diagnosed with cellulitis of the arm and was not in

need of trauma treatment. He simply needed to be admitted to the hospital for intravenous antibiotic treatment. Dr. Deno decided to transfer plaintiff to Charity Hospital because he determined that plaintiff could not afford to pay for inpatient treatment at JoEllen Smith, not because he wanted plaintiff to have the benefit of a superior treatment facility. He therefore made an economic and not a medical decision.