

DECLARATORY RULING OF
THE
ALABAMA STATE BOARD OF MEDICAL EXAMINERS

The Alabama State Board of Medical Examiners (the “Board”) has received a request that the Board issue a Declaratory Ruling pursuant to Ala. Code § 41-22-11 (2013) and Rule 540-X-1-.10 of the Alabama Administrative Code. The question to be addressed is whether, in a malpractice lawsuit, a payment made pursuant to a high/low agreement entered into with a plaintiff prior to a judicial determination of the case by a judge or jury must be reported to the Board pursuant to Ala. Code § 34-24-56, although there was a dismissal of the plaintiff’s claim or a determination of no liability by the judge or jury.

Facts Presented

During the course of a medical malpractice lawsuit, but before a judicial determination of the claim (generally, but not necessarily, during the actual trial), the plaintiff and defendant physician enter into a high/low agreement in which the plaintiff will be paid an agreed upon “low” figure even if the verdict or decision is ultimately made in favor of the defendant doctor, or plaintiff will be paid a “high” amount if a plaintiff’s verdict is returned even though it exceeds the agreed-upon high amount. The judge or jury subsequently renders a decision or dismissal in favor of the physician. Payment is made by the doctor to the plaintiff for the “low” amount as previously agreed upon.

The Question

Based upon the facts presented herein and pursuant to Ala. Code § 34-24-56, is a physician who is licensed to practice medicine in Alabama required to report to the Board a payment made pursuant to a high/low agreement entered into with a plaintiff when the judge or jury has rendered a decision or dismissal in favor of the physician?

Answer

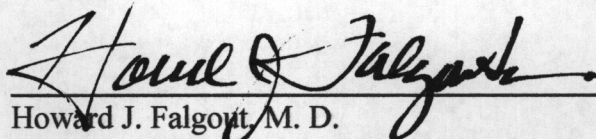
Under the facts stated above, a licensee is not required under Ala. Code § 34-24-56 to report a payment made pursuant to a high/low agreement if there was a dismissal or determination of no liability by the judge or jury.

Discussion

Section 34-24-56(a) of the *Code of Alabama* states, in pertinent part, that a report is required to be made to the Board when any final judgment is rendered against such physician or when there is a settlement of a malpractice claim. A high/low agreement payment made after a judicial determination is a payment made pursuant to an independent contract between the plaintiff and the defendant's insurer and is not being made for the benefit of the physician in settlement of a medical malpractice claim. Section 34-24-56(a) does not require a physician to report a verdict or decision in favor of the physician defendant. Consequently, in the fact situation presented herein in which the fact finder renders a judicial determination assigning no liability to the defendant physician, the high/low agreement payment is not reported to the Board.

This ruling is based upon the precise facts presented and upon the statutes and rules currently in existence. Should any relevant statutes or rules be amended or repealed, this ruling may no longer be valid.

ENTERED this 29th day of June, 2016.


Howard J. Falgout, M. D.
Chairman, Alabama Board of Medical Examiners