



EXPERIMENTAL HEALTH CARE TREATMENT: A CONSTITUTIONAL RIGHT OR RIGHTFULLY EXCLUDED?



THURSDAY, FEBRUARY 21, 2008 • 1:00 P.M. - 2:30 P.M. EST

A 90-MINUTE TELECONFERENCE

Program Description:

This is a program virtually ripped from the headlines! In December, an insurer initially denied benefits to cover the expenses of a liver transplant for a 17-year-old leukemia patient, asserting that the procedure was experimental to treat complications arising from a bone-marrow transplant, and was excluded from coverage. The insurer reversed its decision on appeal, but the insured was removed from life support and died before the decision was communicated to her family. In August, the D.C. Circuit Court of Appeals in *Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach*, held *en banc* that terminally ill patients do not have a constitutional right of access to experimental drugs still undergoing review by the FDA. The Supreme Court denied *certiorari* of this case on January 14, 2008.

These two current events show the emergence of access to experimental medical treatment as a legal “hot topic.” This program will address the topics on two fronts. First, it will discuss the current case from the D.C. Circuit Court of Appeals, whether an individual can be said to have a “constitutional” right to treatment and drugs, and if so, the ramifications of such a right on health insurance and medical care. Second, the program will address the law and health insurance exclusionary provisions regarding experimental treatment in general.

The Program Will Examine:

- The nature of an individual’s rights to obtain access to unapproved experimental drugs that potentially are lifesaving.
- The basis for the D.C. Circuit Court's determination that there is no constitutional right to access experimental drugs, even for terminally ill patients.
- What the court examines with regard to whether a “treatment, procedure or therapy” is considered experimental.
- Whether the “exclusion” in the policy is defined by the entire treatment or only a particular phrase of the treatment.
- The arguments that may persuade a court that treatment is, is not, or is no longer experimental.

Moderator:

Aaron E. Pohlmann, Smith Moore LLP
Atlanta, GA

Speakers:

Ronald K. Alberts, Gordon & Rees LLP
Los Angeles, CA

J. Scott Ballenger, Latham & Watkins LLP
Washington, DC

Robert M. Little, Great-West Life & Annuity
Insurance Company, Greenwood Village, CO

Steven G. Storch, Storch Amini & Munves, P.C.
New York, NY

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This teleconference is sponsored by the American Bar Association Tort Trial & Insurance Practice Section’s Health and Disability Insurance Law Committee.

