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2 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**
3 **FIRST JUDICIAL DISTRICT AT SITKA**

4 **BREANNA NICOLE WAMPLER,**)

5 **Plaintiff,**)

6 **v.**)

7 **RICHARD W. McGRATH, M.D., and CITY,**)
8 **AND BOROUGH OF SITKA, ALASKA**)

9 **Defendants.**)

Filed in the Trial Courts
State of Alaska First District
Sitka

SEP 17 2024

Clerk of the Trial Courts
By Deputy

Case No. 1SI-20-00140CI

10 **ORDER RE: DEFENDANT'S MOTION IN LIMINE**
11 **FOR RULING ON THE LAW OF THE CASE**

12 Wampler moves the court to issue an order providing a ruling on the law of the case as it
13 relates to a damages cap, defining the reckless standard, and clarifying the standard of proof on
14 these issues. Defendant City and Borough of Sitka (CBS) opposed and Defendant Richard
15 McGrath joined in the opposition. Plaintiff filed a reply. No oral argument or an evidentiary
16 hearing was requested. The motion is now ripe.

17 Whether there is a damages cap on medical malpractice claims is an issue that is
18 prematurely before the court. The court will reserve ruling on whether a finding of "reckless or
19 intentional misconduct" would lift the damages cap as set for in AS 09.55.549(f) until after a
20 jury finding that Plaintiff is entitled to damages for medical malpractice and that the damages
21 awarded exceed the statutory cap.

22
23 Additionally, Wampler asks the Court to clarify the standard of proof when determining
24 if the conduct of Dr. McGrath was "reckless or intentional misconduct." Wampler states the
25 standard of proof should be a preponderance of the evidence standard. Defendant CBS states the

1 standard of proof should be clear and convincing evidence. Defendant McGrath joined in the
2 briefing of Defendant CBS.

3 The two statutes at issue in determining the correct standard to be applied are Alaska
4 Statute 09.55.549(f), which addresses limitations on damages in medical malpractice cases and
5 Alaska Statute 09.17.020, which addresses punitive damages. Alaska Statute 09.55.549(f)
6 states:

7 “The limitation on noneconomic damages in this section does not apply if the
8 damages resulted from an act or omission that constitutes reckless or intentional
9 misconduct.”

10 Alaska Statute 09.17.020(b) provides:

11 “(b) The fact finder may make an award of punitive damages only if the plaintiff proves
12 by clear and convincing evidence that the defendant’s conduct

13 (1) was outrageous, including acts done with malice or bad motives; or

14 (2) evidenced reckless indifference to the interest of another person.”

15 Both parties agree recklessness is most commonly discussed in the context of punitive
16 damages. Punitive damages are an amount of money awarded for the purpose of punishing the
17 defendant and deterring the defendant, and others, from repeating similar acts. Alaska Statute
18 09.55.549 is punitive in nature.¹ During discussion on the House Floor, Representative Croft
19 stated “you’re left with ‘reckless or intentional misconduct’ which is the standard for punitive
20 damages.”²

21
22 In order to award punitive damages, the plaintiffs must show, by clear and convincing
23 evidence, that the defendants conduct was “outrageous, such as acts done with malice or bad
24

25 ¹ See Defendant CBS Exhibit D, Transcript of May 5, 2005, Excerpt of House Floor Session HFLR-050505-2.

² *Id.* at pg. 15

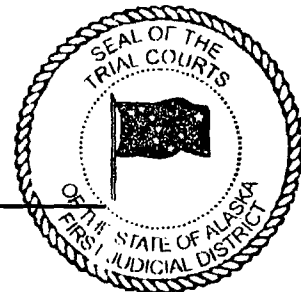
1 motives or a reckless indifference to the interest of others.”³ Further, recklessness “must be
2 something more than negligence.”⁴ Therefore, it would not make sense for the court to apply a
3 standard of preponderance of the evidence in relation to AS 09.55.549, but to apply a standard
4 of clear and convincing under AS 09.17.020. The appropriate standard of proof, under the facts
5 of this case where Plaintiffs are requesting punitive damages, is a standard of clear and
6 convincing evidence.

7
8 The Plaintiff’s motion for ruling on the law of the case is stayed in part and denied in
9 part. The court will determine if the damages cap should be lifted only if a) there is a jury
10 finding the Plaintiff is entitled to damages for medical malpractice and b) the damages awarded
11 exceed the statutory cap as set forth in AS 09.55.549. This issue is not currently ripe before the
12 court. The court DENIES the portion of the Plaintiff’s motion to impose the preponderance of
13 the evidence standard of proof to determine recklessness. The court finds the appropriate
14 standard of proof in determining recklessness is one of clear and convincing evidence.

15 **IT IS SO ORDERED.**

16 Dated at Sitka, Alaska this 17th day of September 2024.

17
18
19 Amanda L. Browning
20 Amanda L. Browning
21 Superior Court Judge



22 **CERTIFICATION**

23 I certify that on 17 day of Sept. 2024
24 a true copy of this do was placed
25 in attorney's box/mailed to the following:

J. McCowan, J. Cashion, H. Lazar
[Signature] all emailed

³ *Adkins v. Collens*, 444 P.3d 187 (2019).

⁴ *Clary Ins. Agency v. Doyle*, 620 P. 2d 194, 203 (1980) citing *Restatement (Second) of Torts* s 500, comment a (1964).