

**ALABAMA  
HEALTH LEGISLATION  
AND  
CASES OF INTEREST**

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Developments and Trends  
in  
Health Care Law 2024**

**September 25, 2024**

**Alabama Hospital**

**Association**

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# LEGISLATION

**1. Act No. 2024-384 (HB21)**

Relating to Consumer Privacy. Genetic testing companies, requiring consent to release customers' genetic data.

EFFECTIVE DATE: 10/01/2024.

**2. Act No. 2024-80 (HB69).**

Relating to controlled substances. Controlled Substances Prescription Database; access by certain representatives of a dentist authorized.

EFFECTIVE DATE: 10/01/2024.

**3. Act No. 2024-89 (HB70).**

Relating to the Board of Dental Examiners of Alabama. Will allow for a special volunteer license for eligible dentists and dental hygienists to practice under the supervision of a licensed dentist during an organized charity event. The bill would also increase the registration fee for hygienists and establish one for the volunteer license.

EFFECTIVE DATE: 04/17/2024.

**4. Act No. 2024-344 (HB73).**

Relating to ad valorem taxation. Caps property tax increases at 7% each year, sunseting in 2027, after 3 years of the program. The bill started with a much lower cap, but several associations, working with local governments and schools, were able to negotiate the increased cap and a sunset provision in the bill.

EFFECTIVE DATE: 10/01/2024.

**5. Act No. 2024-208 (HB77).**

Relating to newborn screening. Will require newborn screenings to include the Recommended Uniform Screening Panel (RUSP) regulated by rules that would be developed by the Department of Public Health following passage of the bill. The bill gives a three-year timeline to update the screenings.

EFFECTIVE DATE: 10/01/2024.

**6. Act No. 2024-81 (HB 126).** Relating to individuals with sensory needs and invisible disabilities. Fire-protection personnel and emergency medical services personnel, annual training related to individuals with sensory needs and certain disabilities, required.

EFFECTIVE DATE: 01/01/2025.

**7. Act No. 2024-391 (HB131).**

Relating to the Department of Revenue. Sales and use tax, durable medical equipment and medical supplies revised.

EFFECTIVE DATE: Immediately (Enacted May 16, 2024).

**8. Act No. 2024-428 (HB144).**

Relating to conditional appropriation for fiscal year ending September 30, 2024. The legislature passed over \$11 billion in education related spending for the 2024 legislative session. Among many things included in the ETF was a 2<sup>nd</sup> version of the Alabama Centers for Rural Healthcare Opportunities that was supported by \$18 million in funding. This partnership between hospitals and the Alabama Community College System produced over a dozen new hospital-based education programs in 2023.

EFFECTIVE DATE: Immediately (Signed by Governor on May 16, 2024).

**9. Act No. 2024-192 (HB163).**

Relating to the Alabama School of Healthcare Sciences in Demopolis. Alabama School of Healthcare Sciences Bill. Establishes the Alabama School of Healthcare Sciences in Demopolis. The express intent in creating the school is to address the chronic healthcare workforce shortage in Alabama. It should help with all aspects of the healthcare workforce, from physicians and nurses to lab and x-ray technicians, pharmacists, and other healthcare professionals. Funding from the school comes from a philanthropic donation and money appropriated from the Education Trust Fund.

EFFECTIVE DATE: Approved by Governor May 3, 2024. Has gone into effect.

**10. Act No. 2024-385 (HB232).**

Relating to the practice of physical therapy. Scope of practice of physical therapists. Expands the scope of practice for physical therapist (PT). The legislation, which was a compromise between PTs and Doctors, removes the requirement to have a referral before seeing a PT if the PT has a doctorate or a master's with 10 years of experience.

EFFECTIVE DATE: 06/01/2024.

**11. Act No. 2024-250 (HB234).**

Relating to the Board of Nursing. Board of Nursing membership revised to include a certified registered nurse anesthetist. Revises the membership of the Board of Nursing to include a permanent seat for a Certified Nurse Anesthetist.

EFFECTIVE DATE: 10/01/2024.

**12. Act No. 2024-392 (HB290).**

Relating to sudden cardiac arrest. Public and non-public schools, sudden cardiac arrest, required to develop and implement cardiac emergency response plan.  
EFFECTIVE DATE: 10/01/2024.

**13. Act No. 2024-214 (HB324).**

Relating to emergency medical transport providers. Emergency medical transport providers, [tax] assessment period extended through the fiscal quarter starting July 1, 2024.  
EFFECTIVE DATE: 06/01/2024.

**14. Act No. 2024-302 (HB346).**

Relating to taxation. Establishes the Alabama Workforce Housing Tax Credit. This bill was a part of a larger package pushed by the Governor to help get more participation in the workforce. It provides a state tax credit for developers of low-income housing that aligns with the federal low-income housing tax credit. The state tax credits are subject to a relatively low aggregate cap (\$5,000 over 10-year credit periods).  
EFFECTIVE DATE: 10/01/2024.

**15. Act No. 2024-303 (HB358).**

Relating to childcare and workforce development. Relating to childcare and workforce development; to establish the employer tax credit and childcare provider tax credit; to make legislative findings.  
EFFECTIVE DATE: 01/01/2025.

**16. Act No. 2024-437 (HB407).**

Relating to income taxes. Ends the current overtime methodology from last year's bill (Act 2023-421) as of September 30, 2024, and then switches over to using the FLSA definition of "overtime" (which permits hospitals and residential care facilities to use a 14-day period for computing overtime under the "8 and 80" rule) from October 1, 2024, to June 30, 2025.  
EFFECTIVE DATE: 10/01/2024.

**17. Act No. 2024-426 (HB479).**

Relating to Supplemental Appropriations from the Opioid Treatment and Abatement Fund. Supplemental appropriations from the Opioid Treatment and Abatement Fund for the fiscal year ending September 30, 2023.  
EFFECTIVE DATE: Immediately (Enacted May 17, 2024).

**18. Act No. 2024-37 (SB15).**

Relating to the Board of Pharmacy. Board of Pharmacy, compounding pharmacies, number of pharmacy technicians regulated by Board rule; may make changes.  
EFFECTIVE DATE: June 1, 2024.

**19. Act No. 2024-249 (SB25).**

Relating to the Board of Nursing. Board of Nursing, authorized by rule to clarify scope of practice. Will give the Alabama Board of Nursing authority to formally recognize Nursing Support Technicians. The goal is for facilities to move existing staff and align the multitude of titles to the extent possible. This will serve as a recruiting aid for more than 2,000 vacancies in the state.  
EFFECTIVE DATE: 10/01/2024.

**20. Act No. 2024-40 (SB26).**

Relating to the Board of Nursing. Board of Nursing, technical change of term “nurse educator” to “advanced practice nurse” in the Alabama Loan-Repayment Program for Advanced Practice Nursing.  
EFFECTIVE DATE: Immediately (Enacted April 4, 2024).

**21. Act No. 2024-1 (SB28).**

Relating to Houston County Healthcare Authority Board. Regarding appointments to the Houston County Healthcare Authority Board. A constitutional amendment applying only to Houston County regarding appointments to the Houston County Healthcare Authority Board. The County must approve the proposed constitutional amendment by vote of the public.

**22. Act No. 2024-114 (SB59).**

Relating to Public K-12 Education. Public K-12 education; hands on instruction in CPR and the use of AEDs, required in health classes; State Board of Education, authorized to adopt rules.  
EFFECTIVE DATE: 10/01/2024.

**23. Act No. 2024-355 (SB67).**

Relating to the General Fund Budget. The General Fund for 2024 eclipsed \$3.3 billion in overall spending. Medicaid received \$955,138,325 (an increase of over \$90 million) from FY 2024 budget. The Medicaid budget also included the annual \$15,000,000 payment for hospital inpatient and outpatient services, as well as \$7,000,000 for inpatient and outpatient services in rural hospitals. The Department of Mental Health was budgeted \$237,965,500, which is an increase of \$24 million over the previous budget year.  
EFFECTIVE DATE: 10/01/2024.

**24. Act No. 2024-414 (SB72).**

Relating to off-label medical treatment. Off-label medication treatment; adverse action by occupational licensing board because of recommendation, prohibited; patient informed consent, required; cause of action, provided.

EFFECTIVE DATE: 10/01/2024.

**25. Act No. 2024-39 (SB100).**

Relating to Education Policy. Establishing the Medical Scholarship Awards Fund. Moves the existing Board of Medical Scholarship Awards Fund under the State Treasurer.

EFFECTIVE DATE: 10/01/2024.

**26. Act No. 2024-330 (SB105).**

Relating to Civil Liability. Amending Alabama Code to limit the liability of members of any community emergency response team who perform emergency care at the scene of an accident or disaster. Amended the “Good Samaritan Law.”

EFFECTIVE DATE: 10/01/2024.

**27. Act No. 2024-247 (SB128).**

Relating to the State Committee of Public Health. Public Health Department State Board of Health, entity abolished and duties transferred to State Committee of Public Health; membership of committee revised; State Health Officer duties and qualifications. Abolishes the State Board of Health and shifts its responsibilities to the State committee of Public Health. The bill also changes the make-up of the Committee in a phased in approach over 3 years. In year one, it is comprised of 11 physicians appointed by MASA, one from each congressional district and four at large appointments, 1 physician appointed by the Alabama State Society of Anesthesiologists, and the 4 chairs of the four existing councils. In year two, 9 physicians appointed by MASA, one from each congressional district and two at large appointments, 1 physician appointed by the Alabama State Society of Anesthesiologists, 1 physician appointed by the Alabama Academy of Family Physicians, 1 physician appointed by the Alabama Chapter of the American College of OB/GYN, and the 4 chairs of the four existing councils. In the final year, and moving forward, the Committee will be comprised of one physician from each Congressional district appointed by MASA, 1 physician appointed at large by the Minority Physician section of MASA, 1 physician appointed by the Alabama State Society of Anesthesiologists, 1 physician appointed by the Alabama Academy of Family Physicians, 1 physician appointed by the Alabama Chapter of the American College of OB/GYN, and the 4 chairs of the four existing councils. Starting with the next Health Officer, the Governor will choose from a list of names submitted by the Committee; and allows for the Governor, Lieutenant Governor, Speaker, and Pro Temp to petition the Committee to see if the State Health

Officer should be disciplined or removed if at least two of the mentioned office holders jointly agree.

EFFECTIVE DATE: 10/01/2024.

**28. Act No. 2024-235 (SB131).**

Relating to the Department of Mental Health. Alabama Behavioral Analyst Licensing Board continued pursuant to Sunset Law until October 1, 2026.

EFFECTIVE DATE: 06/01/2024.

**29. Act No. 2024-358 (SB135).**

Relating to Veterans Affairs. Veterans, to establish and operate a statewide integrated health care system dedicated to Alabama veterans and their immediate family members. Establishes the Veterans Mental Health Steering Committee, charged with developing a comprehensive plan to address Alabama veterans' behavioral health needs and to provide funding if money is available.

EFFECTIVE DATE: 06/01/2024.

**30. Act No. 2024-20 (SB159).**

Relating to in vitro fertilization. Civil and criminal immunity for death or damage to an embryo provided to persons when providing or receiving services related to IVF.

EFFECTIVE DATE: Immediately (was enacted March 7, 2024).

**31. Act No. 2024-366 (SB207).**

Relating to multistate practice for dietitians. Creates new interstate compact to ease multistate practice for dietitians. Seven states must approve compact before it goes into effect. Eleven states are considering, including Alabama.

EFFECTIVE DATE: 10/01/2024.

**32. Act No. 2024-298 (SB208).**

Relating to multistate practice by social workers. This Act provides that Alabama will join the interstate compact to ease multistate practice for social workers in regard to social work licensure.

EFFECTIVE DATE: 10/01/2024.

**33. Act No. 2024-193 (SB240).**

Relating to the Alabama Department of Mental Health. Expands category for involuntary commitment to include individuals with "co-occurring substance use disorders."

EFFECTIVE DATE: 01/01/2025.

**34. Act No. 2024-300 (SB244).**

Relating to licensure of physicians. Existing law states that an individual seeking a license to practice medicine or osteopathy must submit to a background check, but current law did not define the term expedited license. This bill provides that definition for "expedited license," which would mean "a license to practice medicine, a certificate of qualification, a certification of eligibility for a license to practice medicine, or a certification of eligibility for a certificate of qualification that is issued in an accelerated manner."

EFFECTIVE DATE: 06/01/2024.

**35. Act No. 2024-115 (SB247).**

Relating to the Alabama Department of Workforce. Changes the name of the Alabama Department of Labor to the Alabama Department of Workforce, which would be run by the Secretary of Workforce. The bill would move certain state and federal workforce programs, staff, and assets from the Department of Commerce to the newly named Department of Workforce. The bill also forms a single Workforce Pathways Division, all of the department's workforce development functions and workforce funding mechanisms, including the Alabama Workforce Board; the regional workforce boards; Alabama Career Center System; the Alabama Office of Apprenticeship; Alabama STEM Council; the Office of Education and Workforce Statistics; WIOA programs; the Alabama Committee on Credentialing and Career Pathways; the federal Jobs for Veterans State Grants Program; and the federal Work Opportunity Tax Credit, among several others.

EFFECTIVE DATE: 10/01/2024.

**36. Act No. 2024-309 (SB252).**

Relating to the Alabama Growth Alliance. Creation of the Alabama Growth Alliance (the "Alliance") as a public corporation designed to enhance the long-term viability of the State's economic development successes through public-private partnerships and other private-sector involvement in long-term strategic planning. The Alliance would be governed by a board of directors comprised of eleven members, including: Governor, Secretary of Commerce, Speaker, Pro Tem of Senate, Chair of Innovate Alabama, and six at-large members appointed by the Governor from the private sector with experience related to economic development.

EFFECTIVE DATE: 10/01/2024.

**37. Act No. 2024-126 (SB253).**

Relating to the Alabama Workforce Pathways Act. Creates a new workforce pathways diploma for K-12 students. Students in the new workforce pathway would only have to complete two math credits and two science credits, instead of the four math and four science credits currently required. In place of the math and science credits, students who do not plan to attend college or technical school may earn credits in technical and career related courses.

EFFECTIVE DATE: 10/01/2024.



**38. Act No. 2024-278 (SB270).**

Relating to Government Administration, Public Records. Sets a timeline for state agencies and governmental entities, which would include Health Care Authority Hospitals, to receive and respond to public records requests. There are now two types of records requests: (1) standard requests, which would take less than eight hours to process; and (2) a Time-Intensive request that would take more than eight hours to process the volume of material requested. Both requests would specify fifteen days to provide a substantive response and, if it is a Time-Intensive request, the public officer would be required to disclose to the requester the fees involved with the request. If the requester chooses to proceed, the public officer must provide a response to the request within 45 days.  
EFFECTIVE DATE: 10/01/2024.

**39. Act No. 2024-332 (SB283).**

Relating to first responders. Currently, a driver must exercise care and avoid a collision with pedestrians. This bill adds first responders to the requirement. It will also require a driver to yield the right of way to any first responder, the same standard as a pedestrian.  
EFFECTIVE DATE: 10/01/2024.

**40. Act No. 2024-308 (SB336).**

Relating to research and development. Creates a new designation termed “Research and Development Corridors.” This bill authorizes counties and Class I municipalities to authorize the incorporation of Research and Development Corridors within the county or the municipality, as a public corporation for the purpose of undertaking activities and acquiring property, using public revenues for the establishment, benefit, and support of qualified enterprises within the corridor. These organizations would be exempt from many fees and taxes otherwise imposed.  
EFFECTIVE DATE: Immediately (enacted May 9, 2024).

**[END OF LEGISLATION PORTION]**

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# CASES

## WORKER'S COMPENSATION:

### **1. Dean Leader and William Durall v. Crescenio Pablo**

2024 Ala. LEXIS 152  
Case No. SC-2022-0736  
Supreme Court of Alabama  
August 30, 2024

Co-employee liability under the Worker's Comp. Law is not dead yet. Catalina Estillado suffered fatal injuries in a workplace accident while running a machine. She was employed by ABC polymer industries, LLC. Her husband brought a wrongful death claim in Jefferson County against two of her coworkers under Section 25-5-11, Code of Alabama 1975, which allows lawsuits against other employees in addition to or outside workers compensation law in limited situations. The trial court found for the plaintiff and awarded \$3,000,000. The Alabama Supreme Court reversed saying there was no proof that anyone willfully removed a safety guard or safety device.

### **2. Meeks v. Opp Health & Rehab., LLC**

Case No. CL-2023-0239  
Court of Civil Appeals of Alabama  
January 31, 2024

In 2021, Meeks filed a Workers' Compensation Act complaint, alleging that while working in the line and scope of her duties as a certified nurse's assistant (CNA), she was exposed to and diagnosed with Covid-19 and suffered lung injuries that left her permanently disabled. The complaint did not state how she was exposed to Covid-19. The trial court entered judgement in favor of the rehab center because even though Meeks's injuries were not alleged as an "occupational disease," it found that Covid-19 was not compensable as an occupational disease. The trial court did not address whether Covid-19 could be compensable as a nonaccidental injury.

The Court of Civil Appeals noted that other states have allowed Covid-19 exposures to proceed under workers' compensation claims. Thus, Meeks is entitled to pursue her claim that she contracted Covid-19 while working within the line and scope of her employment and the performance of her duties as an employee exposed her to a danger or risk materially in excess of that to which people are normally exposed to in everyday lives.

### **3. Victoryland v. Arnold**

Case No. CL-2023-0340

Court of Civil Appeals of Alabama

January 5, 2024

The employee filed a petition for workers' compensation benefits on account of a back injury she allegedly suffered while working for her employer, Victoryland. They reached an agreement, and Victoryland paid for the reasonably necessary medical treatment incurred by the employee for her back injury. Twelve years later, she was involved in a motor-vehicle accident and her doctor described those injuries as an aggravation of the old back injury. Victoryland filed a motion for relief from the judgment approving the workers' compensation settlement, arguing it should not be responsible for providing future medical care. The trial court denied the motion for relief. On appeal, the Court noted that the trial court's judgment contains no findings of fact or conclusions of law related to the issues. Thus, the judgment of the trial court is reversed and remanded for the trial court to enter findings of fact and conclusions of law in compliance with the law.

### **JURISDICTION:**

### **4. Bd. of Trs. of the Univ. of Ala. v. Univ. of Ala. at Birmingham**

2024 Ala. LEXIS 150

Supreme Court of Alabama

August 30, 2024

SC-2024-0210

An associate professor at UAB filed a complaint against "The University of Alabama at Birmingham" and eight fictitiously named defendants. The defendant later added the board and other parties in the litigation. The board sought to dismiss the complaint based on absolute immunity under Article 1, Section 14, of the Alabama Constitution of 2022. The trial court denied the motion and a mandamus petition followed. The court noted that Dr. Thompson's original complaint named only UAB and fictitious parties, which raised concerns about subject matter jurisdiction. The Supreme Court noted that actions against the state or its agencies, such as UAB are 'void ad initio' and that later amendments to a void complaint do not establish jurisdiction. The court found that the original case was void from the beginning, dismissed the action for lack of subject matter jurisdiction and granted the mandamus petition.

### **5. McGilvray v. Perkins**

2024 Ala. LEXIS 137

Supreme Court of Alabama

June 21, 2024

SC-202-0966

The Alabama Supreme Court found that a circuit court case was properly dismissed based upon res judicata and constitutional provisions. McGilvray, a former investigator for the Alabama Board of Medical Examiners (ABME) filed multiple lawsuits after being terminated from his

position for emailing sexually explicit material to coworkers. Initially, McGilvray sued the executive director of the ABME and the CEO of the local government health insurance board and sought retiree health insurance benefits. The circuit court ruled against McGilvray ruling that his claims were time barred. Gary filed a second lawsuit against the Executive Director of the ABME and its board members, individually and officially. He sued for relief to receive health insurance benefits and for breach of contract. The ABME sought dismissal asserting defenses of res judicata and immunity. The circuit court granted the motion to dismiss, and this appeal followed.

## **ELDER ABUSE PROTECTION ORDERS**

### **6. P.T.S. v. S.S.**

2024 Ala. Civ. App. LEXIS 65  
June 14, 2024  
CL-2023-0673

The Court of Civil Appeals upheld an Elder Abuse protection order issued by the Lee County Circuit Court. There was an earlier ex parte order which was dissolved following a motion by the stepson. After trial, a permanent protection order was issued under the “Elder Abuse Protection Order and Enforcement Act” (enacted in 2017). Under this act elder abuse can include financial exploitation. There was evidence that the stepson had withdrawn \$25,000 from a joint account with his stepmother without permission, when he had no ownership rights in the money.

## **MEDICAL MALPRACTICE**

### **7. In re Hare, Wynn, Newill & Newton, LLP**

2024 Ala. LEXIS 118  
May 24, 2024  
SC-2023-0908

A medical malpractice case was initially filed in 2017 by David Leon Ashford and Hare Wynn on behalf Joel Wesley. Wesley had suffered from a stroke and the complaint alleged a breach of the standard of care. Several defendants were named, as well as fictitiously named defendants. In January 2022 Ashford and Hare Wynn withdrew from the case. The trial court later granted summary judgement for the named defendants. The plaintiffs then named additional defendants, and their claims were dismissed in January 2023, leaving only the fictitiously named defendants. In May 2023, the plaintiffs moved to amend their complaint to add Ashford and Hare Wynn alleging legal malpractice. Ashford and Hare Wynn moved to dismiss arguing that the January 23 order was a final judgement. They argued that the trial court had lost jurisdiction of the case. The trial court denied their motion and they filed a mandamus petition. The Supreme Court agreed the trial court had lost jurisdiction in January 2023.

## **8. Mottern v. Baptist Health Sys., Inc.**

2024 Ala. LEXIS 154

September 6, 2024

SC-2024-0148

This was a wrongful death case arising out of a patient receiving contaminated Total Parenteral Nutrition (TPN). The TPN was outsourced to a compounding pharmacy (Meds IV) a vendor with whom Baptist had a longstanding relationship. In March 2011, there was a national shortage of amino acids, a key ingredient for TPN. Unbeknownst to Baptist, Meds IV began mixing their own amino acids. This practice took Meds IV from being a medium risk pharmacy to a high-risk pharmacy. When the TPN arrived at Baptist, a bacterium already contaminated it, *Serratia Marcescens*. A number of patients received the contaminated TPN and unfortunately nine died. This case involved one of them.

Two of the claims advanced by the plaintiff were products liability claims based upon breach of implied warranty and the “Alabama Extended Manufacturer’s Doctrine.” The hospital moved to strike those two counts as the plaintiff was seeking to impose strict liability (no need to prove negligence) on a hospital for providing a medicine developed by an outside entity that can only be provided to a patient based on a physician’s prescription. The judge dismissed all four of the plaintiff’s claims and the plaintiff appealed to the Alabama Supreme Court. The Supreme Court reversed the trial court as to all four counts and sent the case back for further action. Three of the Justices voted to reverse the trial court and explained that no matter what type of claim is made in a medical malpractice case, the plaintiff must prove what is the standard of care and that the defendant breached the standard of care. Three other justices agreed with the result but would have used different rationales. Two of the justices dissented.

## **9. Mobile Infirmary Ass’n v. Fagerstrom**

Case No. SC-2023-0355

Supreme Court of Alabama

November 17, 2023

Fagerstrom, now deceased, developed a tumor on her brain at age 85. The tumor was removed by Mobile Infirmary Medical Center (MIMC), but her recovery did not go well. She developed a pressure injury in her sacrum while at MIMC that progressed to a Stage 3 pressure ulcer. The plaintiff alleged that the nurses breached the standard of care and caused her pressure injury because she was not turned frequently enough. Eventually, while at another hospital, the ulcer developed to a Stage 4 pressure ulcer due to not being turned frequently enough, according to the plaintiff. Fagerstrom died three and one-half months after her brain surgery at MIMC. At trial, the plaintiff’s expert testified that the defendants breached the standard of care and caused Fagerstrom to develop the ulcer which eventually caused sepsis that resulted in her death. The defendants, however, assert that the plaintiff failed to present sufficient evidence of proximate cause, and the claim should not have been submitted to a jury. They argued the opinion that Fagerstrom died from sepsis caused by the ulcer was based on mere speculation instead of “objective data.” The testimony or brief for the plaintiff did not clearly explain how the vital signs showed that she died from sepsis. Their expert’s opinion was based on the “typical progression and end result of the sort of infection Sylvia had.” Moreover, experts for the defendant indicated

that medical tests revealed plenty of objective vital signs that the plaintiff's expert was not aware of. The trial court ruled in favor of the estate of Fagerstrom. The Alabama Supreme Court reversed the judgment and remanded for the entry of a judgment as a matter of law in favor of the hospital because the plaintiff was required to present substantial evidence of causation.

**10. Springhill Hosp., Inc. v. West**

Case No. SC-2022-0719

Supreme Court of Alabama

August 4, 2023

West cut the tip of his left thumb and had it surgically repaired at Springhill Hospital. His surgeon wrote an order for Percocet, and another order for up to four milligrams of a powerful opioid if Percocet failed to control the pain. He was given four milligrams of the opioid and then she administered an additional four milligrams two hours later. West was not monitored as ordered and was later found unresponsive and not breathing. The patient should have been identified as being at high-risk for opioid-induced respiratory depression and received respiratory monitoring. The hospital did not train the staff on how to protect patients from known fatal dangers of opioid-induced respiratory depression. An expert testified and said, "Well, if you were planning on killing somebody, that would be a dose that would be expected to do the job." The Alabama Supreme Court unanimously agreed that Springhill's conduct breached the standard of care. Moreover, it upheld the award of \$10 million in punitive damages because according to the Court given the degree of reprehensibility, the fact that West lost his life as a result of Springhill's conduct, the amounts of previously affirmed awards, the reality of inflation, the goal of punishing the defendant in conjunction with the apparent lack of economic impact on Springhill, and the cost incurred by his wife after six years of litigation.

**ALABAMA MEDICAL CANNABIS**

**11. Ex parte Ala. Med. Cannabis Comm'n Petition for Writ of Mandamus**

2024 Ala. Civ. App. LEXIS 94

August 23, 2024

CL-2024-0463

In this case the Alabama Medical Cannabis Commission (AMCC) petitioned the Court of Civil Appeals for a writ of mandamus ordering the Circuit Court to dismiss the case filed by Jemmstone Alabama, LLC. The petition looked to dismiss the case and to vacate a temporary restraining order. The Court granted the petition in part and denied the petition in part. Jemmstone had applied for one of five integrated facility licenses. The AMCC was the sole defendant, however contained in the body of the complaint were also the individual members of the AMCC in their official capacities. The circuit court granted Jemmstone's motion to consolidate the action with other cases. On January 3, 2024, the Circuit Court entered a TRO in the master case. The AMCC argued that the case was void because the complaint only named the AMCC as a defendant. The circuit court denied the motion to dismiss and decided that Jemmstone had properly named the members of the AMCC in the body of the complaint. Because of the manner of filing the Court of Civil Appeals upheld the circuit court decision to uphold the TRO. The Court of Civil Appeals reversed the circuit court's denial of a motion to dismiss the AMCC based on sovereign immunity,

because the individual AMCC Board members were named in the body of the complaint. However, it did not rule on the issue of whether naming the members of the AMCC in the body of the complaint was sufficient.

**12. Ex parte Ala. Med. Cannabis Comm’n**

2024 Ala. Civ. App. LEXIS 71

June 21, 2024

CL-2024-0073

This complaint was filed on June 22, 2023. The Alabama of Civil Appeals dismissed the petition for mandamus by the AMCC as being moot. The petition sought to compel the circuit court to vacate two orders. One order was to consolidate multiple cases under this case and the other was to allow the other numerous parties to intervene in the case. In this case Alabama Always commenced the master case by filing a complaint naming the AMCC as the lone defendant. The Court of Civil Appeals held that the complaint did not invoke the jurisdiction of the circuit court because of constitutional sovereign immunity.

**13. Redbud Remedies, LLC v. Ala. Med. Cannabis Comm’n**

2024 Ala. Civ. App. LEXIS 37

March 29, 20024

CL-2023-0352 and CL-2023-0697

In this appeal the Court of Civil Appeals dismissed two consolidated appeals of a judgement of the Montgomery County Circuit Court which denied a request for declaratory and injunctive relief in an action against the AMCC. The dispute in this case arose from Redbud’s failure to file a timely application for a medical cannabis dispensary license and the refusal of the AMCC to accept a tardy application. Redbird argued that the delay in filing the application was caused by the negligence of the AMCC. The complaint named the AMCC as the sole defendant. The case went to trial and the circuit court ruled in favor of the AMCC. The appeal followed. The Court of Civil Appeals requested letter briefs on the question of sovereign jurisdiction in the appeals. The Court ruled that the complaint filed solely against the AMCC was nullity and void ab initio.

**14. Verano Ala., LLC v. Ala. Med. Cannabis Comm’n**

Ala. Civ. App. LEXIS 43

April 19, 2024

CL-2023-0831

On June 12, 2023, the AMCC awarded Verano Alabama, LLC an integrated facility license. On August 10, 2023, the AMCC rescinded the award. Verano appealed to the Montgomery Circuit Court which upheld the decision to resend Verano’s award. Verano Appealed to the Court of Civil Appeals, which affirmed the circuit court’s decision. The decision was based on a determination by the Court of Civil Appeals that Verano had waived an argument which required an automatic affirmance.

### **15. Ex parte Ala. Med. Cannabis Comm’n**

Ala. Civ. App. LEXIS 70

June 21, 2024

CL-2024-0292

The AMCC petitioned the Court of Civil Appeals to issue a writ of mandamus ordering the circuit court to vacate an order allowing Alabama Always to file a petition for judicial review per Section 41-22-20 (d), Code of Alabama 1975. The Court denied the mandamus petition. The procedural history of this case is quite complex. Alabama Always had initially filed suit after it was not awarded an integrated facility license on any of the three dates such licenses were approved on January 3, 2024. After discovering there were jurisdictional problems, Alabama Always dismissed its complaint without prejudice. A new complaint was filed on January 9, 2024. On March 28, 2024 Alabama Always filed a motion to dismiss all its pending actions, which the circuit court granted the motion on April 1, 2024. On April 3, 2024, filed a new complaint and a motion for an order allowing judicial review. On April 8, the AMCC filed an objection to the motion and the circuit court granted the motion for judicial review. The AMCC looked to have that order vacated in its petition, based upon the timeliness of Alabama Always request. The Court of Civil Appeals denied that petition.

## **OPIOIDS:**

### **16. Ex parte McKesson Corp**

Case No. SC-2023-0289

Supreme Court of Alabama

December 22, 2023

The plaintiffs are thirty-four entities that own or operate hospitals in Alabama. They commenced actions against various manufacturers and distributors of prescription opioids. The plaintiffs allege that by flooding the communities with opioids, by pushing false narratives surrounding the safety of opioids, and by failing to take steps to prevent diversion of opioids, they have created an epidemic of misuse, abuse, addiction, and death. Moreover, the average cost of providing care for patients diagnosed with opioid use disorder is eight times higher than for those without opioid use disorder. They further alleged that the opioid pandemic constituted a continuous and abatable public nuisance. The trial court denied the defendants’ motion to dismiss on statute-of-limitation grounds. Thus, they are not entitled to an order dismissing the plaintiffs’ claims against them. Whether the plaintiffs will be able to present proof that the defendants engaged in misconduct was not the issue before the Supreme Court. Instead, it denied writ on the statute-of-limitation grounds.



## **IN VITRO FERTILIZATION:**

### **17. LePage v. Ctr. For Reprod. Med., P.C.**

Case No. SC-2022-0515  
Supreme Court of Alabama  
February 16, 2024

The plaintiffs are parents of several embryonic children, each of whom was created through in vitro fertilization (“IVF”) and, up until the incident giving rise to these cases, had been kept alive in a cryogenic nursery while they awaited implementation. Their embryos were placed in the cryogenic nursery and stored at extremely low temperatures. The plaintiffs allege that the Center was obligated to keep the nursery secured and monitored at all times. A patient at the hospital wandered into the Center’s fertility clinic through an unsecured doorway. The low temperatures burned the patient’s hand, causing the patient to drop the embryos on the floor, killing them. The parents brought suit, asking the court to find a cryopreserved in vitro embryo to be a “child.” The trial court granted motions dismissing the claims because the embryos in this case do not fit within the definition of child and therefore the loss could not give rise to a wrongful-death claim. The Alabama Supreme Court, on the other hand, ruled that the Wrongful Death of a Minor Act applies on its face to all unborn children, without limitation. It said unborn children are “children” under the Act, without exception based on developmental stage, physical location, or any other ancillary characteristics. Therefore, under the Act, the court concluded the wrongful death lawsuit against an IVF clinic employee whose actions resulted in the destruction of plaintiff’s embryos was appropriate.

## **HOSPITAL LIEN:**

### **18. Board of Trustees of the University of Alabama for its Division UAB v. Richards**

Case No. CL-2023-0849  
Court of Civil Appeals Alabama  
June 7, 2024

An amended complaint added the VA, UAB, and UAHSF as defendants in a personal injury lawsuit. A second amended complaint noted a settlement agreement and requested determination of the funds’ distribution, involving UAB. The estate of the plaintiff moved for a hearing on fund disbursement, outlining respective liens. UAB responded, asserting its hospital lien, and submitting relevant documents. The trial court issued a judgment ordering fund disbursement, outlining respective liens. UAB appealed, contending that the trial court lacked authority to reduce UAB’s recovery below its reasonable charges because the funds were sufficient to satisfy its lien. The Court held that the Alabama Code § 35-11-370 provided hospitals with an automatic lien for reasonable charges, subject to attorney’s fees. The trial court’s judgment, dividing settlement proceeds, violated the statute by limiting UAB’s lien amount and barring its right to seek lien satisfaction post-judgment. The trial court’s judgment was reversed, allowing UAB to pursue full satisfaction of its lien.

## **HOSPITAL IMMUNITY:**

### **19. Ex Parte Triad of Ala., LLC**

Case No. 2023-0395  
Supreme Court of Alabama  
January 26, 2024

Triad rendered infusion therapy to Covid-19 patients, and it directed the patients to enter through a preexisting entrance designated as the infusion entry. That entrance has been created in a 2014 construction project and neither the entrance nor the concrete ramp leading up to it has been modified since then. Askew was exiting the entrance and her foot caught the edge of the concrete ramp, causing her to fall and sustain serious injuries. She sued and Triad claimed an affirmative defense of civil immunity. The Supreme Court of Alabama held that the plain language of Code of Ala. §§ 6-5-794(a)(13) and 6-5-792(a) mandate Triad's entitlement to immunity.

## **DEFAMATION:**

### **20. Watters vs. Birmingham Hematology & Oncology Assocs., LLC**

Case No. SC-2022-0907  
Supreme Court of Alabama  
October 13, 2023

Plaintiffs were a nurse and office administrator at Alabama Oncology's St. Vincent's location. There was considerable discord among the staff and the working atmosphere was toxic. Physicians at Alabama Oncology received an anonymous letter setting forth allegations of wrongdoing, including medical malpractice. The executive director contacted legal counsel for advice, and he informed the physicians and staff that an investigation would be occurring at their office. After the investigation, counsel presented the findings to Alabama Oncology's partners and executive management team. Following the presentation, the partnership ultimately voted 13-2 in favor of terminating the plaintiff's employment. The plaintiffs brought a defamation suit and the trial court determined that the alleged defamatory communications occurred between Alabama Oncology's employees, and thus, were not considered to be publications. Even if there had been a publication, the internal communications among management personnel were protected by the absolute litigation privilege. The plaintiffs challenged the summary judgment. The Alabama Supreme Court found that since some of the allegations involved medical malpractice, the legal counsel's presentation of the information that it gathered from its investigation and the employees' receipt of that information was a "legitimate business task" of Alabama Oncology. Summary judgment was affirmed.

## **ARBITRATION:**

### **21. Jamison v. SNH AL Crimson Tenant, Inc.**

Case No. SC-2023-0861

Supreme Court of Alabama

May 17, 2024

In July 2022, the Jamisons brought a lawsuit alleging negligent medical care John received while a resident at an assisted-living facility. According to the Jamisons, the assisted living breached the standard of care by conspiring to misdiagnose, overmedicate, and wrongfully certify John as eligible for hospice care. On March 1, 2023, the assisted living facility moved to compel arbitration based on a signed agreement. The Jamisons filed an objection to the motion to compel. The circuit court granted the motion to compel arbitration. The Supreme Court of Alabama noted it could not conclude that the materials appended to the motion to compel arbitration amounted to substantial evidence of the existence to a valid arbitration agreement signed by a representative with authority to bind the Jamisons. Thus, because the circuit court deprived the Jamisons of the opportunity to respond to new materials attached to one of the assisted living's replies, the order compelling arbitration should be reversed pending further development of the factual record.

## **DAYCARE:**

### **22. Pooh Bear Acad. V. Ala. Dep't of Hum. Res**

Case No. CL-2022-0949

Court of Civil Appeals of Alabama

November 17, 2023

A licensing consultant that DHR had assigned to Pooh Bear Academy's (PBA) license-renewal application inspected the day-care center in connection with PBA's license-renewal request. The consultant reported seventy deficiencies, including that an employee had a substantiated child abuse and neglect (CAN) report. Most of the deficiencies were corrected, and PBA was given a 90-day compliance deadline to correct all the deficiencies. After reviewing the records with DHR, the consultant informed PBA that the CAN report could not be waived, and the deficiency would stand until the employee was terminated or a cleared CAN report was received. PBA purportedly fired the employee, but DHR caught her at PBA one day. Moreover, more deficiencies were reported as time progressed. PBA eventually requested a new DHR consultant, which was denied. At subsequent inspection attempts, DHR consultants were denied access to the building. After informing PBA that their license would not be renewed unless they complied with inspections, DHR hand delivered a letter suspending PBA's day-care-center license, effective immediately. The suspension letter noted that the suspension was necessary because of the imminent danger of the health, safety, and welfare of the children. An ALJ upheld the suspension, and the circuit court affirmed. PBA timely filed an appeal. The Civil Appeals Court noted it cannot remedy the temporary suspension of PBA's day-care-center license and dismissed the appeal as moot.

**23. Deaton v. S. Highland Child Dev. Ctr., Inc.**

Case No. SC-2023-0484

Supreme Court of Alabama

June 7, 2024

A divorced father, who did not have custody of his children, took his child to daycare and partially completed the child's pre-admission record. The mother was not listed as the child's biological mother and the daycare did not inquire why the mother was not listed. When the mother found out, she called the daycare to inform them she was the custodial parent, and the daycare representative hung up the phone. The daycare did not do anything to verify the information provided or to contact a state agency. The mother and her attorney went to the daycare and personally served them with the court order appointing her as the custodial parent. The daycare's executive director took the child out of the back door and gave the child to the father.

The mother sued the daycare, alleging negligence, wantonness, the tort of outrage/intentional infliction of emotional distress, and conspiracy. The circuit court set a hearing to resolve amended complaints, but the mother filed this appeal to the Supreme Court. For her negligence claim, she asserts that the daycare had a general duty of reasonable supervision towards children. The daycare argues that they are governed by DHR standards and that it could not violate the "approved pickup list" rule. The Court agreed with DHR on this point and also said the negligence claim fails on *res ipsa* grounds too.

For the tort of outrage claim, a plaintiff must establish that the conduct was (1) intentional or reckless, (2) was extreme and outrageous, and (3) caused emotional distress so severe that no reasonable person could be expected to endure it. The conduct must be regarded as atrocious and utterly intolerable in a civilized society. The mother argues that the actions of the daycare were tantamount to a kidnapping. The court said she does cite some persuasive authority, but those authorities are all lawsuits against the other parent, not a daycare. Interestingly, the court does say the mother is correct in that this tort may be applicable in more situations than was previously thought. However, the Court had to affirm the trial court's judgment on any grounds supported by the record.

**[END OF CASES]**