

# Chicago Daily Law Bulletin

Chicago Daily Law Bulletin  
August 04, 2008 Volume: 154 Issue: 152

## Court OKs edit of jury instruction

By [Stephanie Potter](#)  
*Law Bulletin staff writer*

The 1st District Appellate Court on Monday upheld a defense verdict in a medical malpractice case, rejecting the plaintiffs' argument that they were prejudiced when the trial judge changed the wording of the pattern jury instruction on professional negligence.

The court's ruling came in a suit Georgianne Calandriello filed as legal guardian of her fiance, David Mount. Mount suffered a heart attack on March 2, 1999, and the subsequent oxygen deprivation left the 51-year-old man brain damaged.

Calandriello and LaSalle Bank, as the plenary guardian of Mount's estate, alleged that doctors who treated Mount at a clinic in Columbia Olympia Fields Osteopathic Hospital and Medical Center in the weeks before his heart attack failed to immediately refer him to a cardiologist, which likely would have prevented the heart attack. The defendants, on the other hand, argued that Mount's cardiac arrest was caused by a viral infection that would not have been detected by a cardiologist.

The appeals court, in a 37-page opinion, rejected a number of issues the plaintiffs raised on appeal, including that Circuit Judge [Daniel M. Locallo](#) committed reversible error by altering the pattern instruction on professional negligence. The current instruction on professional negligence, which also was in effect at the time of trial in November and December 2005, provides that professional negligence is the failure to do something that a "reasonably careful" professional would do, or conversely to do something a "reasonably careful" professional would not do. IPI Civil No. 105.01.

Instead of giving that instruction, Locallo used a hybrid of the 2005 and 2006 pattern instructions. He replaced the "reasonably careful" language with the "reasonably well-qualified" language from the prior version of the jury instruction.

The appeals court found that Locallo did not commit reversible error because he gave an accurate statement of the law. However, [Martin J. Healy Jr.](#), one of the attorneys for the plaintiffs, said the hybrid instruction "eliminated the concept of due care." He said he plans to seek a rehearing.

Writing for the appeals court, Justice [Robert E. Gordon](#) said trial judges are required to use the current version of pattern instructions unless the judge determines that the instruction does not accurately state the law. Illinois Supreme Court Rule 239(a).

Ordinarily, however, a reviewing court will not reverse a trial court, even when it gives an older version of the pattern instruction, unless the instruction misled the jury, Gordon wrote, citing *Schultz v. Northeast Illinois Regional Commuter R.R. Corp.*, 201 Ill.2d 260, 274 (2002).

The appeals court first analyzed the phrase "reasonably careful" and determined that it was an accurate

statement of the law, in part because the Illinois Supreme Court in *Loman v. Freeman*, 229 Ill.2d 104 (2008), approved of similar language to describe the professional standard of care.

However, the appeals court determined that the plaintiffs suffered no prejudice because the "reasonably well-qualified" language also was an accurate statement of the law. Further, Gordon wrote, the 3d District's 2007 decision in *Smith v. Marvin*, 377 Ill.App.3d 562, which held that a defendant had not been prejudiced by a similar non-pattern instruction, may have created confusion over the propriety of using hybrid instructions.

"To be clear, we read *Smith* only for the proposition that the trial court's hybrid instruction, while error, did not prejudice defendants, because it was still an accurate statement of the law," he wrote.

The jury instruction issue drew amicus briefs for both sides, with the Illinois Association of Defense Trial Counsel urging the court to reject the "reasonably careful" language, in part because "it invites the jury to determine the appropriate professional standard of care based upon its own lay experiences, tending to blur the distinction between ordinary negligence and professional liability."

The Illinois Trial Lawyers Association, in an amicus for the plaintiffs, said the "reasonably careful" language is preferable because it encourages jurors to focus on the amount of care taken by the doctor, not the doctor's professional qualifications.

The appeals court did not specifically address those arguments, but did caution that trial judges should use the pattern instruction, even if they believe they could craft a better one.

"In the case before us, there is nothing in the record to indicate that the trial court flouted rules or precedent, and thereby abused its discretion," Gordon wrote. "However, a trial court runs the risk of abusing its discretion if it repeatedly ignores Supreme Court Rule 239(a) by substantively altering an instruction that is already a correct statement of the law."

Justices [Warren D. Wolfson](#) and [Rodolfo Garcia](#) joined in the opinion. *LaSalle Bank N.A., etc., et al. v. C/HCA Development Corp.*, etc. et al., No. 1-06-1859.

In addition to Healy, the plaintiffs were represented on appeal by [William J. Harte](#), [J.T. Terence Geoghegan](#) and [Joan M. Mannix](#).

The defendants were represented by [Michael R. Slovis](#), [Peter J. Strauss](#) and [Robert L. Larsen](#) of Cunningham, Meyer & Vedrine P.C.; as well as [Michael E. Prangle](#), [Hugh C. Griffin](#) and [Jacob Z. Goldstein](#) of Hall, Prangle & Schoonveld LLC.

The amicus brief on behalf of the Illinois Trial Lawyers Association was written by [Bruce R. Pfaff](#) of Pfaff & Gill Ltd. The Illinois Association of Defense Trial Counsel brief was written by [David S. Osborne](#) and [Robert Marc Chemers](#) of Pretzel & Stouffer Chtd.

---

©2008 by Law Bulletin Publishing Company. Content on this site is protected by the copyright laws of the United States. The copyright laws prohibit any copying, redistributing, or retransmitting of any copyright-protected material. The content is NOT WARRANTED as to quality, accuracy or completeness, but is believed to be accurate at the time of compilation. Web sites for other organizations

are referenced at this site, however the Law Bulletin does not endorse or imply endorsement as to the content of these web sites. By using this site you agree to the [Terms, Conditions and Disclaimer](#).

Powered by Tenebral Technology.