

## Nov. 1, 2018: Judicial Advocacy Update

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### Physicians have immunity for good-faith psychiatric discharges

One day after being discharged from involuntary commitment in a mental health facility, a Maryland man killed himself—a sequence of events that everyone fears.

But psychiatrists acting in good faith in their decision-making in such cases have immunity from medical liability in the event of adverse outcomes, Maryland's highest court has ruled.

The opinion not only allows physicians to make good-faith clinical decisions, but protects patients' civil liberties because physicians won't err on the side of involuntary confinement for fear of being sued.

"All that is required for immunity is that the assessment [for release] be done in good faith following the process and applying the criteria in the statute," the Court of Appeals of Maryland said in its decision in *Bell v. Chance* (PDF).

The justices' opinion echoed many of the arguments that the Litigation Center of the American Medical Association and State Medical Societies, and the Maryland State Medical Society made in an amicus brief (PDF). The organizations filed the brief in support of the physician in the case, Leroy C. Bell Jr., MD, and his employer, Bon Secours Hospital Baltimore Inc.

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### Should abortion rights extend to unaccompanied migrant minors?

A federal appeals court will determine whether a government agency can establish barriers for unaccompanied migrant children seeking abortions.

A federal district court earlier this year stopped government interference with access to services, ruling that the U.S. Health and Human Services Department's Office of Refugee Resettlement (ORR) cannot establish an anti-abortion policy that unduly burdens these minors' right to abortion.

The question went before the court after ORR—which can make all medical decisions for unaccompanied alien children in place of their parents—issued a memo and follow-up communication to federal grantee organizations that provide shelter and services for the unaccompanied alien children. The agency said that unless it is an emergency:

- The grantee organizations must contact ORR about any minor who may require an abortion.
- Grantee organizations could not take any action that facilitates an abortion without ORR's director.
- Grantee organizations could only provide "pregnancy services and life-affirming options counseling."

The lower court said ORR established the policy without statutory or regulatory authority.

ORR appealed the decision in *Azar II v. Garza* to the U.S. District Court Appeals for the District of Columbia Circuit, which heard oral arguments on the case in September.

The Litigation Center of the American Medical Association and State Medical Societies joined the American College of Obstetricians and Gynecologists and a half-dozen physician organizations supporting the guardian ad litem for a pregnant unaccompanied alien minor who filed the class action lawsuit on behalf of that child and others. The amici are asking the court to uphold the lower court decision.

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