

# Oraee v. Breeding

November 4, 2005

## Virginia Supreme Court

This case involves 8.01-581.18 which reads as follows;

§ 8.01-**581.18**. Delivery of results of laboratory tests and other examinations not authorized by physician; immunity of physician

A. Whenever a laboratory test or other examination of the physical or mental condition of any person is conducted by or under the supervision of a person other than a physician and not at the request or with the written authorization of a physician, any report of the results of such test or examination shall be provided by the person conducting such test or examination to the person who was the subject of such test or examination. Such report shall state in bold type that it is the responsibility of the recipient to arrange with his physician for consultation and interpretation of the results of such test or examination. The provisions of this subsection shall not apply to any test or examination conducted under the auspices of the State Department of Health.

B. Any physician shall be immune from civil liability for any failure to review, or to take any action in response to the receipt of, any report of the results of any laboratory test or other examination of the physical or mental condition of any person, which test or examination such physician neither requested nor authorized in writing, unless such report is provided directly to the physician by the person so examined or tested with a request for consultation or by the State Department of Health.

C. As used in this section, "*physician*" means a person licensed to practice medicine, chiropractic or osteopathy in this Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

In this case the plaintiff went to an ER with facial drooping. The defendant doctor ordered an MRI, which revealed that the plaintiff had suffered a stroke, and indeed had suffered some in the past which had not caused noticeable symptoms. The defendant felt that the strokes were possibly caused by a clotting disorder, and sent her to a rheumatologist for an appropriate test, which the rheumatologist did. This test took several days, and showed that the plaintiff indeed had the clotting disorder. After the test was completed the plaintiff felt worse and went back to the defendant. The defendant knew that the test had been started, but did no further inquiry, and did not know that it had come back positive. Allegedly as the result of the failure to find out the results of the test and properly medicate the plaintiff suffered a major stroke and ultimately died several weeks later. The plaintiff's evidence was that the standard of care required that the defendant doctor inquire as to the results of the test at the appointment, and his failure to do so and properly medicate was a proximate cause of the plaintiff's death. There was a verdict for the plaintiff, affirmed by the trial judge.

The defendant argued that Section B above immunizes him from any failure to review the results of the tests, since he had not actually ordered them. This is the holding in Auer v. Miller, 270 Va. 172 (2005) decided on in June. In a 4-3 decision the Virginia Supreme Court overruled Auer, and stated that Section B must be read with Section A, so that it only applies to tests not ordered by a physician. Since this was ordered by a physician, it does not apply and the plaintiff's verdict is affirmed. There was a very vigorous dissent by three justices on stare decisis grounds, among others.