

## Lessons All Employers Can Learn from *Owens v. Eagles*

*By: George C. Hlavac, Esq., Jeffrey S. Stewart, Esq., and David R. Keene, II, Esq.*

As part of our full-service commitment to our clients, the Labor and Employment Department at Tallman Hudders & Sorrentino, P.C., aims to keep you informed of the latest labor and employment law developments. As employers in the Lehigh Valley and throughout Pennsylvania know, dealing with disruptive employees—and coming out on top—requires diligence and leadership.

Now that the Super Bowl has been played and football season is finally over, we thought it would be instructive to reflect upon what all employers in Pennsylvania can learn from the “termination” of Terrell Owens from the Philadelphia Eagles. For the Eagles fans out there, we apologize for having to rehash this once again. For everyone else, enjoy the recap.

*Background (just in case you don't follow professional football).* Terrell Owens was a wide receiver for the Philadelphia Eagles until November 5, 2005. Owens, a talented player who helped the San Francisco 49ers to five (5) playoff berths and appeared in several Pro Bowls, was traded to the Eagles in the summer of 2004. At that time, Owens signed a seven (7) year contract with the Eagles. Prior to Owens's arrival in Philadelphia, the Eagles won numerous division championships but repeatedly fell short of the Super Bowl. The 2004-05 season was one of huge success for both Owens and the Eagles and finally cul-

minated a Super Bowl appearance, the first for the Eagles in twenty-four (24) years.

*Acts of misconduct.* Shortly after the Super Bowl in 2005, Owens publicly informed the Eagles, through the media, that he was unhappy with his contract. More specifically, Owens publicly stated that he was underpaid,

that his contract needed to be renegotiated, and that if the Eagles did not increase his compensation, he would become a problem employee. Starting in April of 2005, Owens began to make good on his promise to be a problem employee. In this regard, he repeatedly

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## Has the Med Mal Crisis Ended?

*By Frederick J. Stellato, Esquire*

As a result of a perceived crisis in the medical malpractice litigation arena, Pennsylvania legislators and courts, in the last few years, have initiated several major reforms in an attempt to ease the “crisis”. At present, there is little hard, direct evidence that the reforms have ended the “crisis”, though this subject is debated regularly among professionals in medical and legal fields.

### Crisis — What Crisis?

Entering the new millennium, there was a great furor over the “med mal crisis”. Some of the perceptions of the crisis were as follows: (1) there were too many frivolous lawsuits; (2) jury verdicts were skyrocketing in med mal cases; (3) med mal insurance premi-

ums for doctors were increasing, and coverage declines were on the rise; and (4) as a result, patients were losing their doctors due to the crisis. At least as to doctors medical malpractice costs, it was true that there were unexpected premium increases and coverage declines. Moreover, in large commercial medical malpractice insurers were refusing to write new business.

### The Reforms

#### *Act 13*

In March, 2002, the Medical Care Availability and Reduction of Error (MCARE) Act, otherwise known as Act 13, was signed into law. Act 13 modified the collateral source rule so

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## Lessons

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made disparaging comments about the Eagles management and quarterback Donovan McNabb. Owens also repeatedly gave television interviews disparaging the Eagles and McNabb, including stating that the Eagles were “low class” and that the team would be better off without McNabb, whom he referred to as a “hypocrite”. Additionally, Owens displayed a complete lack of respect to his coaches by refusing to speak to a coach, parking in coaches’ reserved parking spaces, and refusing to open his playbook during meetings. Further acts of misconduct by Owens included: refusing to speak to McNabb, telling his head coach to “shut up,” and having a physical altercation with a management official.

*The separation.* Eventually, after one last inflammatory statement to the media followed by his refusal to speak to McNabb, the Eagles demanded a public apology. At a press conference, Owens read only a portion of the agreed apology. In response to his actions, the Eagles suspended Owens, without pay, for four (4) games and deactivated him for the rest of the season, meaning that he would technically still be an employee but that the Eagles would not let him practice or play for the remainder of the season.

The National Football League Players’ Association—Owens’s union—filed a grievance, demanding that the four-game suspension be overturned and the exclusion from games and practices thereafter be reversed, and that Owens be fully reinstated with back pay. The Eagles asked that the grievance be denied.

After reviewing the documents and hearing from witnesses, the Arbitrator upheld the discipline in its entirety. Some of the key evidence in this decision was a series of letters written by the Eagles to Owens, specifically stating that he had broken team rules and also detailing what was and was not acceptable behavior on the part of an employee. The Arbitrator found that Owens’s comments and misdeeds had

a detrimental impact on his team, that he was given numerous opportunities to change his behavior and refused to do so, and that he had been warned repeatedly that he ran the risk of incurring discipline.

*What employers can learn from Owens v. Eagles.* While your company may not be as high profile as the Eagles, all employers can draw four (4) important points from the arbitration decision and apply them to their companies:

*Be sure to document all misconduct.* The Eagles took care to send Owens four (4) letters documenting his misconduct, including responding to Owens’s agent’s request for greater specificity. In every single letter, the Eagles explained what Owens had done wrong, how it negatively impacted the team, and how his conduct and attitude needed to change so that the team could work together as a team.

Clearly state what discipline you are imposing or will be imposing if a further act occurs. From the very first letter, the Eagles made it clear that Owens was at risk of being disciplined, up to and including suspension and separation from the team.

*Seemingly minor acts of misconduct can add up.* Many of Owens’s misbehaviors seem trivial, but when removed from the professional football context and placed in your company, the larger problem becomes clear. What would you do if an employee parked in a manager’s or handicapped parking space? And then he decided to stop talking to his sales manager, or told that manager to “shut up”? And then skipped mandatory safety meetings? Although individually each of these incidents is unlikely to constitute a terminable infraction, in the aggregate they make for a nightmare employment situation that every manager and business owner wants to avoid.

*Make sure that all executives and managers are publicly in agreement.* The Eagles made sure that all management officials moved in lockstep with one another to avoid the appearance that there was disagreement within the team. Further, they had one person speak for the team, instead of several,

so that there was no way to drive a wedge between managers. Even if executives disagreed behind closed doors, to the public there was only one unified position.

*Conclusion.* Not all employers will encounter a situation where they have to discipline and suspend an employee making millions of dollars a year who decides to become a disciplinary problem and publicly embarrasses his managers and co-workers. But all employers will—at one time or another—be faced with a problem employee who requires discipline, whether in compliance with an employee handbook or union contract. Should you have any questions regarding discharge, discipline, or any other labor or employment law issue, please contact any of the members of our Labor and Employment Department.

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## New Attorney

The Firm is pleased to announce that Christopher C. Carver will be joining us full time in July.

**Christopher C. Carver** received a Bachelor of Arts degree in Economics and Political Science from the University of Richmond (2001) and a Juris Doctor degree from The Dickinson School of Law of the Pennsylvania State University (2004). While at Dickinson, Mr. Carver was included in the 23rd and 24th editions of “Who’s Who: American Law Students”. Mr. Carver practices in the areas of Taxation and Estate Planning & Administration and will graduate with an LL.M. in Taxation (with an Estate Planning Certificate) from the Villanova University School of Law this coming May. He was awarded the Tax Executives Institute (Philadelphia Chapter) Scholarship based upon his academic achievements in the LL.M. program. Mr. Carver is admitted a member of the bars of the Supreme Court of Pennsylvania and the United States Tax Court.

## Med Mal Crisis

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that claimants could not be awarded damages for losses compensated by another source, and initiated several other financial reforms, such as allowing payments for future damages to be made over time, and reducing future damages for loss of earnings or earning capacity to present value. Act 13 also required expert witnesses at the trial of medical malpractice actions to have qualifications substantially similar to the defendant physicians on trial. Finally, Act 13 included patient safety provisions requiring the reporting of serious events or incidents relating to patient safety to both the medical facility and the patient.

### *New Court Rules*

Since Act 13 was adopted in 2002, new court rules have been initiated with goals of improving fairness, increasing predictability and reducing the costs of medical malpractice insurance for doctors, with the major changes noted below.

### *Certificates of Merit*

The Pennsylvania Supreme Court has promulgated rules requiring that, in any action based upon an allegation that a physician has committed malpractice, the attorney for the claimant must file a certificate of merit indicating that an appropriate expert has supplied a written statement that there exists a reasonable probability that the care and treatment fell outside of acceptable standards. In essence, this rule requires the attorney for the claimant to go out and hire an appropriate expert (not an inexpensive proposition), and obtain from that expert a written statement that the case has merit in conjunction with the filing of a lawsuit.

### *Limits on Venue Shopping*

New rules also require a medical malpractice action to be brought against a health care provider only in a

county where the medical care was actually provided. Now, claimants are no longer allowed to shop for a favorable venue for their lawsuit, such as Philadelphia County, where juries have been viewed as sympathetic to claimants.

## Good News for PA Doctors and Patients

### *Insurance and Insurability*

If the medical malpractice “crisis” is defined as involving insurance cost increases and coverage unavailability, this crisis is most certainly easing to some extent. There are positive signs that affordable medical malpractice insurance may be more readily available for physicians in Pennsylvania. In 2005, PMSLIC Insurance Company recently announced that it was eliminating its three year restrictions on new business and would write policies on new insureds effective January 1, 2006. In addition, PMSLIC Insurance Company also declared that it would not be raising its base premium rates for the year 2006, after several years of steep increases. Also, Medical Protective Company, the second largest commercial insurer, has announced that it expects its July, 2006 premium rates to remain flat or to go up by single digit increases only.

### *Fewer Med Mal Cases*

In the years following the MCare Act and the changes to the Court Rules, there has been a dramatic reduction on the number of medical malpractice lawsuits filed in the Commonwealth of Pennsylvania. In 2004, the Pennsylvania Supreme Court published data that there were 34% fewer medical malpractice claims filed in Pennsylvania, and an astounding 54% fewer claims in Philadelphia, as compared to the average annual number of claims from the years 2000 to 2002. The number of lawsuits filed with the MCARE Fund also appears to be declining: 373 cases

in 2005 versus 476 cases in 2004 and 543 in 2003. Certainly, one can argue that there has been a reduction in the number of cases filed as a direct result of the certificate of merit requirement which tends to weed out less meritorious cases from the judicial system. Moreover, the reduction in the number of cases filed in Philadelphia County has been more significant than the rest of the state as a result of the venue shopping rule changes.

### *Lower Jury Verdicts*

Recently, in at least one venue, Philadelphia County, large jury verdicts are down significantly in medical malpractice cases. Statistics kept by the Philadelphia County Court of Common Pleas indicate that, in 2003, 56 medical malpractice verdicts awarded by Philadelphia juries yielded a total of about \$148 million dollars, an

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## Announcements

**Thomas C. Sadler, Jr.** was recently elected to serve on the Executive Board and as Legal Counsel for Minsi Trails Council, Inc. — Boy Scouts of America.

**Barbara L. Hollenbach** has been appointed Assistant Solicitor for Northampton County to handle its Workers' Compensation matters. She is also serving as Co-Chair of the YWCA Women & Teen of the Year Awards Committee and on the Advisory Committee for the Girl Scouts — Great Valley Council Lehigh Valley Women of Distinction Awards.

*Actual resolution of legal issues depend upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

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average of roughly \$2.6 million dollars per verdict. Through three quarters of the year 2005, there have been only eleven medical malpractice jury awards in Philadelphia County totaling almost \$11 million dollars, an average of \$994,000 per verdict. Further, the Pennsylvania Insurance Department recently disclosed a decline of greater than 27% in MCARE Fund pay-out amounts on cases during 2005. Lower verdicts and declines in MCARE Fund pay-outs may be directly related to legislative and judicial reforms, or simply related to jurors who are more aware of the effects of large verdicts and how they potentially impact access to healthcare.

### *Accessibility to Safe and Affordable Health Care*

It is too early to measure the impact of the aforementioned reforms on the accessibility to safe and affordable health care. Legal reforms which benefit doctors hopefully will also benefit patients as well. The American Medical Association has reported that medical malpractice reforms do impact directly on the supply of physician services in those states enacting such reform. Moreover, the MCare Fund has reported that the number of physicians in Pennsylvania has remained relatively constant over the last three years, indicating no current trend of physicians fleeing the state.

Presumably, if medical malpractice insurance is more accessible and affordable to doctors, doctors will not have excessive premium increases have to pass on to patients in the form of higher health care costs. The long term impact of affordable insurance for doctors remains to be studied, however. Finally, patient safety reforms should aid in exposing medical mistakes to hospitals and patients alike.

## Conclusion

The debate rages on as to whether the reforms mentioned above are having their intended effect of ending the so-called "medical malpractice crisis"

in Pennsylvania. Malpractice insurance costs do seem to have leveled off, and insurance seems to be more readily available. The number of medical malpractice lawsuits filed in Pennsylvania is down dramatically, hopefully due to the elimination of frivolous lawsuits. Finally, the trend toward lower jury verdicts in medical malpractice cases may indicate that the public (i.e. jurors) are getting the message that jury verdicts need to be both responsible and just. Thus, the conclusion that we may be "turning the corner" in the medical malpractice crisis is hard to dispute.

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## Social Security Number Verification for Employers

The Social Security Number Verification Service (SSNVS), set up by the Social Security Administration (SSA), allows employers to use the Internet to match their records of employee names and Social Security numbers with those of the Government's before preparing and submitting W-2 forms. You can access the SSNVS at [www.socialsecurity.gov/bso/bsowelcome.htm](http://www.socialsecurity.gov/bso/bsowelcome.htm). This is a faster and easier method to use than submitting requests to the SSA by other means, including the telephone verification option.

Verification of data is important for both the employer and its employees. Correct names and numbers are critical to successful processing of wage reports, and unmatched records can cause additional processing costs for the employer. From the employees' standpoint, verified names and numbers allow the Government to properly credit employees' earnings records. Any uncredited earnings can adversely affect future eligibility for Social Security's retirement, disability, and survivors programs.

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