

## COA Opinion: Mental-health professionals breached duty of care to patient by failing to protect her from former patient with whom she had been in group therapy

14. August 2010 By Sarah Lindsey

---

The Michigan Court of Appeals published its per curiam opinion on August 12, 2010 in *Dawe v. Dr. Reuvan Bar-Levav & Assocs., P.C.*, No. 269147, on remand from the Michigan Supreme Court. The Supreme Court reversed the Court of Appeals' original opinion and held that a patient may pursue a common-law, medical-malpractice claim against her treating mental-health professional if the professional negligently placed the patient in danger of harm from another patient. Our discussion of the Michigan Supreme Court's March 30, 2010 decision remanding the case to the Court of Appeals can be found [here](#).

On remand, the Court of Appeals largely adopted Judge Smolenski's dissent in the earlier Court of Appeals' opinion and concluded that defendant psychiatrists owed a duty of care to their patient to protect her from harm by a third party. Further, the Court of Appeals held that a reasonable jury could conclude that the defendants proximately caused the plaintiff's injuries - being shot by defendants' former patient with whom she had been placed in group therapy. The defendants knew or should have known that the former patient would form improper emotional attachments to persons in his group therapy and that he might seek to harm those persons and therefore should not have placed the former patient in group therapy.

The Court of Appeals also addressed two issues concerning the plaintiff's damage award. First, the Court held that the applicable adjusted cap on noneconomic damages contained in MCL 600.1483 was the one in effect on the date of the verdict, rather than the date the plaintiff filed suit. Second, the Court addressed whether prejudgment interest should be awarded when a jury awards past and future noneconomic damages that exceed the damages cap. The Court concluded that when the past noneconomic damages exceeded the applicable cap, the plaintiff was entitled to prejudgment interest on the full amount of the applicable cap.