

COA Opinion: “Medical care or treatment” exception to governmental immunity applies to treatment of mental illnesses

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On August 26, 2010, the Court of Appeals published its decision in *McLean v. Phenix*, affirming the trial court’s holding that Michigan’s “medical care or treatment” exception to governmental immunity, found in MCL 691.1407(4), extends to treatment for mental, as well as physical, diseases and illnesses. The Court found MCL 691.1407(4) clear and unambiguous; accordingly, the Court confined its analysis to the statutory language. The statute provides immunity does not extend “to a governmental agency or an employee or agent of a governmental agency with respect to providing medical care or treatment to a patient...” The section includes no qualifier or other language limiting the exception to care directed at physical maladies. Therefore, the Court affirmed the trial court’s holding that the “medical care or treatment” exception did not apply in a suit arising out of a community mental health service agency’s care for the plaintiff’s decedent. However, because the plaintiffs did not allege the CEO of the defendant had provided care to the decedent, the Court reversed the holding of the trial court with respect to him.