

## As a matter of law



### Physicians face liability when medical information not released in a timely manner - January 2007

These columns are current as of the time of writing, but are not updated for subsequent changes in legislation unless specifically noted.

In the case of *Deslandes v. Union Life and Dr. Claude Tremblay*, Court of Quebec, No.: 350-22-00009-031, July 20, 2005, a physician was found to be liable for failing to provide medical information to an insurer when a consent had been signed to release the information.

In *Deslandes*, the beneficiaries designated in an application for life insurance sued both Union Life and Dr. Claude Tremblay. The application was not issued before the death of the insured, Mrs. Morin. Insurability would not ultimately have been an issue.

Dr. Tremblay had been Denise Morin's attending physician for several years. He saw Denise regularly, particularly in 2002 when she had been going through divorce proceedings.

On November 2, 2002, Dr. Tremblay received by fax a form signed by Mrs. Morin consenting to the release of medical information to Union Life, as well as the form on which the required information could be entered.

Dr. Tremblay provided his own report on January 9, 2003, which the carrier received on January 15, 2003. Mrs. Morin died on January 13, 2003.

The court had to consider whether Dr. Tremblay's delay in providing the report to the insurer resulted in the loss of proceeds that would have otherwise been payable under the policy to the plaintiff beneficiaries.

Dr. Tremblay argued that he could not use the form provided as a result of the poor quality of the fax. He offered no explanation as to why he did not photocopy the form and work from the fresh copy. He also argued he only had an obligation of diligence to comply with Union Life's request for a report.

The Court did not agree with this submission. The Court indicated that the required report did not need a diagnosis or treatment; the nature of the report was, therefore, not complex. Code for physicians obliges them to provide insurers with medical reports. Specifically, provisions under the Code stipulate that, at a patient's request and within no more than 30 days, a physician must provide pertinent information as requested by an insurer.

The Court found that Dr. Tremblay provided numerous excuses for justifying the delay, but found no credibility in his arguments. Of key importance is that Union Life had sent two reminders to Dr. Tremblay requesting the information, which he failed to respond to in a timely manner.

The Court concluded that the physician caused undue delay in producing the medical reports concerning Mrs. Morin and was therefore responsible for the loss suffered by the plaintiffs.

The case sets an important precedent as to how long medical information should take to reach a carrier. While the common law provinces do not appear to have similar time frames to the Quebec Civil Code and many indicate a "reasonable time", the case is important in determining what the reasonable time frame might be for physicians to provide a report.