

Alabama Supreme Court Retreats from Immunity.

The Alabama Supreme Court has changed its mind on an important aspect of state immunity law. As a general rule, state employees are immune from suits where the exercise of a “discretionary function” has resulted in an injury to a claimant. In November of 1999, the Court applied this doctrine to hold that doctors at a state university cannot be sued for medical malpractice because the diagnosis of a patient’s medical condition involves the exercise of discretion. The decision drew sharp criticism from the plaintiff’s bar and resulted in a request for reconsideration from the losing party.

In an unusual move, the Court retreated from its earlier opinion and issued a new opinion that held that doctors could be sued for malpractice. The Court stated, “We decline to label all discretionary acts by an agent of the state, or all acts by such an agent involving skill and judgment, as ‘immune’ simply because the state has empowered the agent to act . . . [A] physician’s treatment of a patient is too remote from governmental policy to be entitled to immunity.” This decision could signal a significant departure from previous immunity decisions and increase the potential liability of state employees and state agencies. *Ex parte Cranman*, No. 1971903 (Ala. June 16, 2000).