



BASSFORD REMELE

Mark R. Whitmore

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PRACTICE GROUPS

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OVERVIEW

Mr. Whitmore is a trial lawyer who represents and counsels health systems and other businesses and professionals in litigation, risk management, licensing, governmental investigations, and compliance matters.

A sought-after litigator, Mr. Whitmore represents a majority of the health systems in the Twin Cities, including their outstate locations. He takes pride in seeing each matter through conclusion and partners closely with his clients to achieve their goals anywhere from conference rooms to courtrooms.

Mr. Whitmore has more than 30 years of experience successfully litigating matters to verdict in state and federal courts across the Midwest. He has also successfully represented many physicians and other professionals in licensing disputes before regulatory entities.

Mr. Whitmore currently serves as the Chief Executive Officer at Bassford Remele. He previously served as the firm's Chief Operating Officer for seven years.

EDUCATION & ADMISSIONS

Education

University of Iowa College of Law, J.D., With Distinction, 1992

- Phi Delta Phi, President
- Moot Court, Board of Directors
- *Iowa Law Review*, staff member

Macalester College, B.A., *magna cum laude*, 1989

Bar Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Eighth Circuit
- U.S. District Court, District of Minnesota
- Minnesota
- Iowa
- North Dakota
- Wisconsin

EXPERIENCE

Representative Cases

- Represented American Medical Association, Minnesota Hospital Association and Minnesota Medical Association as amicus in appeal to Minnesota Supreme Court about whether Minnesota recognizes ostensible agency as a viable cause of action. *Warren v. Dinter*, 926 N.W.2d 370 (Minn. 2019).
- Obtained summary judgment and affirmance for a physician at the Court of Appeals in a case of first impression that clarified the timing mechanisms in Minnesota's expert-review statute, Minn. Stat. § 145.682. *Firkus v. Harms*, 914 N.W.2d 414 (Minn. App. 2018).
- Represented amicus curiae nursing home in a matter involving a city's decision to deny a conditional use permit application for another nursing home to expand its existing assisted living services by adding a third building to its campus. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71 (Minn. 2015).

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- Obtained summary judgment and affirmance for a physician in a medical malpractice matter involving alleged claims of misdiagnosis, delayed diagnosis, and lack-of-informed consent.
- Represented amicus curiae Minnesota Hospital Association and Minnesota Medical Association in a medical malpractice case of first impression involving Minnesota's "loss of chance" doctrine. *Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2013).
- Obtained dismissal of the American Medical Association in a matter involving alleged antitrust and RICO violations. *Uhr v. Responsible Hospitality Institute, Inc.*, No. 10-CV-4945, 2011 WL 4091866 (D. Minn. 2011), *aff'd* 2012 WL 2893492 (8th Cir. 2012), *cert den.* 133 S. Ct. 1248 (2013).
- Represented amicus curiae Minnesota Hospital Association and MMIC Group/MMIC Insurance in a case of first impression interpreting the ability to cure under Minnesota's expert review statute. *Wesely v. Flor*, 806 N.W.2d 36 (Minn. 2011).
- Obtained dismissal for a hockey association accused of breach of contract, antitrust violations, and tortious interference with business. *Minnesota Made Hockey, Inc. v. Minnesota Hockey, Inc.*, 789 F. Supp. 2d 1133 (D. Minn. 2011).
- Obtained summary judgment and affirmance for a hospital in an action involving the immunity provisions of the Minnesota Commitment Act.
- Obtained summary judgment and affirmance in malpractice action interpreting the applicability of Minnesota's expert review statute.
- Obtained dismissal and affirmance for a hospital in a medical malpractice action involving the applicability of the expert review statute.
- Obtained summary judgment and affirmance defining whether a duty is owed by a nurse to obtain informed consent under Minnesota law.
- Represented amicus curiae Minnesota Hospital Association, Minnesota Medical Association, and American Medical Association in a case of first impression involving claims of negligent credentialing. *Larson v. Wasemiller*, 738 N.W.2d 300 (Minn. 2007).
- Represented amicus curiae Minnesota Hospital Association, Minnesota Medical Association, American Medical Association, Minnesota Orthopaedic Association, American Association of Orthopaedic Surgeons, American College of Emergency Physicians, and American Academy of Pediatrics, Minnesota Chapter in a matter involving the Child Abuse Reporting Act. *Becker v. Mayo Found.*, 737 N.W.2d 200 (Minn. 2007).
- Obtained summary judgment and affirmance for a hospital in a medical malpractice action interpreting the applicable statute of limitations.
- Successfully defended the Minnesota State High School League in an action seeking an injunction under Title IX, Minn. Stat. § 121A.04, and the Equal Protection Clause of the Fourteenth Amendment arising out of the location of the Minnesota State High School Girl's Hockey Tournament.
- Obtained summary judgment and affirmance for a local physician, hospital, and others in an action alleging defamation, intentional infliction of emotional distress, negligence, and false imprisonment. *Mellett v. Fairview Health Servs.*, 634 N.W.2d 421 (Minn. 2001).

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- Obtained defense verdict and affirmance on appeal for national corporation alleging breach of contract, violation of Minnesota Termination of Sales Representative Act, and declaratory relief. *Anderson Marketing, Inc. v. Maple Chase, Inc.*, 241 F.3d 1063 (8th Cir. 2001).
- Obtained summary judgment and affirmance for hospital accused of racial discrimination under the MHRA for the manner it operated its emergency department.
- Obtained summary judgment and affirmance for national retailer in an insurance coverage matter involving an additional insured.
- Defended a corporation and an individual in a banking industry matter involving the Change in Bank Control Act of 1978, 12 U.S.C. § 1817(j), engaging in self-dealing and insider transactions, and monetary penalties for statutory and regulatory violations. *Lindquist & Vennum v. F.D.I.C.*, 103 F.3d 1409 (8th Cir. 1997).
- Successfully defended a national retailer in a premises liability matter involving enforcement of *Pierringer* release. *Wildman v. K-Mart*, 556 N.W.2d 10 (Minn. App. 1996).
- Successfully defended a national corporation in which the Minnesota Supreme Court clarified the interpretation of the *McDonnell-Douglas* test under Minnesota law in a case alleging race discrimination in violation of the Minnesota Human Rights Act. *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555 (Minn. 1996).
- Represented a medical facility in a medical malpractice action alleging failure to timely diagnose. *Koch v. Mork Clinic, P.A.*, 540 N.W.2d 526 (Minn. Ct. App. 1995).
- Obtained dismissal and affirmance in a case involving liability for a health care provider arising from the criminal acts of a third party who murdered a patient. *Kay v. Fairview Riverside Hosp.*, 531 N.W.2d 517 (Minn. App. 1995).
- Successfully obtained a jury verdict and affirmance for a defendant manufacturer accused of discrimination in a case involving allegations of discriminatory discharge and violations of Title VII of the Minnesota Human Rights Act. *Jeffries v. Metro-Mark, Inc.*, 45 F.3d 258 (8th Cir. 1995).
- Obtained dismissal and affirmance for a health system in a case alleging liability for the criminal acts of a third party. *K.L. v. Riverside Medical Center*, 524 N.W.2d 300 (Minn. App. 1994).
- Represented an insurance agency in a matter alleging that the acquisition of a group health policy occurred by misrepresentation of the scope of coverage. *MNVA R.R., Inc. v. John Aldren Life Ins. Co.*, 507 N.W.2d 15 (Minn. App. 1993).
- Represented an individual in a matter alleging unlawful discrimination in hiring, illegal recordkeeping, and defamation. *Butler v. Leadens Investigations and Sec., Inc.*, 503 N.W.2d 805 (Minn. App. 1993).

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Publications

Mr. Whitmore has been interviewed on health care topics.

- *Saying "I'm Sorry" and Other Legal Dimensions of Bad Outcomes*, The Carlat Report, Addiction Treatment, Vol. 2, No. 2, March 2014
- *Steering Clear of Malpractice Cases*, Today's Hospitalist, November 2010

Mr. Whitmore has written extensively on recurring legal issues that impact the health care community.

- *A Survivor's Guide to Larson v. Wasemiller: An Aid to Eliminating Reversible Error in Managing Negligent Credentialing Claims Under Minnesota Law*, author, William Mitchell Journal of Law & Practice, 2008
- *Help! I've Been Sued – A Guide to Surviving a Physician's Nightmare*, author, Minnesota Medicine, June 2005
- *Navigating Minnesota's Vulnerable Adult Act: Understanding Reportable Neglect and Why it Matters*, author, Minnesota Society of Healthcare Risk Managers Quarterly Report, May 2002
- *Decisions of the Supreme Court and DHHS Continue to Expand Hospital Liability Under EMTALA*, author, The Health Lawyer, A Publication of the Health Law Section of the American Bar Association, Vol. 11, No. 3, April 1999
- *Legal Issues in Responding to Purchase Requests for Proposals for Healthcare Services*, author, National Health Lawyers Association, April 1994
- *Partial Settlements: Insurance Coverage*, author, Minnesota Defense, Spring/Summer, 1993
- *Denying Scholarship Athletes Workers' Compensation: Do Courts Punt Away A Statutory Right?*, author, Iowa Law Review, 1991

Seminars

Mr. Whitmore is regularly asked to speak on issues regarding civil litigation, hospital risk management, the Minnesota Commitment Act and disputes with licensing agencies. He is also frequently invited to present on health law and medical malpractice issues at the University of Minnesota's Law School and Medical School and several other colleges and universities.

- *The Minnesota Commitment Act: Legal Issues Impacting Physicians, Nurses, Hospitals and Mental Health Professionals*, presenter, Minnesota Mental Health & The Law, PESI, Inc., February 21, 2020
- *Basics of Mediation and Negotiation*, presenter, Macalester College, November 5, 2019
- *Open Meeting of the Litigation Center of the American Medical Association and the State Medical Societies*, presenter, San Diego, Cal., November 17, 2019
- *Hot Topics in Medical Malpractice*, presenter, Minnesota State Bar Association Health Law Section, October 11, 2019
- *Did the Supreme Court Change the Practice of Medicine in Minnesota?*, presenter, American Board of Trial Advocates (ABOTA), Minnesota Chapter, September 4, 2019
- *The Implications of Warren v. Dinter*, presenter, Bassford Remele Health Care Law Seminar, May 29, 2019

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- *The Minnesota Commitment Act: Legal Issues Impacting Physicians, Nurses, Hospitals and Mental Health Professionals*, presenter, Minnesota Mental Health & The Law, PESI, Inc., February 8, 2019
- *Maltreatment of Vulnerable Adults*, panel member, Minnesota Governmental Relations Council, June 19, 2018
- *The Minnesota Commitment Act: Legal Issues Impacting Physicians, Nurses, Hospitals and Mental Health Professionals*, presenter, Minnesota Mental Health & The Law, PESI, Inc., January 29, 2018
- *Treatment Rights*, presenter, Minnesota Mental Health & the Law, 2017 Seminar, PESI, Inc., February 20, 2017
- *Don't Let Prescribing Narcotics Cause You Pain*, presenter, HealthEast Care System, November 11, 2016 and June 16, 2016
- *Treatment Rights*, presenter, Minnesota Mental Health & the Law 2016 Seminar, PESI, Inc., February 26, 2016
- *The Supreme Court's Creation of Loss of Chance: A Drastic Change in Minnesota Medical Malpractice Cases*, presenter, St. Joseph's Hospital Grand Rounds, August 5, 2013
- *The Law on Ostensible Agency in Medical Malpractice Cases*, presenter, 2013 Medical Malpractice Conference, Minnesota Defense Lawyers Association, Hennepin County Bar Association and Minnesota Association for Justice, April 18, 2013
- *Health Care Law and Liability: A Defense Perspective*, guest lecturer, Hamline School of Law, October 2012
- *Legal Developments in Minnesota Medical Malpractice Cases*, presenter, Minnesota Society of Healthcare Risk Management Spring Seminar, June 22, 2012 and Aon Healthcare Forum, Aon Risk Solutions, May 2, 2012
- *Physician Discipline: A Review of the Minnesota Board of Medical Practice Complaint Review Process*, presenter, Minnesota State Bar Association, Health Law Section, April 20, 2012
- *The Testifying Expert: Getting the Most Out of Your Expert at Deposition and Trial*, panel member, Hennepin County Bar Association, Civil Litigation Section, March 12, 2012
- *Ostensible Agency/Apparent Authority: Kramer v. St. Cloud Hospital*, presenter, Minnesota Hospital Association, February 17, 2012
- *Mock Trial*, Minnesota Society for Healthcare Risk Management Spring Seminar, June 3, 2011
- *Crisis Management – What to do when...?*, panel member with Children's Hospitals and Clinics of Minnesota General Counsel Maria Christu and Allina Health System General Counsel Elizabeth Truesdell Smith, Minnesota State Bar Association, Health Law Section, September 16, 2009
- *Negligent Credentialing as a Civil Cause of Action: Surviving Larson v. Wasemiller*, presenter, Minnesota State Bar Association, Health Law Section, October 19, 2007
- *Poor Nursing Documentation: How to Turn Good Nursing Care Bad Without Even Trying*, presenter, HealthEast DREAM Day Nurses' Training, St. Paul, Minn., November 2, 2006
- *Negligent Credentialing and Civil Liability for Failing to Report Suspected Child Abuse: Recent Developments in Minnesota Courts*, presenter, Minnesota Medical Association Board of Trustees, July 8, 2006 and Minnesota State Bar Association, Health Law Section, December 9, 2005

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- *Negligent Credentialing as a Potential Cause of Action in Minnesota: The Legal Implications of Larson v. Wasemiller*, presenter, Minnesota Society of Healthcare Risk Managers, December 6, 2005
- *The Minnesota Adverse Health Event Reporting Act--An Experiment in Health Care Cooperation and Patient Safety*, presenter, Medical Malpractice Conference sponsored by Hennepin County Bar Association, Minnesota Defense Lawyers Association and Minnesota Trial Lawyers Association, April 21, 2005
- *Treatment Rights and the Minnesota Commitment Act: Legal Issues Impacting Physicians, Hospitals and Mental Health Care Professionals*, presenter, The Minnesota Osteopathic Medical Society 106th Spring Convention and Scientific Seminar, April 23, 2004
- *Government Regulations Arising Out of Patient Grievances*, keynote speaker, Minnesota Association of Patient Representatives' Meeting, February 28, 2002
- *Department of Health Investigations: A Chill on Patient Safety?*, presenter, Minnesota Executive Session on Patient Safety, November 2001
- *Help!! It's HCFA!! Practical and Legal Strategies for Surviving Government Investigations*, presenter, Minnesota Society of Healthcare Risk Managers, May 2001

PROFESSIONAL & CIVIC

Bar Associations

- Minnesota State Bar Association
 - Health Law Section
- Iowa State Bar Association
- State Bar of North Dakota
- State Bar of Wisconsin
- Hennepin County Bar Association

Professional Associations

- Minnesota Defense Lawyers Association
- Minnesota Hospital Association
- Minnesota Society of Healthcare Risk Management
- North Dakota Hospital Association

Civic Involvement

- Benilde-St. Margaret's High School, Volunteer Service Award, 2019
- Benilde-St. Margaret's High School, Assistant Mock Trial Coach, 2017-present
- Benilde-St. Margaret's Football Booster Club, President, 2016-present
- Armstrong Traveling Basketball Coach, 2007-2014

ACCOLADES

Honors & Awards

- Amicus Award, Minnesota Defense Lawyers Association, 2016
- *Best Lawyers*, Minneapolis Medical Malpractice Law-Defendants Lawyer of the Year, 2020
- *The Best Lawyers in America*®, Health Care Law and Medical Malpractice Law, 2016-present
- Rated AV Preeminent® by Martindale-Hubbell®
- Top Lawyer, Health Care Law, *Minnesota Monthly*, 2023
- Minnesota Super Lawyers list, *Super Lawyers*, 2003-present
- Minnesota Rising Stars list, *Super Lawyers*, 1999-2002