

MEDICAL MALPRACTICE AND THE PLAINTIFF'S RESPONSIBILITY FOR DEMONSTRATING A PHYSICIAN'S TREATMENT FALLS BELOW THE STANDARD OF CARE

Fact Pattern:

Julio suffered from back pain and leg pain. His physician, Dr. Smith, referred him to Dr. Calhoun, a neurosurgeon, who concluded that Julio had a herniated disc and scheduled him for surgery. During surgery, Dr. Calhoun found that Julio had an "extruded" disc and attempted to remove the extruding material. Julio's symptoms continued for several days after the operation and Dr. Calhoun scheduled a second operation without an imaging study. Shortly after the second surgery, Plaintiff began to experience severe pain in his back with fever. Another doctor, Dr. Piazza, diagnosed Julio with discitis (an infection of the space between

discs) and initiated antibiotic treatment. Julio (Plaintiff) suffered from chronic disabling pain resulting in vocational loss and ongoing medical care and sued Dr. Calhoun (Defendant). Among the Plaintiff's many allegations against Defendant was that there was a (1) failure to provide proper conservative medical treatment prior to the first surgery.

Question:

In a medical malpractice case, must the plaintiff show that the physician's treatment fell below the standard of care applicable to the general practitioner resulting in the plaintiff's injury?

Rule

A doctor must use that degree of skill and learning which is normally possessed and used by 'minimally trained' physicians in good standing, in the same specialty or substantially similar specialty, in a similar community, and under like circumstances.

Discussion

In medical malpractice cases, the Plaintiff must show that the physician's treatment falls below the standard of care applicable to the Neurosurgeon resulting in the plaintiff's injury.

The plaintiff must show:

- (1) The norms of medical care and knowledge applicable to the Neurosurgeon;
- (2) Proof the physician failed to follow such norms in the patient's treatment; and
- (3) A causal relationship between the physician's act or omission and the patient's injury.

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Standard of Care, depending on the jurisdiction (state), is determined by 'National' or 'Community' standard. Historically, plaintiffs were required to establish the standard of care in the community (location) where the alleged breach occurred by utilizing experts who were familiar with the standards of care in the community. This overtime has been replaced by establishing the standard of care on a national basis since it is generally perceived that Board Certification has provided a certain degree of uniformity across the country that established what the norms of medical care and knowledge is applicable for physicians of a given specialty. The caveat relates to the availability of resources available to a physician, and the emergent nature of medical situations when making decisions as to the diagnosis and treatment of medical conditions as resources do vary when comparing a rural practice to urban practice.

The Plaintiff must establish the relevant 'national' standard of care by providing expert testimony as evidence and must also prove by a preponderance of the evidence (more likely than not) that the physician's negligent conduct was a 'substantial factor' that caused the plaintiff's injury. Expert testimony is generally required to establish the breach in conduct and causation to the damages.

In the above fact pattern, Plaintiff claimed that Defendant failed to provide reasonable care in providing 'conservative' care and but for this failure Julio would not had required surgery. Plaintiff must establish by expert testimony that proper conservative management as practiced by a minimally trained neurosurgeon in the same or similar situation would have 'more likely than not' prevented the need for surgery and therefore the harm would not have occurred. Care need not be 'perfect'. In addition, physicians don't want their patients (and the general public) thinking that ideal care is a full recovery, and thus anything other than a full recovery must be imperfect, unreasonable, and/or negligent care that could amount to medical malpractice.

While physicians tend to believe that reasonable care includes the customary practices of the average physician, the legal viewpoint is that reasonable care and the customary practices of the average physician are separate standards of care, although with some overlap. Some states have been moving toward the standard "reasonableness" definition for determining medical malpractice. Then, still other states have a modified definition of „standard of care.“ They use what is called the „second school of thought“ or the „respectable minority“ definition, in which doctors and lawyers recognize that there may be more than one acceptable method of delivering care to a patient in a given situation.