Appellate Update

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Court of Appeals Expands Hospital's Duty of Care

By: Barbara D. Goldberg, Esq. *December 2015*

On December 16th, a majority at the Court of Appeals, in *Davis v. South Nassau Communities Hospital*, recognized a duty of care owed by medical providers to the public at large. The pertinent holding is that "where a medical provider has administered to a patient medication that impairs or could impair the patient's ability to safely operate an automobile, the medical provider has a duty to third parties to warn the patient of that danger."

The patient, Lorraine Walsh, was treated at the Emergency Room of South Nassau Communities Hospital for complaints of severe internal pain. She apparently informed the staff that she had arrived by car, but she did not specify whether she was the driver. She was examined by a physician and a physician's assistant. Because she informed them that she was allergic to morphine, she was administered Dilaudid and Ativan intravenously. She was discharged and left the hospital slightly more than an hour after the administration of the medications. Shortly thereafter, she crossed a double yellow line while operating her vehicle, and struck an oncoming bus driven by the plaintiff, Edwin Davis. Plaintiff alleged that the accident occurred while Walsh was in "a state of disorientation" and "under the influence of the aforementioned drugs."

The Supreme Court granted the medical providers' motions to dismiss the action for failure to state a cause of action pursuant to CPLR 3211(a)(7) and the Appellate Division affirmed, reasoning that because "only Walsh . . .had a physician-patient relationship with the defendants[,] . . . the allegations did not support a duty of care owed by the defendants to the injured plaintiff." 119 A.D.3d 512, 514 (2nd Dept. 2014). The Court of Appeals granted plaintiffs' motion for leave to appeal and modified to deny the motions to dismiss.

The majority's rationale was that the defendants, because of their relationship with the patient, were in the best position to protect against the risk of harm to others that would result from her operating a motor vehicle; the obligation to warn the patient of the risks of driving after having been given the medications was essentially seen as no more onerous than warning her of the risks and side effects of the medication. "Our decision herein imposes no additional obligation on a physician who administers prescribed medication. Rather, we merely extend the scope of persons to whom the physician may be responsible for failing to fulfill that responsibility."

Judge Stein and Judge Abdus-Salaam dissented in a lengthy opinion, and would have affirmed the dismissal of the complaint for failure to state a cause of action, based on prior precedent declining to extend a physician's duty of care to the public at large. They took the position that the defendants owed the plaintiff no duty of care because he was "an unidentified and unknown stranger to defendants' physician-patient relationship with Walsh," and that the foreseeability of Walsh experiencing side-effects from the medications administered to her by defendants and causing an accident did not resolve the question of whether the defendants could be held liable to the plaintiff.

As recognized by the dissent, the result in *Davis* represents a significant departure from prior precedent in which the Court of Appeals declined to recognize a duty of care owed by a medical provider to third-parties, except in limited circumstances where a special relationship is present, as in *Tenuto v. Lederle Laboratories*, 90 N.Y.2d 606 (1997). There, the Court concluded that a special relationship existed between the non-patient parents of an infant who received an oral poliomyelitis vaccine and the infant's pediatrician such that a duty was owed by the physician to the parents to warn them of the risk of transmittal of the disease and how to avoid it. By contrast, in *McNulty v. City of New York,* 100 N.Y.2d 227 (2003), the Court declined to extend a physician's duty to the friend of a patient being treated for contagious meningitis, even though the friend had accompanied the patient to the hospital and directly inquired of two physicians whether she was at risk and should be treated in light of her close contact with the patient.

Davis appears to recognize a broader duty than would have been recognized in *McNulty*, since it extends to the public at large, as opposed to the defined and finite class of persons who had close contact with a patient diagnosed with a contagious disease. We can anticipate that plaintiffs' attorneys will attempt to further broaden Davis beyond its particular fact pattern, and accordingly must be prepared to resist such efforts. In addition, careful documentation of the instructions given to the patient will be essential to the defense of these cases.