Medical-Legal Forum: Case Debrief: Blagden Versus McMillin - A Phone Consult Is Enough to Establish Physician-Patient Relationship

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The first element a plaintiff must prove in order to establish medical malpractice is that the physician had a "duty" towards the patient. Black's Law Dictionary defines duty as "a legal obligation owed or due to another, and that needs to be satisfied." Generally, this is done by showing a physician-patient relationship and is not a controversial issue. Clearly, a neonatologist on service caring for a baby in the NICU has a physician-patient relationship. If that neonatologist is out of town and another one is covering, it would be very difficult to establish a duty of care. Duty is, however, a "threshold" issue, meaning if there is no duty to the patient, there is no negligence.

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There are more complex questions about when a duty exists regarding situations such as telephone advice. Can you be held liable for a patient you have never met being treated by a different attending? The answer will depend on a number of factors, including the circumstances involved and the specificity of the advice given. If the consulting physician generates a bill, it would be very difficult to argue that there was no relationship. The converse, however, is not true, meaning that a duty may be established even if the patient was never billed.

The question of whether a telephone consultation between an Emergency Department (ED) physician and an on-call physician is enough to create a physician-patient relationship was recently addressed by the Fourth District Appellate Court of Illinois in the case of *Blagden v. McMillin, MD* 2023 IL App (4th) 220238. ED attending Dr. McMillin in the Graham Hospital Emergency Department saw and evaluated Dennis Blagden. While he thought the patient was primarily having a muscular issue, he also noted an elevated white count. He called to discuss Mr. Blagden with Dr. Krock, the on-call Internal Medicine physician, who had admitting privileges, to discuss the patient. Ultimately, the patient was not admitted, discharged home, and three days later came back to the ED critically ill with a spinal epidural abscess from which he unfortunately died. His family sued Dr. Krock for malpractice because he did not rule out an infectious process and did not admit and treat Mr. Blagden. Dr. Krock's defense was that he did not have a physician-patient relationship with this patient. The trial judge agreed, stating, "[t]here was no direction here, there was just confirmation, and I think that's an important distinction." Dr. Krock was dismissed from the case, and the plaintiffs appealed.

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When deposed about this case, Dr. Krock did not recall this particular patient but testified that when called from the ED, "[t]ypically the decision to admit has already been made" and that deciding whether to admit was "not typically our role, but yes sometimes we'll do that." He also agreed that he could refuse an admission, although he had never done so. While it was a "collaborative" decision whether to admit, the ultimate decision was by Dr. Krock. At the same time, he noted that only the ED physician was actually looking at the patient.

Dr. McMillin testified that he had discussed whether or not to admit with Dr. Krock and that Dr. Krock did not believe that the patient needed to be admitted.

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In a decision released on January 26, 2023, the Appellate Court reversed the trial court and found that a physician-patient relationship existed between Dennis Blagden and Dr. Krock. The Court cited seven "undisputed" facts that Dr. Krock was:

1) The on-call physician based on a contractual obligation
2) Compensated for being on-call
3) Consulted specifically for medical advice for Mr. Blagden's benefit concerning admission
4) Given specific information about Mr. Blagden's history, symptoms, and test results

5) Considered the information and collaborated on the decision to discharge

6) Ultimately responsible for the decision concerning whether to admit

7) Decided admission was not necessary and discharge with follow-up was appropriate

Note that this decision does not find Dr. Krock liable for malpractice in this case or that his decision to discharge was inappropriate. It simply means that a duty exists, and the case can continue. He may or may not be found liable. The States generally regulate medical malpractice. It should be stressed that this case was decided by an Appellate Court based on Illinois law and is being used in this article for educational purposes. It certainly should not be relied upon as legal advice. There are, however, lessons that can be learned.

"While this case involved an adult patient, it has relevance for neonatologists since we are often consulted over the phone by Pediatricians, Family Physicians, and Emergency Room Physicians. Additionally, we need to be careful about "curbside consults" as specific information and advice may lead to establishing a physician-patient relationship."

While this case involved an adult patient, it has relevance for neonatologists since we are often consulted over the phone by Pediatricians, Family Physicians, and Emergency Room Physicians. Additionally, we need to be careful about "curbside consults" as specific information and advice may lead to establishing a physician-patient relationship. This does not mean that informal conversations between physicians are not important and, indeed, encouraged. When in doubt, however, request a formal consultation or the information needed to provide the most appropriate advice.

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