Medicolegal Forum: Can You Be Held Liable for a Patient You've Never Seen? Recent Minnesota Supreme Court Decision says 'Yes'

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You're on call in the NICU and receive a phone call from an outside hospital from a pediatrician asking advice about a baby. After receiving some basic information, you give advice and go back to caring for the babies in your unit. Can you be held liable for the advice you just gave for a patient you have never seen or examined?

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The existence of a physician-patient relationship has traditionally been a prerequisite to the filing of a medical malpractice lawsuit. It shows that there was a 'duty' towards the patient in whom there has been alleged wrongdoing. A recent decision by the Minnesota Supreme Court, however, has drawn attention for its ruling that a physician may be liable for malpractice even without a physician-patient relationship. The case involved an adult, and the ruling only applies in Minnesota, but all Neonatologists should be aware of the case since State Supreme Court opinions may influence courts in other States. The facts of the case, Warren v. Dinter, have been obtained from the court opinion.

Facts

Susan Warren, a 54-year old woman, living in Minnesota, presented to a clinic complaining of abdominal pain, fever, chills, and other symptoms. The nurse practitioner, Sherry Simon, who saw her ordered labs that were concerning to her for infection. She called a nearby hospital to arrange admission and spoke to the hospitalist, Dr. Richard Dinter, who did not have access to any of the lab values. There is some dispute over what Dr. Dinter was told; The NP stated that he told her Ms. Warren did not need to be admitted to the hospital while he says he responded "to what end[?]" The end result was that Ms. Warren was sent home with a scheduled follow up appointment. She was found dead in her home by her son three days later, who then sued the Dr. Dinter and the hospital he was working at for malpractice in his care and treatment of his mother. The nurse practitioner and her collaborating physician were also sued and paid a settlement.

The defense asked for the court to dismiss the lawsuit on the basis that Dr. Dinter had no duty of care towards Ms. Warren since a physician-patient relationship had not been established. The call from NP Simon was merely for his "thoughts as a hospitalist," and his responses were given to her as a "professional courtesy." The trial court agreed that no doctor-patient relationship was created through the "informal conversation between medical colleagues." The son appealed this decision, and the Minnesota Court of Appeals agreed with the lower court that there was no duty as there was no physician-patient relationship. The case was then appealed to the Minnesota Supreme Court, which reversed the two lower court decisions on April 17, 2019.

Ruling

The key ruling of the Court was that "A physician-patient relationship is not a necessary element of a claim for professional negligence. A physician owes a duty of care to a third party when the physician acts in a professional capacity, and it is reasonably foreseeable that the third party will rely on the physician's acts and be harmed by a breach of the standard of care."

Applied to this case, the Court found that even though Dr. Dinter had never met Ms. Warren, he "knew, or should have known, that a breach of the applicable standard of care could result in serious harm." The Court did not find Dr. Dinter liable, but the case was sent back to the trial court where it has not yet gone to trial.

Implications

The American Medical Association, working with the Minnesota Medical Association (MMA) and Minnesota Hospital Association, had written to the Court in what is known as an *amicus brief* arguing that holding Dr. Dinter liable would ultimately harm patients by inhibiting informal consultation and collaboration. The Court disagreed, stating that the interaction, in this case, was neither a 'curbside consultation' nor 'professional courtesy.'

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The impact of this decision is unclear as it is relatively recent, but it certainly will have consequences for neonatologists practicing in Minnesota and other states that adopt or have adopted the "foreseeability of harm" standard. Foreseeability deals with the fact that if something is foreseeable, it is probably predictable. In order to prove that negligence caused the injury, the plaintiff must prove that the harm that was caused was foreseeable. Foreseeability is not always a simple doctrine. For example, after a car accident, the injured driver's arm develops an infection and needs to be amputated. The driver causing the accident can be held liable even though the amputation was not a foreseeable outcome after a broken bone.

We as neonatologists are often consulted from an outside source regarding a patient. The information you provide may be relied upon by the outside physician, and your name could appear in the chart. A perfect example of verbiage in the electronic medical record might involve the following: I requested an opinion from Dr. X regarding the criteria for total body cooling for baby Y. He/she responded that cooling did not meet criteria. Your name and "so-called advice" will be highlighted in the chart.

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It is sometimes best to respond in "generalizations" rather than with specifics regarding the care of a patient who you have never established a relationship. Oftentimes, words and advice are taken out of context and do not reflect the actual conversations regarding the patient.

References:

1. *The Minnesota Supreme Court decision can be found at https://law.justia.com/cases/minnesota/supreme-court/2019/a17-0555.html*
2. *The Minnesota Medical Association article on the ruling can be found at https://www.mnmed.org/news-and-publications/News/MN-Supreme-Court-Rules-Physician-Patient-Relations*

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