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HEALTH LAW

Can Patients Contribute to Medical Negligence?

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The day before Mrs. Clark was scheduled to undergo a breast biopsy she filled out a hospital form entitled, "Admission Information and Nursing Care Data." A nurse assisted Mrs. Clark in completing this form, and under the heading "medications," Mrs. Clark disclosed to the nurse that she had been taking the drug Lasix before her admission to the hospital. The purpose of this form was to help the hospital and nursing staff provide proper care to Mrs. Clark before and after the surgery and to make sure that she received any medications that she had been taking at home. The form was not included in Mrs. Clark's chart, nor did any of her physicians see the form prior to her procedure.

On the day of her biopsy, Mrs. Clark met with 2 physicians. Each physician asked whether she was taking any medication and Mrs. Clark answered "no." One of the physicians asked Mrs. Clark whether she suffered from heart disease, to which she answered "no." Trusting this information, the 2 doctors proceeded with the biopsy. During the procedure, Mrs. Clark suffered cardiac arrest, which ultimately caused irreversible brain damage.

Legal Analysis

The above facts are adapted from *Mackey v Greenview Hospital*.¹ Mrs. Clark's family sued the doctors for medical malpractice. Rather than just taking the defensive position, the doctors responded to the allegations with charges of their own. This "affirmative defense," as it is called, answered the plaintiff's claim by charging Mrs. Clark with "contributory negligence." The doctors argued that Mrs. Clark's failure to disclose her full medical history was the proximate cause of her cardiac arrest and resulting brain damage. The jury agreed with the physicians and dismissed the case, and the plaintiffs appealed.

The central issue before the appellate court was to determine how significantly Mrs. Clark's failure to disclose affected the quality of care given by the hospital and defendant physicians.² When the court analyzes the quality of care and diagnosis issue such as the one in this case, it can only examine the circumstances that were available to the physicians at the time. Thus, the court asked whether, given the circumstances and information available to them, Mrs. Clark's physicians should have been aware of her condition. The court recognizes, in addition, that patients are responsible for exercising ordinary care in revealing information to their physicians and that physicians have the primary responsibility for eliciting an

accurate history from their patients due to their greater wealth of medical knowledge. This responsibility cannot be fully achieved without the truthful admissions of the patient. Thus, if the patient willfully chooses to withhold information from the physician, the physician cannot be liable for a negligent misdiagnosis.

The appellate court was left to consider whether the defendant hospital and physicians had presented evidence of contributory negligence sufficient to persuade the trial jury to believe that Mrs. Clark's failure to disclose contributed to the substandard care. The defendants did not need to present conclusive proof of Mrs. Clark's contributory negligence; they needed to demonstrate only that the evidence presented at trial was sufficient to persuade the jury of Mrs. Clark's contributory negligence. The defendants had the burden of providing evidence that Mrs. Clark knew of her heart condition and failed to disclose it prior to the biopsy.

The defendant doctors presented the following evidence. About 2 weeks prior to the surgery, Mrs. Clark experienced an episode of severe chest pain and vomiting. During this episode, she was described as being sweaty and pale. The doctors also produced evidence that Mrs. Clark had been taking nitroglycerine, a drug prescribed primarily for chest pain associated with heart disease. Finally, Mrs. Clark had admitted taking Lasix, a potent diuretic also used in the treatment of heart disease.³ On the other hand, attorneys for Mrs. Clark argued that her disclosure to the nurse on the day prior to surgery should have been discovered by the defendant physicians.³ Since the physicians have the primary responsibility to develop an accurate medical history, the plaintiff's attorneys said, they should have examined the nurse's report for any further information.

Based on the above circumstantial evidence, the court upheld the jury verdict in favor of the doctors. The court reasoned that, from the evidence presented, a jury could find that Mrs. Clark suffered from a heart condition and failed to disclose this condition, which proximately caused her cardiac arrest.³ If Mrs. Clark had revealed this information to the defendant physicians, they could have postponed her procedure until her potassium levels were ideal for surgery. Since the physicians operated without the knowledge of heart disease, they can not be found negligent. Finally, the physicians did not have a binding duty to examine the nurse's report. Had they viewed the report and ignored the mention of Lasix, Mrs. Clark's failure to disclose would not have allowed the physicians to plead contributory negligence.

References

1. *Mackey v Greenview Hospital, Inc.* 587 SW 2d 249.
2. *Mackey*, 255.
3. *Mackey*, 256.

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