



COURT UPHOLDS PATIENTS' PERSONAL RESPONSIBILITIES



A recent Court of Appeals decision upheld a jury finding in favor of physicians in a malpractice case where the jury found that a patient was responsible for their own health care decisions. This case is the clearest expression to date that physicians may not be responsible for the patient's own failures to follow the physician's advice.

In the case of *Striff v. Luke Medical Practitioners, Inc.*, the patient suffered a fatal heart attack at age 43. The case described the background of professional treatment prior to the passing of the patient. Starting in 2003, the patient was treated by the first of four different providers named in the lawsuit. During the first visit, the patient complained of fatigue, upper chest heaviness, and a racing heart. The patient was overweight, smoked a pack of cigarettes a day, and drank several alcoholic beverages each day. The first physician recommended that the patient have a cardiac work-up, including an EKG, stress test, echocardiogram, a lipid profile, and was referred to a cardiologist.

While the patient did have the EKG and echocardiogram, the patient did not have the lipid profile tests nor did he keep his appointment with the cardiologist, nor followed up with the original physician as directed. Ten months later, the patient returned to the initial doctor for a different medical condition, the patient no longer complained of the prior conditions seen in the first visit, but the physician again reminded the patient to follow-up with the tests and to see a cardiologist.

Two years later, the patient visited another treating professional claiming panic attacks, cramping and back pain. In completing his medical history, he denied having any cardiovascular problems and indicated that he did not have high blood pressure, heart disease, heart chest pain, or other conditions related to heart disease. The second provider also ordered a lipid profile and encouraged him for further screening to check for possible cardiovascular disease. The second treating professional scheduled a follow-up visit, which the patient did not keep. Several months later, the patient went to another physician for a routine physical as a part of the renewal of his commercial driver's license. The third treating physician likewise noted that patient should follow-up for further testing for potential coronary artery disease, encouraged that he be checked for his cholesterol and recommended discontinue smoking.

The patient died six months later. At trial, the physicians asserted as a defense that each of the treating physicians had advised the patient on multiple occasions to have additional testing, to see a cardiologist, and made recommendations to alter his lifestyle, particularly his weight and smoking. Even the physician expert for the plaintiff agreed that the patient's failure to have his cholesterol checked may have led to an

increased risk for an adverse cardiac event. At the conclusion of the trial, the jury entered a verdict in favor of all of the physicians, finding that the physicians were not negligent and further finding that 100% of the negligence that directly and proximately caused the death of the patient was attributable to the patient for failure to follow the directions of the physicians.

Frequently, physicians make recommendations to patients for steps that may be helpful for the best interests of the patient. Patients are not required, of course, to follow that advice as foolish as that may be. The key lesson in this case was that the treating physicians had documented their recommendations for action by the patient. While frequently physicians may give general advice to their patients, they also frequently fail to note in the patient's chart specific advice regarding losing weight, stop smoking or potential follow-ups and referrals. The failure to document those recommendations could hurt physicians if claims are later asserted when such documented recommendations could serve as the basis for strong defenses by treating physicians.

The case is also helpful on the issue of the obligation of a treating physician to monitor or follow-up with patients to see if they have followed the physician's advice. Each of the treating physicians had recommended that the patient have some additional testing done and at least one physician had specifically made a referral to a cardiologist and had actually arranged for a scheduled appointment. The patient did not follow the advice. It is important to note that the jury did not find that the treating physician had an obligation to follow-up with the patient to see if the patient was following the physician's advice. This is also important in this particular setting because physicians frequently are not clear what if any obligations they may have to verify if their patients are actually having tests done or seeing other treating physicians and following the patient through that process. This case supports the position that there is no obligation to verify that a patient is following the physician's recommendations. While the new federal legislation proposing the creation of ACOs may alter this process in the future, at least currently in Ohio, it appears that courts have upheld the obligations of patients to take responsibility for their own health care decisions.

If you would like a copy of the case or have any questions concerning these issues, please contact Scott P. Sandrock, Brennan, Manna & Diamond, LLC, phone: (330) 253-4367, facsimile: (330) 253-4876, email: spsandrock@bmdllc.com.