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The Connecticut Supreme Court Extends Physician's Duty of Care to an Identifiable Non-Patient Third Party

The Connecticut Supreme Court recently addressed a matter of first impression regarding whether a physician may owe a duty of care to a non-patient. Addressing medical testing for sexually transmitted diseases (STDs), the Court extended a doctor's duty of care to an identified third-party—namely, the patient's exclusive romantic partner. *Doe v. Cochran*, 332 Conn. 325 (2019).

After dating for a few months, the patient and the plaintiff agreed to undergo testing for STDs before engaging in a sexual relationship.^[1] When the patient consulted the defendant-doctor for an STD test, the patient also informed the defendant that he wanted to be tested "for the protection and benefit of his new, exclusive girlfriend, the plaintiff."^[2] After receiving the patient's test results, the physician used a guide to interpret the results. According to the guide, a score below .9 is a negative test result, while a score above 1.1 is a positive diagnosis for the herpes simplex virus type 2.^[3] The patient's score was 4.43.^[4] The defendant then directed a member of his staff to inform the patient of his results. The staff member incorrectly communicated to the patient that his results had come back negative.^[5] Subsequently, the plaintiff contracted herpes. The patient then learned of the error and that he was diagnosed with herpes as well.^[6]

The plaintiff sued claiming the defendant physician had been negligent in multiple ways. The defendant countered that: 1. the plaintiff's claim sounded in medical malpractice as opposed to negligence, and 2. there was no special relationship between the defendant and the plaintiff that would justify extending the duty of care to her, a non-patient.^[7]

The Court first held that the plaintiff's claim sounded in ordinary negligence, as opposed to medical malpractice. Although the mistakes in question took place in a medical setting, the Court noted that they occurred when the results of the STD test were interpreted or communicated.^[8] Given the straightforward nature of the guide and test in question, the Court concluded that no specialized medical knowledge was required for either interpretation or communication. Therefore, the alleged error did not involve professional medical judgment or skill; only "elementary reading and arithmetic skills" were necessary.^[9]

After concluding that the claim sounded in negligence, the Court held that the defendant owed a duty of care to the plaintiff despite her status as a non-patient, third party.^[10] The Court first determined that the specific harm in this particular case was foreseeable.^[11] Addressing any concern that the holding would lead to a "slippery slope" the Court emphasized that the defendant was well aware of the plaintiff's existence. The defendant's knowledge of this non-patient allowed the Court to distinguish the rule established in earlier precedents that physicians owe no duty to *unknown* third parties. The Court described its holding as "quite limited" and extending "only to identifiable third parties who are engaged in an exclusive romantic relationship with a patient at the time of testing, and, therefore, may foreseeably be exposed to any STD that a physician fails to diagnose or properly report."^[12] The Court described the third party here as identifiable regardless of whether the doctor was told the third party's name or merely described to him as an exclusive girlfriend. The Court noted that limiting its holding to only those patients who are readily identifiable to the physician is in line with rulings by other state courts in similar cases regarding misdiagnoses and STDs, as well as Connecticut cases allowing bystanders to sue for emotional distress.^[13] Finally, the Court noted that the defendant's duty to the plaintiff in these circumstances is consistent with public policy. Focusing on both the seriousness of sexually transmitted diseases and the reliance of the public on doctors, the Court found that extending the duty would both protect individuals and incentivize physicians to accurately communicate test results.^[14] The Court also noted the physician's obligation to the non-patient does not intrude on patient confidentiality, because the physician has no duty to communicate the results to the non-patient.

Chief Justice Robinson issued a dissenting opinion in which Justices McDonald and Kahn joined. The dissent identified several public policy concerns in extending the duty to non-patient, third parties. While acknowledging that the plaintiff in this case was identifiable, the dissent maintained that the question of whether to expand a physician's duty belongs to the legislature. Given that the legislature has "acted extensively in the areas of both STD reporting and to provide physicians relief from professional liability,"^[15] the dissent was reluctant to expand the duty when the legislature was in a "far better position" to make a decision.^[16]

In this decision, the Court resolved a clear, but relatively narrow issue: In the context of STD testing, physicians now owe a duty of care to non-patients identified to the physician as the patient's exclusive partner. Despite the majority's emphasis on the limited nature of its holding,^[17] all of the contours of this newly recognized duty remain unresolved. Will courts use this holding by analogy to extend a physician's duty to non-patients outside the context of STD testing? Will later cases extend the definition of "identifiable" third parties beyond the limited circumstances of this case? These and other questions will certainly arise in later cases.

Summer associate Hannah F. Kalichman contributed to this alert.

^[1] Doe v. Cochran, 332 Conn. 325, 328 (2019).

^[2] *Id.*

^[3] *Id.* at 328?-29.

^[4] *Id.* at 329.

^[5] *Id.*

^[6] *Id.*

^[7] *Id.*

^[8] *Id.* at 336.

^[9] *Id.*

^[10] *Id.* at 337.

^[11] *Id.* at 348.

^[12] *Id.* at 371-72.

^[13] *Id.* at 352-53.

^[14] *Id.* at 355-57.

^[15] *Id.* at 390-91.

^[16] *Id.* at 381.

^[17] See, e.g., *id.* at 371 ("We emphasize that the duty that we recognize today is quite limited.")

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