

## State's high court says doctor's liability goes beyond patients

By Denise Lavoie, AP Legal Affairs Writer | December 10, 2007

BOSTON --A doctor who failed to warn his patient about the potential side effects of medication can be held liable for the man's car crash that killed a 10-year-old boy, the state's highest court ruled Monday in the first such decision to make doctors responsible for harm to nonpatients.

Doctors said the ruling by a divided Supreme Judicial Court could create a fear of litigation and inhibit their treatment decisions.

In March 2002, David Sacca, 75, lost consciousness while driving his car and struck Kevin Coombes as he stood near his Stoughton home.

Sacca's doctor, Roland Florio, had told the man he could safely resume driving after he had finished receiving treatments for lung cancer. But Kevin's mother sued, saying Florio was negligent for failing to warn Sacca about the possible side effects of eight prescription medications he was taking, including drowsiness, dizziness and altered consciousness.

A Superior Court judge had dismissed the lawsuit, ruling Florio could not be held liable because the doctor's duty was limited to his patient.

But the Supreme Judicial Court overturned that decision Monday, finding that Florio's duty extended to anyone who could be put at risk by his failure to warn Sacca about the drug side effects.

The court said the number and combination of drugs Sacca took increased the potential severity of any side effects and the likelihood that his driving ability would become impaired.

"Any duty that Dr. Florio owed to warn of the side effects of medication he prescribed extended not only to Sacca, but to those whose injuries were foreseeable caused by the resulting accident," Justice Roderick Ireland wrote for the court.

But in one of two dissenting opinions, Chief Justice Margaret Marshall said the ruling would establish for the first time in Massachusetts a doctor's duty to prevent harm to nonpatients and "would do so in sweeping terms."

Marshall said the ruling could have a chilling effect on doctors, who would no longer be able to use their professional judgment about how to present treatment options to the patient or to omit discussion of remote possible side effects.

"The physician would be forever looking over his shoulder," Marshall wrote.

Dr. B. Dale Magee, president of the Massachusetts Medical Society, said the decision could make doctors feel limited in what medications they could prescribe for patients.

"It's making them responsible not only for providing good care to their patients, but also trying to anticipate what kind of trouble the patients might get into and to assume liability for a patient's behavior after they leave their office," Magee said.

Sacca had lung cancer, chronic bronchitis, emphysema and high blood pressure. He died of cancer five months after the crash.

Shortly after he was diagnosed with cancer in July 2000, Florio, who was Sacca's primary care physician, warned him it would not be safe for him to drive during his treatment. Sacca obeyed his warning and did not drive until the fall of 2001, when his cancer treatments ended. At that point, Florio told Sacca he could safely drive again.

On March 22, 2002, Kevin was standing on a sidewalk with a friend, getting ready to go skateboarding, when Sacca's car left the road and struck him.

William Rose, an attorney for the Coombes family, said Sacca told police he blacked out and could not remember details of the accident.

"Our contention was given health and his age, and the medication he was taking, it was a dangerous situation," Rose

said. "It shouldn't benefit the doctor that the innocent victim of the accident was not his patient."

Florio's lawyer, Edward Mahoney, did not immediately return calls seeking comment.

He had argued to the SJC that extending a doctor's duty to nonpatients would create a fear of litigation, noting that widespread concern over medical malpractice rates has prompted the state Legislature to pass laws attempting to limit the liability of doctors.

In his written opinion, Ireland said that although the ruling may result in a larger number of lawsuits and an increase in medical malpractice rates, it is up to the Legislature to determine whether to impose additional limits on doctor's liability.

The SJC ruling means Coombes' lawsuit can proceed to trial. The court did not rule on the merits of her claim that Florio was negligent. ■

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