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SJC ruling adds to doctor liability
Allows suit in crash caused by a patient

By Liz Kowalczyk

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The state Supreme Judicial Court ruled yesterday that a doctor can be sued over a car accident caused by his patient, greatly expanding potential liability for the medical profession.

A divided court said that the mother of a boy who was hit by a car and died can sue the physician who prescribed numerous medications to the driver, including narcotics that can cause drowsiness. The mother's lawyers alleged that the physician, Dr. Roland Florio, who practices in Brockton, failed to warn his patient, David Sacca, about the side effects of the medication and the potential danger of driving while taking them.

Sacca passed out and drove off the road March 22, 2002, hitting 10-year-old Kevin Coombes, who was standing on the sidewalk with a friend.

Justice Roderick L. Ireland, who wrote the lead opinion, compared a doctor who fails to warn a patient about a drug's side effects that could endanger others to a bartender who serves a drunk customer.

Other states have ruled on whether a doctor's liability extends beyond his patients, and the decisions have been mixed. Two previous Superior Court rulings in Massachusetts said that a doctor can be held liable after one patient hit a biker and another, a pedestrian. But this is the first time Massachusetts' highest court has made such a ruling, which could make it easier for plaintiffs in similar circumstances to sue doctors.

"Absolutely the case has precedent-setting value," said Reni Gertner, editor of the Massachusetts Medical Law Report.

The decision upset the medical community.

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"This is one more straw on the backs of practicing physicians who feel the liability challenges out there are being broadened," said Dr. Dale Magee, president of the Massachusetts Medical Society, which represents most of the state's doctors. "Now they're being held responsible for things that happen beyond the physician-patient relationship."

Magee said it's reasonable to require doctors to warn patients about common side effects of medications. But he said if doctors are required to relay a litany of possibilities and rare potential problems, they could scare off patients from taking their medications. "They may do more harm than good," he said.

Sacca, 75, according to the court's ruling, had a number of serious medical problems, including emphysema, high blood pressure, and metastatic lung cancer. At the time of his accident, he had prescriptions from Florio for oxycodone, Zaroxolyn, prednisone, Flomax, potassium, Paxil, oxazepam, and furosemide – drugs with side effects that include drowsiness, dizziness, and fainting. He reported no side effects in the months before his accident.

"Very simply, when a doctor treats a patient and prescribes medication and other services, the doctor has a duty to warn that patient of the side effects of those treatments, and if he fails to warn the patient of those side effects and they result in an accident that injures or kills a third party, that he can be responsible to that third party," said Peter Eleey, a lawyer for the plaintiff, Lyn-Ann Coombes.

A lower Massachusetts court had upheld the doctor's motion for "summary judgment," or to dismiss the case before trial. The Supreme Judicial Court reversed that decision, allowing Coombes's mother and her lawyers to proceed with a trial to decide whether the physician was negligent.

Florio's lawyer, Edward Mahoney, did not return a phone message left at his office. A secretary for Florio said he would not comment on the case.

Two dissenting justices said they worried the ruling would drive up medical malpractice rates, among other concerns.

This "introduces a new audience to which the physician must attend – everyone who might come in contact with the patient," wrote Justice Robert J. Cordy.

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Wow, this'll sure lead to a lot of CYA. I can just see all those doctors' notes: "I engaged in a lengthy discussion with the patient regarding the potential side-effects of this medication and the importance of not driving, etc. etc."

Marilyn

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