

Courts Expand the Indiana Medical Malpractice Act: A “Patient” is No Longer Limited to Recipients of Care

Amundsen Davis Health Care Alert
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Within two months, Indiana courts expanded the Indiana Medical Malpractice Act beyond its previous interpretations, raising new risk management concerns for health care providers. In the pivotal 1999 decision in *Sword v. NKC Hospitals, Inc.*, only hospitals or clinics associated with a hospital were put on notice that they had to be concerned about being held vicariously liable for the actions or inactions of an independent contractor as well as employees. Now, after the Indiana Court of Appeals decision in *Arrendale v. American Imaging & MRI, LLC*, No. 20A-CT-2184 2021 WL 1940803 (Ind. Ct. App. 2021), *trans. sought*, potential exposure for the actions or inactions of independent contractors has been extended to non-hospital entities, including centers for radiologic studies, professional medical corporations, and medical centers. This decision suggests that a similar approach will be taken for other health care providers that contract for professional health care services.

Even more concerning is the Indiana Supreme Court's decision in *Cutchin v. Beard*, 171 N.E.3d 991 (Ind. 2021). In that case, a patient (Watson) took her prescription opiates before driving with a passenger in her vehicle. As Watson was driving home, she became unable to lift her foot from the accelerator and crashed into another vehicle, resulting in her death and the death of individuals in the other vehicle (the Cutchins). A relative of the Cutchins filed a complaint in federal court (as well as one with the Indiana Department of Insurance) seeking damages for the Cutchins' deaths. The plaintiff alleged medical malpractice against Watson's prescribing physician for his failure to warn Watson of the danger posed by operating a motor vehicle while under the influence of prescribed medication and breach of the standard of care due to the physician's failure to screen Watson for cognitive impairment caused by the medications, reduce medications due to loss of muscle control and report concerns about Watson's ability to drive to the Indiana Bureau of Motor Vehicles.

The plaintiff reached a settlement for the statutory cap under the Indiana Malpractice Act and then sought excess damages from the Indiana Patient Compensation Fund (the “Fund”). The Fund contended it had no liability “because the underlying claim was not covered by the [Medical Malpractice] Act,” and was

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granted summary judgment. Since the lawsuit was pursued in federal court, the Seventh Circuit Court of Appeals followed a process to pose the following question to the Indiana Supreme Court: “Whether Indiana’s Medical Malpractice Act applies to claims brought against qualified providers for individuals who did not receive medical care from the provider, but who are injured as a result of the provider’s negligence in providing medical treatment to someone else.”

Alarming, the Indiana Supreme Court unanimously answered the question in the affirmative. According to the Supreme Court, the term “patient” falls into two categories: (1) “a traditional patient, i.e., one with a physician-patient relationship with a health-care provider[;]” and (2) “a third party with a claim against a health-care provider under state law[.]” The second category, according to the Court, “refers to a third party whose claim results from a provider’s malpractice to someone in the first category, namely, a traditional patient.” As a result, the Supreme Court was saying that the person in the other car could be considered a “patient” of the prescribing physician, and could pursue a claim for medical malpractice with respect to the physician’s prescription and related practices in treating the primary patient who was driving the car.

This decision will have major repercussions for health care providers as well as for medical malpractice litigation. It creates a new category of claimants (a secondary level of “patients”) seeking to impose liability against a health care provider based on that provider’s alleged negligent treatment of someone else causing the plaintiff to suffer an injury. This will have implications for treatment decisions and risk management assessments as well as insurance coverage for providers.

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