

JANUARY 8, 2016



New York's highest court expands medical providers' duty of care

By Laurie T. Cohen and Jena R. Rotheim

A divided New York Court of Appeals has extended the class of individuals to whom medical providers owe a duty of care. In *Davis v. South Nassau Communities Hospital*, the Court of Appeals concluded that a medical provider who administers medication to a patient that could impair the patient's ability to safely operate an automobile owes a duty to third parties to warn the patient of that danger.¹ The Court acknowledged that it must proceed cautiously in exercising its power to expand any duty but, at the same time, stated that such expansion was warranted in this case in order to meet the changing needs of our society.²

We [previously reported](#) on the facts giving rise to this suit. Briefly, Lorraine Walsh presented at the hospital's emergency room complaining of pain and while in the emergency department she received an intravenous opioid narcotic painkiller, Dilaudid, as well as a benzodiazepine drug, Ativan.³ The hospital records indicated that Ms. Walsh had driven herself to the hospital. Nevertheless, the complaint alleges that she was discharged an hour and a half after the medications were administered, and she was not provided any warning by the physician or hospital staff regarding the effects of the medications, which included sedation, dizziness, weakness, unsteadiness and disorientation. Additionally, the Dilaudid package warning stated that the drug may impair mental and/or physical ability to perform activities such as driving a car or operating machinery.⁴ Nineteen minutes after her discharge, Ms. Walsh drove her car across a double yellow line and struck, head-on, a bus driven by Mr. Davis.⁵ Mr. Davis and his wife commenced an action against the hospital, the medical providers and their practice, alleging medical malpractice.

In rendering its decision, the Court states that its expansion of the duty of care is intended to "assign responsibility of care to the person or entity that can most effectively fulfill that obligation

¹ 2015 NY Slip Op. 09229 at *2 (Dec. 16, 2015, Fahey, J.).

² See *id.*, citing *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 391 [1916]).

³ See *id.* at *2-3.

⁴ See *id.* at *2-3.

⁵ See *id.* at *3.

at the lowest cost.”⁶ The Court found the medical providers had the knowledge and were in the best position to provide the warning to the patient regarding the adverse effects of the administered drugs. At the same time, the Court states that its decision is limited “under the facts alleged.”⁷ The dissenting opinion, however, notes that providers may now feel compelled to “inundate” patients with “excessive detail about potential, but unlikely, risks” or hand patients an overwhelming list of pro forma warnings, which may detract from those that are most necessary.⁸

Furthermore, the Court’s opinion does not address the degree to which the likelihood of an impairment occurring might affect a medical provider’s need to issue a warning to a patient. Despite this lack of guidance, in order to address this new duty owed to third parties as well as the long-standing duty owed to their patients, medical providers will, at a minimum, want to re-examine their current practices involving the administration of drugs in the medical office, clinic, hospital or other health care setting to ensure that prior to a patient’s discharge he or she is provided information or warnings regarding the possible impairment that may be caused by such administered drugs.

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⁶ See *id.* at *4.

⁷ See *id.*

⁸ See *id.* at *18 (Stein, J., dissenting).