

MEDICAL MALPRACTICE PROBLEM - TORTS

First c/a: P.v.D.: medical malpractice: Was Dr. D. negligent in failing to admit P. to the hospital (and administering mag sulfate and inducing labor) after learning of her pre-eclampsia?

Duty: the doctor-patient relationship (and contract) give rise to a duty.

Breach: the standard of care is the degree of care, skill, knowledge, etc. possessed and practiced by other doctors in the relevant geographical community.

Breach is shown by establishing what other physicians do and D's deviation from it. Experts will be required. The following issues will arise in proving breach:

1) is the standard national or "same or similar locality?"

The facts don't say which the state of Elation uses. As an obstetrician, Dr. D is a specialist, and in most jurisdictions a specialist is held to a national standard. If a national standard is used, Dr. Rah and Dr. Max will both be admissible as experts; if a same or similar locality rule is followed, Dr. Rah may need to be further qualified as to where in the neighboring state she practices, and its similarities to Oz.

2) Does Dr. R's testimony establish the relevant standard?

She states that she would have admitted P to the hospital, etc. She will need to further testify that she is aware of the specialty's customary practice, and that it's not only her personal practice but that of most other doctors to admit the patient, administer mg sulfate and induce labor in these circumstances. Moreover, D can argue that there are two separate schools of thought here - a "natural remedies" school and an "induce labor" school. If D can establish that they are both respected and followed, even if one is a minority position, that would undercut P and give rise to application of a "judgment" jury instruction. It's not clear that other doctors actually follow the "bedrest" protocol, just that it has some support in the literature.

Causation: Dr. M.'s testimony suggests there is no causal connection between the treatment and the harm, although simply saying that "there was a chance" that it might have happened anyway does not defeat proof of causation. P. must show (via an expert) that it is more likely than not that had she been admitted to the hospital immediately, she would not have suffered the harm.

Second c/a: P.v.D.: informed consent: P will argue she was not adequately informed of the risks associated with rejecting induced labor after a diagnosis of pre-eclampsia. The first issue will be to discover which rule is used in Elation:

-the professional rule: an expert will need to testify that doctors customarily provide this information to patients in P's circumstances. Need more info as to whether this is the case.

-the patient rule: the doctor is obligated to inform a patient of the material risks that a reasonable patient in P's circumstances would want to know about.

Here the doctor merely told P her symptoms were "worrisome," and offered two options without elaborating. Surely the diagnosis, risks and consequences of each proposed option, probabilities of success and prognosis under each option were material facts that D. did not provide. This establishes breach of duty.

P may have a problem establishing cause in fact. P had a "strong desire" for natural childbirth, and may well have made the same choice even if she had been told the risks. The question would then be whether a "reasonable" person, even factoring in the circumstances of preferring a natural birth, could have rejected the induced labor option if properly explained the risks involved. In a state that uses an objective standard, P will probably prevail; if the state uses a subjective standard, it's not clear she does.

