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Can Injured Third Party Sue Hospital for Medical Malpractice?

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Consider the following scenario: A patient is given pain medication in a hospital emergency room which impairs the ability to operate a motor vehicle. The doctor who administers the medication discharges the patient from the hospital without advising her not to drive while on the medication. On the way home from the hospital, the patient, still under the influence of the pain medication, veers into opposing traffic, causing an accident. Can an individual injured in that motor vehicle accident sue the doctor at the hospital who administered pain medication without informing the patient not to drive? The New York Court of Appeals recently said yes.

The above fact pattern is precisely what occurred in ***Davis v. South Nassau Communities Hospital***. Lorraine Walsh presented to the South Nassau Communities Hospital emergency room on March 4, 2009 with stomach pain. A doctor there gave her a heavy pain medication, Dilaudid, and then discharged her home a short time later.

The doctor never warned Ms. Walsh that Dilaudid could impair her ability to drive. Ms. Walsh drove herself home from the hospital. On her way, she crossed into oncoming traffic, striking a vehicle being driven by Edward Davis. Mr. Davis suffered injuries in the accident. He then sued the hospital and physician for medical malpractice, alleging that the hospital and doctor were negligent in failing to warn Ms. Walsh of the danger involved in driving while under the influence of Dilaudid.

The hospital and doctor moved to dismiss the suit, arguing that Davis' claim against them lacked legal merit. That motion was granted by the trial court and the suit was dismissed. Davis appealed and the Appellate Division affirmed the dismissal of the suit. The Appellate Division explained that there was no duty on the part of the defendant medical providers to prevent injuries to third parties. Davis then appealed to the state's highest court, the Court of Appeals.

The case presented an interesting legal issue: can a third party, injured by a patient, sue a medical provider under the theory that the provider's malpractice caused the injury, even thought the injured party had no special relationship with the medical providers? In a 4-2 decision, a New York Court of Appeals ruled that the claim in *Davis* was permissible.

The Court stated that a third party, injured by an impaired patient, can sue a physician for failing to warn the patient that medications they were given would impair the patient's driving ability. Writing for the majority, Justice Eugene Fahey explained that the doctor in this case "by taking the affirmative step of administering the medication … without warning Walsh about the disorienting effect of those drugs created a peril affecting every motorist in Walsh's vicinity." Justice Fahey went on to explain that the doctor and hospital were the only ones in a position to warn Walsh.

It is noted that both the Medical Society of the State of New York and the American Medical Association filed an *amicus curiae* brief opposing the Court's decision. They argued that this ruling would open the floodgates and expose medical providers to a practically limitless number of lawsuits. According to Justice Fahey, however, physicians already had a duty to warn their patients about the dangerous side effects of medications they are being given and, therefore, this ruling does not impose any additional obligation on physicians.