

How far does a doctor's responsibility extend?

Perera v Dr Ng, unreported, A/J Norton, NSW District Court, 14 May 1998.
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Can doctors be held responsible for the treatment of their patients through an intermediary such as a relative? According to the judgement in *Perera v Ng*, they can. In this case brought under the *Compensation to Relatives Act* by the wife of the deceased who died of varicella pneumonia (a complication of chicken pox), the Court held the defendant doctor liable in negligence for failing to monitor the development of symptoms of the patient by means of enquiry of his wife, the plaintiff.

Facts

The plaintiff and her family were from Sri Lanka. All members of the family had contracted chicken pox; the father last. Chicken pox is not a common childhood disease in Sri Lanka as it is in a country like Australia with a more temperate climate. At the first visit with the defendant when the chicken pox diagnosis was made, the plaintiff and her husband had told the defendant that a relative had died of a complication of chicken pox and the defendant had remarked that it was indeed a serious disease for adults.

Two days later the defendant made a home visit, listened to the patient's chest, and prescribed antibiotics and a throat gargle. He did not advise him or his wife at this time to watch for certain symptoms which might indicate that complications were developing. The plaintiff attended the defendant's surgery late in the afternoon of the following day indicating her concern about the condition of her husband and in particular, raised with the defendant her anxiety about him surviving the night. Much turned on what had happened at this visit. The evidence was that the defendant had not asked the plaintiff whether her husband had developed such symptoms as shortness of breath or coughing. Neither did the plaintiff volunteer any information concerning his symptoms. The defen-

dant did not give any advice or inform the plaintiff of the risks of the disease or what she should do if her husband developed a cough or had difficulty breathing during the night. The defendant reassured the plaintiff, noting that he had seen him the previous day. The defendant charged a consultation fee for this visit.

The plaintiff's husband's condition did deteriorate during the night. The plaintiff did not appreciate the significance of his symptoms nor the need to have her husband taken to hospital because she had not been given this essential information by the defendant. The plaintiff's husband arrested the following morning and died in hospital 24 hours later.

The plaintiff visited the defendant some months after the death and was told by him that he had thought she was exaggerating the extent of her husband's illness.

There were several interesting features of the case.

Extending the time to sue

The plaintiff first sought leave to extend the limitation period in order to commence proceedings. She was successful in extending the time to commence the action under the *Compensation to Relatives Act* but not so in her proposed nervous shock claim. In that regard, Master Malpass of the Supreme Court held that the defendant was prejudiced by having been denied the opportunity of having the plaintiff psychiatrically examined.

Duty of care

The defendant gave evidence that he knew that varicella pneumonia was a complication of adult chicken pox, that people could die of it and that death could occur rapidly within 24 hours. Even though the defendant did not see the deceased on the critical day (the day



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before he died), Her Honour, on the subject of the relevant duty of care, applied *Rogers v Whittaker* (1992) 175 CLR479 at 483 stating:

"The duty...is a simple comprehensive duty covering all the ways in which...(he)...is called upon to exercise his skill and judgement; it extends to the examination, diagnosis and treatment of the patient and the provision of information in an appropriate case".

and held that in this case:

"The defendant breached the duty of care that he owed to the deceased by failing to give to the plaintiff or the deceased clear advice as to what they should do if the deceased developed symptoms which were suggestive of varicella pneumonia". (emphasis added)

Strangely enough, the defence GP witness gave his evidence along the lines of the *Bolam* principle.

The Judge preferred the evidence of the plaintiff's expert who had said that warnings as to the complications of chicken pox, including symptoms of pneumonia, should have been given as early as the first visit.

Causation

The defence argued that even had more prompt medical attention been given, the deceased would not have survived. On the causation issue, her Honour also preferred the plaintiff's expert (Dr Phillip Jones, an Infectious Diseases specialist) who stated that if the deceased had been taken to hospital even as late as the day before he died and treatment initiated, it was more probable than not that he would have survived. ■

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