

# To refer or not to refer: is that the question?

*Maguire v McGroder* [2001] NSWSC 122a

**T**he New South Wales Supreme Court of Appeal recently found a general practitioner to be negligent for the referral of a patient to a chiropractor whose treatment aggravated the patient's injuries causing further injury.

The plaintiff, Chris Maguire, hit his head on the roof of a truck in the course of his employment. He attended specialists

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over the course of two years but continued to have tingling and paraesthesia in his left arm. Mr Maguire went to see Dr Gregory McGroder as suggested by an occupational health nurse employed at his place of employment.

A referral to Jonathan Ayscough, chiropractor, followed the consultation with Dr McGroder. Mr Ayscough was subsequently found to have negligently manipulated Mr Maguire's neck and back, worsening his condition and leaving him permanently unfit for work.

I received several calls at the AMA(NSW) from general practitioners concerned about the effects of this judgment on their practice of referring patients for treatment. The court felt it was not only Dr McGroder's inappropriate referral that led to a finding of negligence but the underlying absence of proper risk management procedures associated with the referral.

The court was satisfied that Dr McGroder did not physically examine the plaintiff and that he either did not look at the plaintiff's medical records in any detail, or if he did, he failed to have regard to Mr Maguire's symptoms of brachialgia and radiating pain which made referral to chiropractic treatment inappropriate.

Therefore, the significant point in this case is not the referral itself but the failure to carry out routine medical and risk management procedures. The judgment is a caution to general practitioners to examine a patient thoroughly before making the decision to refer. This case also affirms a doctor's right to refuse a referral if he or she does not believe that it would further a patient's best clinical interests.

I have received calls from general practitioners querying how it is that a general practitioner could be held liable for the negligent acts of a specialist. It is important to understand that Dr McGroder was not held liable for the negligent treatment provided by Mr Ayscough. Rather the court held that 'his negligence generated the risk of injury by referring him for inappropriate treatment'. So it is not a general practitioner's duty to ensure a specialist provides treatment with due care and skill but rather to ensure that the appropriate specialist is chosen for referral in light of the patient's particular clinical condition. There is always a duty to thoroughly examine a patient and review their medical records. This case simply re-enforces that duty. 

**arw**

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