

Tort Law—Extending Physician’s Duty of Care to Third Parties for Breach of Duty Owed to Patient—*Coombes v. Florio*, 877 N.E.2d 567 (Mass. 2007)

A successful negligence action requires a plaintiff to prove that the defendant owed a duty of care and then breached that duty by creating an unreasonable risk of harm.¹ Physicians owe patients a duty to inform them of the consequences of proposed medical treatment due to the nature of the physician-patient relationship.² In *Coombes v. Florio*,³ the Massachusetts Supreme Judicial Court (SJC) examined whether a physician’s duty of care extends to third parties harmed by the physician’s failure to warn a patient of a prescribed medication’s side effects.⁴ The court concluded that a physician owes a duty of reasonable care to any individual foreseeably put at risk by the physician’s failure to warn his or her patients.⁵

On March 22, 2002, seventy-five-year-old David Sacca lost consciousness while driving his car, causing him to veer off of the road and kill ten-year-old bystander Kevin Coombes.⁶ Shortly after the accident, Sacca regained consciousness in a nearby hospital; doctors could not determine the precise cause of his blackout.⁷ At the time of the accident, Sacca suffered from serious illnesses including asbestosis, chronic bronchitis, emphysema, high blood pressure, and metastatic lung cancer.⁸ As part of his treatment, Sacca’s primary-care physician, Dr. Roland Florio, prescribed a number of medications including Oxycodone, Zar.oxolyn, Prednisone, Flomax, Potassium, Paxil, Oxazepam, and Furosemide.⁹ The drugs’ potential side effects include lightheadedness, drowsiness, dizziness, fainting, altered consciousness, and

1. See *Cottam v. CVS Pharmacy*, 764 N.E.2d 814, 819 (Mass. 2002) (delineating traditional tort concept of plaintiff’s burden to establish duty); *Glidden v. Maglio*, 722 N.E.2d 971, 973-74 (Mass. 2000) (listing essential elements of negligence as duty, breach, causation, and damages); *Tarasoff v. Regents of Univ. of Cal.*, 551 P.2d 334, 342 (Cal. 1976) (noting psychiatrist owes duty to others “who are foreseeably endangered” by creation of unreasonable risk); RESTATEMENT (SECOND) OF TORTS § 284 (1965) (establishing negligent conduct as failure to act when under a duty to provide assistance).

2. See *Cottam v. CVS Pharmacy*, 764 N.E.2d 814, 820 (Mass. 2002) (explaining physician-patient relationship creates duty to inform patients of medication side effects as necessary); see also *Schroeder v. Lawrence*, 359 N.E.2d 1301, 1303 (Mass. 1977) (requiring plaintiff to prove physician negligently failed to inform about risks surrounding treatment).

3. 877 N.E.2d 567 (Mass. 2007).

4. See *id.* at 568 (stating plaintiff’s cause of action).

5. *Id.* at 567-68 (noting decision split four-to-two amongst justices); *Id.* at 572 (concluding physician’s breach of duty creates cause of action for third parties foreseeably at risk).

6. *Id.* at 568-69 (detailing sequence of events leading to Sacca’s automobile accident).

7. 877 N.E.2d at 569 (recounting events immediately following Sacca’s accident).

8. *Id.* at 568 (delineating seriousness of Sacca’s medical condition at time of accident).

9. *Id.* (listing numerous medications Dr. Florio prescribed to Sacca).

sedation.¹⁰ At trial, Sacca's medical expert contended that the aggregate effect of these medications, combined with Sacca's old age, exacerbated the drugs' side effects and caused him to lose consciousness.¹¹

Dr. Florio began treating Sacca in 1999 and was responsible for managing all of his prescribed medication.¹² In July 2000, Dr. Florio warned Sacca that he should not drive during his cancer treatment.¹³ Sacca obliged until the fall of 2001, when Dr. Florio informed him that it was safe to begin driving again.¹⁴ Subsequently, Dr. Florio never warned Sacca about the side effects of any medications that he prescribed.¹⁵

The administratrix of Kevin Coombes's estate sued Dr. Florio on the theory that he negligently failed to warn Sacca about the medications' known side effects.¹⁶ The Massachusetts Superior Court granted Dr. Florio's motion for summary judgment on the narrow reasoning that a physician-patient relationship does not impose a duty upon doctors to control their patients' actions.¹⁷ The SJC reversed and remanded, holding that a physician's duty of care includes the duty to warn patients of proposed treatment; this duty extends to parties foreseeably put at risk by the physician's failure to warn.¹⁸

An essential component of a negligence claim is whether an alleged tortfeasor owes his or her victim a duty of care.¹⁹ In general, one whose affirmative action creates an unreasonable risk assumes a duty of care to protect other individuals from any resulting harm.²⁰ Conversely, a person who fails to

10. *Id.* (noting potentially adverse side effects of Sacca's prescriptions). Sacca claimed that he never experienced any of the drugs' side effects prior to the accident. *Id.* at 569.

11. 877 N.E.2d at 568-69 (explaining medical expert's opinion attributing cause of Sacca's blackout to prescription drug combinations).

12. *Id.* at 568 (establishing Sacca's relationship with Dr. Florio).

13. *Id.* (acknowledging Dr. Florio initially warned Sacca against driving when he began cancer treatment).

14. *Id.* (explaining Dr. Florio assured Sacca he could safely drive following conclusion of cancer treatment).

15. 877 N.E.2d at 569 (noting Dr. Florio failed to inform Sacca about driving dangers following cancer treatment).

16. *Id.* (articulating plaintiff's claim).

17. *Coombes v. Sacca*, No. 02-1182, 2005 WL 4926580, at *2 (Mass. Super. July 27, 2005) (contrasting physician-patient relationship with required "special relationship" when one party controls another).

18. 877 N.E.2d at 575-76 (reversing Superior Court and finding genuine issue of material fact). The SJC concluded that Dr. Florio's failure to warn was a reasonably foreseeable cause of Sacca's accident and that Dr. Florio's duty to Sacca also extended to all other foreseeable third parties put at risk. *Id.* at 573; see also Eric T. Berkman, *Massachusetts Supreme Judicial Court Says M.D. Can Be Sued After Patient Hits Boy in Car Crash*, MASS. LAW. WKLY., Dec. 17, 2007, at 1, 28 (describing holding as broadly issuing liability on doctors); Liz Kowalczyk, *SJC Ruling Adds to Doctor Liability: Allows Suit in Crash Caused by a Patient*, BOSTON GLOBE, Dec. 11, 2007, at 1B (explaining broadness of ruling as expanding physician liability beyond patient relationship).

19. See *supra* note 1 and accompanying text (establishing duty is essential component to negligence claim); see also W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 53, at 356 (5th ed. 1984) [hereinafter PROSSER & KEETON] (defining duty requirement in negligence action).

20. See *Mullins v. Pine Manor Coll.*, 449 N.E.2d 331, 336 (Mass. 1983) (noting duty of reasonable care exists for voluntary actions); RESTATEMENT (SECOND) OF TORTS § 302 cmt. a (1965) (recognizing affirmative

perform an act does not assume a duty of care, even if the act is necessary to protect another.²¹ As a means of alleviating the consequences of this harsh rule, courts often impose an affirmative duty to act for the benefit of another when a “special relationship” exists between the parties.²² Additionally, courts impose duties of care based on existing and desired social policies.²³ Factors that judges consider include the foreseeability of harm, the benefits of imposing the duty, the burden that the duty places on the defendant, and the administrative problems encountered when enforcing the duty.²⁴

In the medical context, a doctor owes a duty of care to his or her patient by virtue of the physician-patient relationship.²⁵ The doctrine of informed consent is integral to this relationship, requiring a doctor to explain the risks and benefits of any proposed medical treatment so that the patient may make an educated treatment decision.²⁶ Accordingly, courts impose a duty on

action creates duty to protect others from any resulting risk of unreasonable harm); RESTATEMENT (SECOND) OF TORTS § 323 (establishing duty of reasonable care akin to similarly situated person exists when rendering services for another).

21. See *Luoni v. Berube*, 729 N.E.2d 1108, 1111 (Mass. 2000) (asserting landowner does not owe duty to protect against unreasonably dangerous third-party acts); RESTATEMENT (SECOND) OF TORTS § 314 (1965) (explaining no duty to act in aiding another despite individual’s need of assistance); PROSSER & KEETON, *supra* note 19, § 56, at 373 (justifying “nonfeasance” as lack of beneficial interference without constituting harm toward plaintiff).

22. See *Jean W. v. Commonwealth*, 610 N.E.2d 305, 315 (Mass. 1993) (noting parole officer has duty toward parolee because “special relationship” of control exists); *Irwin v. Town of Ware*, 467 N.E.2d 1292, 1303-04 (Mass. 1984) (maintaining police officer’s duty to detain driver because “special relationship” imposed by statute). Chief amongst the court’s view to impose a duty was the foreseeability of harm to third persons. See *Irwin v. Town of Ware*, 467 N.E.2d 1292, 1303-04 (Mass. 1984); see also *Adamian v. Three Sons, Inc.*, 233 N.E.2d 18, 19 (Mass. 1968) (imposing statutory duty on bar owner to not serve excessive amounts of alcohol); RESTATEMENT (SECOND) OF TORTS § 315 (1965) (recognizing general exception to section 314 when “special” control relationship exists over victim). Recognized special relationships include parent-child, master-servant, and landowner-licensee. RESTATEMENT (SECOND) OF TORTS § 315 cmt. c.

23. See *e.g.*, *McKenzie v. Hawai’i Permanente Med. Group*, 47 P.3d 1209, 1220 (Haw. 2002) (evaluating whether duty exists by weighing societal benefits against burdens); *Cremins v. Clancy*, 612 N.E.2d 1183, 1185 (Mass. 1993) (describing establishment of duty as a question of law based on analysis of social values); PROSSER & KEETON, *supra* note 19, § 53, at 358 (discussing duty as culmination of judicial policy considerations).

24. See *Burroughs v. Magee*, 118 S.W.3d 323, 329 (Tenn. 2003) (listing factors considered by court in assessing imposition of duty). Relevant factors include “the foreseeable probability of . . . harm; the possible magnitude of . . . harm; the . . . social value of the activity engaged in by defendant; the usefulness of the conduct to defendant; [and] the feasibility of alternative, safer conduct . . .” *Id.*; *McKenzie v. Hawai’i Permanente Med. Group*, 47 P.3d 1209, 1219 (Haw. 2002) (noting doctors’ conundrum in choosing whether to breach physician-patient confidentiality or establish fulfillment of duty).

25. See *Cottam v. CVS Pharmacy*, 764 N.E.2d 814, 820 (Mass. 2002) (noting physician-patient relationship involves duty of care based on patient needs and medical history). The court explained that pharmacies are not liable for warning patients because doing so would intrude on the physician-patient relationship. *Id.* at 820.

26. See *Harnish v. Children’s Hosp. Med. Ctr.*, 439 N.E.2d 240, 242 (Mass. 1982) (requiring physicians to reasonably explain relevant medical information so patient can make intelligent treatment decision); Cherie N. Wyatt, Comment, *Driving on the Center Line: Missouri Physicians’ Potential Liability to Third Persons for Failing to Warn of Medication Side Effects*, 46 ST. LOUIS U. L.J. 873, 901-02 (2002) [hereinafter *Driving on the Center Line*] (explaining informed-consent standard to require physician’s disclosure of treatment options).

physicians to warn patients about the side effects of medication.²⁷

Determining whether a physician's liability extends to third parties foreseeably placed at risk of harm is a contested issue that has received varying treatment among jurisdictions.²⁸ Tennessee, New Mexico, Kansas, and Illinois refuse to extend physician liability by discounting the foreseeability of harm to third parties and citing public-policy considerations.²⁹ Other jurisdictions, such as Hawaii, South Carolina, and Washington, recognize physician liability to third parties by expanding the duty to warn based on either a foreseeability or social-policy analysis.³⁰ Another method of establishing such liability is through the application of general third-party liability principles.³¹

27. See *Cottam v. CVS Pharmacy*, 764 N.E.2d 814, 820 (Mass. 2002) (holding doctors have duty to inform patients about medication side effects); *McKee v. Am. Home Prods. Corp.*, 782 P.2d 1045, 1049-50 (Wash. 1989) (reasoning physicians' close relationship with patients confers duty to inform about medication side effects).

28. Compare *Hardee v. Bio-Medical Applications of S.C., Inc.*, 636 S.E.2d 629, 631-32 (S.C. 2006) (reasoning physician owes duty to motoring public to warn patient of medication side effects), and *McKenzie v. Hawai'i Permanente Med. Group*, 47 P.3d 1209, 1221 (Haw. 2002) (extending physician's duty to nonpatients for failure to warn patient of medication side effects), and *Kaiser v. Suburban Transp. Sys.*, 398 P.2d 14, 16 (Wash. 1965) (recognizing physician negligence if failure to warn patient created foreseeable harm), with *Burroughs v. Magee*, 118 S.W.3d 323, 335 (Tenn. 2003) (concluding doctor did not owe duty to third parties when prescribing medication), and *Lester v. Hall*, 970 P.2d 590, 595 (N.M. 1998) (refusing to extend physician duty to public), and *Kirk v. Michael Reese Hosp. & Med. Ctr.*, 513 N.E.2d 387, 399 (Ill. 1987) (limiting physician liability to third parties).

29. See *Burroughs v. Magee*, 118 S.W.3d 323, 335 (Tenn. 2003) (concluding potential negative effect on patient care outweighs foreseeability of harm to third parties); *Lester v. Hall*, 970 P.2d 590, 592 (N.M. 1998) (rejecting physician liability to third parties because prescription medication not foreseeable cause of accident). The *Lester* court also weighed the importance of protecting a physician's discretion in choosing effective treatment options without being concerned about potential liability. *Lester v. Hall*, 970 P.2d 590, 593 (N.M. 1998); see also *Calwell v. Hassan*, 925 P.2d 422, 430-32 (Kan. 1996) (declining to impose duty on physician due to lack of "special relationship" with third party); *Kirk v. Michael Reese Hosp. & Med. Ctr.*, 513 N.E.2d 387, 397 (Ill. 1987) (examining public-policy concerns regarding overburdened medical-care system in refusing to extend third-party liability); Jaime Carmack, Note, *Torts-Negligence-Defining the Scope of a Physician's Duty of Care to Third Parties: Burroughs v. Magee*, 71 TENN. L. REV. 797, 814-15 (2004) (recognizing negative impact on physician-patient relationship if extended liability for negligent prescriptions); see also Lisa M. Nuttall, Note, *Tort Law-Foreseeability vs. Public Policy Considerations in Determining the Duty of Physicians to Non-Patients-Lester v. Hall*, 30 N.M. L. REV. 351, 360-61 (2000) (noting *Lester* court's adoption of social policy in favor of foreseeability analysis creates legal uncertainty).

30. See *Hardee v. Biomedical Applications of S.C., Inc.*, 636 S.E.2d 629, 631 (S.C. 2006) (noting first step in extending liability is determining whether doctor owed duty to warn patient). The *Hardee* court next analyzed whether the harm to the third party was a foreseeable result of the physician's failure to warn his or her patient of the treatment's side effects. *Hardee v. Biomedical Applications of S.C., Inc.*, 636 S.E.2d 629, 631-32 (S.C. 2006); *McKenzie v. Hawai'i Permanente Med. Group*, 47 P.3d 1209, 1213 (Haw. 2002) (recognizing physician liability for not warning patient about side effects extends to foreseeable third parties). The court noted that the failure of a physician to warn a patient about side effects known by the physician lacks social utility. *McKenzie v. Hawai'i Permanente Med. Group*, 47 P.3d 1209, 1219 (Haw. 2002); *Kaiser v. Suburban Transp. Sys.*, 398 P.2d 14, 16 (Wash. 1965) (reasoning doctor is liable if harm to plaintiff was reasonably foreseeable); see also J.D. LEE & BARRY LINDAHL, *MODERN TORT LAW: LIABILITY AND LITIGATION* § 25:4 (2d ed. 2007) (recognizing courts often reduce doctor's litigation burden by refusing to extend liability to third parties).

31. See *Burroughs v. Magee*, 118 S.W.3d 323, 329 (Tenn. 2003) (applying general Tennessee duty precedent for actor liability in third party situation); cf. *Jupin v. Kask*, 849 N.E.2d 829, 832 (Mass. 2006)

Furthermore, some jurisdictions, like Hawaii, New Mexico, Washington, and Maine, only extend a physician's duty in limited contexts, such as when a doctor directly administers the medication or when a patient has no knowledge of the medication's side effects.³²

Recognizing its authority to derive a physician's duty of care, the SJC in *Coombes* reasoned that physicians have a duty to inform based both on the nature of the physician-patient relationship and the foreseeability that an automobile accident injuring other parties might occur.³³ The court not only considered its own precedent concerning liability to remote defendants, but also the rulings of other jurisdictions establishing a physician's duty to at-risk third parties.³⁴ As a result, the court concluded that the social benefit of protecting the public from a preventable harm outweighs the potential burden of increased litigation.³⁵ The dissent, however, asserted that the extension of physician liability to third parties weakens the physician-patient relationship because it

(extending homeowner's duty to secure firearm from dangerous person). In *Jupin*, the SJC imposed a duty on a homeowner to protect a third-party police officer because of the firearm's dangerous nature, the statutory requirement to secure them, and the foreseeability that a dangerous intermediary could use the homeowner's unsecured weapon to injure the officer when the homeowner granted unsupervised access to the premises. *Jupin v. Kask*, 849 N.E.2d at 836-37 (Mass. 2006); *Michnik-Zilberman v. Gordon's Liquor, Inc.*, 453 N.E.2d 430, 434 (Mass. 1983) (reasoning storeowner's duty not to sell liquor to minors imposes liability to harmed third parties). In *Michnik-Zilberman*, the SJC stressed the legislative intent for limiting the sale of liquor to minors as a means of protecting the public from harm. *Michnik-Zilberman v. Gordon's Liquor, Inc.*, 453 N.E.2d at 433-34 (Mass. 1983).

32. See *McKenzie v. Hawai'i Permanente Med. Group*, 47 P.3d 1209, 1220 (Haw. 2002) (limiting physician liability when patient knows prescription's effects); *Lester v. Hall*, 970 P.2d 590, 595 (N.M. 1998) (refusing to extend physician duty to public when patient takes prescribed medication out of physician's presence); *Joy v. E. Me. Med. Ctr.*, 529 A.2d 1364, 1365 (Me. 1987) (extending liability to physician failing to issue driving warning for eye patch affixed in physician's office); *Kaiser v. Suburban Transp. Sys.*, 398 P.2d 14, 18-19 (Wash. 1965) (imposing physician negligence only when patient lacks knowledge of side effects). A physician's liability should be limited to instances where the physician has an advantage over the patient in recognizing safety threats caused by his treatment, thereby reducing litigation and aiding the overburdened healthcare system. See *Wyatt*, *supra* note 26, at 905 (noting negative effect of third-party liability on healthcare system).

33. 877 N.E.2d at 568 (framing issue broadly). The court outlined the issue as encompassing a physician's duty to any party for failure to warn of any treatment. *Id.*; see also *id.* at 570 (noting court's ability to establish duty as critical factor for negligence analysis). The SJC rejected Dr. Florio's argument that he did not owe *Coombes* a duty because he did not maintain an ability to control *Sacca's* actions. *Id.* at 574-75. The court reasoned that it did not need to establish an affirmative duty to control a patient because Dr. Florio's conduct created a foreseeable risk of harm. *Id.* at 575.

34. *Id.* at 571-72 (analyzing Massachusetts precedent extending liability to original actor in context of intermediary tortfeasor involvement). The SJC also examined a physician's duty to third parties, as recognized in other jurisdictions. *Id.* at 572 (citing *Burroughs v. Magee*, 118 S.W.3d 323, 331 (Tenn. 2003); *McKenzie v. Hawai'i Permanente Med. Group*, 47 P.3d 1209, 1220-22 (Haw. 2002); *Joy v. E. Me. Med. Ctr.*, 529 A.2d 1364, 1366 (Me. 1987)).

35. 877 N.E.2d at 573 (weighing societal benefit of protecting innocent bystanders against negligible burden). The court noted that imposing a duty to third parties does not overly burden physicians because such a duty already exists between physicians and patients. *Id.* But see *id.* at 582-83 (Marshall, C.J., dissenting) (criticizing majority's view of legislature as best situated to address increased litigation). The dissent contended that the court has the authority and responsibility to address the possibility of a potential increase in litigation. *Id.* (Marshall, C.J., dissenting).

requires the dissemination of confidential communications to interested litigious parties and hinders the professional discretion of physicians.³⁶ In support of this proposition, the dissent criticized the majority's application of third-party liability cases and argued that the physician-patient relationship does not constitute a "special relationship" because it is not based on either control or statutory obligation.³⁷

The SJC in *Coombes* inappropriately broadened a physician's duty to *any* injured third party for the failure to warn about *any* foreseeably risky treatment by relying on precedent from other jurisdictions and failing to acknowledge the limitations of liability imposed by those courts.³⁸ For example, the court embraced *McKenzie v. Hawai'i Permanente Medical Group*³⁹ for the proposition to impose a duty, but did not similarly limit that duty to the prescription of medication in the context of driving an automobile.⁴⁰ In addition, the SJC did not implement the limitation of physician liability established in *Burroughs v. Magee*,⁴¹ in which physicians were not liable to patients for negligently prescribing medication despite the foreseeability of harm to a third party.⁴² Lastly, the court improperly adopted the general scheme of physician liability from *Joy v. Eastern Maine Medical Center*,⁴³ in which the physician administered treatment while the patient was in the doctor's office, subject to the physician's control.⁴⁴

The SJC inconsistently utilized the "special relationship" analysis when

36. *Id.* at 583 (Cordy, J., dissenting) (cautioning against violating physician-patient confidentiality by forced dissemination of communications to interested litigants). The dissent asserted that *Cottam* places emphasis on the physician-patient relationship by not allowing the pharmacy to interfere in treatment communications. *Id.* at 586-87.

37. *Id.* at 584 (categorizing majority's implementation of third-party tort liability cases as "special relationship" cases). The physician-patient relationship does not amount to a "special relationship" in the context of conferring an affirmative duty. *Id.* at 582 (Marshall, C.J., dissenting). The dissent also disagreed with the majority's analogy that a doctor's failure to warn is as unreasonably dangerous as leaving a loaded handgun unsecured in the presence of a mentally disturbed individual. *Id.* at 585 (Cordy, J., dissenting).

38. See *supra* note 18 and accompanying text (describing court's broad statement and treatment of the issue); *supra* note 34 (highlighting extent of SJC reliance on rulings from other jurisdictions); see also PROSSER & KEETON, *supra* note 19, § 53, at 358 (discussing duty as culmination of judicial policy considerations within court's discretion).

39. 47 P.3d 1209 (Haw. 2002).

40. See *McKenzie v. Hawai'i Permanente Med. Group*, 47 P.3d 1209, 1212 (Haw. 2002) (limiting physician liability to failure to warn of prescription side effects on driving ability).

41. 118 S.W.3d 323 (Tenn. 2003).

42. See *Burroughs v. Magee*, 118 S.W.3d 323, 334-35 (Tenn. 2003) (declining to extend physician liability as means of protecting professional discretion). The *Burroughs* court protected physicians from liability for the negligent prescription of medication as a means of upholding the social value of preserving the sanctity of the physician-patient relationship. *Id.* Allowing third parties to intrude on this relationship undermines the existing structure of the medical system. Carmack, *supra* note 29, at 815 (indicating erosion of physician-patient relationship would allow unsuitable parties to make health care decisions for patients).

43. 529 A.2d 1364 (Me. 1987).

44. See *Joy v. E. Me. Med. Ctr.*, 529 A.2d 1364, 1365 (Me. 1987) (extending physician's liability for failing to issue driving warning for treatment conducted in office); see also *supra* note 32 and accompanying text (illustrating court decisions in other jurisdictions limiting physician liability to in-office treatments).

reasoning that Dr. Florio owed Sacca a duty of reasonable care.⁴⁵ First, the court imposed a duty on physicians by extending its analysis from numerous foreseeable accident cases; this created an affirmative duty based upon the existence of a “special relationship” with third parties.⁴⁶ Subsequently, the court rejected the relevancy of a “special relationship” analysis with regard to Dr. Florio and Sacca when imposing a duty of care on Dr. Florio.⁴⁷

The SJC also failed to limit the liability of doctors to circumstances in which the patient has knowledge of a treatment’s side effects.⁴⁸ As a means of shifting some liability to patients, it should have carved out an exception whereby the patient’s subsequent negligent act precludes physicians from liability.⁴⁹ Such a limitation would impose a duty on physicians to third parties while also recognizing the social value of upholding a physician’s discretion toward patients and moderating the economic strain on an overburdened health-care system.⁵⁰

In *Coombes*, the SJC imposed a broad duty on physicians to all third parties foreseeably injured from the physicians’ failure to warn patients about the side effects of a proposed treatment. In its reasoning, the SJC inconsistently utilized the “special relationship” analysis both to support and to deny the existence of an affirmative duty of physicians to third parties. Furthermore, while the court

45. See *supra* note 22 (illustrating applicability of “special relationship” analysis based on Massachusetts precedent and Restatement of Torts). Compare 877 N.E.2d at 575 (declining to apply “special relationship” analysis to Dr. Florio’s claim), with *supra* note 34 (highlighting court’s use of precedent regarding remote tortfeasor liability for third party injury), and *supra* note 37 (explaining dissent’s interpretation of majority’s application of Massachusetts precedent as “special relationship” analysis).

46. See *supra* note 31 (illustrating court’s application of Massachusetts foreseeable accident cases to impose duty on remote tortfeasor); see also 877 N.E.2d at 584 (Cordy, J., dissenting) (rejecting inclusion of physician-patient relationship within “special relationship”-imposed duty). The dissent noted that the court’s previous treatment of cases where a “special relationship” existed was limited by a statutory duty not to act. 877 N.E.2d at 584 (Cordy, J., dissenting).

47. See 877 N.E.2d at 575 (disregarding Dr. Florio’s denial of affirmative duty based on lack of “special relationship”). The court established that an affirmative duty on Dr. Florio by means of a “special relationship” is not necessary because he foreseeably created the risk of harm. *Id.*

48. See *supra* note 10 and accompanying text (noting Sacca did not experience side effects prior to accident); *supra* note 18 and accompanying text (stating court’s concise holding and foreseeability reasoning fail to limit physician liability for patient negligence).

49. See *McKenzie v. Hawai’i Permanente Med. Group*, 47 P.3d 1209, 1220 (Haw. 2002) (explaining physician liability lessened when patient is aware of medication side effect through experience); *Kaiser v. Suburban Transp. Sys.*, 398 P.2d 14, 18-19 (Wash. 1965) (limiting physician negligence when patient knows side effects).

50. See *Burroughs v. Magee*, 118 S.W.3d 323, 335 (Tenn. 2003) (concluding potential negative effect on patient care outweighs foreseeability of harm to third parties). A doctor’s consideration of third parties when prescribing medication detracts from the doctor’s care of his or her patients. *Id.*; *McKenzie v. Hawai’i Permanente Med. Group*, 47 P.3d 1209, 1220-21 (Haw. 2002) (declaring patient’s knowledge of side effects as a factor in determining physician liability); *Kirk v. Michael Reese Hosp. & Med. Ctr.*, 513 N.E.2d 387, 399 (Ill. 1987) (limiting liability on physician when no physician-patient relationship existed to alleviate overburdened healthcare system); *Driving on the Center Line*, *supra* note 26, at 905 (describing benefits of limiting physician liability when patient knows of risks posed by medication). Reducing liability between patients and physicians eases the economic strain on the healthcare system. *Driving on the Center Line*, *supra* note 26, at 905.

adopted other jurisdictions' reasoning, it failed to acknowledge the emphasis that those jurisdictions placed on limiting physician liability. Instead of creating a broad duty to any third party foreseeably harmed, the court should have lessened physician liability by holding patients accountable when they have knowledge of a medication's side effects. This limitation would not only lessen the impact of increased liability on the overstressed medical profession, but also uphold the sanctity of the physician-patient relationship.

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