

## Court of Appeals Decision Expands Physician and Hospital Liability

On December 16, 2015, the New York State Court of Appeals issued a decision that has important implications for medical malpractice liability. In *Davis v. South Nassau Communities Hospital*, the Court held that treating physicians and hospitals owe third parties a duty to warn patients of the risks or side effects associated with medications. In this case, the physicians at the hospital administered medication to a patient that had the potential to impair her ability to safely operate an automobile. The patient subsequently drove away from the hospital and, allegedly impaired by the medication she received, caused an accident with Davis, who sustained injury. Davis sued the physicians and the hospital for medical malpractice for failing to warn the patient of the side effects of administered medication.

Although the Court admonishes readers against interpreting this decision as an erosion of the prevailing New York principle that a physician's duty of care does not extend beyond the patient to the community at-large, this belies the actual effect of the decision. In fact, the decision expands the potential pool of litigants who can sue a physician for malpractice. Specifically, unknown third parties with whom the physician has no doctor-patient relationship now have standing to sue if they have been injured by the physician's patient. In our view, this case illustrates a shift from prior New York case law which required a direct relationship between the doctor and the patient before a valid medical malpractice action could arise. The Court also argues that its decision imposes no additional obligation on a physician who administers medication to a patient. This argument, however, overlooks the increased burden upon the provider to carefully document the specific warning to the patient, since one has to assume that the patient will not be a credible witness. If the patient ignored the warning and injured someone else while their judgement was impaired by the medication prescribed by the physician the only witness to the warning may be the chart.

Physicians should continue to comply with their obligation to advise patients of the specific risks and side effects of administered medications. This decision does not compel physicians to prevent patients from leaving the hospital after receiving certain medication, but requires physicians to ensure that when patients leave the hospital, they are properly warned about the side effects of that medication. Careful documentation of specific warnings to the patient will be critical to defending these cases in the future.

To read the complete Court of Appeals decision, click [here](#).

If you have questions concerning this Alert, please contact your Underberg & Kessler attorney.