

Health Care Alert: Providers May Be Liable to Third Parties for Failure to Inform Patient of
HIV Test Results

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The Superior Court of New Jersey, Appellate Division, has held that a hospital and attending physicians that fail to notify a patient of HIV test results may be liable to that patient and to any person who is subsequently infected by the patient. In the case, C.W. v. The Cooper Health System, (Superior Court of New Jersey, Appellate Division, August 10, 2006), the court stated that a hospital and attending physicians owe a duty of care to the patient to inform him of the results, and if the patient tests positive, to advise the patient on preventing the transmission of the virus. If the hospital or physicians do not, they can be held liable to the patient and any person who contracts the disease from the patient.

The patient, C.W. was admitted to Cooper Hospital on August 5, 1994. During his stay at the hospital, an HIV test was ordered. C.W. was discharged from the hospital on August 10, at a time when the test results were pending. After his discharge, the test results were made available that showed he tested positive for HIV. C.W. was not informed of the test results.

C.W. began a sexual relationship with E.Y. in the fall of 1994. On July 18, 1995, their daughter, J.W. was born. C.W. and E.Y. lived together until December of 1999. In 2002, C.W. was diagnosed with AIDs. Shortly thereafter, E.Y. was tested and it was determined that she had contracted HIV. The child, J.W. tested negative for HIV.

C.W. and E.Y. filed a lawsuit against the hospital and the attending physicians, alleging they had breached a duty of care owed to each of the plaintiffs, by failing to inform C.W. of the results of the HIV test. As a result, C.W. was not informed of the need to seek timely medical treatment, and to take precautionary measures to avoid transmitting the virus to E.Y. The trial court granted summary judgment in favor of defendants. The appellate court reversed.

The appellate court held that the hospital and attending physicians had a duty to notify C.W. of his test results, even after his discharge. The court stated that the discharge summary should have noted that an HIV test was administered and the results were pending. C.W. should have been advised to contact a hospital representative for a follow-up appointment to discuss the results, or alternatively, the hospital should have made some effort to contact C.W. directly.

The court held that the hospital and attending physicians owed a duty of care to E.Y. as well, because it was foreseeable that C.W. would likely be sexually active. The hospital and physicians should have advised C.W. on the precautions he needed to take to avoid transmitting the virus to another person. As C.W.'s sexual partner, E.Y. is within the scope of foreseeable individuals who would be harmed by the provider's failure to inform C.W. of his HIV positive status.

The court recognized that even if the hospital and physicians knew the identity of C.W.'s sexual partner, they were legally precluded from informing her of his HIV status, due to the laws of patient confidentiality. The court stated that the question is not whether the providers have a duty to notify E.Y. directly of C.W.'s HIV test results. The duty of care to a third party such as E.Y., requires the providers to take all reasonable measures to notify the patient of the results of his HIV test, and counsel the infected patient on how to avoid transmitting the virus. Once that is done, according to the court, it is up to that individual to act reasonably in his own conduct. In this case, unfortunately, the patient was not informed of the results.

Ultimately, the court held that the hospital and attending physicians can be held civilly liable in damages to the patient and any individual, like E.Y., who contracted the HIV virus from a former patient who was not informed of the test results of an HIV test ordered by the physicians responsible for the patient's care.

Through this case, the court has announced new standards of care, and broadened the scope of liability for failing to inform patients of test results. It re-emphasizes the need for hospitals and physicians to have appropriate policies and procedures for the reporting of test results, and strict adherence to the same.

For more information on the court's decision or any other issue related to Health Care Law, please contact Brian M. Foley, Esq. or any member of Schenk, Price, Smith, & King's Health Care Practice Group.