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Welcome to our Supreme and Appellate Court summaries webpage. For the past 10 years, Edward McCreery has summarized hundreds of Connecticut appellate court decisions which highlighted important issues and developments in Connecticut law and provided practical pointers to litigants. Upon joining Pullman & Comley earlier this year, Ed asked me to take on the role of writing brief summaries of recent rulings in civil litigation decisions and condense often long and confusing decisions down to their basic elements. Pullman & Comley's Appellate Practice Group, of which I am a member, includes experienced appellate advocates in almost every area of the law. Should you have a need to consult about a potential appeal, please email me at dscholfield@pullcom.com or Ed McCreery at emcreery@pullcom.com. I hope you find these summaries helpful. – Daniel P. Scholfield

Alert! Divided Connecticut Supreme Court concludes that physician owed duty to patient's girlfriend to accurately report results of an STD test in a 4-3 split.

SC 19879 – Jane Doe v. Charles Cochran (duty of physician to third-parties in reporting STD test results)

In a 4-3 split, the Connecticut Supreme Court holds that a doctor owed a duty of care to his patient's new exclusive girlfriend in the course of performing a test for herpes. The Plaintiff, who gained permission to proceed under the pseudonym "Jane Doe" brought suit against her boyfriend's physician, claiming that the physician was negligent in reporting the results of an STD test for herpes. Prior to the test, the boyfriend informed the physician that he had a new "exclusive" girlfriend and wanted to be tested for STDs before becoming sexually active with her. The physician performed a blood test, which found the boyfriend positive for herpes, and delegated the task of reporting that result to one of his staff, who incorrectly told the boyfriend that the test was negative for herpes. A short while later, when the Plaintiff contracted herpes, her boyfriend inquired with his physician, who apologized and informed him that the test had been positive. The plaintiff then brought suit.

The trial court dismissed the lawsuit, finding that the Plaintiff could not sue the physician because she did not have a doctor-patient relationship with him. A divided Supreme Court reversed. According to the majority opinion, the Plaintiff's allegations could be of regular negligence, because the accurate reporting of a medical test result in this context did not require specialized knowledge, even if the testing itself did. The majority also held that a medical provider in the limited circumstance of testing for an STD such as genital herpes

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owes a duty of care to an identifiable third party who is engaged in an exclusive romantic relationship with the patient at the time of the testing and who foreseeably contracts the STD as a result of his or her reliance on the physician's incorrect communication to the patient. In this case, that included the patient's new exclusive girlfriend.

Furthermore, the majority reasoned, other States have recognized such a duty, and the Restatement of Torts explains that a party should be liable for negligent misrepresentation if the incorrect information causes a loss to a limited group of persons for whose benefit and guidance the information was supplied. Here, the Plaintiff had standing to sue and was identifiable because only one person could have fit the description of the boyfriend's exclusive girlfriend, and the information was arguably supplied for her benefit as much as her boyfriend's.

The Chief Justice, joined by two others, dissented. The dissenting justices reasoned that, although the case could properly be characterized as a common negligence case, the physician did not owe a duty of care to the Plaintiff because "[c]onsistent with the . . . limited duty of healthcare providers under the common law, this court has exercised restraint when presented with opportunities to extend the duty of health care providers to persons who are not their patients." The Chief Justice explained that the only time Connecticut has concluded that a medical provider owes a duty of care to a third person is in the case of a psychotherapist who believes a dangerous patient will imminently harm another, and that although the Plaintiff may have been identifiable, that was not the exclusive consideration governing whether a duty of care existed. In closing, the dissent argued that imposing a duty of care under the current circumstances could threaten patient-doctor confidentiality and loyalty, by suggesting to the doctor that a third party must be informed of the STD test results.

It appears that the majority opinion is in tension with the strictures of other laws governing the disclosure of information pertaining to STDs. For example, the majority reasons that a "physician's duty to protect the broader public health ... transcends the physician's duty to his or her individual patient." But that conclusion is in conflict with the strictures of Conn. Gen. Stat. § 19a-584, a statute which was "designed and intended to combat the AIDS epidemic, beginning with protecting confidentiality." *Doe v. Marselle*, 236 Conn. 845, 852 (1996). Section 19a-584 heavily restricts a physician's ability to disclose information concerning a patient's HIV status to third-parties, and does so specifically to encourage patients to get tested and treated by ensuring their confidentiality, with the understanding that confidentiality is paramount to successfully combating the spread of AIDS. The Court's new decision, in *Cochran*, does not attempt to reconcile that conflict.

Furthermore, although the facts of the case surrounded the duty a doctor might owe to a third party, the case nevertheless has implications for professionals in other contexts where there is a possibility of harm to a third party. This is especially so in light of the Court's conclusion that the case sounded in common-law negligence. Accordingly, the case creates the possibility that liability to third parties for other professionals has also been expanded. For example, does an attorney whose client has asked for advice concerning disclosing an STD to a

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romantic partner now have a duty to that client's romantic partner if the advice given is incorrect? Although the traditional answer should be "no," the majority decision in *Cochran* calls the certainty of that conclusion into question.

The factual summary, or even the legal conclusions, of any case may be summarized, redacted, paraphrased or altered at the author's discretion for ease of reading. Accuracy of the summary cannot be guaranteed and the viewer is referred to the actual case for an exact reading. The Docket number should be a link to the full decision.