

GP Successfully Appeals Negligence in Failing to Follow Up on Electronic Referral



Reading time:
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Last Modified on 08/05/2024 9:57 pm AEST

The ACT Supreme Court of Appeal has overturned a decision in which a GP was initially found to have breached his duty of care to the patient by failing to follow up on referrals to a surgeon at a public hospital.

This comes as a timely reminder to doctors about their legal duty to follow up results and referrals. However, it also provides reassurance that those duties only extend so far and that the scope of the duty can depend on the context of the case.

Background

The patient who filed the negligence claim against the GP had a corn on the sole of his right foot. He experienced so much pain and discomfort that he went to see the GP a total of 19 times, over a period of three years.

The GP sent a referral to the Canberra Hospital for a referral for a surgical review. The GP did not receive a response from the Hospital, so two months later he sent another letter. The GP still did not receive a response. A period of two years elapsed, during which the management plan from the GP involved focusing on prescribing painkillers. The foot eventually became infected, and the patient was admitted to hospital and required surgery.

This matter focused on the allegation of negligence that the doctor breached his duty by failing to follow up on that referral to ensure the patient was seen more quickly. The argument was that had the GP followed up on the referral, the patient would have been treated earlier and not have had to go through surgery for the infected foot.

At the initial hearing, the Court accepted this argument and the GP was found to be negligent and was ordered to pay the patient \$190,000.

Appealing on the decision

The GP successfully appealed the decision on the grounds that the original judge erred in finding that the onus was on the GP to ensure that the public hospital system followed through. The Court found that it was not within the power of the GP to decide the appropriate specialist treatment or that it was within the GP's scope to provide treatment that would have avoided the plaintiff's ultimate outcome. Instead, the reality of the situation was that the hospital system had not actioned the referral, the doctor was aware of this appalling system and was expecting delays.

[The initial finding was] that a reasonable general practitioner would have made enquiries of the Canberra Hospital ... that the appellant breached his duty of care by December 2014, or at least by May 2015, in not attempting to communicate with the recipient of the referral. This finding was, in our view, erroneous. (46)²

According to one of the doctors who gave evidence on behalf of the GP and also had experience referring patients into the public health system in the ACT:

"In my opinion, the public hospital system caters well for acute emergencies, serious acute illness, and other life-threatening illness such as cancer, but if a patient has a very painful, but not life-threatening problem, then obtaining earlier treatment is generally not possible."³

Public system to blame

The appeal was allowed and the patient was ordered to pay the GP's legal fees. The Court of Appeal held that the delay in the patient's queue in the public system was the product of a long waiting list and allocated low priority.

This decision comes as a win for GPs in affirming that their legal duty does not extend to advocating for their patients to be seen by the referring specialist.

The onus on GPs derived from the primary trial, but overturned on appeal, would have been an additional strain on the resources of GPs.

Sources

1, 2, 3 <https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACTCA//2023/7.html>

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