

10/5 Hypo

Polly, an 81-year-old, fell in her apartment and broke her right hip. She consulted Dr. Dee, an orthopedic surgeon. He prescribed bed rest for her rather than surgery. He based his decision on the fact that Polly was elderly, frail & in a weakened condition. In addition, he believed that her bones were too porous to hold the screws necessary to put the hip in traction. He explained these facts to Polly, and she agreed to follow his advice. Shortly after Polly began her bed rest, her femur dislocated from her hip, causing her great pain. Her right leg thereafter was permanently shortened, and she never regained the ability to walk. This is very traumatic for the fiercely independent Polly, who can no longer live on her own. She decides to file suit against Dr. Dee.

1. What is the nature of her suit?

Dr. Paul, Polly's expert, testified that board-certified orthopedic surgeon testified that bed rest was an inappropriate treatment under the circumstances. He stated that he never prescribes bed rest for hip fractures except for those who will never regain the ability to walk or who are in a vegetative state. He explained that unless bed rest is accompanied by traction, there is always a danger that the hip fracture could dislocate, as occurred here.

Dr. Dara, Defendant's expert, testified that that pinning Polly's hip would have reduced the risk of hip displacement. She also testified that Polly's bones were probably too brittle to withstand the insertion of pins, and the local practice was to prescribe bed rest under such circumstances.

2. What is the likelihood of success of these claims?

1. Polly v. Dr. Dee: Negligence in failure to put hip in traction

A. Duty owed is that of ordinary orthopedic surgeon in good standing in the community. Breach of custom = automatic malpractice

1. Breach:

A. Dr. Paul testified that inappropriate treatment under the circumstances – seems to suggest below medical practice.

B. He states that he would not prescribe bed rest because of danger of hip fracture.

C. Even D's expert agrees that pinning would have reduced risk.

2. No breach:

A. Dr. Dara testified that local practice was to prescribe bed rest under such circumstances.

B. May be sufficient in any jurisdiction, but will be particularly

relevant if jurisdiction applies same or similar community standard.

2. Polly v. Dr. Dee: Lack of informed consent
 - A. Breach: Failure to inform of risks of bed rest & alternatives
 1. Physician-centered standard:
 - A. No expert testimony to gauge disclosure
 2. Reasonable patient
 - A. All material risks
 - B. Based on testimony, seems that risk of displacement is significant
 - C. Reasonable patient would want to know where potential to never regain ability to walk.
 - B. Causation
 1. Reasonable patient made a different decision?
 - A. Would seem so if significant likelihood that would permanently impair ability to walk
 - B. Potential for alternative treatment – both cause pain
 2. This patient?
 - A. Certain seems so based on particular interest in mobility
 - C. Injury: Did the undisclosed risk occur? Clearly yes.

For similar case, *Matthies v. Mastro Monaco*, 733 A.2d 456 (N.J. 1999)