

Can a Family Practice Physician Punt to a Specialist?

It is not uncommon for family practice physicians to refer patients to specialists. When that occurs, is the family practice physician or internist who continues to follow the patient, relieved of responsibility as a result of the referral?

It has been held that “under normal circumstances a referring physician's duty to a patient is extinguished once another physician exercises independent medical judgment as to the patient's medical care in performing a surgical procedure.” Billebault v. Dibattiste, 1998 U.S. Dist. LEXIS 7399, *15-16 (E.D. Pa. May 19, 1998) citing Strain v. Ferroni, 405 Pa. Super. 349, 592 A.2d 698 (Pa. Super. 1991)(holding that physician was not liable for acts of covering physician exercising independent medical judgment); Hannis v. Ashland State General Hosp., 123 Pa. Commw. 390, 554 A.2d 574, 578 (Pa. Super. 1987)(holding that physician had no duty to follow the care of patient after referring patient to a specialist).

Nevertheless, the fact that a family practitioner has referred the patient to a specialist does not, *in and of itself*, establish due care. Jones v. Montefiore Hospital, 418 A.2d 1361, 1367 n. 4 (Pa. Super 1980), reversed on other grounds, 494 Pa. 410, 431 A.2d 920 (1981). The law requires that “In spite of the consultation [with a specialist] the general practitioner still owes to the patient the duty to exercise his powers of observation and that degree of skill and learning possessed and exercised under similar circumstances by competent general practitioners. The case must be rare indeed in which the advice of a consultant will be an absolute defense to a doctor who closes his eyes completely and shelves that skill and caution which even a general practitioner must use.” Id., citing Marchese v. Monaco, 52 N.J. Super 474, 478, 145 A.2d 809, 817 (1958). The mere fact that a family practitioner acts on the advice of another physician, even though a specialist, does not constitute a defense to an action based on unskilled treatment. Marchese, supra, at 817.

The Superior Court in Jones stated, “...the court in Marchese held that a general practitioner who refers a patient to specialists must comply with the same standard of care as in all other circumstances: the reasonable man standard. We believe this holding is correct.” Jones, 418 A.2d at 1367 n.4. “That reasonable care would extend to recognizing deficiencies in the care provided by the specialist, if such recognition is within the skill and knowledge of a general practitioner.” Estate of Tranor v. Bloomsburg Hosp., 60 F. Supp. 2d 412 (M.D. Pa. 1999).

Although a referring general practitioner is not required to provide follow up care or otherwise to continue treating the patient, Hannis, supra, he or she must exercise reasonable care if he or she does. Estate of Tranor v. Bloomsburg Hosp., 60 F. Supp. 2d 412 (M.D. Pa. 1999). On the other hand, the Court in Jones noted that the converse of Marchese is also correct: “A general practitioner is not *necessarily* liable for failing to determine that the specialists to whom he referred a patient did not adequately treat the patient.” Jones, supra, at 1367 n. 4.

There is little case law on the subject in Pennsylvania, perhaps because it is clear that the issue is fact specific. In cases involving the interplay of a family practitioner and a specialist, a good attorney must examine several questions:

- 1) Did the referring physician have knowledge or reason to know that the specialist lacked the skill or training or was otherwise inappropriate to adequately treat the patient? In other words, was it a negligent referral? See Estate of Tranor, supra, (negligent referral to a specialist, *i.e.*, when the referring physician knows or has reason to know the specialist is incompetent, may be a basis for liability under general negligence principles). But see Weidner v. Nassau, 28 Pa. D. & C. 4th 269, 270 (Montg. Co. C. P. 1993)(stating that no court in Pennsylvania has recognized cause of action for negligent referral between physicians).
- 2) What was scope of the referral? For what specific purposes was the referral made? See e.g., Burroughs v. Worsham, 574 S.E. 2d 215, 223-24 (S. C. Ct. of App. 2002)(in case of failure to diagnose colon cancer, referral to general surgeon for treatment of an incisional hernia who testified he would have done further testing if asked, mere fact that defendant consulted specialist did not constitute defense under the circumstances)(relying upon Marchese).
- 3) What was the extent of the communication between the two physicians regarding the scope of the referral and what records were available to the specialist? Documentation of what the specialist was asked to do and what information he or she had available to him may be critical in determining whether liability in a particularly case will lie with the specialist, the referring physician or both. See Marchese, supra, at 145 A. 2d at 817 (a consultation obviously is not adequate unless the general practitioner makes sure the specialist knows all the essential facts...")
- 4) Did the referring physician provide follow-up care and what was the nature of that follow-up? See Federici v. Epstein, 1997 U.S. Dist. LEXIS 10073, *7, 1997 WL 399384 (E.D. Pa. July 10, 1997)(Plaintiff suffered profound bilateral hearing loss from improper and excessive use of a drug prescribed by another physician after referral from defendants, but “[m]erely because Dr. Hally initially prescribed the medicine does not preclude, as a matter of law, holding otherphysicians liable in negligence for the continuing use of the drug” where defendants were plaintiff's continuing treating nephrologists).
- 5) Did the specialist continue to follow the patient after he or she completed whatever examination, testing or treatment he was tasked with as a result of the referral? See Burroughs, supra.

Thus, it is evident that the fact that referral to a specialist took place does not end the inquiry in the medical malpractice case against the general practitioner. Care must be taken to explore fully the circumstances surrounding the referral before concluding that the family doctor may be exonerated.

This article was co-authored by

*Clifford A. Rieders, Esquire
Pamela Shipman, Esquire
Rieders, Travis, Humphrey,
Waters & Dohrmann
161 West Third Street
Williamsport, PA 17701
(570) 323-8711 (telephone)
(570) 323-4192 (facsimile)*

Cliff Rieders, who practices law in Williamsport, is Past President of the Pennsylvania Trial Lawyers Association and a member of the Pennsylvania Patient Safety Authority. None of the opinions expressed necessarily represent the views of these organizations.