



Haralampopoulos v. Kelly, 2014 CO 46 (Colo. 2014)

Topics Covered: Abusive Litigation Against Physicians

Outcome: Very Favorable

Issue

The issue in this case was whether, in a medical malpractice case, the trial judge properly allowed the jury to consider if the plaintiff's use of cocaine contributed to his injury.

AMA Interest

The AMA supports state medical societies in combating lawsuit abuse.

Case Summary

Vasilios Haralampopoulos went to a hospital emergency room for abdominal pain. Tests disclosed a cyst on his liver, and the surgeon on call ordered a needle biopsy of the cyst for the following day. Mauricio Waintrub, MD, the internist on call, took Mr. Haralampopoulos's medical history and admitted him for the biopsy.

The following day, Jason L. Kelly, MD, an interventional radiologist, performed the needle biopsy. Shortly after the cyst was pierced, Mr. Haralampopoulos suffered a severe allergic reaction, went into cardiac arrest, and stopped breathing. Before he could be revived, he suffered permanent brain injury. Dr. Kelly did not know what caused the allergic reaction.

About two weeks after this incident, Mr. Haralampopoulos's former girlfriend contacted Dr. Kelly. She told him that Mr. Haralampopoulos had used cocaine recreationally, including around the time of his emergency room visit.

The guardian for Mr. Haralampopoulos sued Drs. Kelly and Waintrub for medical malpractice. According to the complaint, Dr. Waintrub was negligent in not ordering tests or consulting a specialist before admitting Mr. Haralampopoulos for the needle biopsy. The complaint also alleged that Dr. Kelly was negligent in failing to consider the cause of the cyst and performing the biopsy without taking the appropriate precautions against an allergic reaction.

In a deposition, the guardian testified that, although he had never seen Mr. Haralampopoulos use cocaine, during the 1990s some mutual acquaintances had told him that Mr. Haralampopoulos was a cocaine user. By a motion *in limine* and then during the course of the trial, the guardian objected to testimony about Mr. Haralampopoulos's cocaine use. The objection was denied, and evidence of the cocaine use was presented to the jury.

The defense experts testified that cocaine is a known cause of cardiac arrest and Mr. Haralampopoulos's cocaine use was the most likely explanation for his injuries. The jury entered a judgment for the defendants.

The guardian for Mr. Haralampopoulos appealed to the Colorado Court of Appeals. The principal question on appeal was whether the trial judge had correctly allowed evidence of Mr. Haralampopoulos's cocaine use. In a split decision, the Court of Appeals ruled that the trial court had abused its discretion by allowing that evidence.

Dr. Kelly appealed to the Colorado Supreme Court which reversed the Court of Appeals and remanded to the trial court to enter judgment for the defendants. The Supreme Court held that evidence used to make a medical diagnosis is admissible, even if the diagnosis does not lead to a decision regarding treatment. As a result, Mr. Haralampopoulos was at least partially responsible for the adverse medical outcome that resulted from his own unhealthy behavior.

Litigation Center Involvement

The Litigation Center, along with the Colorado Medical Society (CMS) filed an *amicus* brief in the Colorado Supreme Court, to urge it to accept review. In addition, the Litigation Center and CMS filed an *amicus* brief on the merits.

Colorado Supreme Court brief regarding the petition for discretionary review

Colorado Supreme Court brief regarding the merits