



# Warren v. Dinter, 926 N.W.2d 370 (Minn. 2019)

Topics Covered: Abusive Litigation Against Physicians

## Outcome: Very unfavorable

### Issue

The issue in this case was whether a hospitalist, who discussed a patient's medical condition with a nurse practitioner but not with the patient herself, owed a duty of care to the patient.

### AMA interest

The AMA opposes lawsuit abuse against physicians.

### Case summary

The facts, although disputed, are recited most favorably to Justin Warren, the patient.

Warren presented to a medical clinic, complaining of abdominal pain, fever, chills, and other symptoms. A nurse practitioner, Sherry Simon, examined Warren, drew her blood, and performed various tests. Based on the examination and test results, Simon believed Warren needed to be admitted to a hospital.

The standard practice at the clinic, when a clinic employee believed a patient needed hospitalization, was for the clinic employee to call Fairview Medical Center (the closest hospital), speak with a hospitalist, and have the hospitalist make the admission determination. Neither Simon nor any other clinic employee had a contract with Fairview personnel or admitting privileges at Fairview.

In accordance with this practice, Simon spoke with Richard Dinter, MD, a hospitalist employed by Fairview. Simon described Warren's symptoms to Dr. Dinter, who told Simon that Warren did not need to be hospitalized. Simon then called her collaborating physician, Jan Baldwin, MD and discussed Warren's condition as well as Dr. Dinter's recommendation with her. Dr. Baldwin concurred that Warren did not require hospitalization.

Warren left the clinic, and she was not hospitalized. The next day, she died of sepsis brought on by a staph infection.

Warren's estate sued Dr. Dinter and Fairview. On the defendants' motion for summary judgment, the trial court found that the defendants did not owe a duty of care to Warren. Summary judgment was granted to the defendants. The estate appealed.

The Court of Appeals, in a split decision, found that there was no physician/patient relationship between Warren and Dr. Dinter. Moreover, it observed, it was desirable policy to promote

informal consultations among health care professionals. If physicians feared that such consultations could lead to malpractice liability, they might refuse to take the calls. Accordingly, although the Minnesota Supreme Court had not ruled in such a case, the summary judgment was affirmed.

Warren appealed to the Minnesota Supreme Court. On April 17, 2019, the Supreme Court, in a split decision, found that physicians can have a duty to a patient, even without a patient/physician relationship. If harm to the patient could foreseeably arise from the physician's action (or inaction), the physician could be liable for medical malpractice. The Supreme Court recognized that the majority of jurisdictions that have addressed this issue would probably have decided the case differently. It reversed the Court of Appeals.

### **Litigation Center involvement**

The Litigation Center, along with the Minnesota Medical Association and the Minnesota Hospital Association, filed an *amicus* brief on behalf of Dr. Dinter and Fairview with the Minnesota Supreme Court.

Minnesota Supreme Court brief