



# Davis v. South Nassau Communities Hospital, 26 N.Y.3d 563 (NY Ct.App. 2015)

Topics Covered: Abusive Litigation Against Physicians

## **Outcome: Very Unfavorable**

### **Issue**

The issue in this case is whether a physician, a physician assistant and a hospital could be liable to a third party who was injured by their patient, allegedly because they failed to warn the patient that she should not drive her car while under the influence of a narcotic medication.

### **AMA Interest**

The AMA supports the state medical societies in combating lawsuit abuse.

### **Case Summary**

Lorraine Walsh went to the South Nassau Communities Hospital emergency room complaining of abdominal pain. She was examined by an emergency room physician and by a physician assistant, who administered medications to reduce Ms. Walsh's pain. These included a narcotic medication. After a few hours, Ms. Walsh was discharged. Allegedly, she was not advised of the soporific effects of her medications.

While driving home from the hospital, Ms. Walsh became unconscious as a result of her medications. Her car crossed a double yellow line and struck a bus operated by Edwin Davis, who was traveling in the opposite direction.

Mr. Davis and his wife sued the physician, the physician assistant, and the hospital for medical malpractice. The defendants moved to dismiss for failure to state a cause of action, because their duty of medical care was owed only to their patient, Ms. Walsh, and not to a third person, Mr. Davis. The trial court granted their motion, and the Appellate Division affirmed. The case was then appealed to the New York Court of Appeals, the highest court in New York.

On December 16, 2015, the Court of Appeals reversed. In a split decision, it held that although physicians generally owe a duty of care only to their patients and not to third persons, it would make an exception in this case. The burden on the physician of warning about the side effects of the medication were small, and the number of persons against whom the physician might owe liability was limited.

### **Litigation Center Involvement**

The Litigation Center, along with the Medical Society of the State of New York filed an amicus brief in support of the defendants.

Court of Appeals of the State of New York brief