



Heinrich v. Sweet, 308 F.3d 48 (1st Cir. 2002)

Topics Covered: Professional Liability, Abusive Litigation Against Physicians, Clinical Trials and Informed Consent

Outcome: Very Favorable

Issue

The primary issues in this case were (a) whether the district court correctly applied the Massachusetts statute of limitations to uphold a jury's finding of liability against Dr. William Sweet based on actions that occurred almost forty years prior to trial, and (b) whether a jury's finding of informed consent should have precluded a simultaneous verdict of fraudulent concealment.

AMA Interest

The AMA strives to avoid the expansion of liability theories against physicians, which can lead to abusive malpractice litigation.

Case Summary

Dr. Sweet, a world famous physician, was the chief neurosurgeon at Massachusetts General Hospital ("MGH"). In the late 1950's and the early 1960's, he conducted a medical experiment, known as boron neutron capture therapy. The experiment was approved in advance by the Executive Committee of the MGH Medical Staff, the MGH Board of Trustees, and the Biomedical Advisory Committee at Massachusetts Institute of Technology ("MIT") (composed of representatives of MIT and seven other prestigious institutions, including three Boston area medical schools). Candidates for the experiment were terminally ill patients with fast growing brain tumors. After their injection with boron, a neutron beam, derived from an MIT nuclear reactor irradiated these patients. Both MGH and MIT closely supervised the clinical trials, which the federal government partially funded and also monitored.

Unfortunately, the procedure was, at least at times, painful. Moreover, the radiation damaged healthy brain tissue as well as the tumors. Ultimately, the experiment was unsuccessful, and all of the patients died.

In 1995, the President's Advisory Committee on Human Radiation Experiments issued an analysis of human radiation testing commencing in the 1940's. When the study was reported in the media, Evelyn Heinrich, the widow of George Heinrich, remembered that Dr. Sweet had conducted radiation treatments on her husband in 1961. She sued Dr. Sweet, MGH, MIT, the United States of America, and several other defendants. After she filed suit, she was joined by Henry M. Sienkewicz, the son of another of Dr. Sweet's patients, Eileen Sienkewicz. The

plaintiffs contended that, although Dr. Sweet may have advised his patients of the risks of the procedure, he did not tell them that the experiment was unproven and had no reasonable probability of success. Thus, the plaintiffs alleged that either the procedure itself or the manner in which it was performed was negligent. Dr. Sweet was 89 years old and suffering from Parkinson's Disease at the time of trial, so he did not testify in his own behalf. He died shortly thereafter.

After a twenty-day trial, most of the defendants were either dismissed on motion or found not liable. However, the jury found in favor of the plaintiffs and against Dr. Sweet for \$4,750,000. A portion of this sum was compensatory damages, and a portion was punitive damages. The jury did find, though, that the patients' consent to the procedure had been informed. The trial court upheld the finding of liability against Dr. Sweet, summing up the case against him as follows:

"In short, Sweet well knew during his care of these patients that his [boron neutron capture therapy] treatments were not helping them, and, in fact, were causing severe side effects unrelated to the progressive effect of the fatal brain tumors. He pressed ahead anyway, believing in complete good faith that such experimentation on dying patients held out hope for other cancer victims."

Due to certain statutory limitations, the court reduced the award against Dr. Sweet to \$830,000. Judgment was also entered against MGH. Both sides appealed.

The United States Court of Appeals for the First Circuit reversed. It held, primarily, that the evidence against the defendants was insufficient to prove negligence or damages for wrongful death. The plaintiffs' case was built upon the conclusions that they reached in hindsight, rather than the state of medical science available at the time of the experiments. The court also agreed with the argument, raised in the amicus brief, that the jury verdicts for the defendants on the informed consent count precluded liability on the other counts.

Litigation Center Involvement

The Litigation Center and the Massachusetts Medical Society filed an amicus curiae brief on Dr. Sweet's behalf in the First Circuit.

United States Court of Appeals for the First Circuit brief