LAW & MEDICINE

Causation

Question: An internist prescribed increasing doses of cholestyramine for a patient with hypercholesterolemia with resulting constipation. The constipation worsened after codeine was used to relieve abdominal pain. A month later, the patient experienced severe abdominal distress, and a barium enema revealed a perforated sigmoid colon. She underwent emergency surgery, and the colon was found to be distended, with impacted feces the size of tennis balls. She sued the internist, alleging that his negligence in prescribing the various medications led to the intestinal perforation. Which of the following statements best fits the situation?

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A. The internist will lose the case because he should have chosen a statin over a bile acid sequestrant.

B. The internist was negligent when he prescribed codeine in combination with cholestyramine.

C. The patient was fully aware that constipation is a side effect of these medications, and so assumed the risk of injury.

D. The patient has not proved that the bowel perforation was caused by the internist's negligence.

E. The barium enema could have caused the perforation, and the proper party to sue is the radiologist.

Answer: D. Choices A and B may reflect the general medical view, but the use of these approved drugs is determined by the individual clinical situation and may not constitute substandard care. Choice C is incorrect, as the patient can hardly be said to have accepted the risk of a bowel perforation. This hypothetical case is adapted from *Roskin v. Rosow* (#301356, San Mateo Cty Super. Ct. [Cal. 1987]), which illustrates the importance of the causation factor in tort litigation. The defendant contended that the plaintiff reported only mild constipation, and that the bowel was perforated during the barium enema. The plaintiff demanded $500,000, which was then reduced to $300,000; the defendant offered $100,000. The jury found for the defendant because the plaintiff did not satisfy the causation element. The radiologist was apparently not sued, perhaps because the statute of limitations had lapsed.

To prevail in a medical negligence lawsuit, a plaintiff must prove causation even after establishing that the doctor owes a duty of care and that there has been a breach of the standard of care. There are two types of causation, factual cause and proximate cause, and both must be proved. Factual cause is also known as cause-in-fact, actual cause, or physical cause. It is established with the "but-for" test: "The defendant's conduct is a factual cause of plaintiff's injuries if plaintiff's harm would not have occurred but for defendant's conduct," or "the defendant's conduct is a factual cause of plaintiff's injuries if plaintiff's harm would not have occurred without defendant's conduct" (Steven Finz, 1998, "Sum & Substance Audio on Torts").

Whereas factual cause is relatively easy to ascertain, proximate cause is not. One Court of Appeals has stated: "A plaintiff proves proximate cause, also referred to as legal cause, by demonstrating a natural and continuous sequence of events stemming from the defendant's act or omission, unbroken by any efficient intervening cause, that produces an injury, in whole or in part, and without which the injury would not have occurred" (*Barrett v. Harris,* 86 P.3d 954 [Ariz. 2004]).

The key inquiry in proximate cause analysis is whether the injury was foreseeable rather than remote. If the defendant could not reasonably have foreseen the resulting harm, the defendant escapes liability. Suppose Mr. A negligently broke the leg of a pedestrian as the result of careless driving. Unfortunately, the injury was worsened by a surgeon's intervening negligence. Because surgical malpractice is foreseeable, the surgeon's negligence is said to be a concurring cause, and Mr. A, the original tortfeasor, becomes liable for both the original and the aggravated injury (the surgeon is, of course, also liable).

To analyze causation issues systematically, one has to identify factual cause issues separately from proximate cause issues. To make matters worse, the term "legal cause" is sometimes used interchangeably with "proximate cause." Reflecting this complexity, the California Supreme Court now disallows confusing jury instructions regarding proximate cause, requiring instead that the jury be simply directed to determine whether the defendant's conduct was a contributory factor in the plaintiff's injury (*Mitchell v. Gonzales*, 819 P.2d 872 [Cal. 1991]). ■

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