

## **The Duty to Provide for Aftercare in the Hospital Emergency Room**

The Court of Appeal has released its decision in *Rollin v. Baker* 2010 ONCA 569 (CanLII). The result is a reaffirmation of its decision in *Tacknyk v. Lake of the Woods Clinic*, [1982] O.J. No. 170 on the standard of care in after care.

Rollin broke her wrist in a fall suffering a classic injury known as a Colle's fracture. She went to the hospital where her wrist was reset with closed reduction followed by the application of a cast. Unfortunately the wrist alignment did not remain in place and as various important follow up steps were not taken Rollin went on to suffer pain, disfigurement and limitations even after two corrective surgeries. She sued the emergency room physician.

The trial judge found that the defendant fell below the standard of care by failing to follow proper x-ray procedures, failing to provide sufficient information about after-care, and failing to ensure either that Rollin's family doctor was able to take responsibility for her care or that she was provided with an appropriate back-up. No appeal was taken from this first finding of negligence. The defendant appealed the other findings of negligence as well as the issue of causation.

The Court of Appeal noted that the trial judge properly identified that the obligation of a surgeon to his patient does not stop with the successful completion of the operation. A continuing duty rests upon him or her to provide appropriate post-operative care or advice and direction as to such care. Here, there were two aspects of the surgeon's duty to his patient in relation to after-care – the information component and the capable hands component.

### **The information component**

The Court of Appeal held that Rollin was not provided with the information needed to put her in a position to pursue a proper course of treatment. In terms of the information component, the standard of care required that Rollin be advised in clear terms that there was a high risk that the bones in her wrist would slip inside the cast during the first three or so weeks following the surgery and that it was therefore important that, during that period of time, she ensure her wrist was closely monitored through regular x-rays. She was only advised to obtain an x-ray one week following the reduction and to see her family doctor. She was not told the importance of the time sensitive need for continuing monitoring. Rollin left the hospital ill-equipped to ensure optimal recovery from surgery.

### **The capable hands component**

The Court of Appeal concluded that it was left with no clear evidence as to the standard practice with respect to the obligations of an emergency room doctor in terms of ensuring that the patient has access to a doctor, capable of performing

the necessary steps to ensure optimal recovery, as it rejected the trial judge's finding of what constituted recognized practice since the finding was based on a preference of the evidence of one expert over another solely on the basis that the former had treated the patient. This was an irrelevant ground. The court did not resolve the conflicting expert opinions on this issue. However this did not change the outcome.

The standard of care regarding follow-up treatment requires a consideration not only of the patient's medical circumstances but also of what is "realistic and reasonable".

The essence of a physician's duty is to ensure that the patient is adequately equipped to obtain her own after-care. How this responsibility is to be met – the standard of care in the circumstances - will involve a mix of factors. The first question that arises in this context is whether it is reasonable, in the circumstances of the particular patient and the particular required after-care procedures, for the doctor to leave the responsibility with the patient by informing the patient of the necessary steps to be taken and impressing upon her the importance of those steps. Where the patient's ability to follow instructions does not appear compromised and there is no doubt that a reasonable person could be expected to carry out the steps, the burden upon a physician with respect to follow-up, decreases. In other words, the capable hands into which a patient must be placed can be, if the circumstances permit, her own. A continuing duty rests upon the surgeon to provide adequate post-operative care or to give adequate advice and direction as to such care.

Rollin was not given rudimentary information regarding the severity of her condition and the important steps to be taken concerning her after-care. This failure deprived her of the tools necessary for her to obtain adequate care for herself. An important factor in coming to this conclusion was that the displacement could only be detected by having an x-ray taken: it was not something Rollin could detect. Therefore, the defendant's failure to inform Rollin as to the seriousness of her fracture and the time-sensitive need for its monitoring makes his failure to ensure she was placed in the care of a competent doctor a breach of any reasonable standard of care.

Of singular note was the rejection of the argument made by the appellant that due to the demands of the emergency room department that a lesser obligation should be placed on the shoulders of an emergency room physician in meeting the requirements of aftercare. The court refused to accept that a specific policy can be established that applies to referrals made by emergency room doctors.