No. 125150

In the Supreme Court of Illinois

SUSAN STEED, as Independent Administrator
of the Estate of Glenn Steed, Deceased,

Plaintiff-Appellee,

v.

REZIN ORTHOPEDICS AND SPORTS MEDICINE, S.C.,
an Illinois Corporation,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois,
Third Judicial District, No. 3-17-0299.
There Heard on Appeal from the Circuit Court of Will County, Illinois,
County Department, Law Division, No. 2010 L 340.
The Honorable **Theodore J. Jarz**, Judge Presiding.

AMICUS CURIAE BRIEF OF ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE SUSAN STEED

STEPHEN S. PHALEN
(steve@phalenlaw.com)
LAW OFFICES OF STEPHAN S. PHALAN
33 North Dearborn Street
Chicago, Illinois 60602
Telephone: (312) 445-4909

Attorney for Amicus Curiae
Illinois Trial Lawyers Association

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Carolyn Taft Grosboll
SUPREME COURT CLERK

COUNSEL PRESS · (866) 703-9373

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INTRODUCTION

The Illinois Trial Lawyers Association submits this *amicus curiae* brief in support of plaintiff-appellee Susan Steed. This case involves negligent office administration and management. Defendant-appellant's office staff failed to follow the treatment plan ordered by Glenn Steed's doctor that included a follow-up appointment two weeks later. *Steed v. Rezin Orthopedics and Sports Medicine,* 2019 IL App (3d) 170299-U, ¶¶ 4, 6. The office staff scheduled the appointment for three weeks later. *Id.* ¶ 4, 9. Nineteen days after the negligent scheduling, Mr. Steed died from an undiagnosed and untreated pulmonary embolism. *Id.* ¶¶ 4,13, 31.

No patient should die because a receptionist fails to follow the doctor's order for scheduling the patient's follow-up appointment. In other words, nobody should die from administrative errors. Unfortunately, health care errors are common. A 2017 survey conducted by the University of Chicago National Opinion Research Center found that 21% of patients reported experience with medical errors. NORC at the University of Chicago and IH/NPSF Lucian Leape Institute. *Americans' Experience with Medical Errors and Views on Patient Safety.* Cambridge MA. Institute for Healthcare Improvement and NORC at the University of Chicago: 2017. These errors often cause lasting impact on the patient's physical health, emotional health, financial well-being or family relationships. *Id.* p. 2.

The "fundamental policies of tort law" are to "to compensate the victim, deter negligence and to encourage due care." *Siemieniec v. Lutheran General Hospital,* 117 Ill. 2d 230, 258 (1987). Despite what the hospital *amici* argues in this case, liability for

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negligent conduct gives tortfeasors "appropriate incentives to engage in safe conduct." *Zokhrabov v. Park,* 2011 IL App (1st) 102672 ¶ 8 (2011).

It is uncontested that medical office staff, like the receptionists in this case, must follow the doctor's orders to protect the patients. *Steed*, ¶ 28. By affirming the appellate court's ruling that office staff must implement a doctor's treatment plan exactly as ordered, this court will encourage due care and deter avoidable, negligence, patient injury and wrongful death. Affirming the appellate court gives medical facilities incentive to make sure that their office staff implement doctors' treatment plans as ordered. The chance for future fatal administrative errors will be reduced. This *amicus* brief is intended to offer a larger perspective on these issues and their significance that may not be described in detail by the parties' briefs.

ARGUMENT

Doctors prescribe treatment plans and write orders. Medical office staff, in this case receptionists, are not trained, licensed medical professionals. They lack the requisite expert knowledge, skill and authority to decide what medical care a patient requires and when and how that treatment should be provided and when the patient should return to the doctor. However, the business of modern medicine requires doctors to rely upon support staff to implement their orders. Patients must also rely on the staff to fulfill their doctors' orders.

This delegation of responsibility is safe only when the staff implements the doctor's treatment plan as ordered. Office staff must have no discretion when implementing doctors' orders. Doctors' orders including scheduling of follow-up appointments must be implemented as written. To allow otherwise greatly increases the

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risk of patient harm and even death. If the unqualified office staff is allowed to exercise its own discretion in how not to implement medial orders, then patients and doctors will have no guarantee that necessary medical care is provided on time, if at all.

I. Affirming *Steed* Will Promote Patient Safety and Deter Future Deaths Caused by Administrative Negligence.

Dr. Stephen Treacy, an employee of defendant-appellant, Rezin Orthopedics and Sports Medicine was Glenn Steed's treating physician. *Steed,* ¶ 4. Dr. Treacy's custom and practice was to note the date he wanted his patient to return on the bottom of the patient's "super bill" and give the super bill to the receptionist. *Id.* ¶ 6, 27. "The receptionist would then schedule the appointment ***in accordance with Dr. Treacy's instructions***." *Id.¶* 6. (emphasis supplied). The appellate court determined "the evidence regarding the standard of care of a reasonably careful orthopedic facility was clear." *Id. ¶* 27. That standard of care requires a reasonably careful orthopedic facility to "***schedule patient follow-up appointments as instructed in the super bill.***" *Id.* (emphasis supplied).

> The evidence established, through physician testimony, office protocol, administrative scheduling documents and custom and practice, that the standard of care of a "reasonably careful" treating institution was to follow the written order on the super bill. That evidence was not contradicted. The evidence also demonstrated that Rezin Orthopedics breached the standard of care.

*Id. ¶*28.

Affirming the appellate court's ruling that Rezin's receptionists were required to schedule Glenn Steed's follow-up visit in accordance with Dr. Treacy's instructions will further tort law's fundamental purposes of deterring negligence and encouraging due care. The chance another patient wrongfully dies from administrative mistake will be reduced. Medical offices will be reminded that support staff must implement doctors' orders as

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written and that office policies established to promote patient safety must be followed. Affirming the appellate court will also provide patients and doctors with increased confidence that treatment will be received as ordered.

In contrast overruling the appellate court and granting lay office staff discretion to decide how to implement doctors' treatment plans would lead to chaos. Physician orders would be become mere hopes and wishes. This is obviously contrary to Illinois public policy promoting patient safety.

Patient safety goals dictate that medical offices must have and enforce office policies requiring support staff to implement treatment as instructed by the doctor. Affirming *Steed* will work to accomplish these goals.

II. *Steed* Will Not Cause a "Race to the Bottom."

Hospital *amici* argues that affirming the appellate court will lead to "unintended consequences" and "a race to the bottom" in patient care. This cynical argument audaciously suggests that doctors will be intentionally less careful and less diligent to avoid potential liability and that this perceived problem "of unintended consequences" can only be remedied by keeping the standard of care bar as low as possible, at a "bare minimum." Dr. Treacy, who presumably had his patient's best interests in mind, decided Mr. Steed should return to his office in two weeks. Nonetheless hospital *amici* asserts because of *Steed,* Dr. Treacy and all other doctors would change their tune and will now decide to their patient's detriment that: "My professional judgment is my patient should return in two weeks but I better say four so I don't get sued". The "unintended consequences" argument asks this court to join in and accept this cynical leap. Instead, common sense and simple reasonableness tells us that *Steed* will encourage careful physicians to double

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check with their staff to confirm that their orders were actually carried out rather than persuading doctors to "race to the bottom" and jeopardize their patients' health and well-being. Encouraging physicians to follow up with staff on the status of their orders of course will promote patient safety and place little if any additional burden on doctors.

Additionally affirming liability in this case will not place undue burden on medical offices. Offices will simply be expected to follow the well-established law that doctors practice medicine - not receptionists - and it must be doctors who determine what care and treatment the patient needs and when it should be provided.

III. The Appellate Court Correctly Determined this is not a Professional Negligence Case.

Employees of defendant-appellant Rezin Orthopedics negligently managed and administered Glenn Steed's medical care. *Steed,* ¶ 27. Non-professional employees failed to follow established office policy and procedure. *Id.* This failure caused the death of one of the office's patients. *Id.* ¶ 31. The tortfeasors were not licensed professionals, they were staff employees. *Id.* ¶ 4. Liability here arises not from professional negligence but from general negligence - the receptionists' failure to follow established policies and procedures. *Id.* ¶¶ 27-28. The question to be answered is not if the receptionists deviated from a professional standard of care, but were they negligent in failing to fulfill their administrative duty to carry out Dr. Treacy's treatment plan. *Id.* ¶ 27-29.

Defendant-appellant hopes to avoid responsibility for the death of its patient by asking this court to convert plaintiff's case to a professional negligence action and then look toward defendant-appellant's expert opinion testimony to support a not guilty verdict. *Id.* ¶ 29. The appellate court correctly rejected this argument. "We have been asked to evaluate whether a verdict should have been entered against Rezin Orthopedics. That

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question requires the assessment of a ***general standard of care*** based on a reasonably careful orthopedic facility.*"* *Id.* ¶ 29. (emphasis supplied). This general standard of care is not established by expert opinions but instead through "physician testimony, office protocol, administrative scheduling documents and custom and practice." *Id. ¶* 28. This evidence proved that the standard of care for a reasonably careful treating institution required office staff to follow written orders received from the practice's doctors. This evidence was not contradicted. *Id.*

Dr. Treacy's order instructed the receptionists to schedule the appointment for two weeks out. The receptionists were obligated to follow this order. They lacked the professional knowledge, expertise and authority to decide to do otherwise. Their responsibility was one of action not discretion or judgment. There was no question the receptionists failed to follow Dr. Treacy's order. This failure violated the standard of care a reasonably careful orthopedic practice owed to Mr. Steed in the management and administration of his medical care. Therefore, Steed is entitled to judgment *n.o.v.*

IV. Defendant's Expert Testimony Was Irrelevant and Unnecessary to Judge Rezin's Administrative Errors.

At trial, defendant-appellant presented expert opinion testimony that Steed's three-week return chosen by the receptionists complied with the professional standard of care owed by a reasonably careful doctor. *Steed. ¶¶* 15, 16, 29. The appellate court correctly found this testimony was not relevant to the "assessment of a general standard of care based on a reasonably careful orthopedic facility." *Id. ¶* 29. Instead, that general standard of care was clearly established by uncontested testimony and evidence of office policies, administrative scheduling documents and custom and practice. *Id. ¶¶* 27, 28.

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This court has previously recognized that institutional negligence can be determined without expert testimony in some cases. *Jones v.Chicago HMO,* 191 Ill. 2d 278 at 296.

> *Darling* and its progeny have firmly established that, in an action for institutional negligence against a hospital, the standard of care applicable to a hospital may be proved by a number of evidentiary sources and ***expert testimony is not always required.*** *Advincula,* 176 Ill.2d at 29-34, *Greenberg,* 83 Ill.2d at 293-94, *Darling* 33 Ill.2d at 330-33. We likewise conclude, that in an action for institutional negligence against an HMO, the standard of care applicable to an HMO may be proved through a number of evidentiary sources and ***expert testimony is not necessarily required. Accordingly, expert testimony concerning the standard of care required of an HMO is not a prerequisite to Jones' claim.***

Id. 298. (emphasis supplied).

This court's reasoning in *Jones* applies in this case. Plaintiff-appellee Steed was not required to rely on expert standard of care testimony. She instead proved her case through Rezin's office policies and custom and practice. This evidence was not contradicted and conclusively proved the standard of care owed by a reasonably careful orthopedic practice. Rezin Orthopedics clearly failed to satisfy this standard of care. Its failure caused Mr. Steed's death. The appellate court properly disregarded defendant-appellant's irrelevant expert professional standard of care testimony. Therefore Steed is entitled to judgment *n.o.v.*

CONCLUSION

For the reasons herein stated *Amicus Curiae* respectfully requests that this court affirm the appellate court and remand this case to the trial court to enter judgment in favor of Steed and against Rezin Orthopedics and to hold a new trial on the issue of damages.

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Respectfully Submitted,

/s/Stephen S. Phalen

Stephen S. Phalen on behalf of Illinois
Trial Lawyers in support of Plaintiff-Appellee

Stephen S. Phalen
Law Offices of Stephen S. Phalen LLC
33 N. Dearborn St. Chicago, IL 60602
312/445-4909
steve@phalenlaw.com
ARDC # 6191842

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate or service and those matter to be appended to the brief under Rule 342(a), is 7 pages.

/s/Stephen S. Phalen
Stephen S. Phalen

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NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

SUSAN STEED, etc.,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 125150
	)	
REZIN ORTHOPEDICS AND SPORTS MEDICINE, S.C., an Illinois Corporation,	)	
	)	
Defendants-Appellant.	)	

The undersigned, being first duly sworn, deposes and states that on June 16, 2020, there was electronically filed and served upon the Clerk of the above court the *Amicus Curiae* Brief of Illinois Trial Lawyers Association in Support of Plaintiff-Appellee. Service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

Martin J. Lucas
Lauren Levin Budz
MDR LAW LLC
180 North LaSalle Street, Suite 3650
Chicago, Illinois 60601
marty@mdr-law.com
florina@mdr-law.com
lauren@mdr-law.com

Stephen A. Rehfeldt
Marcelline DeFalco
MULHERN REHFELDT & VARCHETTO, P.C.
211 South Wheaton Avenue, Suite 200
Wheaton, Illinois 60187
srehfeldt@mrvlaw.com
mdefalco@mrvlaw.com
mwaldow@mrvlaw.com

Robert E. Elworth
HEPLERBROOM, LLC
30 North LaSalle Street, Suite 2900
Chicago, Illinois 60602
relworth@heplerbroom.com

J. Timothy Eaton
TAFT LAW
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
Teaton@taftlaw.com

Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Amicus Curiae Brief bearing the court's file-stamp will be sent to the above court.

/s/ Stephen S. Phalen
Stephen S. Phalen

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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/s/ Stephen S. Phalen
Stephen S. Phalen

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