

Does a Plaintiff's Suicide Bar His or Her Estate from Recovering Damages in a Medical Malpractice Case?

By: Jared R. Green and Elie A. Maalouf¹

I. Introduction

In a recent medical malpractice case, the defendant moved for summary judgment, arguing that the plaintiff's estate could not recover tort damages because the plaintiff's death by suicide was unforeseeable to the defendant medical provider. Although this matter resolved at mediation before the court ruled on the issue, it is our view that New Hampshire law does not prohibit pre-death or post-death damages where the decedent's suicide was causally related to the harm that resulted from the defendant's negligent conduct. This article will review the New Hampshire law on the subject, and it will discuss our objection to the defendant's motion.

II. Background

The plaintiff's decedent in this action took his own life because the defendant's medical negligence made his continued existence unbearable. Shortly after learning that the pain, disfigurement, inability to eat solid foods, and inability to communicate orally, which we alleged resulted from the defendant's egregious errors, were likely to be permanent, the decedent lost all hope and killed himself. There was no evidence in the record suggesting any other reason for the decedent's suicide. The defendant moved for summary judgment arguing that the plaintiff's claims were barred as a matter of law because the suicide was unforeseeable and thus broke the chain of causation between the defendant's malpractice and the decedent's death.

III. Pre-Death Damages New Hampshire Law

As an initial matter, we argued that even if the defendant's legal argument was true, the plaintiff had stated valid claims for his months of **pre-death** pain and suffering, loss of enjoyment of life, medical expenses, and lost wages. We contended that the defendant was not entitled to summary judgment because the plaintiff had established a valid medical negligence claim with a variety of recognized damages, which included, but were not limited to, the harm the decedent's estate experienced when he died. For example, as a result of the defendant's failure to provide reasonable medical care, the decedent experienced physical pain, emotional distress, disfigurement, and loss of enjoyment of life, and he incurred medical expenses and lost wages, **all before he died**. Since New

Hampshire's wrongful death statute permits a decedent's estate to recover damages for his pre-death losses, even if his subsequent death was unrelated to the negligently-caused injury, we argued there was no basis for entering summary judgment terminating this case. ²

Since it was undisputed that the defendant medical provider was the plaintiff's treating physician at the time of the injury, the resulting physician-patient relationship created a legal duty to exercise reasonable care in treating the decedent.³ The plaintiff had disclosed expert testimony demonstrating that the defendant failed to comply with his duty and, as a result, the decedent experienced a variety of painful, disfiguring, and debilitating complications, which ultimately led him to take his own life. Thus, even if the court accepted the defendant's arguments regarding the availability of **post-death** damages, there was no reason why the plaintiff should be denied recovery for the decedent's **pre-death** damages.

IV. Post-Death Damages

We also argued that the plaintiff's **post-death** damages were not barred by current New Hampshire law. First, we pointed out that the defense relied entirely on dicta from earlier cases expressing a "general rule" that suicide is unforeseeable. In *McLaughlin v. Sullivan*,⁴ our Supreme Court stated: "[a]s a general rule, negligence actions seeking damages for the suicide of another will not lie because the act of suicide is considered a deliberate, intentional and intervening act which precludes a finding that a given defendant, in fact, is responsible for the harm."⁵ But the court immediately added, "[i]n recent years, however, tort actions seeking damages for the suicide of another have been recognized . . . where the defendant is found to have actually *caused* the suicide . . ."⁶ The court explained that, as of 1983, suicide claims had been allowed "where a tortious act is found to have caused a mental condition in the decedent that proximately resulted in an uncontrollable impulse to commit suicide, or prevented the decedent from realizing the nature of his act."⁷ Just two years later, the court backed off the "general rule" it referenced in *McLaughlin*, when it wrote, "**Early cases** denied recovery for wrongful death by suicide on the basis that suicide, **apparently** as a matter of law, is an intervening, independent agency which breaks the causal connection between the wrongful or negligent act and the death."⁸

We contended that the dicta relied upon by the defense was inapplicable here because the plaintiff's suicide **was caused by** the defendant's medical negligence, a recognized exception to the "general rule," and it was foreseeable to the defendant, when he treated the plaintiff, that, if he failed to comply with the applicable standard of care, his patient may experience the types of physical and psychological harm that have

been shown to cause suicidal behavior. In fact, an article published a few years earlier in the official journal of the defendant's specialty association warned physicians like the defendant of that very risk. Thus, we argued that this case is a perfect example of why the dicta relied upon by the defense has been extensively criticized, rejected by other courts, and, most importantly, contradicted by our Supreme Court's most recent suicide cases.⁹

We explained that rather than being barred as a matter of law, the plaintiff's claims for **post-death** damages raise a garden variety causation issue, which New Hampshire law emphatically leaves to the jury. "In a medical negligence action, the plaintiff has the burden of proving: (1) the standard of reasonable professional practice in the medical care provider's profession or specialty; (2) the medical care provider failed to act in accordance with such standard; and (3) as a proximate result thereof, the injured person suffered injuries, which would not otherwise have occurred."¹⁰ The third prong, which was at issue here, "reflects the plaintiffs' burden at common law to produce sufficient evidence that [the medical care provider's] negligence proximately caused the patient's injury."¹¹

"The concept of proximate cause includes both the cause-in-fact and the legal cause of injury."¹² The inquiry focuses on whether the defendant's negligence caused or contributed to cause the harm, "not on whether the defendant's negligence was the sole cause or the proximate cause . . ."¹³ "Conduct is the cause-in-fact of an injury if the injury would not have occurred without that conduct,"¹⁴ and conduct is a legal cause of harm if the actor's conduct is a substantial factor in bringing about the harm.¹⁵ "The law in this State is that causation is an issue of fact. The weighing of substantive evidence is the very essence of the jury's function. Consequently, the trial judge has been granted little discretion to withdraw questions of substantive fact from the jury's consideration. . . ."¹⁶ Our Supreme Court has reiterated this point many times.¹⁷

In our case, we highlighted the abundant evidence in the record to establish that the defendant's medical negligence was both a cause-in-fact and a legal cause of the plaintiff's suicide. Since the defense did not point out, much less conclusively establish, the presence of some unrelated stressor or traumatic event that occurred between the defendant's negligence and the plaintiff's suicide to support an alternative explanation for the plaintiff's death, we argued that the chain remained unbroken and the defendant's motion should be denied.

V. Conclusion

New Hampshire's tort system is in place to serve two primary goals: to deter unsafe behavior and to make an innocent victim who has been harmed by unsafe conduct whole.¹⁸ Wrongful death damages serve the tort system's compensatory purpose by "address[ing] the injury to the person and to the estate of the deceased."¹⁹ Damages available in a wrongful death action therefore restore the person wronged as nearly as possible to the position he would have been in if the wrong had not been committed.²⁰ Under New Hampshire law, where, as here, the defendant owes an acknowledged duty of care to avoid harming someone, the question whether the defendant is responsible for post-death damages, such as loss of enjoyment of life from death through the decedent's normal life expectancy, lost earning capacity for the decedent's work life expectancy, and funeral expenses, turns on whether or not the decedent's death was causally related to the harm that resulted from the defendant's unsafe conduct. Allowing a plaintiff's estate to recover post death damages where the plaintiff's suicide was caused by the defendant's negligence is consistent with New Hampshire law and it satisfies the goals of our state's tort system.

¹ Jared Green and Elie Maalouf are attorneys at Abramson, Brown & Dugan in Manchester, New Hampshire. Their firm's practice focuses on representing plaintiffs in medical malpractice and personal injury litigation.

Jared started working with Abramson, Brown & Dugan in 1992 while still attending law school. In the subsequent thirty years, he has represented injured people and their families in some of New Hampshire's most complex and tragic cases, including victims of clergy sexual abuse and victims of the Hepatitis C outbreak. Most recently, Jared wrote the Brief for the Plaintiff and presented the oral argument before the New Hampshire Supreme Court in *Chartier v. Apple Therapy, Inc. et al.*—a decision in which the Court clarified the law regarding bystander emotional distress claims in the context of medical negligence cases.

Elie joined Abramson, Brown & Dugan in 2017 after graduating from Suffolk University Law School, where he served as an editor on the Suffolk University Law Review. Since then, Elie has represented numerous medical negligence victims and their families in cases involving catastrophic injuries and wrongful death. In addition to his practice, Elie serves on the New Hampshire Association for Justice's Board of Governors and Publications Committee. He is also the editor of the Verdicts and Settlements Report in the New Hampshire Trial Lawyer's Quarterly.

² See *Trovato v. Deveau*, 143 N.H. 523, 529 (1999) (New Hampshire's wrongful death act allows an estate to recover for the decedent's pre-death losses when the death was unrelated to the injury and to recover for both the decedent's pre-death losses and the estate's post-death losses when the death was causally related to the injury).

³ See *Smith v. Cote*, 128 N.H. 231, 240 (1986) ("If the plaintiff establishes that a physician-patient relationship . . . existed . . . it follows that the defendants assumed a duty to use reasonable care in attending and treating her.").

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- ⁴ 123 N.H. 335 (1983).
- ⁵ *Id.*, 123 N.H. at 337.
- ⁶ *Id.* (emphasis in original).
- ⁷ *Id.*, 123 N.H. at 337-38.
- ⁸ *Mayer v. Hampton*, 127 N.H. 81, 84 (1985) (emphasis added). The court reiterated that the “general rule” does not apply where the defendant actually caused the suicide. *Id.*
- ⁹ Most significantly, our Supreme Court unanimously rejected the so-called suicide rule in the workers’ compensation context in *Appeal of Pelmac Indus.*, 174 N.H. 528 (2021).
- ¹⁰ *In re Haines*, 148 N.H. 380, 382 (2002).
- ¹¹ *Id.*
- ¹² *Bronson v. Hitchcock Clinic*, 140 N.H. 798, 801 (1996).
- ¹³ *Brookline Sch. Dist. v. Bird, Inc.*, 142 N.H. 352, 354 (1997) (emphasis in original).
- ¹⁴ *Bronson*, 140 N.H. at 801.
- ¹⁵ *Pillsbury-Flood v. Portsmouth Hosp.*, 128 N.H. 299, 304 (1986).
- ¹⁶ *Gowen v. Brothers*, 121 N.H. 377, 379 (1981) (citations and quotations omitted).
- ¹⁷ *Ela v. Postal Tel. Cable Co.*, 71 N.H. 1, 3 (1901) (“In this state it is well settled that the question of remote and proximate cause is a question of fact to be determined by the jury.”); *Maxfield v. Maxfield*, 102 N.H. 101, 105 (1959); *Pillsbury-Flood v. Portsmouth Hosp.*, 128 N.H. 299, 304 (1986); *MaCleod v. Ball*, 140 N.H. 159, 161 (1995); *Bronson v. Hitchcock Clinic*, 140 N.H. 798, 804 (1996); *Brookline Sch. Dist. v. Bird, Inc.*, 142 N.H. 352, 355 (1997); *Beckles v. Madden*, 160 N.H. 118, 129 (2010).
- ¹⁸ *See Rosa v. Partners in Progress, Inc.*, 152 N.H. 6, 14 (2005) (referring to the deterrence and compensation principles of tort law).
- ¹⁹ *Alonzi v. Ne. Generation Servs. Co.*, 156 N.H. 656, 666 (2008).
- ²⁰ *Id.* (citing *Smith v. Cote*, 128 N.H. 231, 243 (1986)).