On April 29, 2019, the Minnesota Supreme Court issued a long-awaited decision that is likely to impact Minnesota's medical malpractice environment. The following resource is intended to keep you up to date on this fast-moving issue so you can worry less about your malpractice risk and more about the health and safety of your patients.

What did the Supreme Court decide?
The Supreme Court issued a decision in the case of Warren v. Dinter. In this case, a hospitalist was sued for malpractice after he received a call from a nurse practitioner to discuss whether the nurse practitioner's patient should be admitted to the hospital. No physician-patient relationship existed between the patient and the hospitalist; rather, the hospitalist relied upon the information provided to him by the nurse practitioner and the two discussed whether hospitalization would be appropriate for the patient. The patient was not admitted following this conversation and subsequently passed away from an untreated staph infection. The hospitalist was sued for malpractice and argued that he could not be liable because no physician-patient relationship existed between him and the patient.

The Minnesota Medical Association partnered with the Minnesota Hospital Association and the American Medical Association to submit an amicus curiae brief in the case to alert the Court to the chilling effect that expanding liability beyond the physician-patient relationship could have on physician collaboration and team-based care. Despite this counsel, the Minnesota Supreme Court ruled that a physician-patient relationship is not required for a patient to sue a physician for malpractice. Rather, a physician can be sued for malpractice if the adverse event was a foreseeable consequence of the physician's actions.

What does this ruling mean for Minnesota physicians?
This decision has the unfortunate effect of potentially increasing physicians' liability risk following informal consultations and collaboration with physicians and allied professionals. Although the Court emphasized that it did not intend for its rulings to expand liability to "curbside consultations," the ruling will require physicians to use their judgment in deciding how to respond to questions from colleagues. Impacts are likely to be specialty and context specific, but ultimately, the ruling does mean that a physician can be liable for the reasonably foreseeable consequences of his or her actions, whether or not a physician-patient relationship exists. For example:

- A hospitalist in the position to suggest or make admission decisions could be liable for the consequences of those admission decisions.
- A cardiologist who receives a call to consult informally on a case may be liable for advice given during that consultation if the cardiologist provides patient-specific advice to the patient-facing practitioner.
A family medicine physician who fails to adequately diagnose a transmissible disease could be liable for the consequences of that disease being transmitted to a third party.

A physician may be liable for injuries that occur during an independent medical examination, despite the lack of a physician-patient relationship.

What can Minnesota physicians do to protect themselves and their patients?

- Be mindful of informational limits – don’t provide definitive advice if you don’t have adequate information to support your conclusions.

- Be aware of power dynamics – expect that non-physician allied professionals will rely on your advice and will likely defer to your judgment unless you say otherwise.

- Curbside consultations should be brief and general in nature – the more specific, the greater potential for liability.

- If a case is complex or the conversation involves specific patient tests results or history, consider recommending a formal consultation.

- Work with your employer – if you are expected to make medical judgments for patients that you don’t have the opportunity to adequately examine, advocate for structural changes that will get you the information that you need.

- Be a thoughtful, available collaborator – medicine is often a team sport. The Court’s ruling does not change the needs of patients or a physician’s obligation to seek assistance if its needed. Defensive medicine that compromises patient care can lead to more malpractice exposure.

- Only document formal consultations that are intended to direct patient care; if you don’t intend for a consultation to direct patient care, make that intention known.

What is the MMA doing in response?
The MMA is working with community and national partners to identify opportunities to advance its existing policies on tort reform, alternative dispute resolution, and risk management. For more information on MMA policies, visit our policy compendium here.

Do you need to reevaluate your malpractice insurance needs?
Given the implications of the Warren v. Dinter decision, now may be the right time to reassess your insurance needs. The MMA is proud to partner with COPIC as the Association’s preferred medical professional liability insurance carrier. COPIC provides medical liability insurance that goes beyond basic coverage to offer educational resources, expert guidance, and proven programs designed to address health care risks and improve outcomes. Along with Minnesota, COPIC is the preferred MPLI provider in Colorado, Iowa, Nebraska, Utah, as well as North and South Dakota. COPIC’s network of insured entities includes more than 8,000 physicians and more than 160 hospitals and health care facilities. MMA members are eligible for a 5 percent discount off their premiums with COPIC. Interested members should contact their current medical professional liability insurance agent or Jerry O’Connell, COPIC’s director, Regional Development, at 800-421-1834, ext. 6182, to learn more about what COPIC offers.

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For more information on the Warren v. Dinter case or medical malpractice more generally, please contact MMA Policy Counsel Becca Branum at bbranum@mnmed.org.