

# Doc Never Met Patient Who Died From Insect Bite, but Negligence Suit Moves Forward; More

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## On-Call Specialist Incurred a Clear "Duty of Care," Court Rules

An Illinois doctor who consulted with a patient's treating physician but never actually saw the patient himself can't escape a medical malpractice claim, a state appeals court ruled [late last month](#).

The appeals decision is the result of a case involving the late Dennis Blagden.

On July 26, 2017, Blagden arrived at the Graham Hospital emergency department (ED), in Canton, Illinois, complaining of neck pain and an [insect bite](#) that had resulted in a swollen elbow. His ED doctor, Matthew McMillin, MD, who worked for Coleman Medical Associates, ordered tests and prescribed an anti-inflammatory pain medication and a muscle relaxant.



McMillin consulted via telephone with Kenneth Krock, MD, an internal medicine specialist and pediatrician, who was on call that day and who enjoyed admitting privileges at Graham. (Krock was also an employee of Coleman Medical Associates, which provided clinical [staffing for the hospital](#).)

Krock had final admitting authority in this instance. Court records show that McMillin and he agreed that the patient could be discharged from the ED, despite Krock's differential diagnosis indicating a possible infection.

Three days later, now with "hypercapnic respiratory failure, [sepsis](#), and an altered mental state," Blagden was again seen at the Graham Hospital ED. Blagden underwent intubation by McMillin, his original ED doctor, and was airlifted to Methodist Medical Center, in Peoria, 30 miles away. There, an MRI showed that he'd developed a spinal [epidural abscess](#). On August 7, 2017, a little over a week after his admission to Methodist, Blagden died from complications of his infection.

In January 2019, Blagden's wife, Judy, filed a suit against McMillin, his practice, and Graham Hospital, which is a part of Graham Health System. Her suit alleged medical negligence in the death of her husband.

About 6 months later, Blagden amended her original complaint, adding a second count of medical negligence against Krock; his practice and employer, Coleman Medical Associates; and Graham Hospital. In her amended complaint, Blagden alleged that although Krock hadn't actually seen her husband Dennis, his consultation with McMillin was sufficient to establish a doctor-patient relationship and thus a legal duty of care. That duty, Judy Blagden further alleged, was breached when Krock failed both to rule out her husband's "infectious process" and to admit him for proper follow-up monitoring.

In July 2021, after the case had been transferred from Peoria County to Fulton County, Krock cried foul. In a motion to the court for summary judgment — that is, a ruling prior to an actual trial — he and his practice put forth the following argument: As a mere on-call consultant that day in 2017, he had neither seen the patient nor established a relationship with him, thereby precluding his legal duty of care.

The trial court judge agreed and granted both Krock and Coleman the summary judgment they had sought.

Judy Blagden then appealed to the Appellate Court of Illinois, Fourth District, which is located in Springfield, the state capital.

In its unanimous decision, the three-judge panel reversed the lower court's ruling. Taking direct aim at Krock's earlier motion, Justice Eugene Doherty, who wrote the [panel's opinion](#), said that state law had long established that "the special relationship giving rise to a duty of care may exist even in the absence of any meeting between the physician and the patient where the physician performs specific services for the benefit of the patient."

As Justice Doherty explained, Krock's status that day as both the on-call doctor and the one with final admitting authority undermined his argument for summary judgment. Also undermining it, Doherty added, was the fact that the conversation between the two doctors that day in 2017 was a formal exchange "contemplated by hospital bylaws."

"While public policy should encourage informal consultations between physicians," the justice continued, "it must not ignore actual physician involvement in decisions that directly affect a patient's care."

Following the Fourth District decision, the suit against McMillin, Krock, and the other defendants has now been tossed back to the trial court for further proceedings. At press time, no trial date had been set.

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## Will This Proposed Damages Cap Help Retain More Physicians?

Fear of a doctor shortage, triggered in part by a recent history of large payouts, has prompted Iowa lawmakers to push for new state caps on medical malpractice awards, as a story in the [Des Moines Register reports](#).

Currently, Iowa caps most noneconomic damages — including those for pain and suffering — at \$250,000, which is among the lowest [such caps in the nation](#).

Under existing Iowa law, however, the limit doesn't apply in extraordinary cases — that is, those involving "substantial or permanent loss of body function, substantial disfigurement, or death." It also isn't applicable in cases in which a jury decides that a defendant acted with intentional malice.

Lawmakers and Iowa Gov. Kim Reynolds would like to change this.

Under a Senate bill that has now passed out of committee and is awaiting debate on the Senate floor, even plaintiffs involved in extreme cases would receive no more than \$1 million to compensate for their pain, suffering, or emotional distress. (The bill also includes a 2.1% annual hike to compensate for inflation. A similar bill, which adds "loss of pregnancy" to the list of extreme cases, [has advanced to the House floor](#).)

Supporters say the proposed cap would help to limit mega awards. In Johnson County last March, for instance, a jury awarded \$97.4 million to the parents of a young boy who sustained severe brain injuries during his delivery, causing the clinic that had been involved in the case to file for bankruptcy. This award was nearly three times the total payouts (\$35 million) in the entire state of Iowa in all of 2021, a year in which there were 192 closed claims, including at least a dozen that resulted in payouts of \$1 million or more.

Supporters also think the proposed cap will mitigate what they see as a looming doctor shortage, especially among ob-gyns in eastern Iowa. "I just cannot overstate how much this is affecting our workforce, and that turns into effects for the women and the children, the babies, in our state," Shannon Leveridge, MD, an obstetrician in

Davenport said. "In order to keep these women and their babies safe, we need doctors."

But critics of the bill, including some lawmakers and the trial bar, say it overreaches, even in the case of the \$97.4 million award.

"They don't want to talk about the actual damages that are caused by medical negligence," explains a spokesman for the trial lawyers. "So, you don't hear about the fact that, of the \$50 million of economic damages...most of that is going to go to the 24/7 care for this child for the rest of his life."

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