

During a comprehensive evaluation of an adult patient's psychiatric condition, a psychiatrist failed to diagnose her patient's suicidal state. One day after the misdiagnosis, the patient committed suicide. The patient's father, immediately after having been told of his son's suicide, suffered severe emotional distress, which resulted in a stroke. The patient's father was not present at the patient's appointment with the psychiatrist, nor did he witness the suicide. The father has brought an action against the psychiatrist to recover for his severe emotional distress and the resulting stroke.

Is the father likely to prevail?

- A. No, because the father did not sustain a physical impact.
- B. No, because the psychiatrist's professional duty did not extend to the harms suffered by the patient's father.
- C. Yes, because the father was a member of the patient's immediate family.
- D. Yes, because the psychiatrist reasonably could have foreseen that a misdiagnosis would result in the patient's suicide and the resulting emotional distress of the patient's father.

Explanation:

Mental-health professional's

duty to control patient's conduct

Must use reasonable care to:

determine whether patient poses risk of harm to others *and*

mitigate that risk—eg:

treat patient

warn potential victims

notify law enforcement

seek patient's commitment

For **negligent infliction of emotional distress** (NIED), the plaintiff must prove that the defendant acted negligently by **breaching a duty** owed to the plaintiff. Mental-health professionals owe their **patients** a duty to use reasonable care. And because they have a **special relationship** with their patients, mental-health professionals also owe **others** a duty to use reasonable care to:

identify patients who pose a foreseeable **risk of physical harm to others** *and*
take steps to **mitigate** that risk.

Here, the psychiatrist may be liable to the patient's estate for failing to diagnose his suicidal state. However, the psychiatrist is *not liable* to the father because the patient only posed a threat of physical harm to himself—not to his father. Therefore, the psychiatrist did not breach her duty to the father, and the father will not recover for his severe emotional distress or resulting stroke.

(Choice A) The **zone-of-danger theory** of NIED requires proof that the plaintiff was in danger of physical harm—not actually harmed by a physical impact. Therefore, had the psychiatrist breached her duty to the father by placing him in a zone of physical danger, then the father may have prevailed despite his lack of physical impact.

(Choice C) The father's relation to the patient is relevant under the **bystander theory** of NIED, which applies when a plaintiff suffers emotional distress upon witnessing bodily harm to a close relative. But since the father did not witness the patient's suicide, this theory does not apply.

(Choice D) The psychiatrist's ability to foresee that her misdiagnosis would result in the patient's suicide shows that she breached her duty to the patient—not the father. And though the father's resulting *emotional* distress may have been foreseeable, the psychiatrist's duty to the father only extended to foreseeable risks of *physical* harm.

Educational objective:

Mental-health professionals have a duty to use reasonable care to identify and mitigate any foreseeable risk of physical harm that their patients pose to others.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 41 cmt. g (Am. Law Inst. 2012) (duty of mental-health professionals to control patients).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 47 cmt. i (Am. Law Inst. 2012) (duty arising from a special relationship is limited to foreseeable physical harm).

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