

# **SCHAUM LAW OFFICES**

600 Old Country Road, Suite 328, Garden City, NY 11530  
516-228-8766 Fax: 516-228-3559 SCHAUM@SCHAUMLAW.COM

---

*January, 2023*

## **TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF**

**The issue of a physician's sexual relationship with a patient is always challenging and an opinion of New York's highest court on the question should be of interest.**

**The defendant in this case was a family practice physician and the plaintiff patient was receiving treatment for depression and anxiety while undergoing marital problems. A consensual sexual relationship ensued and plaintiff was ultimately divorced. Patient then sued physician alleging medical malpractice relating to their affair.**

**There was a jury trial which resulted in a finding of malpractice but the award was reduced by 25% as the jury found that there was comparative negligence on the part of the patient. The jury further awarded punitive damages in the amount of \$166,000.**

**Both sides appealed the verdict. Defendant physician contended that the affair and the medical treatment were unrelated and thus there was no medical**

**malpractice. Patient argued that the jury should not have been informed that comparative negligence could be considered.**

**The Court of Appeals determined that the jury could reasonably find that the medical treatment, in this instance, could bear a substantial relationship to the treatment of the patient as she was being treated for her mental health problems and thus, the sexual relationship could interfere with the treatment.**

**On the important question of the offset afforded by the theory of comparative negligence the Court ruled that a finding of malpractice does not obviate the application of comparative fault. The Court also struck down the award of punitive damages which had been assessed as despite the malpractice there was no manifest evil or malicious conduct on the part of the physician.**

*Respectfully submitted,*

*Schaum Law Offices*