

Medicolegal**Responsibility for Malpractice of Partners and Substitutes***(Lee vs. Moore (Tex.), 162 S. W. R. 437)*

The Court of Civil Appeals of Texas in reversing a judgment obtained by the defendant and ordering a new trial, says that if a physician makes provision for the attendance of a competent physician on his patient, he may leave temporarily, but for the unwarranted abandonment of a case at a critical period resulting in increased pain and suffering on the part of the patient, he will be held liable in damages. In this case the question was as to the liability of a physician for the malpractice of a substitute furnished by him.

The plaintiff had arranged with the defendant to attend his wife in childbirth. One night the defendant was summoned, pronounced the pains false, and went home. When called again next morning by telephone, he replied that he could not come, but would send another physician, a Dr. Hardin. The court is of the opinion that, even though it should be conceded that common carriers in furnishing a physician to treat injured passengers, etc., and persons rendering gratuitous services in employing a physician to attend on a sick or injured person are only required to exercise ordinary care to select a skilful and competent physician, yet, under the facts of this case, the duty of the defendant to furnish the plaintiff a physician to attend on his wife possessing that degree of knowledge, skill, and care which physicians practicing in that city and vicinity possessed, was absolute. If it could be said that Dr. Hardin was not an assistant of the defendant in the treatment of the plaintiff's wife, and was not a general partner of the defendant in the practice of medicine, yet that he was a special partner in the treatment of the case, or was acting under his employment to do so, could not very well be gainsaid. At any rate, the defendant, being a physician himself, and having by contract undertaken the treatment of Mrs. Lee, and having secured the services of Dr. Hardin to relieve himself of the necessity of attending her himself and to serve his own interests, the defendant would not be allowed to say that, in such case, the duty resting on him in the selection of a substitute physician was simply that of ordinary care.

Whether the plaintiff was under the influence of intoxicating liquors and exhibited a pistol in such a threatening manner towards Dr. Hardin while he was waiting on the plaintiff's wife as to alarm or excite Dr. Hardin to such an extent as that the same contributed to the failure, if any, of the physician to use ordinary care and skill in the treatment of the plaintiff's wife, was an issue made by the evidence, which should have been submitted to the jury for their determination, with instructions that an affirmative finding on it would entitle the defendant to a verdict in his favor.