



## Alerts

### Wisconsin 2020 Med Mal Update: Patient Has the Burden of Producing Evidence of Physician Negligence Prior to Submitting Case to a Jury

December 11, 2020  
*Health Care Alert*

In this significant medical malpractice decision, the Wisconsin Court of Appeals confirmed that a patient has a duty to produce sufficient evidence regarding a physician's negligence before a case can be submitted to a jury.

*Suhs v. Proassurance Cas. Co.*, 2020 Wisc. App. LEXIS 286

#### Background

The patient's experts testified that the surgeon should have operated "as soon as feasible" and "as quickly as possible" to alleviate cauda equina syndrome, but acknowledged that (1) he could not identify a specific time by which the surgeon should have operated in order to prevent the patient from suffering permanent neurological deficits; (2) that those presenting with saddle anesthesia tend to have permanent deficits; and (3) that he had cauda equina patients who suffered permanent deficits even though he had operated on them within 24 hours of the onset of symptoms. However, none of the patient's experts answered the critical question—what, if any harm, did the patient sustain as a result of the surgeon's alleged negligence in delaying the surgery?

The Court of Appeals held that the trial court properly dismissed the patient's claims at the close of his case because the patient had not produced sufficient evidence to allow the jury to decide how the surgeon's conduct allegedly aggravated the patient's condition.

#### Guidance from the Decision

Patients should produce expert testimony that is sufficient to allow a jury to consider whether a physician is negligent and whether the physician's alleged negligence caused harm.

#### Attorneys

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