Laboratory’s Liability for Patient Distress

When a laboratory negligently errs in performing or interpreting a laboratory test but the patient does not suffer physical injury as a result, can the patient bring a lawsuit for any emotional distress the erroneous result may have caused? The answer to this question differs from state to state. A recent case in Florida, RJ v Humana of Florida Inc, has addressed this issue, and in that jurisdiction the answer is no.

Told He Had HIV—But He Didn’t

A hospital sent a patient’s blood sample to a reference laboratory for a human immunodeficiency virus (HIV) test. A week and a half later, the hospital informed the patient the test was positive and referred him to a physician for medical care and treatment. A second test requested by the patient a year later indicated that he had never been infected with HIV.

The patient filed suit against the hospital, the reference laboratory, and the treating physician. He claimed that through their negligence, he was incorrectly led to believe that he had contracted HIV, causing him to suffer “bodily injury including hypertension, pain and suffering, mental anguish, loss of capacity for the enjoyment of life, and the reasonable expense of medical care and attention.”

The trial court dismissed the lawsuit, and the appellate court concurred, citing the “impact rule,” which holds that damages for primarily emotional harm resulting from misdiagnosis are not recoverable—unless the plaintiff shows that the misdiagnosis directly resulted in some physical impact and related injury.

The case was appealed to the Florida Supreme Court, which held that the impact rule was still the law in Florida: “Before a plaintiff can receive damages for emotional distress caused by the negligence of another, the emotional distress suffered must flow from physical injuries the plaintiff sustained in an impact.”

In concurring with the other courts’ findings, the court cited several exceptions to the Florida impact rule. For example, no physical impact is required for recovery under a claim for intentional, as opposed to negligent, infliction of emotional distress. For a plaintiff to be successful, however, the intentional act must be sufficiently outrageous. Additionally, no physical impact is required for recovery of damages when a plaintiff sees or hears a close family member physically and negligently injured and, as a result of the psychologic trauma and mental distress, the plaintiff suffers physical illness.

The high court reaffirmed its commitment to the impact rule, stating that it ensures the validity of claims for emotional or psychologic damages:

Without question, allowing compensation for emotional distress in the absence of a physical injury under the circumstances of this case would have a substantial impact on many aspects of medical care, including the cost of providing care to the public. Were we to create such an exception, we would of necessity also be allowing a claim for emotional distress for any misdiagnosis made from negligent medical testing. We could not limit an exception for negligent misdiagnosis to cases specifically involving the HIV virus [sic] while excluding other terminal illnesses. Moreover, it would be exceedingly difficult to limit speculative claims for damages in litigation under such an exception. Given that the underlying policy reasons for the impact rule still exist, we find that no special exception is justified under the circumstances of this case.

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Although the court found that this plaintiff had not pleaded sufficient harm to meet the requirements of the impact rule, the court recognized that misdiagnosis could result in "unnecessary and harmful medical treatment that does in fact cause bodily injury." This injury, the court concluded, would satisfy the requisite physical impact for lawsuit.

According to the court, simply touching the patient and performing minor invasive procedures, such as phlebotomy, would not qualify as sufficient impact. Performing more invasive treatments, therapies, or surgeries, or administering prescribed drugs with toxic or adverse side effects could be considered significant impact. For example, the court noted that the drug AZT (azidothymidine), often given to patients with acquired immunodeficiency syndrome (AIDS), is caustic. If evidence could be presented that the patient in this case was given AZT unnecessarily with resultant adverse clinical consequences, the court would allow the additional emotional distress claims.

In the end, the high court upheld the trial and appellate courts, ruling that the plaintiff in *RJ v Humana of Florida Inc* had not alleged the requisite physical impact to permit a claim for predominantly emotional damages. Nevertheless, it was not a total loss for the plaintiff. The court remanded the case to the appellate level so that the plaintiff could amend the lawsuit to include allegations of sufficient physical impact.1

**State-by-State Analysis**

The following is an analysis of how jurisdictions have ruled on the issue of mental distress. Several variations of the following theories exist among jurisdictions, but they basically fall into three categories: physical impact, actual injury, and independent tort of negligent infliction of mental distress.

### Physical Impact Rule
Colorado, Florida, Georgia, Kentucky, Oregon

In these states, a lawsuit may be filed for associated psychologic distress only if there's immediate impact—as opposed to mere resultant injury. The majority of jurisdictions used to hold this rule.

### Actual Injury Rule
Alaska, Arizona, Arkansas, Delaware, Idaho, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming

In these states, no immediate impact is required. The plaintiff can recover damages if his or her emotional distress is associated with an injury caused by another person's negligence.

### Independent Tort of Negligent Infliction of Mental Distress

In these states, no injury needs to be proven.©

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The Traditional Impact Rule

The traditional impact rule requires immediate impact, as opposed to mere resultant injury, to permit the filing of a lawsuit for associated psychologic distress. This strictness often has produced harsh outcomes. As the concurring opinion in *RJ v Humana* explained, if someone's negligence caused a pregnant woman to become frightened and later to miscarry, there still would be no liability for any associated emotional distress, even assuming causation could be proven. Why? There was no initial impact.

Because many jurisdictions were dissatisfied with this result, courts started reaching for anything that resembled an impact merely to satisfy the formality of the requirement. Among the events courts found to be "impacts" were dust in the eye, inhalation of smoke, and a circus animal "evacuating his bowels" into a plaintiff's lap.2

Options to the Traditional Impact Rule

Instead of straining the definition of impact, more than 30 jurisdictions developed the "actual injury rule" to avoid dismissing such cases. In these jurisdictions, a plaintiff must prove only that another person's negligence proximately and foreseeably resulted in an injury that caused or was associated with psychologic stress. In other words, if an injury existed, then recovery for the associated emotional distress is allowed; no immediate impact is required.

In a few jurisdictions, the law evolved even further to eliminate the requirement of injury altogether. Damages, therefore, could be awarded after
establishing negligent infliction of mental distress independently of physical injury. This is the law in a minority of states, however, with the majority still requiring at least proof of actual physical injury. (See “State-by-State Analysis.”)

Laboratory errors that result in injury occur far less frequently than laboratory errors with no adverse patient outcomes. Furthermore, negligent clinical or anatomic laboratory analysis rarely causes direct and immediate physical impact.

The greatest risk of liability for negligently performed laboratory testing, therefore, is in those jurisdictions recognizing the independent tort of negligent infliction of emotional distress, where no injury needs to be proven. Tests for HIV are not the only tests that could elicit such emotional responses. Test results relating to pregnancy, cancer, and sexually transmitted diseases, among others, can evoke extreme, emotional reactions. Negligently performed testing that produces erroneous results could turn into legal claims in these states. Negligence includes performing a test on the wrong specimen, reporting results with control specimens out of range, and preparing patients improperly for testing.

In a separate concurring opinion in RJ v Humana, justices of the Florida Supreme Court remarked that with the case of RJ v Humana, Florida had progressed from the impact rule to the popular rule of actual injury. The justices who wrote the majority opinion in RJ v Humana were willing to allow a cause of action for emotional distress if the plaintiff could prove that the HIV misdiagnosis proximately and foreseeably caused him to receive inappropriate treatment—clearly not the traditional impact required by the old rule. In fact, an analysis of Florida case law by the authors of leading legal treatises showed that Florida already had been considered a jurisdiction that operated under the actual injury rule.3

**Conclusion**

Laboratory professionals operating within states whose liability laws are based on actual injury still must be aware of the potential claims for emotional distress if, as in RJ v Humana, follow-up care based on erroneous results will be considered the injury that opens the door for mental distress damages.

To prevent the kind of distress unnecessarily felt by the patient in RJ v Humana, laboratory professionals should monitor errors, improve performance, and reduce laboratory errors as much as possible. The cost to monitor and reduce error would be justified by the potential for greater expense if wrong results were given to the physician.®

**References**

1. RJ v Humana of Florida, 652 So2d 360 (Fla Sup Ct 1995).

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