Wisconsin ruling a win for doctors’ judgment on ivermectin use

In a win for patients and physicians, a Wisconsin hospital won’t be forced to administer ivermectin after the state’s Supreme Court upheld an appellate-court ruling.

The Litigation Center of the American Medical Association and State Medical Societies and Wisconsin Medical Society filed an amicus brief (PDF) in the case. In the brief, they urged Wisconsin’s highest court to affirm the appellate-court ruling that found the law doesn’t give “a patient or a patient’s agent the right to force” private hospitals or physicians to administer a particular treatment that they conclude is below the standard of care.

“While the case got a lot of attention because it involved ivermectin and COVID-19, it was about much more than just ivermectin. It was about whether a judge can force physicians to treat their patients in a way that violates their own ethical principles, including ‘do no harm,’” Wisconsin Medical Society President Don Lee, MD, MPH, said in response to the ruling in Gahl v. Aurora Health. “We are trained to save lives. According to court records, this patient improved with oxygen, ventilator support, steroids and without ivermectin.”

Medicine by physicians, not judges

Allen Gahl was losing hope when COVID-19 forced his uncle to go on a ventilator. He came across ivermectin on the internet and found a doctor not credentialed at the hospital where his uncle was being treated to write a prescription for the drug and wanted his uncle to receive it.

Aurora Medical Center-Summit staff and administrators refused to administer the ivermectin—a drug that leading medical experts advise against using to treat COVID-19 because studies show it’s ineffective and can, in fact, harm patients with COVID-19. Gahl sued on behalf of his uncle, John J. Zingsheim—who ultimately recovered from COVID-19 and was released—to force the hospital to administer ivermectin.

A Waukesha County Circuit Court judge initially ordered the hospital to credential a physician who would be willing to administer the medication, but the appellate court and ultimately the Wisconsin
Supreme Court disagreed with that initial ruling.

“When the final decision was released and it turned out to be 6–1 affirming the court of appeals, we were relieved. That margin from a court having a history of splitting 4–3 on many cases sends a nice signal, we think: Judges shouldn’t be practicing medicine on the bench, and certainly shouldn’t be ordering the attending physician to do something to the patient that the physician believes would cause unnecessary risk to the patient with little benefit,” said Dr. Lee, a hospitalist and physician adviser at a separate health system who was not involved in the patient’s care in the case.

“There are more than 250 circuit court judges in Wisconsin, so the ramifications of our Supreme Court allowing a circuit-court judge to practice medicine on the bench would have been devastating to patient care.”

In a statement, Aurora Health Care said it was “pleased with this decision and continue to believe that courts should not be allowed to compel providers to administer care that is medically substandard.”

A threshold to compel treatment

The Wisconsin Supreme Court ruling was limited, with the court emphasizing that “this case is not about the efficacy of ivermectin as a treatment for COVID-19.” Instead, the court’s ruling centered on whether the Waukesha County Circuit Court “erroneously exercised its discretion by issuing” a temporary injunction that would have compelled the hospital to administer ivermectin.

The court concluded that the temporary injunction was issued “without referencing any basis demonstrating that Gahl had a reasonable probability of success on the merits of some type of legal claim.” The opinion noted that the circuit court acknowledged that four factors must be met to issue a temporary injunction. However, court justices ruled that the circuit court didn’t engage in an analysis of those factors.

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