

## Medical Malpractice / Healthcare Law

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### Appellate Court Rejects “Fatal Gap” in Proximate Cause

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The loss of chance concept refers to the harm resulting to a patient when negligent medical treatment is alleged to have damaged or decreased the patient’s chance of survival or recovery, or to have subjected the patient to an increased risk of harm. *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 98 (1997). This proximate cause theory applies to cases where a medical provider’s malpractice deprives the plaintiff of a chance to survive or recover from a health problem, lessens effectiveness of treatment, or increases the risk of an unfavorable outcome. *Holton* 176 Ill. 2d at 111. Under the lost chance doctrine, the plaintiff must only show with a reasonable degree of medical certainty that the malpractice lessened the effectiveness of treatment to the plaintiff. *Id.* at 117-18.

The Illinois Fourth District Appellate Court recently addressed a challenge to proximate cause in a medical malpractice claim grounded in the lost chance doctrine in *Dunbar v. Carlson, M.D.*, 2025 IL App (4th) 241143-U. The plaintiff filed suit against the defendant doctor and medical group alleging medical negligence resulting in her husband’s myocardial infarction and death. The defendants were granted summary judgment by the trial court. The plaintiff appealed arguing a genuine issue of material fact relating to proximate cause, namely, whether Dr. Carlson’s approach in treating Smith increased the risk he would suffer a myocardial infarction and deprived him of a chance at earlier treatment that could have been successful. *Dunbar*, 2025 IL App (4th) 241143-U, ¶¶ 2-3.

The decedent, Bruce Smith, established care with the defendant, Dr. Carlson, in January 2017 and he suffered a heart attack and passed away on August 23, 2017. Evaluation in January of 2017 revealed hypertension and advancing kidney disease, and an ultrasound in February 2017 confirmed severe hydronephrosis. Dr. Carlson prescribed various medications to treat Smith’s hypertension, including lisinopril, hydrochlorothiazide and terazosin, but Smith’s blood pressure remained elevated. Smith was never prescribed a statin for blood pressure control. By May 2017, Smith’s bladder and kidney function worsened. Lisinopril and hydrochlorothiazide were put on hold due to the risk to worsen kidney function and Dr. Carlson referred Smith for urology and nephrology consultations. *Id.* ¶¶ 5-6.

Smith’s treating nephrologist, Dr. Rosborough, completed an initial evaluation in May 2017. He assessed Smith for acute on chronic kidney disease. Dr. Rosbough opined that Smith’s blood pressure management was completely appropriate and he did not think Smith presented with any urgent or emergent conditions requiring treatment right away. *Id.* ¶ 19. Smith’s treating urologist, Dr. Padilla, also evaluated Smith in May 2017. She treated urinary retention and bilateral hydronephrosis, both of which can affect a patient’s blood pressure. Smith’s condition was stable and did not significantly worsen or improve, although lab results showed some improvement. Dr. Padilla indicated Smith was not in need of urgent or emergent urological intervention. *Id.* ¶ 21.

The plaintiff disclosed two experts: Dr. Nelson, a family medicine physician with added qualifications in hypertension; and Dr. Budoff, a cardiologist. Dr. Nelson opined Dr. Carlson’s failure to treat Smith’s blood pressure with a statin medication and provide urgent referral to a urologist or nephrologist in February 2017 were deviations from the standard of care. Dr. Nelson explained how Smith’s heart and kidney diseases were related and opined it was more likely

than not that if Smith had received earlier treatment, he would not have suffered a fatal heart attack within eight to nine months of his initial visit with Dr. Carlson. *Id.* ¶¶ 10-11. Similarly, Dr. Budoff opined that Dr. Carlson should have been adjusting Smith’s medications to bring down his blood pressure more aggressively and it was a deviation to not prescribe a statin. *Id.* ¶ 14. Dr. Budoff further opined that there would have been a significant reduction in a cardiovascular event had a statin been initiated in January 2017, and with better blood pressure control, it was more likely than not Smith would not have had a fatal heart attack in August of 2017. *Dunbar*, 2025 IL App (4th) 241143-U, ¶ 15.

At the trial court level, the defense moved for summary judgment arguing a “fatal gap” in proximate cause as the plaintiff had failed to provide testimony from a nephrologist or urologist regarding what treatment Smith would have received had he been referred earlier than May 2017. The plaintiff countered that the alleged mismanagement was not limited to the nephrology and urology referrals and highlighted the failure to prescribe a statin and expert testimony supporting proximate cause for Smith’s death. *Id.* ¶ 24. Summary judgment was granted without substantive comment from the court. *Id.* ¶ 25.

On appeal, the Court reasoned that the plaintiff’s case could not be reduced to whether the Dr. Carlson’s referral to a nephrologist and urologist was timely. *Id.* ¶ 50. The plaintiff presented expert testimony providing two opinions, to a reasonable degree of medical certainty, that Dr. Carlson’s alleged deviations from the standard of care increased the risk of harm and lessened the effectiveness of treatment. Specifically, Dr. Nelson opined that had Smith received earlier referral to a urologist and nephrologist, better blood pressure management, and statin prescription he would not have suffered a fatal myocardial infarction within 8-9 months of his first visit to Dr. Carlson. *Id.* ¶ 53. Dr. Nelson noted use of a statin in and of itself would have impacted stabilization of the plaque that ruptured. *Id.* Dr. Budoff was also critical of Dr. Carlson’s blood pressure management and opined Smith would have had significantly lower cardiovascular risk with better blood pressure medication. *Dunbar*, 2025 IL App (4th) 241143-U, ¶ 54. It was the Appellate Court’s view that expert testimony undoubtedly created a question of fact and summary judgment was reversed. *Id.* ¶ 55.

### *Holton v. Memorial Hospital*

In *Holton*, the Illinois Supreme Court was tasked to resolve whether application of the “loss of chance” doctrine in medical malpractice cases lessens the plaintiff’s burden of proving proximate cause. *Holton*, 176 Ill 2d at 98. The plaintiff in *Holton* alleged the defendant hospital nursing staff failed to report progression of her decline into paresis (partial paralysis) to her treating physicians, resulting in a delay in detection and treatment to avoid paralysis. The defendant hospital asserted it was entitled to judgment as a matter of law for failure of plaintiff to present expert testimony to support her claim that an earlier call to Holton’s physicians would have prevented her eventual paralysis. The Court noted testimony from Holton’s physicians that they based their erroneous diagnosis and treatment decisions on inaccurate and incomplete information. Holton’s physicians further opined if paresis is detected and treated early enough, there is good probability for avoiding or minimizing paralysis. The hospital argued Holton’s physicians rendered ineffective treatment both before and after being notified of her change in condition such that plaintiff did not establish that her physicians would have acted differently had they been notified earlier. *Id.* at 107-109.

The Illinois Supreme Court disagreed. By the time Holton’s physicians were notified of the change in condition, Holton had already suffered complete loss of motor control below the waist. There was sufficient testimony indicating the doctors would have undertaken a different course of treatment had they been accurately and promptly apprised. *Id.* at 109. The evidence permitted an inference that the defendant’s negligence prevented plaintiff’s physicians from correctly diagnosing and treating her condition. The plaintiff was not required to show a different outcome would have occurred but rather that the delay in diagnosis lessened the effectiveness of treatment *Id.* at 110.

## Conflict with First District Principle

The defense in *Dunbar* cited three First District cases in support of summary judgment: *Aguilera v. Mount Sinai Hospital Medical Center*, 293 Ill. App. 3d 967 (1997); *Townsend v. University of Chicago Hospitals*, 318 Ill. App. 3d 406 (2000); and *Guerra v. Advanced Pain Centers S.C.*, 2018 IL App (1st) 171857. *Dunbar*, 2025 IL App (4th) 241143-U, ¶ 40. In *Aguilera*, the First District held the absence of expert testimony from a neurosurgeon regarding an analysis of whether an earlier CT scan would have led to surgical intervention or other treatment that may have contributed to the decedent's recovery creates a gap in evidence of proximate cause fatal to the plaintiff's case. *Aguilera*, 293 Ill. App. 3d at 975. Similarly, in *Townsend*, the lack of expert testimony from a urologist or interventional radiologist regarding the course of treatment for an undiagnosed kidney stone left the jury to speculate about proximate cause. *Townsend*, 318 Ill. App. 3d at 414. Finally, in *Guerra*, the lack of testimony from an addictionologist regarding how an addictionologist's intervention would have prevented the decedent's suicide led to a missing link between the alleged deviations and proximate cause. *Guerra*, 2018 IL App (1st) 171857, ¶ 34.

The lack of expert testimony from a urologist or nephrologist in *Dunbar* would appear to prove fatal in connecting allegations that earlier urology or nephrology intervention would have increased Smith's chance to survive. Interestingly, however, the *Dunbar* court was not persuaded to follow *Aguilera*, *Townsend* or *Guerra*. Rather, the Fourth District Court found *Holton's* rule "echoed" through Dr. Nelson's and Dr. Budoff's testimony, as both opined Dr. Carlson's malpractice lessened the effectiveness of treatment to Smith and/or increased his risk of harm. *Dunbar*, 2025 IL App (4th) 241143-U, ¶ 55. The *Dunbar* court further found that that the case was about more than urology or nephrology referrals, but still, it was not left to speculate as to what would have happened if Dr. Carlson acted quicker in sending Smith to these specialists. *Id.* ¶¶ 50-51. It could be reasonably inferred that earlier treatment of Drs. Rosborough and Padilla would have been the same and just as effective in alleviating Smith's symptoms. *Id.* For purposes of the lost chance doctrine and surviving summary judgment, the expert testimony offered in *Dunbar* was deemed sufficient for a fact finder to conclude Dr. Carlson's decisions about medications, as well as delay about referrals, proximately caused Smith's death. *Id.* ¶ 55.

## About the Author

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