Marty’s Malady

Your supervising attorney asks you to participate in the initial consultation with a prospective client. Marty is a twenty-five year old game designer for a prominent computer gaming company. He is married to Mary. Michael is their two-year old son. Mary works part-time at a local bookstore on the weekends when Marty is not working and spends the rest of the time taking care of Michael, the two-year old.

Marty is nearsighted and requires a prescription. Two months ago he decided to use disposable contact lenses upon the advice of his ophthalmologist. Marty decided to have the contact lens prescription filled at the optometrist affiliated with his ophthalmologist. He received a standard supply of the disposable contacts. The optometrist provided some education and training in the placement of the contacts into his eyes and the steps for the proper care and storage of the lenses.

Marty used the contacts in the manner outlined by the instructions and optometrist. About two weeks into using the contacts, Marty noticed his eyes were red and irritated. He decided to leave the contacts out to give his eyes a breather and wear his glasses for the day. The following morning, he noticed that his eyes still appeared inflamed and he was feeling a bit of discomfort. He called up his ophthalmologist and set an appointment for the following day.

He woke up the following morning with his eyes mattered shut and in significant pain. He decided to stay home and gut it out until his doctor’s appointment at 10:00 a.m. His ophthalmologist examined Marty’s eyes and determined they were infected.

The doctor queried Marty on the manner in which he used his contacts and the brand of contacts he used. The doctor recorded in information in the Marty’s file. He prescribed a topical antibiotic for his eyes and had Marty schedule another appointment in 5 days to check on the progress. He also advised Marty to suspend use of the contacts until the infection cleared.

Marty pretty much complied with the doctor’s orders. He applied the antibiotic three times a day, though not precisely every eight hours as directed – sometimes he was up to an hour late. However, after three days of treatment, Marty was still feeling pain and his eyes seemed to be getting worse instead of better. He was planning to call his doctor if things didn’t improve by the next day, but the doctor beat him to the punch and called him back in. He was also asked to bring in his unused disposable contacts.

Marty’s ophthalmologist explained that his office just received a recall notice from the contact lens manufacturing concerning certain lots of lenses. The doctor examined the lot number on Marty’s package of lenses and confirms that it was included in the recall. The ophthalmologist explains that the saline solution in which the lenses were immersed during the packaging process was contaminated with bacteria. Unfortunately, the bacterial strain is very resistant to antibiotics.

Marty is admitted to the hospital for receive a powerful intravenous antibiotic in hopes of beating back the infection. Unfortunately, the bacteria were too resistant to the treatment and Marty lost vision in both eyes rendering him completely blind.