



Gallbladder surgery uncovers something more

ABDOMINAL PAIN prompted a 46-year-old woman to seek treatment at a local medical center, where she had minor therapy. She returned to the hospital repeatedly over the next 3 years and received various treatments for abdominal pain, culminating in the removal of her gallbladder.

During the procedure, the surgeon found an ovarian tumor that turned out to be stage III cancer. The patient underwent oophorectomy and several courses of chemotherapy.

PLAINTIFF'S CLAIM The cancer should have been diagnosed at any of the patient's previous examinations.

THE DEFENSE The patient's symptoms were vague; ovarian cancer is often diagnosed at a late stage.

VERDICT \$160,000 New York settlement.

COMMENT *It never ceases to amaze that we're held to such high (irrational?) standards whenever cancer is diagnosed. Although pertinent details of this case—such as the size of the tumor and frequency of pelvic exams—aren't provided, it goes to show you that lawyers will do what lawyers do.*

Diagnosis minus treatment equals catastrophe

A SWOLLEN, PAINFUL LEFT KNEE led a 65-year-old man to go to the emergency department (ED). The physician who examined his knee prescribed acetaminophen and hydrocodone and naproxen and sent the patient home with instructions to apply ice and heat.

The patient went back to the ED 2 days later because the knee was still swollen and painful. He was told to keep taking the prescribed medications and to follow up with a doctor at a local practice, who examined the patient later that day. The doctor aspirated brown, pus-filled material from the knee and diagnosed sepsis in the knee joint. He told the patient to drive to his family physician's office, about 70 miles away, for treatment. The patient was carried back to his car and made the drive slowly.

By the time he arrived at his doctor's office, the patient was in shock and kidney failure and breathing with difficulty. He was put on a ventilator and given antibiotics. He died several days later from septic shock and multiple organ failure.

PLAINTIFF'S CLAIM If the patient had been given antibiotics during his first or second examination, he would have lived.

THE DEFENSE No information about the defense is available.

VERDICT \$10.9 million South Carolina verdict.

COMMENT *It's horrible enough that this patient wasn't diagnosed promptly, but unfathomable that he was sent on his way without treatment!*

Circumcision proceeds without consent

AFTER THE BIRTH OF A HEALTHY BABY BOY, a nurse presented the baby's mother with a consent form for circumcision, which she didn't sign. Before the birth, the parents had told the child's pediatrician—who had also been the pediatrician for the mother's 2 brothers and her oldest son—that they didn't want their baby circumcised if it was a boy. Despite a lack of consent, the pediatrician circumcised the infant, without incident, the day after his birth. The parents were outraged.

PLAINTIFF'S CLAIM Because the pediatrician had cared for other male members of the family, he should have been aware of the family's wishes regarding circumcision. The Gomco clamp method used to circumcise the baby caused pain throughout the 25-minute procedure, and the child suffered pain for 2 weeks while his penis healed. The baby, who had been calm before the surgery, became fussy afterwards and remained so for a year. He has a greater risk of developing some health problems because of the circumcision.

CONTINUED

The cases in this column are selected by the editors of *THE JOURNAL OF FAMILY PRACTICE* from *Medical Malpractice: Verdicts, Settlements & Experts*, with permission of the editor, Lewis Laska (www.verdictslaska.com). The information about the cases presented here is sometimes incomplete; pertinent details of a given situation may therefore be unavailable. Moreover, the cases may or may not have merit. Nevertheless, these cases represent the types of clinical situations that typically result in litigation.

COMMENTARY PROVIDED BY

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After being given a diagnosis of sepsis, the patient was told to drive to his family physician's office—70 miles away.

> The physician called in a prescription for antibiotics because the symptoms resembled ones the patient had had about 8 months earlier that cleared up with antibiotics.

THE DEFENSE The circumcision was performed because the hospital staff erred in not following the hospital's protocol. The procedure was done properly and without complications; the baby suffered no injuries from it. Remaining uncircumcised has no benefit; because circumcision lowers the risk of urinary tract and foreskin infections, as well as other illnesses, the child would be healthier than uncircumcised boys.

VERDICT Indiana defense verdict for the pediatrician. (The hospital reached a confidential settlement with the parents before trial.)

COMMENT *It still astounds when wrong side surgeries occur—and how about this example of a circumcision without consent?! This is why checklists are so important. Obviously, appropriate informed consent should precede any procedure.*

A drug adverse effect—that wasn't

A 68-YEAR-OLD WOMAN went to her physician complaining of gastrointestinal discomfort. The doctor surmised that medication prescribed for hypertension was causing the discomfort and changed the medication. He recommended a follow-up visit in 2 weeks.

Three days later, the patient returned to the clinic complaining of abdominal pain. A physician assistant made the same diagnosis as the physician.

The patient went to the hospital 4 days later because the pain had increased. She was found to have a ruptured appendix and underwent an appendectomy. After surgery, the patient experienced residual pain.

PLAINTIFF'S CLAIM The physician and physician assistant were negligent in failing to diagnose appendicitis promptly. The case proceeded to trial against the physician assistant and the clinic.

THE DEFENSE The patient was properly evaluated and didn't have symptoms suggesting appendicitis. Diagnostic tests weren't necessary because the second visit was a follow-up examination.

VERDICT \$150,000 New York verdict.

COMMENT *Thoroughly documenting the history and physical examination is key to avoiding malpractice claims.*

Antibiotics prescribed by phone can't substitute for office visit

THREE DAYS OF FATIGUE AND A 103°F FEVER in a 42-year-old man prompted his wife to call his primary care physician. She discussed the symptoms with a nurse, who told her the doctor didn't have an opening to see her husband. Instead, the physician called in a prescription for antibiotics because the symptoms resembled ones the patient had had about 8 months earlier that cleared up with antibiotics.

The patient felt well enough to pick up the antibiotics and the couple's 2 children from preschool. When he got home, he took the antibiotics and went to bed. His wife found him dead that evening. The cause was determined to be cardiac arrest from myocarditis.

PLAINTIFF'S CLAIM Based on the reported symptoms, the doctor should have seen the patient immediately and referred him to an emergency department, where myocarditis would have been diagnosed and lifesaving treatment could have been started.

THE DEFENSE The patient's wife didn't properly describe all the symptoms to the nurse when she called. If she had, the doctor's office would have scheduled an immediate appointment. In any case, myocarditis is difficult to diagnose; a pathologist's findings indicated that the patient had focal myocarditis only in the right ventricle, which would have caused no symptoms detectable by a physical examination or electrocardiogram.

VERDICT \$220,255 New Jersey judgment. The jury returned a \$1 million verdict on a finding that the doctor was 20% responsible for the damages and the patient's pre-existing condition was 80% responsible.

COMMENT *I'm increasingly alarmed by the trend to find clinicians partially responsible for damages. A 20% share of liability added up to more than \$200,000 in this case.* **JFP**