

the Reporter

OB-GYN CLOSE CLAIM STUDY FAILURE TO OBTAIN A PREGNANCY TEST

By S. Catherine Stidham, Risk Management Representative

The following closed claim study is based on an actual malpractice claim from TMLT. This case illustrates how action or inaction on the part of physicians led to allegations of professional liability, and how risk management techniques may have either prevented the outcome or increased the physician's defensibility. The ultimate goal in presenting this case is to help physicians practice safe medicine. An attempt has been made to make the material less easy to identify. If you recognize your own case, please be assured it is presented solely for the purpose of emphasizing the issues of the case.

Presentation

On July 6, a 35-year-old patient presented to her ob-gyn for her annual well woman exam with complaints of urinary incontinence with coughing and straining, heavy irregular bleeding on the birth control pill, and cramping. During this visit, the physician performed a pelvic exam, and noted her last menstrual period (LMP) to be June 18. In response to her complaints, the physician recommended a hysterectomy and bladder suspension which was then scheduled in August after the patient called the office to confirm that she would like to proceed with the operation.

The patient began seeing the physician 11 years earlier for prenatal and gynecological care. Seven years later the physician removed an IUD because of excessive bleeding, and discussed removal of her uterus if the absence of the IUD did not solve the problem. However, the bleeding ceased and there was no further discussion of a hysterectomy. The patient was currently using a contraceptive pill for birth control.

Physician action

On August 22, the patient was admitted to the hospital with diagnoses of stress urinary incontinence, menometrorrhagia, and pelvic relaxation. After informed consent, the physician performed a hysterectomy. After her uterus was removed, it was described as "very large, about 12 weeks." The physician suspected a pregnancy at the time the uterus was delivered. He later received a phone call from pathology, confirming the pregnancy. The physician told the patient about the pregnancy the following morning.

Allegations

The plaintiff alleged that the physician performed a hysterectomy without obtaining a preoperative pregnancy test.

Legal implications

Although the defendant physician did not feel a pregnancy test was necessary because the patient reported she could not be pregnant, some TMLT consultants and the plaintiff's expert were critical of the physician for performing a hysterectomy on the patient without ordering any type of pregnancy test as part of the preoperative lab work-up. As one reviewer commented, for the menstruating woman of childbearing age, "it is the standard of care to obtain a pregnancy test prior to any gynecologic surgery, especially a hysterectomy surgery, at the time preadmission laboratory studies are obtained."

Peer reviewers were also critical of the physician's discharge summary and the physician's suggestion that the patient should have known she was pregnant when she called into the office with her decision to have the hysterectomy. Upon the reviewer's analysis, the patient had reported and the physician documented that her LMP was

June 18. Therefore, on July 6, the patient would not have missed a period, and would not have suspected pregnancy.

In addition, the discharge summary included wording that may have been perceived as inflammatory. The physician noted that he felt the patient's "hysterical reaction" to hearing about the pregnancy loss as a result of the hysterectomy was inappropriate for the situation. Reviewers felt this language blamed the patient for not realizing she was pregnant and was accusatory of her behavior when she was made aware of the consequences of failing to diagnose her pre-existing pregnancy.

Although some defense expert opinions supported the physician citing that he met or exceeded the standard of care that a prudent physician would have done under like or similar circumstances, ultimately the plaintiff's attorneys argued that the loss of the patient's unborn fetus, with the naturally accompanying pain and suffering which she endured, were directly and proximately caused by the negligent care she received from the physician. They argued that, based on reasonable medical probability, if the physician had ordered a pregnancy test before he performed a hysterectomy, or the nursing staff had followed the anesthesiologist's orders and sent a pregnancy test to the laboratory on the patient, the test would have been positive and he would have canceled the surgery. Ultimately, the patient would have had the option to make a decision regarding continuation of the pregnancy.

Disposition

The TMLT defense team anticipated a jury verdict in the low to mid-six figure range. After three days of trial, a settlement was negotiated for an amount in the low six-figures. The patient also settled with the hospital for an amount in the low five-figures.

Risk management considerations

Although the physician did disclose the unexpected outcome to the patient and document the physician-patient interaction, it is suggested that the physician avoid language in the medical record that may be perceived as negative toward the patient. Although it was argued by defense experts that the physician did not breach the standard of care, a jury verdict may have been influenced by the sympathetic nature of this unfortunate occurrence.

It is also recommended that those physicians whose practice involves hospital personnel make an assessment of the systems in which they provide patient care. In this case, it was suggested that a pregnancy test could have been ordered on several occasions: at the doctor's office, with preoperative laboratory testing, and from standing anesthesia orders. Adding a question to the patient encounter forms regarding pregnancy status may prompt physicians regarding unassessed risks. A pregnancy test is a simple, inexpensive blood or urine test which confirms or rules out unexpected pregnancies in women difficult to diagnose.

Although the removal of a pregnant uterus at the time of surgery is an unusual occurrence, and other factors such as obesity and the use of birth control pills may make the diagnosis of pregnancy more difficult, it is advisable that gynecological operative pregnancy tests on all women of reproductive age be ordered. Even if the defense attorney could have successfully argued that the physician was justified in omitting the preoperative pregnancy test, it may have been difficult for a jury to understand why a pregnancy test was not done. Since this case involved the loss of a fetus, it is possible that the jury could have returned a sympathetic high verdict for the plaintiff.

Risk Management Times

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risk management 101

Combating physician stress and burnout

By Barbara Rose, Senior Risk Management Representative

Physician, heal thyself!

“Self-love my liege is not so vile a sin/As self-neglecting.”

(King Henry V, Act 2, scene 4)

Shakespeare wrote with acumen in relation to life and its realities. Self-neglect may have been as prevalent in the 1500s as it is in 2004. In today’s stress-filled world, with no exception or reprieve for physicians, these lines serve as a reminder that one who neglects his own health may be perceived as careless in regard to the health of his patients. Self-care is unlikely to be a part of the physicians’ training and no doubt ranks low on a list of priorities.¹ Many physicians do not have a personal physician for their own care. From this fact, it is a short leap to the premise that a stressed out physician may make more medical errors and have more malpractice lawsuits.

Health is much more than the absence of disease. We all experience stress in our lives. How we deal with it depends on many factors — age, maturity, work, relationships, and approach to life — to name a few. One study with 130 physician responders revealed data indicating the use of “approach-to-life wellness-promotion practices is associated with increased psychological well-being among physicians.”²

From analysis of this survey, five wellness-promotion elements evolved and included relationships, self-care, work, spirituality, and approaches to life. Among the respondents who reported use of any of the elements, there was a trend toward increased psychological well-being. When use of the five categories was compared, the approach-to-life practice was linked to significantly higher levels of psychological well-being.

Identifying burnout

What are the characteristics of burnout? There are many including fatigue, inability to concentrate, anxiety, irritability, insom-

nia, depression and, at times, increased use of alcohol or drugs. The most distinct characteristic of burnout is likely to be a loss of interest in one’s work and/or personal life.³

“Some studies suggest that burned out physicians have more trouble relating to patients, and the quality of care they provide may suffer.”⁴ Physicians need to achieve balance in their lives. Medicine is their profession but one’s personal and community life must not be neglected.

According to stress management experts, the risks of today’s physicians experiencing burnout are greater than ever as they deal with lower reimbursement, managed care issues, patients with unrealistic expectations, and rising medical liability insurance costs. Past generations of physicians were taught to keep going when things got tough. That continues to be the ethos for some physicians.⁵

Burnout does not have to result in a career-ending event. Having recognized burnout and the need for help, options are available for physicians. The Texas Medical Association Committee on Physician Health and Rehabilitation is dedicated to the promotion of physician health and well-being. For more information access the TMA web site at www.texmed.org.

Assess the balance in your life — all aspects — emotional, social, intellectual, spiritual, occupational, financial and physical. Achieving balance provides resilience and the energy to “deal with stress, avoid burnout, and extract the greatest meaning and joy from everything life has to offer.”

The warning signs of stress and burnout include:

- emotional and physical exhaustion;
- physical symptoms such as headaches, chest pains, depression, sleepiness, digestive problems;
- anger, anxious or irritable behavior toward others; outbursts of temper;
- inability to take on additional tasks;
- feelings of helplessness and loss of control;
- persistent thoughts of quitting work;
- sarcasm, negativism and cynicism in

one’s surroundings;

- feeling guilty when at rest or play; and
- placing blame on others.⁶

How to beat burnout

- Identify stressors and focus on what you can control. Learn to cope with things you cannot control.
- Slow down and leave your work at the office.
- Make time for yourself and your family.
- Prioritize what is important and urgent.
- Vary your workload and know your limits.
- Exercise, eat right and get enough sleep.
- Connect with those around you.
- Find ways to have fun each day.⁷

Physicians who have “hit the wall” after ignoring stress and have progressed to burnout, have coped in a variety of ways. These include leaving medicine abruptly, early retirement, a career change within medicine if options are available, time-off with and without family to reflect and recover. This writer met a cardiologist several years ago who was at the pinnacle of his career in medicine. He was retiring in a few months and had enrolled in a cooking school in Europe.

In lieu of a choice without money worries, the burned out physician who wants and needs to continue his/her career will recognize that support and options for recovery are available. Whether a retreat, a physician support group, a trip never taken, or a sabbatical to reconnoiter and recover, the method will vary among physicians. Find a solution uniquely meaningful and take action.

To quote Steven Miles, MD, “There is a presumption that, unless you are invincible, you are a less-than-optimal physician, which is simply not true.”⁸ Men and women with the same human weaknesses present in all of us apply to medical schools. As medical students, residents, fellows and practicing physicians, our humanness with all its

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incumbent foibles remains. The difference in response to stress and avoidance or burnout is influenced by all facets of life. Recognizing stress and burnout, reflecting, reevaluating goals and values, taking action to intervene, and finding a balance is the key. We all have choices and one should include acknowledging our needs. Maintain flexibility in life. Physician, do no harm and heal thyself!

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NIH halts hormone replacement study

On March 2, 2004, the National Institutes of Health halted a study involving estrogen and the possibility of reducing the risks of developing heart disease in healthy postmenopausal women. The study found that the hormone offered little such protection and long-term use slightly increased the risk of stroke and possibly dementia. The NIH released only preliminary data. When released, the study may be accessed on the NIH web site, www.nih.gov.