MALPRACTICE COUNSEL

Commentary by Francis L. Counselman, MD, Associate Editor-in-Chief | Neal E. Flomenbaum, MD, Editor-in-Chief

Failure to Give Proper Instructions About Returning to the ED

A mother brought her 4-year-old daughter to an ED in Indiana because the girl was gagging and had watery diarrhea. She was seen by an emergency physician, who determined that the girl was not dehydrated and prescribed promethazine to treat nausea. The girl was then discharged with instructions for the mother to give her fluids.

The prescription was filled on the way home and administered upon arrival there. Within a few hours, the girl's condition worsened. She became lethargic, had persistent diarrhea, and could not hold her head up to take a drink. The mother called the hospital and spoke with a nurse, who (according to the mother) told her to "give the medication more time to work."

A few hours later, the girl was found in her bed, not breathing. She could not be revived.

The local police department initially investigated the death as a homicide, with the mother considered a suspect. The investigation ended when an autopsy determined the cause of death to be dehydration secondary to body volume loss due to diarrheal enteritis. The pathologist also identified promethazine intoxication as a significant contributing factor in the death.

The plaintiff made claims against the physician and the hospital and also sued the manufacturer of the promethazine syrup, claiming that testing showed that the concentration of promethazine in the syrup was 2.68 times greater than the dosage that should have been given. The manufacturer was granted a summary judgment, as the evidence was insufficient to show that the death was due to promethazine intoxication.

The plaintiff mother claimed that she should have been told to return the child to the hospital if the diarrhea worsened or if the girl's mental status deteriorated. The plaintiff also claimed that she should have been told to bring her daughter back to the hospital at the time she called to report her worsening condition.

The emergency physician claimed that it was the nurses' duty to give discharge instructions and that he was unaware of the call made later. The hospital claimed that proper discharge instructions were given and that the mother was told to bring the girl back if she felt it was necessary (which the mother disputed).

Outcome

According to reports, a $200,000 verdict was returned against the hospital. The physician was granted a directed verdict.

Comment

There are multiple issues involved in this case, but perhaps the most important is the critical role of discharge instructions. Repetition is a good thing; patients should receive discharge instructions from both their physician and the nurse. The physician should provide the patient, in clear and easily understandable language, the diagnosis and the discharge instructions, and answer any questions. The nurse should then review the instructions with the patient and provide a printed/hard copy. Reasons to return should be specific (eg, continued vomiting; change in mental status); "return prn" means absolutely nothing. Finally, a copy of the discharge instructions should remain as part of the chart. Documentation of discharge instructions (like everything else in medical malpractice cases) is extremely important, as illustrated in this case. **FLC**

Failure to Properly Treat Infant's Symptoms, Meningococcemia, and Sepsis

A 16-month old infant was brought to an Illinois ED with a high fever, diarrhea, lethargy, spreading rash, and other symptoms. About three hours later, he died from meningococcemia and sepsis caused by *Neisseria* meningitis in his blood (ie, Waterhouse-Friderichsen syndrome). The plaintiff claimed that the defendant emergency physician failed to properly monitor and treat the infant's deteriorating condition, meningococcemia, and septic shock. The defendant claimed that proper treatment was given, but the child's condition was too far advanced to prevent his death.

Outcome

According to reports, a defense verdict was returned.

Comment

Being sued for malpractice afterward compounds a physician's pain when everything that could possibly be done for a dying child is not enough. But just because a case is brought does not make it true, and the majority of medical malpractice cases are decided in favor of the physician. Practicing within the standard of care while accurately documenting the patients' conditions, diagnostic study results, and treatments will usually result in a favorable outcome. **NEF**

Man Dies After Leaving Hospital Against Medical Advice

A 31-year-old California man was struck by a vehicle while walking across a street. He was taken from the scene by ambulance to a hospital. On arrival at the ED, he was placed in a cervical collar and examined by the ED staff. A police officer who had responded to the accident scene came to the hospital to ascertain whether the patient was intoxicated.

The emergency physician ordered CT, but when the technician attempted to complete the scan, the patient refused further treatment. The emergency physician who had examined him advised the patient not to leave before he had undergone a full evaluation.

The man was picked up by a friend and left the hospital against medical advice. He was found unconscious about 4.5 hours later. He was taken back to the hospital, where he was pronounced dead. The cause of death was bleeding into his brain from a skull fracture.

The plaintiff claimed that CT should have been performed before the decedent left the ED and that hospital personnel knew that the decedent was intoxicated, which affected his judgment. The defendant claimed that the decedent was not intoxicated and that the decedent understood the consequences of leaving. The defendant also claimed that the decedent was alert and oriented when he left and was able to walk without problems.

The defendant further claimed that something else happened to the decedent after he left the ED. The friend who had picked up the decedent invoked his right under the Fifth Amendment not to answer when asked about what happened after the decedent left the hospital. The defendant maintained that there was no evidence of deteriorating condition, which would have been observed if the patient had a brain injury while he was in the ED.

Outcome

According to a published account, a defense verdict was returned.

Comment

Patients leave the ED against medical advice (AMA) every day in the United States. When dealing with such patients, the emergency physician must discuss with them the reason(s) for leaving, attempt to persuade them to stay, and explain the risks involved with leaving. It is often helpful to involve family members or friends in convincing a patient of the need to stay.

If the patient still wants to leave, the emergency physician must determine if the patient has the capacity to make medical decisions. For those patients who do not possess capacity, the least amount of force necessary to restrain the patient should be used. A few complaints, like suicidal or homicidal ideation, require the physician to prevent the patient from leaving regardless of capacity.

For both types of patients—the ones who leave and the ones who require restraint—documentation is critical. Be sure to document why you think the patient possesses capacity (or does not) and your explanation to the patient of the risks involved with his/her decision. **FLC**

Undiagnosed Epiglottitis Blamed for Death

A 47-year-old man presented to an ED in North Carolina with a recent history of an extremely sore throat. The man was drooling and could not control the secretions from his mouth. An emergency physician examined him, diagnosed a sore throat, and discharged him. The man's wife drove him home, then went to pick up a grandchild. When the wife returned home, she found her husband unresponsive. Emergency person-

CONTINUED ON NEXT PAGE

CONTINUED

nel attempted to intubate the man but were unsuccessful. He died 4 hours after his discharge from the ED.

The plaintiff claimed that the patient had symptoms of acute epiglottitis, which the defendant failed to diagnose. The plaintiff additionally claimed that the defendant had failed to note the decedent's extreme pain and secretions.

The defendant maintained that the decedent did not have sufficient signs or symptoms of epiglottitis, which is a rare condition. The defendant argued that the decedent's condition deteriorated rapidly after he left the ED and that the wife should not have left the decedent alone after his discharge if he was as sick as the woman claimed.

Outcome

A defense verdict was returned.

Comment

Despite a defense verdict in this case, it is worth remembering that there are some serious or life-threatening conditions that typically present with few or no signs and one worrisome symptom: severe pain out of proportion to the physical findings. Among these conditions are mesenteric ischemia, hydrofluoric acid exposure, and adult epiglottitis. It is difficult to provide guidelines for how frequently to consider one of these conditions and how far to go in pursuing the diagnosis. But one thing is certain: If you don't think of them, sooner or later you'll miss one. **NEF**

Cases reprinted with permission from *Medical Malpractice Verdicts, Settlements and Experts*, Lewis Laska, Editor, (800) 298-6288.