WHAT'S THE VERDICT?

Medical judgments and settlements

COMMENTARY PROVIDED BY
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The patient said she told the ob-gyn about her family physician's advice to avoid estrogen-containing birth control. And yet, she received an etonogestrel/ethinyl estradiol vaginal ring.

Birth control prescription blamed for stroke

A 29-YEAR-OLD WOMAN SUFFERED A BLOOD CLOT in her leg. Her family physician advised her to start taking aspirin, which she did, and counseled her to use birth control that didn't contain estrogen. She was taking norgestimate/ethinyl estradiol at the time of the clot.

The woman subsequently went to an obstetrician-gynecologist (ob-gyn), whom she said she told about her family physician's advice to avoid estrogen-containing birth control medication. The ob-gyn prescribed and inserted an etonogestrel/ethinyl estradiol vaginal ring.

A few months later the patient was hospitalized with severe headaches. She had blood clots in her brain and had suffered a stroke, which affected her speech and executive functions.

PLAINTIFF'S CLAIM The ob-gyn was negligent in prescribing the vaginal ring.

THE DEFENSE The cause of the first clot was an injury; the vaginal ring didn't cause the second clot and stroke.

VERDICT $523,000 Georgia verdict.

COMMENT *A comprehensive history, and clear documentation of communicating the potential risks of therapy, might have prevented this judgment.*

Elevated PSA without referral delays diagnosis

ROUTINE BLOOD WORK before orthopedic surgery revealed an elevated prostate-specific antigen (PSA) of 7.4 in a 53-year-old man. A medical assistant who was directed to refer the patient to a urologist didn't do so. Widespread metastatic prostate cancer was diagnosed 18 months later.

PLAINTIFF'S CLAIM Diagnosing the cancer 18 months earlier would have given the patient a >50% chance of 5-year survival. Because of the delay, he was terminal. The clinic was negligent in having no written procedure or system for tracking adverse lab test results.

THE DEFENSE The patient already had metastatic disease when the PSA level was discovered and would have required the same treatment.

VERDICT $1 million Washington settlement.

COMMENT *A clear system for tracking test results is imperative in today's litigious society.*

Removal of mole without follow-up leads to death

A MOLE ON THE UPPER BACK prompted a 26-year-old man to visit a dermatologist, who performed a complete excision. The pathologist who examined the excised tissue suggested that the patient return for follow-up. During the next 6 months, the patient saw the dermatologist twice but didn't receive proper follow-up.

Two years later, the patient noticed a suspicious area on his back near the scar from the excision. A hospital biopsy resulted in a diagnosis of metastatic melanoma. A review of the slides from the original biopsy found "melanoma, superficial spreading type, invasive to a depth of a minimum of 1.0 mm anatomic level IV, extending to inked deep resection margin."

The patient underwent a wide local excision and was given a diagnosis of stage III melanoma. The patient underwent neck and back radiation and high-dose treatment with alpha interferon, followed by high-dose interleukin-2 and chemotherapy. Nevertheless, the patient died.

PLAINTIFF'S CLAIM The dermatologist's office had no system to contact the patient when he didn't return. The chances for cure would have been between 73% and 94% if the melanoma had been diagnosed at the time of the original excision.

THE DEFENSE No information about the defense is available.

VERDICT $1.7 million Massachusetts settlement.

CONTINUED ON PAGE 660

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.

CONTINUED FROM PAGE 654

COMMENT *Failure to follow up on abnormal results is a potentially preventable cause of malpractice. Do you have a mechanism to track such testing?*

Suggestive symptoms, but no Dx until it was too late

A nodule was spotted on a preop chest x-ray, but the patient wasn't told and a referral wasn't made.

A 42-YEAR-OLD WOMAN went to the hospital in February for chest pain, dizziness, and shortness of breath. The emergency room physician diagnosed sinusitis and bronchitis and discharged the patient in stable condition. In April, the woman visited her primary care physician complaining of fatigue and shortness of breath. She claimed that her physician knew about the February emergency room visit. Later in April, she again went to her physician with shortness of breath; in July, she reported an irregular heart rhythm.

In October, the patient was found unresponsive after suffering cardiorespiratory arrest, hypoxic ischemic brain injury, and static encephalopathy. She has since been in a vegetative state.

PLAINTIFF'S CLAIM The patient had gone to her primary care physician many times during the 2 years before her emergency room visit with complaints suggesting an underlying cardiac condition, including shortness of breath, dizziness, light-headedness, vertigo, chest tightness, fatigue, and an irregular heart rhythm. The defendants were negligent in failing to diagnose the patient's condition and provide proper treatment, failing to order proper diagnostic testing, and failing to perform a cardiac workup.

THE DEFENSE No negligence occurred.

VERDICT $6.3 million Florida verdict.

COMMENT *Comprehensive documentation, including your medical decision making, can help prevent multimillion dollar judgments.*

A serendipitous finding—to no avail

A FALL ON THE ICE sent a 74-year-old woman to the hospital with a fractured ankle. A preoperative chest radiograph taken before open reduction and internal fixation to repair the fracture showed a 2-cm nodular opacity in the right upper hemithorax. The radiologist recommended a computed tomography scan to rule out lung cancer, but the treating internists didn't order a scan or refer the patient for biopsy.

The nodule appeared again on a second radiograph taken 2 days later. The patient wasn't informed, and the attending internist at the time didn't order follow-up testing or refer the patient to a specialist. The attending physicians continued to treat the patient without further testing or referral for the nodule.

Two years after the fracture, the patient was admitted to the hospital with complaints of sweating and shortness of breath. A chest radiograph showed pneumonia and the previously noted nodule. The patient was diagnosed with metastatic, inoperable small-cell lung cancer. She died after receiving extensive chemotherapy and radiation.

PLAINTIFF'S CLAIM The doctors were negligent in failing to diagnose and treat the lung cancer in a timely manner.

THE DEFENSE No information about the defense is available.

VERDICT $325,000 Michigan settlement.

COMMENT *Could this happen to you? How many times have you serendipitously noted an abnormal result that was not followed up adequately?* **JFP**