Responsibility for delayed Dx cuts both ways

A 44-YEAR-OLD WOMAN went to a university medical clinic complaining of weight gain and fatigue. The clinic was staffed by residents supervised by clinical faculty. The resident who examined the woman found a 1.5-cm mobile mass in one of her breasts. After consultation with the supervising physician, a mammogram with ultrasound was ordered. The supervising physician didn't see the patient, but signed off on the treatment plan.

The mammogram was performed 2 days later and the mass was evaluated as probably benign. The patient was advised to follow up in 6 months. A month later, a second resident consulted with the patient and told her that she could have a biopsy or follow her condition on her own. The patient decided against a biopsy.

Eight months later, the clinic sent a reminder to the patient to return for follow-up, which she did. At that time, the skin on her breast had the texture of orange rind and the mass had grown. Metastatic breast cancer was diagnosed. Aggressive treatment was recommended, but the patient opted for herbal and other homeopathic remedies.

The initial trial of the case ended in a defense verdict, which was appealed after the patient died. A second trial led to a verdict finding the supervising physician 99% at fault and the patient 1% at fault. The jury award was set aside by the trial court.

PLAINTIFF'S CLAIM Failure to diagnose breast cancer promptly constituted negligence. A needle biopsy was needed.

THE DEFENSE The follow-up plan was reasonable; the patient didn't return for evaluation when her condition changed.

VERDICT $2.4 million verdict in the second trial, set aside by a Tennessee judge.

COMMENT *Failure to appropriately diagnose breast cancer is a leading cause of medical malpractice. A persistent breast mass, no matter the mammographic findings, needs to be followed aggressively and appropriate evaluation and referral pursued.*

Missed pulmonary embolism proves fatal

TWO FAINTING EPISODES caused a 41-year-old man to be transported to the emergency department (ED), where he was found to have decreased blood oxygenation, increased respiratory rate, and heart strain. The patient had hypertension and had recently taken 2 4-hour airplane trips.

An ED physician examined the man initially and admitted him to the hospital. About 12 hours after admission, an attending family physician saw the patient, but didn't order any immediate testing. The patient subsequently died from a pulmonary embolism.

PLAINTIFFS' CLAIM Prompt testing was needed to rule out pulmonary embolism.

THE DEFENSE Fainting isn't a common sign of pulmonary embolism. A 4-hour plane ride usually isn't sufficient to cause deep vein thrombosis.

VERDICT $975,000 New Jersey settlement.

COMMENT *Although pulmonary embolism certainly has more classic presentations than this one, the combination of the patient's history and clinical findings were of sufficient concern to warrant prompt evaluation.*

Warfarin + a twisted back = bad outcome

A FALL DOWN A FLIGHT OF STAIRS in her home caused an 85-year-old woman to twist her back when she grabbed for the bannister (she caught herself before landing). She was taken to an emergency department, where the staff noted that she was taking warfarin; she was diagnosed with acute low back pain and strain. The patient continued to receive anticoagulation therapy.

Because the patient also had decreased sensation in her lower legs, a magnetic resonance imaging (MRI) scan of the lumbo-

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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
Jeffrey L. Susman, MD, Editor-in-Chief

The patient, who had hypertension and had recently taken 2 plane trips, was admitted with decreased blood oxygenation and an increased respiratory rate; the attending physician ordered no immediate tests.

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The plaintiff claimed she wouldn't have developed cancer if she'd undergone screening. The defense denied responsibility, saying the patient only came into the office for acute-care issues.

sacral spine was ordered. The wet read of the MRI reported degenerative joint disease at L4-5 and mild-to-moderate spinal stenosis at L1-2, L2-3, L3-4, and L4-5, with no other abnormalities. The radiologist who issued the formal report described similar findings.

The next morning, the patient complained of numbness in her legs. She couldn't move either leg and needed help to turn in bed. By noon, she had minimal motor control of her legs and couldn't stand.

The attending physician was notified, but didn't assess the woman. When a nurse called the doctor to let her know that the physical therapist had concerns about the patient, the doctor said that she'd address the concerns the following morning.

A neurologist ultimately assessed the patient and reported that she had neurologic deficits in her legs that interfered with her ability to walk. The patient continues to have significantly impaired function in her legs.

PLAINTIFF'S CLAIM The radiologists failed to identify abnormal signal intensity on the MRI, which should have raised concerns about bleeding and prompted an immediate assessment. The patient's warfarin therapy wasn't managed properly.

THE DEFENSE Subdural bleeding in the spine is rare. The fall caused the neurologic impairment, which was unlikely to improve regardless of the timing of diagnosis or treatment. The proper orders were given based on the reported MRI results. Discontinuing warfarin posed a risk in light of the patient's history of mini-strokes.

VERDICT $1.5 million Massachusetts settlement.

COMMENT *Although we could debate the cause of this patient's disability, anyone on warfarin is at risk for occult bleeding and requires careful assessment after a fall or injury.*

Colon cancer blamed on failure to screen

AFTER HER PHYSICIAN LEFT HIS PRACTICE, a woman started seeing another doctor in the practice almost exclusively. The second doctor never discussed or recommended colon cancer screening. Seven years later, at 66 years of age, the patient was diagnosed with stage IIB adenocarcinoma of the colon. She underwent surgery to remove part of the large intestine and required 6 months of chemotherapy.

PLAINTIFF'S CLAIM The doctor was negligent for failing to recommend colon cancer screening. The patient wouldn't have developed cancer if she'd undergone screening.

THE DEFENSE A screening recommendation wasn't required because the patient visited the doctor's office only for acute-care issues.

VERDICT $357,130 Illinois verdict.

COMMENT *Even patients who are casual users of our practices should receive clearly documented screening recommendations or requests to have a complete physical.*

Quinolone leads to tendon damage in patient with known allergy

SINUSITIS PROMPTED A 35-YEAR-OLD WOMAN to visit an otolaryngologist. The physician prescribed moxifloxacin, despite the woman's well-documented history of allergy to quinolone antibiotics.

After 2 doses of the drug, the patient developed a reaction marked by tendon damage in the hips. She suffered ongoing limited mobility, which affected her work and interfered with her ability to pursue her hobbies.

PLAINTIFF'S CLAIM The doctor was negligent in prescribing moxifloxacin.

THE DEFENSE Although moxifloxacin belongs to the quinolone antibiotic class, it has differences that make prescribing it a matter of judgment.

VERDICT $203,614 Kentucky verdict.

COMMENT *Although we don't know the exact nature of the patient's "allergy" to quinolone antibiotics—we all know of cases in which allergy is defined as a bit of diarrhea or stomach upset. I have to wonder whether the decision-making process that led to using moxifloxacin (instead of another antibiotic) was documented clearly.* **JFP**