The Devil is in the (Documentation) Details

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This case involves a middle aged female who died from complications of anal cancer. She had been a patient of the family practice for seven years prior to her death. The plaintiff alleged her primary care physician (PCP) failed to provide yearly rectal exams, and that this failure resulted in a delayed diagnosis of anal cancer. Did the PCP prevail?

This patient celebrated her 50th birthday under the care of her PCP. She was seen in that office on a regular basis for a variety of complaints, including constipation and hemorrhoids. The PCP testified the patient refused a digital rectal exam, but he had not documented the patient’s refusal. The medical record did not reflect the PCP ordered any further procedures or studies (i.e. colonoscopy, sigmoidoscopy, fecal occult blood testing) or any form of screening for anal or colorectal cancer.

There was also no documentation of a referral to a gastroenterologist or the patient’s refusal of such referral.

The PCP treated the patient with Anusol suppositories, and advised her to return to the office if the condition did not improve within 7 days. In the meantime, the patient sought the services of a gastroenterologist who diagnosed her with anal cancer. She succumbed to cancer complications two years later, and her husband sued the PCP and the practice.

Risk Management Commentary:

A settlement was negotiated. This case demonstrates a situation in which a physician becomes so familiar with a patient that he/she stops pushing the patient to comply with the usual standard recommendations, and an important piece of baseline/diagnostic information is missed. Also, the lack of sufficient medical record documentation became problematic for the defense of this case.

The PCP defendant maintained that he offered all of the normal health screening, including screenings for colon and rectal cancers, which she refused, presumably because she was not insured. Ultimately, the experts who reviewed this case were unsympathetic towards the PCP because of the lack of documentation in the patient’s medical record. There was no meaningful discussion in the record of the importance of health screenings for a person in this age group, particularly one displaying these particular symptoms. The practice documented these issues by checking a box marked “PEU”, meaning “patient education understood”, but did not specifically indicate what was discussed with the patient. Under the circumstances, this level of documentation was considered to be inadequate. The situation easily moved into a “he said, she said” direction, because of the shortcomings in the record documentation.

Two defense experts disagreed about the standard of care requirements for patients who reach the age of fifty. Does the physician necessarily need to discuss, and document, the need for screening exams like annual physical, annual breast exams, yearly pelvic exam, PAP smears, yearly rectal exams and colonoscopies?

One expert opined that a simple pelvic exam would have led to the diagnosis, so he believed our PCP’s care fell below the standard of care.
How should you respond to a patient who fails to participate in a recommended health screening?

Ask the patient:

- Do you have an interest in being screened for any potential health risk?
- Is there something in particular you don’t like about or fear regarding this recommended screening?
- If indications of this disease/condition were detected in you, would you want to be treated?
- Would you like to discuss my recommendation with another provider?
- Elicit and document the patient’s reason/s for refusal or rejection of the recommended treatments or diagnostics.

When your patient refuses care, ensure that your medical records reflect your detailed discussions of the risk of refusal and/or any alternative treatments or procedures with which the patient may be more cooperative. MagMutual Insurance Company has a sample “Informed Refusal” form you may request your patient signs. In these situations, while patients generally cannot “sign away” their legal rights, their signatures on such documents may constitute valuable evidence that these discussions did in fact occur.

However, if you feel strongly that a patient should undergo a treatment or procedure that he/she is refusing, and for which there really is no good alternative, then consider dismissing the patient from your care. Again, protocols for ending the physician-patient relationship should be followed; repeated non-compliance— as happened in this case—can increase the liability risk for the physician.

For more information, call MagMutual Insurance Company, and ask for Risk Management.

MAG Mutual Risk Managers invite our policyholders’ questions. If you wish to discuss information presented in this article, or have other questions, please call us at 1-800-282-4882, and ask for Risk Management.

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