When Instincts are Ignored

By William "Mike" J. Johnson, JD

Our instincts of self-preservation and “common sense” protect us from many hazards. This article illustrates what can happen when those instincts are absent or ignored.

The plaintiff, a middle-aged diabetic female, presented to a family practice physician for the primary purpose of obtaining medication for her diabetes. This was her very first time to visit this practice and this physician. During the visit, she also asked the physician to examine a small, pimple-type lesion on her buttock. She was diagnosed with cellulitis, skin ulceration, skin abscess and diabetes. Neither a culture of the lesion nor a blood sugar level were obtained. She was prescribed Bactrim, Silvadene and medications for diabetes and pain. She was scheduled for follow-up in fourteen days and told to return if the lesion worsened.

The communications that took place during those fourteen days are disputed between the physician, the office staff, the patient and her husband. The husband says he spoke with the physician and told him her condition was worsening and that she was out of antibiotics and pain pills. According to the husband, the physician refused to treat her. The physician maintained his only communication with the husband was related to giving a refill of pain medication. The physician’s staff denied that the patient called requesting either an earlier appointment or to advise the physician that her condition was worsening.

When the patient presented for the two-week follow-up, she had extensive areas of gangrene affecting the gluteal area. She was emergently admitted to the hospital where she underwent surgical debridement and began a lengthy course of treatment, including a diverting colostomy. The patient and her husband sued the family practice physician. The complaint alleged that the physician failed to properly diagnose the patient’s condition, failed to obtain a culture or blood sample, failed to re-examine the patient sooner and failed to prescribe additional antibiotics.

In this case, the patient presented with a small skin infection that progressed to a life or limb-threatening gangrenous infection, yet neither she nor her husband made any meaningful effort to secure medical help from this physician or any other medical provider. Her husband agreed that the wound increased in size and severity and emitted a putrid odor. He went so far as to purchase a walker for her as the infection made ambulation difficult. The most basic and routine biological functions were compromised due to the location of the infection and may have exacerbated the infection. She had to be transported on her side to the scheduled appointment, as she could not sit in the vehicle. The patient denied any responsibility for neglect of her own medical condition and

explained that she “trusted” the physician and did not see a need in going elsewhere for medical care. Incredibly, the patient stated that after the first office visit she did not look at the wound again.

We may never know why the plaintiffs failed to get medical help in the face of such a horrifically deteriorating condition. Did the physician have any warning signs of her deteriorating condition? Possibly the request for more pain medication signaled that the infection was not improving. The physician maintained that he had no idea that the patient’s condition deteriorated to this extent.

While it is more common that a patient may neglect a latent, subtle or hidden condition, in rare circumstances patients may neglect their own care when the danger, as here, is obvious. Under similar circumstances, we offer some risk prevention suggestions:

- Clear, easy-to-understand documented instructions help protect the patient and the physician. Is there a particular risk that merits a special warning? Here, the patient was more susceptible to a worsening infection due to her diabetes and the location of the infection.
- Does a patient’s concern over cost cause the patient to refuse certain tests or make a patient reluctant to obtain follow-up appointments? If so, consider getting the patient to execute a Refusal of Treatment form (available here) or make other appropriate documentation.
- What does the “new” patient’s history tell you about the patient? Is the patient reliable? Who was the previous physician? Why is the patient no longer going to the previous physician? Is the patient seeking your full care and expertise or coming to you only to get a prescription or for treatment of a specific problem?

Lawsuits often involve disputed allegations concerning communications with the physician’s office. In your practice, are all calls documented? Is advice given by phone being reviewed and authorized by the physician? Are after-hours calls and calls received and made by a covering physician being documented? Some elements of this documentation should include:

- The date and time of the call.
- The direction of the call (the patient calling in or the physician’s office calling the patient).
- The names of those involved in the call.
- The nature of the call, and any orders, instructions, or information given.

Thorough documentation that supports the physician’s appropriate medical care may help to head off a lawsuit in the event the patient’s instincts of self-preservation are simply not what they should be. In fact, in any medical malpractice case, good documentation can only increase the chance of successfully defending your care.

At trial, this physician received a defense verdict. The jury concluded that the physician and his staff were credible and that their actions in caring for the patient were appropriate.

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