

Medical Legal Forum: Case Debrief: J.S. v. The United States of America

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“This is about to change with the implementation of a rule from the Federal Office of the National Coordinator for Health IT requiring health systems to provide greater access to patient health records.”

The majority of medical malpractice lawsuits in the United States claim that the physician was negligent. The states generally regulate medical malpractice, so exact definitions vary, but in general, a negligence claim is a charge that the physician failed to meet the “standard of care,” defined as how a reasonably prudent physician in the same or similar circumstances would act. In order to prevail, the plaintiff must show that the physician had a *duty* to the patient that was *breached* (by not practicing to the standard of care) and in turn *caused* measurable *damages*. All four elements must meet a certain burden of proof, which is usually “more likely than not,” a much lower burden than the criminal prosecution’s burden of proving guilt “beyond a reasonable doubt.” Consequently, it is not enough to show that the standard of care was breached, but the breach must also be the *cause* of the poor outcome in question. This was illustrated in a recent decision in the United States District Court, Western District of Texas, San Antonio Division, the case of *J.S. v. The United States of America* (SA-18-CV-00605-JKP).

Facts: [All facts are derived from the legal opinion]

J.S. was born on December 2, 2015, in San Antonio. His mother is deaf and requires a sign language interpreter for communication with others. His father has retinoblastoma and lost an eye to the disease. During pregnancy, the mother was referred to a geneticist but declined amniocentesis to test for the R.B. gene. The pediatrician, Dr. S, saw J.S. on December 3. He did not have access to the prenatal chart. Dr. S saw J.S. for multiple subsequent well-child visits, and the mother requested an interpreter, but one was not provided, and the father interpreted at these visits. At the April 15, 2016 visit (4 ½ months) a different physician, Dr. J, saw

J.S. and, based on the physical exam and written communication with the mother, referred the baby to a retinoblastoma specialist where he was diagnosed with bilateral retinoblastoma. He has subsequently received chemotherapy, cryotherapy, and laser therapy treatments with an “outstanding” response to treatment. Due to the tumor’s location, however, J.S. has permanent damage to central vision in his left eye as well as a significant blind spot in his right eye, the impact of which will not be fully understood until he is older.

“An important second aspect of the rule is penalties for anti-competitive behavior and information blocking that impedes the exchange of medical information. For example, some health IT vendors had a “gag clause” prohibiting the sharing of screenshots. These non-disclosure clauses hinder efforts to improve safety and openly discuss safety concerns.”

The Lawsuit

The family sued J.S.’s treating physicians stating that the damage to his vision was exacerbated by their failure to:

1. Provide an interpreter
2. Take a family history
3. Timely refer to a retinoblastoma specialist

Both sides had expert witnesses. Neither expert could predict to a reasonable degree of medical probability when the tumor formed or how long it had been growing. The plaintiff’s expert testified that it was difficult to determine whether J.S. will have a recurrence. The defense expert felt that the retinoblastoma had been successfully treated and had a recurrence risk of under two percent.

The Judge’s Decision

The judge ruled that Dr. S breached the standard of care by failing to obtain an adequate history and immediately refer J.S. to a pediatric ophthalmologist. The second pediatrician, Dr. J, immediately referred J.S. and did not breach the standard of care, although the judge noted it would have been “prudent” to provide an interpreter.

While the standard of care was breached, the judge ruled that the plaintiff did not establish a reasonable degree of medical probability, either the timing of the development of the retinoblastoma or how rapidly the tumors grew. As a result, there was insufficient evidence to show that the delay in diagnosis exacerbated the damage to J.S.’s vision. The defense prevailed, and there was no liability or payment to the plaintiff.

Discussion

In this case, the physicians were not held liable, although, as the judge noted, "it is possible J.S. might have had a better outcome if he had been referred to a pediatric ophthalmologist sooner." The case provides an opportunity for learning and reflection on what could have been done differently. The Institute of Medicine defines a learning health care system as one

in which science, informatics, incentives, and culture are aligned for continuous improvement and innovation, with best practices seamlessly embedded in the care process, patients and families active participants in all elements, and new knowledge captured as an integral by-product of the care experience.(1)

Medical malpractice lawsuits can provide learning opportunities to improve future patient care. What can be learned from this case that may help improve care for future patients? For one, this case highlights the importance of communication, both between obstetric and pediatric colleagues as well as with families. Family history can provide a wealth of information, and properly trained medical interpreters should be provided, especially when requested. And while rare, a baby with a parent who has retinoblastoma will have a 50% chance of developing tumors and requires timely referral and follow-up.

References:

1. *Roundtable on Value & Science-Driven Health Care. The Roundtable. Washington, DC: Institute of Medicine; 2012.*

The authors have no conflicts of interests to disclose.

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Disclaimer:

This column does not give specific legal advice, but rather is intended to provide general information on medicolegal issues. As always, it is important to recognize that laws vary state-to-state and legal decisions are dependent on the particular facts at hand. It is important to consult a qualified attorney for legal issues affecting your practice.

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