Allegations of Profit over Patients

By J. Baugh, JD, CPA

A physician faced a medical malpractice lawsuit after administering injections that allegedly failed to alleviate a patient's chronic pain. The patient, who sought relief from persistent discomfort, not only claimed the treatments were ineffective, but she also claimed the treatments were given simply so the physician could make money. This lawsuit underscored the complexities and risks associated with pain management therapies, raising important questions about the standard of care and the responsibilities of healthcare providers in ensuring patient well-being. This case serves as a poignant reminder of the challenges in achieving successful pain relief for patients.

Fran Spicer[1], a 40-year-old female patient, was referred to Dr. Andy Qualls, an interventional neurologist, by her PCP for pain in her neck that was radiating into her shoulders and arms and for pain in the median and ulnar nerves in both of her arms. Dr. Qualls diagnosed Ms. Spicer with lumbar radiculopathy. He also treated her with numerous injections over the course of several years, with the injections being given in her back, neck, legs and arms. Dr. Qualls' records showed that Ms. Spicer experienced good results from the injections and that she was pleased with the pain management provided

by Dr. Qualls. Despite this, Ms. Spicer filed a lawsuit against Dr. Qualls alleging that he performed unnecessary and excessive procedures on Ms. Spicer for Dr. Qualls' own monetary gain and that Dr. Qualls' actions fell below the standard of care.

Defense counsel made a couple of interesting observations after reviewing Ms. Spicer's medical records. First, it appeared that subsequent providers were critical of Dr. Qualls's "chronic" injection therapy. Second, Ms. Spicer contended that subsequent providers determined that her median and ulnar nerve issues were mild and did not equate to the pain she was experiencing. Ms. Spicer later had to have a triple level anterior cervical diskectomy at C3-4, C4-5, and C5-6 with cage insertion, which Ms. Spicer suggested could have been diagnosed by Dr. Qualls at the outset of his care. Ms. Spicer contended that Dr. Qualls was "masking" this issue so he could make money off the injections. Criticisms from subsequent providers make it difficult to defend a physician's care, and that was true with Dr. Qualls' care in this case.

If a physician decides to treat a patient for a chronic condition, it is helpful in the defense of a case for the physician to document the reasons for repeatedly treating the chronic condition with the same method of treatment, such as Dr. Qualls' decision to treat Ms. Spicer's chronic pain with continued injections. In this case, Ms. Spicer's attorneys were able to locate expert witnesses that said Dr. Qualls should have changed his method of treatment at some point, such as referring Ms. Spicer to a surgeon, rather than continuing with the injections. Documenting the reasons for continuing to treat chronic pain with injections rather than referring the patient to a surgeon would have helped not only with a standard of care defense, but it would have also helped rebut the allegation that Dr. Qualls continued to give the injections as a money-making enterprise. If a jury were to believe that the reason for continuing the injections was only to make money, it could cause a jury to think he was only interested in hiimself and not inerested in helping Ms. Spicer.

There were additional issues unrelated to Dr. Qualls' treatment that negatively impacted the defense of this case. The first issue was the history that Dr. Qualls had with medical board licensure proceedings. Regardless of the facts that lead to the medical board taking action against Dr. Qualls' medical license, disclosure of a negative licensure proceeding would have made the defense of this case more difficult. Whether this type of information will be admitted into evidence at trial is a decision that is solely within the court's discretion. Some courts will rule that licensure proceedings that are not related to the instant case are irrelevant and are therefore inadmissible during the trial, meaning the jury would not be informed that a licensure board took any action against the defendant. However, some courts will allow information about licensure proceedings to be admitted into evidence and allow the jury to decide whether that information should be considered in determining whether the defendant's treatment in the instant case fell below the standard of care. A second issue was the fact that Dr. Qualls closed his practice and moved back to his country of origin after the lawsuit was filed. SVMIC's policy states that an insured has a duty to cooperate with the defense of a claim. However, Dr. Qualls left the country with no indication that he would ever return for a deposition or a trial, making it even more evident that defending Dr. Qualls' care in this case would be difficult.

The decision to settle a claim usually is not made based on one single fact or issue in a case. The decision to settle is usually made based on several factors, which was true with the case that Ms. Spicer filed against Dr. Qualls. She claimed the injections Dr. Qualls provided were unnecessary and were given only for money-making purposes, surgery rather than injections ultimately provided the relief from the pain she was experiencing, Dr. Qualls had previous licensure board issues that may have been admitted into evidence at trial, and Dr. Qualls chose to leave the country wihtout giving any assurances that he would return. It may have been possible to overcome any one of these factors, but the combination of factors appeared to be too much to overcome, and the parties agreed to a settlement in this case.

[1] Names have been changed.
