

Malpractice Cases

ALTERED RECORDS SPELL TROUBLE

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Facts:

Dr. Marie Petit first treated Hank Matthews for pain in the right leg and buttock, and numbness and tingling in the toes. After orthopedic, neurologic and structural function tests, Dr. Petit diagnosed the 50-year-old gardener's problem: chronic L5 lumbar disc syndrome, L5 disc degeneration, left leg radiculitis, and lumbar splinting muscle spasm.

Dr. Petit treated Matthews with spinal adjustments, traction, ultrasound, and EMS and reflex techniques. She told him to avoid heavy lifting, strenuous exercise, and sudden movements. Dr. Petit also told him not to use heat on the inflamed areas.

After two months of treatment, Dr. Petit referred Matthews to her associate, Dr. Phil Mallory. When questioned about the frequency and intensity of pain, Matthews admitted that he had injured his back at work. Midway through his treatments with Dr. Petit, the gardener had strained his back, weeding. A few days later, he fell down a short flight of steps. Matthews also admitted to using a heating pad on the sore areas. Dr. Mallory emphasized the importance of following Dr. Petit's instructions.

Dr. Mallory gave Matthews conservative treatment, and the patient felt some relief. Two weeks later, Matthews returned to the office and told Dr. Mallory that he had experienced urination problems and had felt shooting pains in his back while mowing a lawn.

Dr. Mallory diagnosed a medial disc protrusion. He administered a blocking technique and sent the patient home with instructions to apply ice and to call if he continued to have bladder problems.

Dr. Mallory called three times that day to check on the patient's progress. When Matthews complained of increasing pain, Dr. Mallory told him to see a neurologist and gave him the names of four local doctors.

A week later, Matthews saw a neurologist, Dr. Gina Howard. Dr. Howard requested a myelogram, but Matthews was reluctant. Five days later he agreed to the myelogram which revealed a herniated disc at the L-4/L-5 level. Dr. Howard performed a laminectomy the following day.

In the months following surgery, Matthews lost bladder and bowel functions, and most of the sensation in his legs. He suffered partial paralysis in one leg, and the other leg required a brace. He was diagnosed as cauda equina syndrome.

Outcome:

Matthews brought suit against Dr. Petit and Dr. Mallory. He alleged the following: failure to diagnose, improper treatment, and failure to refer. The plaintiff demanded \$125,000 from each doctor.

Chiropractic experts for the plaintiff felt that an earlier referral to a neurologist was appropriate, especially considering the numbness and tingling in the lower extremities. They were prepared to testify that the chiropractors had a medical responsibility to refer their patient for neurological care in a timely manner.

Chiropractic experts for the defense supported the conservative treatment used by both doctors, and said that treatment for a protruding disc is within the standard of care.

The defense's medical investigator discovered that Dr. Mallory had rewritten all of Matthew's records when the neurologist requested copies. The chiropractor did this before the malpractice claim and insisted that he was only making them more legible. He had destroyed the originals.

The defense attorney felt that the record changing would look very suspicious to a jury, but he did note several points in favor of the defense:

- The patient did not modify work and personal habits to accommodate his back problem.
- Matthews used heat, even though he was instructed not to.
- Two weeks passed before Matthews told the doctors about his accidents at work.
- He waited a week before seeing a neurologist and did not immediately agree to the myelogram.

The defense attorney concluded that the seriousness of the plaintiff's injuries and the altered records would be difficult obstacles to overcome in court. Fearing a jury verdict for the plaintiff might exceed \$250,000, the defense attorney negotiated a settlement of \$75,000.

Prevention:

If a patient is non-compliant early in the treatment process, document the records so that the doctor knows to take care to repeat instructions, document discussions, and make follow-up phone calls. Make sure the patient is completely informed. Consider an early referral to another medical specialist.

Never destroy original records, even if you think they are illegible. If you send a rewritten version to another doctor, enclose a copy of the original so that you can prove you have not altered the contents.

This case study is provided from the OUM Group Chiropractor Program's claim files. The study is based on actual incidents; however, circumstance and names have been changed.

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