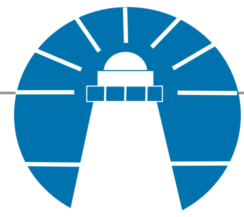
# The BEACON



April 2010


CASE STUDY

## Lack of PSA Follow-up Leads to Litigation

### Medical Case

The patient, a 68-year-old male, had been a patient of his PCP for approximately 4 years when the PCP sold his practice to a new physician. During the 4 years that he saw the original PCP, the patient's PSA results had risen from 2.2 to 5.0. The original PCP expressed concern over the rising PSA and asked the patient to undergo another PSA test.

When the new physician took over the practice, his first appointment with the patient was in January of 2005. In reviewing the previous lab results, he documented that the patient's last PSA was 5.0 which was within the expected range (0.0 - 5.0). He performed a digital rectal exam (DRE) noting an enlarged, non-nodular symmetrical prostate. The physician documented, "Slight BPH w/ borderline PSA. Re-check in November prior to his going to FL. Declines urologic consult at this time." Rather than having the test performed in November 2005, the patient chose to be tested the day after this PCP appointment. The result came back outside the reference range, at 7.0. The physician initialed the lab report but he did not date it and the staff did not document their attempts to reach the patient.

### Risk Management Take Home Points

The purpose of diagnostic testing and establishing consult appointments is not served until the ordering provider, or his designee, receives and reviews the results and takes necessary clinical action. In this case the PCP and his staff should have documented their attempts to communicate the test results to the patient.

In your office:

- Date and initial all diagnostic and consult reports when reviewed.
- Document actions taken relating to results in the patient's record.
- If telephone contact is unsuccessful use a certified letter, particularly for significant results.
- Establish solid tracking tools to ensure that follow up occurs as scheduled.

The patient did not return to the office until 2006, when he again presented for an annual examination. The physician performed another DRE which was unremarkable. The physician recorded a note stating a PSA test was "pending" but he did not record anything about the 7.0 PSA result from the previous year. He asked the patient to follow-up in 3 to 6 months or sooner, if needed. The PCP received another PSA result 4 days after the office visit, this time reported as 8.0. The physician initialed and dated the report but neither he nor the staff documented efforts to contact the patient.

Through Discovery we learned that the patient saw a Florida physician who ordered another PSA test in March 2007, which was reported as 8.5. After cancelling his 2007 annual physical with his Maine physician, we learned that the patient saw the Florida physician again in December 2007. A repeat PSA test showed the result had risen to 12.5, prompting a referral to a urologist in Florida.

The patient saw the urologist in Florida in the spring of 2008. The urologist expressed concern over the rapid rise in PSA in nine months from 8.5 to 12.5. He ordered another PSA test which by now had risen to 18.4. Prostate biopsies were positive for Gleason-8 prostate cancer involving 50% of the tissue, representing at least a stage T2b cancer. A CT scan of the pelvis and a total bone scan were negative and based on these results, the patient chose to have a radical prostatectomy which was attempted in April 2008. During surgery, metastatic disease was found in the pelvic nodes and the surgery was aborted.

### Legal Case

The plaintiff alleges that the Maine physician failed to timely diagnose and treat his prostate cancer. Specifically, the PCP failed to notify the patient of the abnormal (7.0) PSA result in January 2005, failed to advise him of the risks associated with a high PSA result and the need for

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# Patient Compliance—Who is Responsible?

CASE STUDY

## Medical Case

A 67-year-old patient with a previous history of prostate cancer was referred to a Medical Mutual-insured otolaryngologist for evaluation of a mass in his jaw. The patient was largely asymptomatic but he reported experiencing intermittent pain in his ear for almost two years. The examination by the otolaryngologist was consistent with the radiographic findings of a mass in the parotid gland involving the deep and superficial lobes.

The otolaryngologist explained to the patient the tumor's commonly benign presentation and its usual course and treatment, to include eventual surgery. As per his usual office procedure, the physician recommended that the patient schedule the surgery and return to the office within the next couple of months to make preparations for his scheduled procedure. The patient did not return to the office as expected, therefore, the intended surgery was not scheduled. Instead, he delayed returning to the otolaryngologist for two years and, when he did return, his symptoms were more significant. Upon his return, the patient also described numbness in his jaw area. An MRI, revealed that his tumor had grown significantly. The patient immediately underwent a parotidectomy. Pathology diagnosed a malignant acinic cell carcinoma. In addition, due to the technical difficulty of the procedure and in order to facilitate the tumor's removal, the patient's facial nerve was intentionally transected, which later required an oculoplastic procedure to repair the weakness in his upper eyelid and forehead.

Following the surgery, the patient underwent radiation treatment but he declined to receive chemotherapy. At the conclusion of his radiation treatment he had no detectable residual disease; however, approximately twelve months later he developed a recurrence in his left jaw, requiring mandibular reconstructive surgery. After a lengthy post-operative recuperation, he was at first believed to be disease free, but he later learned he had metastatic disease. He is now under the care of an oncologist for palliative care.

## Legal Case

The plaintiff in this case alleged negligence by the otolaryngologist for failing to diagnose and treat his parotid gland tumor when the surgeon first saw him in the office in June of 2003. He further alleged that he did not know or have a reason to know that the care of our insured was negligent until July 2005 when he was diagnosed with his malignant tumor. The plaintiff claimed that the delay in treatment enabled the cancer to become metastatic and required him to have more invasive and aggressive medical and surgical treatment than would have been required with an earlier diagnosis. As a result, the plaintiff claimed that he has a severely reduced life expectancy.

Despite a regular process within our insured's office for tentatively scheduling a patient for surgery on the day he/she first presents with a parotid tumor, this patient fell through the cracks. In retrospect, the physician suspects that the patient was simply not prepared to commit to surgery on that particular day, but instead wanted to think things over before contacting the office to set up another appointment. Unfortunately, our insured's office refiled the patient's medical record and there was no mechanism in place to assure that a patient who fails to schedule a follow-up appointment is identified and contacted. Consequently, this patient was lost to follow-up, as he never called, scheduled a follow-up appointment, or made any contact with the office for two years.

Given the facts of the case and our concerns with its defensibility, the parties agreed to enter into settlement negotiations through mediation. An important mitigating argument in the negotiations was the patient's non-compliance which helped moderate the amount of the settlement that was ultimately reached. ■

### Risk Management Note

Failure to assure certain patients return for follow-up appointments could have unintended medical consequences for the patient and legal consequences for the provider. Court decisions in the form of verdicts favoring plaintiffs demonstrate that juries believe providers, with their clinical experience and expertise and their comprehensive knowledge of patients' conditions, are best able to determine the importance of keeping office appointments and following treatment recommendations. Consequently, providers and their practices are perceived by the courts as having the responsibility to ensure that the patient understands and follows through on recommended treatment and diagnostic plans.

Some additional risk management guidelines:

- Book follow-up appointments during the check-out process when possible.
- Implement a system to flag high risk patients for periodic review to determine if necessary follow up and testing has been completed.
- Educate patients about their treatment regimens and the importance of follow-up. Evaluate the patient's comprehension and reinforce the teaching as needed.

For more information regarding patient follow-up, see Medical Mutual's Practice Tip, *Appointments: Missed (No Show) & Canceled Appointments,* on our website at www.medicalmutual.com.

## Lack of PSA Follow-up Leads to Litigation

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a biopsy and referral to a urologist. The patient claimed the Maine PCP delayed diagnosing the prostate cancer for over two years, alleging an earlier diagnosis would have prevented the spread of the disease to the lymph nodes. Had the prostate cancer been diagnosed in 2005, the patient believed he would have required less aggressive treatment and attained a full recovery.

With respect to the alleged liability in this case, the defense argument that the standard of care had been met was weak; stronger was our defense argument surrounding causation. The patient had an aggressive prostate cancer (Gleason 8) and his treatment options would have been the same in 2005 as they were in 2008. However, the Pre-Litigation Screening Panel believed the patient had been harmed by the delay, voting unanimously against the PCP on both standard of care and causation. Consequently, the parties entered into settlement negotiations shortly after the Panel decision. ■

## Risk Management Reminder

### Diagnostic Test and Referral Tracking

Delayed and/or missed diagnoses are leading sources of medical malpractice claims; and, unread and misplaced test results and consultative reports are commonly identified causative factors.

How do your systems measure up? Evaluate the following:

- Critical values are reported to me promptly.
- A system is in place to identify ordered tests/referrals that have not been reported to my office.
- All results are reviewed promptly and initialed or signed by a provider before filing/closing the encounter.
- Patients are notified of all normal and abnormal test results with follow-up instructions documented in the medical record.
- Patients are instructed to call if they have not received their test results.

If you answered no to any of the statements or for more information, please review our Practice Tip, *Diagnostic Test Tracking Systems.* Our tips can be accessed on our website at www.medicalmutual.com. Select Risk Management from the menu in the yellow bar at the top of the page. Then select Practice Tips from the left hand column.

# MMIC's Annual Practice Manager Seminar Scheduled for June 29, 2010

The two cases discussed in this issue of the *Beacon* illustrate societal expectations of providers with respect to test tracking, follow-up, and patient compliance. Medical Mutual's claim experience in the form of certain jury verdicts teaches us that providers' "jury of peers" believe providers, through their knowledge and expertise, have an obligation to their patients to institute practices to optimize patient compliance with testing, consulting and treatment recommendations. Striving to achieve patient compliance and documenting the communication efforts employed to notify and educate patients of the importance of follow-up along with the potential ramifications associated with non-compliance, are very important behaviors for practices to employ to minimize patient harm while minimizing as well liability exposure following an adverse outcome.

Medical Mutual's annual **Practice Manager's Seminar,** scheduled for June 29, 2010 at the Marriott Sable Oaks (please see "ad" on last page), will provide an opportunity for an in-depth discussion of test tracking and appointment management systems. With additional case presentations providing context, MMIC's Risk Managers will share insights and observations on the issues; and, the audience will hear from a couple of Practice Managers who have agreed to share the processes they have implemented to assure patients do not "slip through the cracks" or are not lost to follow-up.

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*The articles in this newsletter seek to raise the consciousness of clinicians who must apply their own experience, intuitions, and medical judgments to arrive at optimal care decisions. They do not constitute legal advice or practice standards. If you have any questions on any of the topics addressed by this publication, you should seek a qualified legal opinion.*

## A Medical Mutual Practice Manager Seminar

Managers of practices insured by Medical Mutual: Save the date for this free afternoon seminar, which takes a closer look at test tracking and appointment management systems, as well as Liability and the EMR. Registration information will be mailed to all Medical Mutual insureds in early May. If you do not recieve the mailing, or for further information, please contact Betsy Maxwell at 1-800-942-2791.

**Marriott Sable Oaks**
**June 29, 2010**
**Noon to 4pm**

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