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Woman alleges doctor did not inform her of risks associated with sinus infection treatment

MEDICAL MALPRACTICE-PHYSICIANS & HEALTH PROFESSIONALS

Internist/Pulmonologist/Pharmacist

MEDICAL MALPRACTICE-PROCEDURES & TREATMENT
Informed Consent/Medication

VENTURA COUNTY SUPERIOR COURT

Morandi v. Gonzalez, Docket number: CIV234385. Judge: Vincent J. O'Neill Jr. Trial type: Jury: 9 days. Verdict/Judgment date: 7/9/2007.

VERDICT: DEFENSE

The jury poll was 9 to 3 for defendant Gonzalez and 12 to 0 for defendant Home Pharmacy. Vote: Mixed poll. Deliberations: 1 hour, 10 mins.

COUNSEL

Plaintiff: Marshall Caskey, Caskey & Holzman, Los Angeles.
Defendant: Raymond L. Blessey, Taylor Blessey, Los Angeles. John Sheller, Hinshaw & Culbertson, Los Angeles. Filomena Meyer, Hinshaw & Culbertson, Los Angeles.

FACTS/CONTENTIONS

According to defendant: Plaintiff Karen Morandi, age 63, presented to defendant Dr. Miguel Gonzalez, a board-certified internist and pulmonologist, in February 2004 with a history of chronic sinus infection, lupus, asthma, chronic obstructive pulmonary disease, and pernicious anemia. Plaintiff had previously undergone four surgical procedures for her chronic sinus infections without a cure. In addition, multiple attempts at oral antibiotic therapy did not eradicate the source of plaintiff's sinus problem. A culture and sensitivity test revealed that the offending bacterium

was pseudomonas and it was sensitive to aminoglycosides (including gentamicin) and Fortaz.

In August 2003, plaintiff was hospitalized briefly for hemoptysis, bronchiectasis, and pneumonia. Shortly after completing an outpatient course of antibiotic therapy for her pneumonia, plaintiff's sinus infection flared again, and she was placed on further antibiotic medication. In November 2003, a CT scan of the sinuses revealed changes in the left maxillary sinus consistent with an abscess. Soon after this study, a fifth sinus procedure was performed by an ENT surgeon that did not resolve the infection.

Defendant Gonzalez prescribed a combination of intravenous gentamicin and Fortaz therapy on February 16, 2004, to be given twice a day for 30 days. The prescription was to be filled by defendant Home Pharmacy of California, and arrangements were made to have a home-health nurse monitor plaintiff on a weekly basis for gentamicin levels and adverse side effects. Additionally, plaintiff was instructed to see defendant Gonzalez on a weekly basis for follow-up in his office during the 30-day treatment period.

Plaintiff responded favorably to the combined antibiotic regimen through March 15, 2004. On March 16, 2004, defendant Home Pharmacy sent a fax to defendant Gonzalez reminding him of the increased risk of vestibular toxicity that was associated with treatment beyond 30 days. The gentamicin therapy was discontinued on March 16, 2004. On March 18, 2004, plaintiff reported for the first time to the home-health nurse that she began to experience dizziness during the evening of March 16, 2004. A repeat culture and sensitivity test in June 2004 revealed that the pseudomonas bacteria had been eradicated.

Plaintiff alleged that defendant Gonzalez failed to provide her with sufficient information regarding the risks and adverse side effects of long term gentamicin therapy. Furthermore, plaintiff alleged that it was unnecessary and below the standard of care to treat her sinus infection with gentamicin therapy for more than 10-14 days due to the risk of vestibular toxicity.

As to defendant Home Pharmacy, plaintiff alleged that it had a duty to warn defendant Gonzalez that the intended duration of the therapy was improper when it first received the prescription. Plaintiff stated that had defendant Home Pharmacy warned defendant Gonzalez initially about the potential complication of vestibular toxicity at the outset, he would not have opted to continue therapy beyond 14 days.

Plaintiff Gary Morandi, plaintiff Karen Morandi's husband, asserted a derivative loss of consortium claim. Plaintiff Gary Morandi alleged that the nature of his relationship with his wife changed from partner to caretaker as a result of the negligent treatment by defendants.

Defendant Gonzalez argued that it was necessary and well within the standard of care to prescribe gentamicin therapy for at least 30 days given the culture and sensitivity results,

the refractory nature of the sinus infection, and the risks of not eradicating the infection in the face of a crescendo pattern of problems in the months leading up to the treatment at issue. Defendant Gonzalez also argued that plaintiff was provided with sufficient information about the side effects of gentamicin. Moreover, defendant Gonzalez contended that a reasonable person, under the circumstances, would have agreed to the gentamicin therapy as prescribed, given the potential benefits, risks of not undergoing therapy, and uncommon risk of vestibular toxicity.

Defendant Home Pharmacy of California claimed that a 30-day prescription for a chronic infection such as the one suffered by plaintiff was not uncommon. Furthermore, defendant Home Pharmacy claimed that defendant Gonzalez was the "Captain of the Ship" and, therefore, it had a right to defer to him regarding the length of therapy. Defendant Home Pharmacy argued that even if defendant Gonzalez had been advised of the risk of vestibular toxicity with prolonged use of gentamicin, he would not have altered the prescription to limit it to less than 30 days.

CLAIMED INJURIES

According to defendant: Vestibular toxicity; loss of consortium.

CLAIMED DAMAGES

Not reported.

SETTLEMENT DISCUSSIONS

According to defendant: Demand: \$250,000 for each plaintiff; Offer: Waiver of costs and rights to a malicious prosecution action by both defendants prior to trial.

EXPERTS

Plaintiff: Lloyd Peckner, M.D., internist, Los Angeles. Michael A. Persky, M.D., plastic surgeon, Encino (818) 501-3223. Pamela Parker, Ph.D., pharmacist.

Defendant: William P. Klein, M.D., pulmonologist, Huntington Beach (714) 842-4492. Dennis Maceri, M.D., otolaryngologist, USC/Norris: Otolaryngology, Keck School of Medicine, Los Angeles (800) 872-2273. David Pegues, M.D., professor of infectious diseases, UCLA. Michael Rigas, Ph.D., pharmacist, Crescent Healthcare Inc., Anaheim (800) 879-4844.

EXPERT TESTIMONY

According to defendant: Plaintiff's expert Lloyd Peckner, M.D., an internist, testified that the 30-day prescription for gentamicin to treat plaintiff's chronic sinus infection was too long and unnecessary. The gentamicin should have been discontinued after 10-14 days and plaintiff could have been continued on Fortaz therapy alone.

Plaintiff's expert Michael A. Persky, M.D., an ENT and facial plastic surgeon, testified that as a result of the vestibular toxicity attributable to the gentamicin therapy, plaintiff suffered from permanent balance impairment which was moderate in nature.

Pamela Parker, Ph.D., a pharmacist and plaintiff's expert, testified that the prescription for 30 days of gentamicin was improper on its face; therefore, defendant Home Pharmacy had a duty to warn defendant Gonzalez of the potential consequences of prolonged gentamicin therapy.

Defendants' expert William Klein, M.D., an internist and pulmonologist, testified that the 30-day prescription was reasonable given plaintiff's chronic sinus infections, failure to respond to multiple sinus surgeries and oral antibiotics, the serious complications from the sinus infection in the months leading up to the gentamicin therapy, and the pre-treatment culture and sensitivity testing.

Defendants' expert Dennis Maceri, M.D., testified that based on diagnostic testing, plaintiff had a mild to moderate balance problem as a result of vestibular toxicity. He opined further that plaintiff's balance impairment would be expected to respond favorably to a protracted course of physical therapy.

Defendants' expert David Pegues, M.D., testified that it was appropriate and reasonable to treat plaintiff's chronic, refractory sinus infection with gentamicin for up to 4 to 6 weeks. First and foremost, the goal of therapy is to eradicate the infection. Therapy, therefore, should continue as long as necessary to accomplish the goal of treatment, barring any complication or adverse side effect. Plaintiff would have likely suffered serious complications from her pseudomonas infection had she not undergone combined gentamicin and Fortaz therapy for 30 days.

Michael Rigas, Ph.D., defendants' expert and pharmacist, testified that the length of gentamicin treatment for an acute, initial sinus infection versus a chronic infection unresponsive to oral antibiotics and multiple sinus surgeries is distinctly different. It is not unusual for gentamicin therapy to be used for up to 6-8 weeks for a recurrent, chronic sinus infection.

COMMENTS

According to defendant: The complaint was filed on June 15, 2005. Raymond L. Blessey provided the information for this report.