

# The Changing Role of the Hospice Medical Director

There are no easy decisions when a person must arrange appropriate end-of-life care for themselves or a loved one. Hospice care is a system designed to aid dying individuals and their families. The focus of hospice care is to provide palliative and supportive medical care, which promotes comfort and control of pain and other disease symptoms. When an attending physician informs a person that they are terminally ill, patients and family members rely on that diagnosis to begin to accept the reality of the end of life. This reliance prompts deep consideration of hospice care as a viable alternative to ease the pain and suffering associated with terminal disease, and to help family members cope with the loss of a loved one. The role of the attending physician as well as the role of the hospice and its medical director in making determinations of terminal illness and in clearly communicating this information to the patient are vitally important to the remaining course of a person's life.

A recent medical malpractice case discussed the role of the medical director in hospice organizations based on an inadvertent admission of a patient to the hospice facility. The court decision focused on the duty and standard of care for a medical director and the fact that a breach of this duty could create liability for the medical director and the hospice organization. Hospices more typically struggle with the reverse problem of inappropriately late referrals and this unusual fact situation should not lead to a further devastating chilling effect on timely hospice admissions. However, the case provides an important reminder that in professional liability cases involving attending physicians, the hospice and its medical director may also be held liable. It is important to clearly define the duty of the medical director and subsequently, the standard of care that must be maintained to avoid liability.

## What Are the Elements Necessary to Prove Medical Negligence?

There are four elements that must be shown to succeed in proving medical negligence:

1. A duty of the physician or hospice organization to the patient to act according to a certain standard.
2. A breach of the standard of care.

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3. A resulting injury to the patient.
4. A causal connection between the breach of duty and the injury.

Once it is established that the medical director does have a duty to the patient, then the standard of care necessary to avoid breaching that duty should be determined. In the case in question, the court found that both the hospice and the medical director had a duty to the patient. The court remanded the case to determine whether the medical director or hospice breached the standard of care to the patient. The court further concluded that if there was a breach of the standard of care, both the medical director and hospice could be found liable for the medical negligence that resulted in the wrongful admission of the patient to hospice and his subsequent demise.

## Why Does the Medical Director Have a Duty of Care to the Patient?

The court concluded that the medical director established a patient-physician relationship with the patient, and therefore owed a duty of care to the patient. The court based the establishment of a patient-physician relationship on the following factors:

- **The medical director's participation in the patient's interdisciplinary plan of care.** The federal Conditions of Participation require that the hospice medical director have overall responsibility for the patient's medical care. The medical director participates in the creation of the plan of care, provides and supervises patient care, and reviews and updates the plan of care for each patient. The medical director also certifies terminal illness, consults and discusses patient care with the attending physician, and is available for consultation concerning palliative medical care management. These responsibilities stem from the medical director's role as a member of the interdisciplinary care team that creates and revises the patient's plan of care.
- **The medical director's signature on the patient's plan of care.** The interdisciplinary team approach includes the participation of physicians, nurses, social workers, specialized therapists and clergy. This team approach can be attributed to the federal law requirement for specific professional's participation in planning hospice patient's care as a precondition to Medicare reimbursement. The interdisciplinary group meets biweekly to address the

needs of each patient and to work as a team in making appropriate adjustments to the patient's plan of care. In this case, the medical director signed the patient's plan of care and was an active member of the interdisciplinary care team.

- **Completion of the Attending Physician's Certification form.** Upon admission to hospice, a Certification form must be completed stating that the patient is terminally ill and has six months or less to live. The Certification form must be signed by both the attending physician and medical director and states "[a]s Hospice physician, I certify that this patient has a reasonable, medically predictable life expectancy of six months or less." In this case, the medical director signed the Certification form for the patient.
- **The patient's signed Informed Consent form.** Finally, the informed consent form, which a patient signs before being admitted to a hospice facility, includes language that informs the patient that the medical director will be reviewing the patient's plan of care. In this case, the patient had signed a valid Informed Consent form and, therefore, believed that the medical director would oversee his hospice care.

The court decided that the combination of the above four factors sufficiently established that there was a physician-patient relationship between the hospice patient and medical director. Once the physician-patient relationship is established the physician owes a duty to the patient. Because the court established that there was, indeed, a duty owed to the patient by the medical director, it must be then be determined whether or not this duty was breached.

## What Is the Standard of Care for the Medical Director?

The standard of care for physicians is generally based on what any physician of ordinary skill and prudence, practicing in similar circumstances would do. There are conflicting opinions as to the standard of care in the current case. The medical director understood that his duty only extended to certifying that the attending physician had in fact diagnosed the patient with a terminal illness. According to the medical director, the standard did not require an independent determination of whether or not the patient was terminally ill or whether the attending physician's diagnosis was correct.

The medical director's opinion directly conflicted with the expert testimony of a physician who testified that it would not be within the standard of care for the medical director to sign the Certification form without examining the patient or reviewing his medical chart. There is clearly a conflicting opinion of what the standard of care is for the hospice medical director.

Because it is medically inappropriate to treat a person for a condition that they do not have, a patient should not receive hospice care if they are not terminally ill. Therefore, the medical director plays an important role in ascertaining whether or not the patient is actually qualified to receive hospice care when they sign the Certification form. Furthermore, the Certification form states that the signing physician believes that the patient is terminally ill, the precise language does not imply that the signor acknowledges that the attending physician believes this, but that the signing physician believes that the patient is terminally ill.

## **May the Hospice Be Liable for the Inappropriate Admission of a Nonterminal Patient?**

If the court decides that the medical director breached his duty to the patient, the medical director would be liable for medical negligence. The hospice organization may also be held liable for the medical negligence of the medical director under the doctrine of Respondeat Superior. This doctrine holds the employer responsible for the breach of duties of employees if the breach occurs while the employee is engaged in work for the employer. The fact that the medical doctor was volunteering his services to the hospice organization would not protect the hospice organization from liability for the negligent acts of the medical director.

Furthermore, there may be liability for breach of duty by the hospice. Because the hospice arguably did not follow its own admission criteria when it admitted the patient into the hospice facility, there may be a breach of the acceptable standard of care. The admission criteria is set up as a safeguard against the inappropriate admission of a non-terminal patient, and seemingly failed to accomplish that in this case.

## **What Should the Hospice Organization Do to Avoid Liability?**

Because the court has found that the medical director has a duty to the patient, there is a standard that must be maintained when certifying terminal illness. It will

be necessary for hospice organizations to ensure that the medical director has sufficient information to make an accurate determination whether or not the patient is, in fact, terminally ill. To do this, the medical director should minimally have access to information relevant to the Certification to clearly understand why the patient was diagnosed as terminally ill. Review of the patient's medical information will become key to the ability of the medical director to make an informed decision whether or not to certify the patient for hospice care. It will also be important to allow the medical director an opportunity to consult with the attending physician about the patient's diagnosis to clarify any ambiguities in the record.

The case in question also raises an important issue as to the understanding of the medical community about the use of hospice care. In this case, the attending physician indicated that he believed hospice would be appropriate not only for terminally ill patients but for disabled persons or persons in "intractable pain." This misunderstanding indicates that the entire medical community may not clearly understand that hospice care is reserved for those who are terminally ill. The focus of hospice care is to provide palliative and supportive care to dying individuals and their families. Further education of the medical community and the public at large may be helpful to dispel confusion as to the limited use of hospice to providing care at the end of life. Because the physician's signature on a Certification form acknowledging terminal illness may not always be adequate, further education of the public, patients, and family members may also be helpful to ensure that a patient is not inadvertently receiving hospice care.

Hospices should take the following steps to avoid liability and provide the best care to their patients:

- Educate medical directors about the duty they have to every patient, the standard of care that they should meet, and the understanding that they are responsible for the medical care provided. Modify the medical director job description to accurately reflect understanding of this duty and standard.
- Provide medical directors with access to the patient's medical information upon admission and before the medical director signs the patient's Certification form. Allow adequate time for the medical director to review medical information to make an informed decision before certifying the admission.
- Create guidelines for medical directors to reference when admitting a patient to hospice care. The guidelines should include fully informing the patient about



the role of the medical director in their care and the interdisciplinary team approach to planning care.

- Encourage discussions between medical directors and attending physicians about each patient and their specific needs and to clarify any ambiguities related to certification of the patient.
- Educate attending physicians on the concept of hospice and the criteria to make appropriate admission decisions.
- Educate health care professionals, patients and families about the hospice system of care and its goals. Explain criteria used to determine whether a patient is qualified for hospice care.

The case in question clarifies the expectations of medical director involvement in the decision to admit a patient to hospice care. Discussions with the attending physician and review of medical information are appropriate steps to guard against a breach of the duty of care to the patient and to protect against liability. This case should prompt hospices to evaluate their current medical director duties and job descriptions in order to assure that their duty to each and every hospice patient that is admitted to the hospice is fully met.

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