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IDAHO STATE BOARD OF MEDICINE

BEFORE A PRELITIGATION SCREENING PANEL

IDAHO STATE BOARD OF MEDICINE

MARLIN RIGGS,

Claimant,

v.

STEPHEN GARRETT, M.D.,

Respondent

CASE NO. 89-10

REPORT AND RECOMMENDATION

INTRODUCTION

This matter is before the panel on the claim of Marlin Riggs (Claimant). The claim was filed on October 13, 2010. Claimant alleges that Dr. Garrett's treatment of Claimant after he was assaulted in prison fell below the standard of care.

The panel consisted of John J. McMahon, panel chairman; Scott Schwendiman, M.D., physician panelist; and Larry Kirk, lay panelist.

Claimant appeared by phone and was represented by James D. Huegli, Attorney at Law. Dr. Garrett is out of the country, did not seek counsel, and responded by two emails.

The panel was convened pursuant to Title 6, Chapter 10, Idaho Code, on December 17, 2010, in the Conference Room of the Idaho State Board of Medicine. Having considered the evidence, the panel issues the following Report and Recommendation.

ALLEGATIONS

Claimant, an inmate at the Idaho Correction Center, was violently assaulted on May 11, 2008. He was choked till unconscious, then kicked in the upper body and face. Shortly thereafter, he was seen by Dr. Stephen Garrett, an employee of Idaho Correctional Center. Claimant asserts that Dr. Garrett placed his nose back into position but otherwise did not examine him, or provide for follow up treatment.

ANALYSIS

Did Dr. Garrett Treat Mr. Riggs?

As noted, Dr. Garrett is out of the country. His email of December 2, 2010, states that he has been "working in missions from the time of my resignation from the Idaho Correctional Center in May of 2008." That first communication stated: "I never examined him or even co-signed a mid-level or nursing note." Dr. Garrett does acknowledge signing a short term order for Ibuprofen to treat Mr. Riggs' complaints of arthritis and headaches.

In a second email, dated December 6, 2010, Dr. Garrett states: "I can not see that I ever saw/examined the patient myself and there is nothing that even indicates that a nurse or mid-level even discussed the case with me." Again, he acknowledges signing an order for an NSAID.

Given these statements, the panel's first concern was to establish that Dr. Garrett did personally treat the patient. The normal expectation is that a physician documents everything he or she does; what is not documented did not happen. In this instance, Dr. Garrett did not document his treatment of the patient.

The panel believes, based on the available evidence and Claimant's statement, that Dr. Garrett most likely did, in fact, see the patient and treat him. At hearing, Claimant provided a description of Dr. Garrett and testified that he had seen his name on his ID badge. An emergency room note dated May 11, 2008 at 7:30 p.m. states: "Dr. Garrett placed nose back into position." The note is co-signed by an LPN and an RN, each of whom made examination entries and drew the location of Claimant's injuries on an "Anatomical Form Chart." A verbal order is entered on the Physician's Order Sheet an hour later at 8:30 p.m. for the Ibuprofen Dr. Garrett acknowledges having prescribed. Claimant's counsel stated at hearing that the prison has not denied that Dr. Garrett treated Mr. Riggs.

The panel finds the evidence persuasive that Dr. Garrett treated Mr. Riggs on May 11, 2010, the evening of the assault.

Did Dr. Garrett's Treatment Comply with the Standard of Care?

Claimant asserts that Dr. Garrett violated the standard of care by failing to take X-rays or to order a CT scan, and by failing to have Claimant transported to an emergency room to have his wounds operated on. The panel physician found that a civilian outside the prison would have been taken to an emergency room and been seen by a maxillofacial specialist, if appropriate imaging studies indicated such was needed. On the other hand, he found that Dr. Garrett's immediate intervention by placing Claimant's nose back into position was not unreasonable. And, given Claimant's facial swelling, he noted that a delay in surgical treatment was not atypical.

The panel physician finds that Dr. Garrett's failure to document his examination and treatment of the patient falls below the standard of care. The normal entry follows the SOAP model (starting with the patient's Subjective complaints, following up with Objective test results, then stating the physicians Assessment and Plan). The records provided to the panel do not contain an entry of any kind.

Equally important, Dr. Garrett allowed Claimant to be put into administrative segregation. According to Claimant, "ad seg" is used for punishment, not for protection of the injured inmate. (The infirmary was available for the latter purpose.) There is no record that Dr. Garrett wrote orders alerting the medical staff of the patient's condition, possible complications, or appropriate follow up treatment. The suggestion was made that perhaps the day of the incident was Dr. Garrett's last day as an employee at Idaho Correctional Facility. Even if true, the panel does not find that Dr. Garrett's imminent departure justified his failure to document his treatment of the patient or his failure to provide directives to the medical staff for follow up care.

Claimant remained in administrative segregation for two more weeks during which time he was checked for air blockage and was given Ibuprofen. It was not until June 10, 2008, a full month after the assault, that Claimant was seen and examined by a physician who found:

"Dramatic deformity & total collapse of l. nare. No air possible." A Doctor's Order of the same date states: "Refer to ENT for evaluation of repair of badly fractured nose 30 days ago."

Despite the doctor's order referring Claimant to a specialist on June 10th, it was not until July 28th that he was transported to see Darrell Kammer, M.D., an ENT specialist. Dr. Kammer's impression was of "nasal and septal fracture secondary to trauma, with total left airway obstruction." He found "a fairly marked deformity" and recommended "an open reduction of a nasal and septal fracture."

Despite these findings and recommendation by the ENT specialist, it was not until September 16, 2008, that Dr. Kammer finally performed the open reduction surgery.

The physician panelist characterized Claimant's course of treatment as a "process failure," starting with Dr. Garrett's failure to document his treatment, his failure to alert staff to possible complications and necessary follow up, along with a one-month delay in having a thorough medical exam, a two-month delay in referral to an ENT specialist, and a four-month delay in authorizing and providing surgical treatment.

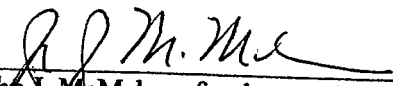
A final note. The panel reiterates that the overall lack of documentation on the part of Dr. Garrett and of quality assurance in that regard by the facility is the most disturbing aspect of this case. The failure to assure that the would be seen by a physician of adequate knowledge and training in a timely manner could have resulted in the death of the patient.

CONCLUSION

The panel finds that Claimant has borne his burden of proving by a preponderance of the evidence that Dr. Garrett did not comply with the standard of care in failing to document his treatment of the patient and in failing to leave orders for follow up care of the patient.

The panel therefore concludes that the complaint against Dr. Garrett is meritorious.

DATED this 21⁵⁷ day of December, 2010.



John J. McMahon, for the unanimous panel