

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN BRODER,

Plaintiff,

vs

REC'D JUL 12 2006
Case No. 03 75106
Honorable Gerald E. Rosen

CRAIG HUTCHINSON, its medical director, and
AUBERTRO ANTONINI, and BENCY MATHAI,
and employees of the Michigan Department of
Corrections, namely: PATRICIA L. CARUSO, Director,
GEORGE PRAMSTALLER, Medical Director, HENRY
GRAYSON, former warden, and JAN EPPS, Regional
Medical Director in their individual and official capacities,

Defendants.

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DEFENDANTS' EXPERT REPORT:
SILAS NORMAN, JR., M.D.

This is a report on the medical care provided to Steven Broder at the Parnell Correctional Facility in Jackson, Michigan from approximately March 2001 to May 2002 concerning the above captioned case. My opinions are based on the materials I have reviewed and are expressed to a reasonable degree of medical certainty. I may supplement this report if new materials are provided.

I. Statement Of Qualifications:

My CV and list of fees is attached. I am licensed in Michigan as a medical doctor. I graduated from the Wayne State University School Of Medicine in Detroit, Michigan (1976). I completed my residency in Internal Medicine (1976-1979) at Detroit General Hospital. I became board certified by the American Board of Internal Medicine in the medical specialty of Internal Medicine in 1983. I am a Certified Correctional Health Professional, Advanced (1998 to present). I am a staff member at all Detroit Medical Center Hospitals, in Detroit, Michigan. Currently I am an Assistant Professor of Medicine and the Assistant Dean for Admissions at Wayne State University, School of Medicine. During all dates in question in the above captioned case I spent more than 50% of my professional time in the medical specialty of Internal Medicine. A list of cases in which I have testified in the past 4 years will be provided.

II. Materials Reviewed:

I reviewed the following documents in this case:

1. Complaint.
2. Affidavit of Merit by Brent Williams, M.D. (Internist).
3. Affidavit of Merit by Carol Bradford, M.D. (Oncologist, Otolaryngologist).
4. MDOC Medical Chart Of Steven Broder.
5. Affidavit of Meritorious Defense by Silas Norman, M.D.
6. Affidavit of Meritorious Defense by Leon Pedell, M.D.
7. Transcripts of the following depositions:
 - a. James Hayman, M.D. (radiation oncologist)
 - b. Christina Tsien, M.D. (radiation oncologist)
 - c. Ronald Kornak, M.D. (otolaryngologist, ENT)
 - d. John Axelson, M.D. (oncologist)

- e. Audberto Antonini, M.D. (internal medicine)
 - f. Bency Mathai, M.D. (internal medicine)
 - g. Steven Broder (Plaintiff)
 - h. Craig Hutchinson, M.D. (CMS Medical Director in Michigan)
 - I. George Pramstaller, D.O. (MDOC Chief Medical Officer)
 - j. Patricia Barrett (MDOC, Resident Unit Health Manager)
- 8. Expert Report by Carol Bradford, M.D., Board Certified in Otolaryngology
 - 9. Expert Report by Brent Williams, Board Certified in Internal Medicine

III. Statement Of Basis For Opinions To Be Expressed:

My opinions expressed herein are based upon my skills, knowledge and abilities as a medical doctor who is board certified in the medical specialty of Internal Medicine, and the information reviewed in part II above.

Between March 2001 and August 20, 2001 Mr. Broder did not exhibit “persistent” symptoms that would require Dr. Mathai to rule out laryngeal cancer. On May 4, 2001 Plaintiff informed Dr. Mathai he was “recovering” from a sore throat. On May 31, 2001 Plaintiff was seen by nursing staff and he did not complain of a sore throat. On July 11, 2001 Plaintiff was again seen by nursing staff and complained of a sinus cold with a cough for 2-3 weeks, and he did not complain of a sore throat. August 20, 2001 is the first time Mr. Broder presented to Dr. Mathai with a sore throat which became persistent thereafter. During the August 20, 2001 examination, Plaintiff stated his throat had been sore for 2 weeks only.

Dr. Mathai was not informed that Mr. Broder’s sore throat became persistent until after he was seen by Dr. Antonini on October 10, 2001. Further, prior to October 10, 2001, Plaintiff did not complain of difficulty swallowing (“dysphagia”). It is within the applicable medical standard of practice and care for the consideration of a differential diagnosis of laryngeal cancer to take 2 months after August 20, 2001 under Mr. Broder’s circumstances.

On September 4, 2001 Plaintiff was examined by nursing staff in sick call in response to a “kite” by Plaintiff. Plaintiff informed nursing staff “I’m not sure if I still have a sore throat when I wake up.” The nurse observed Plaintiff’s throat was not red or swollen, and that Plaintiff was a “smoker for many years.” There was no cervical lymph node swelling. Plaintiff did not complain of difficulty swallowing.

Dr. Mathai was on a vacation leave from October 1, 2001 through October 21, 2001. During that time, Plaintiff was seen one time by Audberto Antonini, M.D. on October 12, 2001. Dr. Antonini properly diagnosed Mr. Broder with possible laryngeal cancer, and made an appropriate recommendation for an ENT consultation. Dr. Antonini was covering for Dr. Mathai, and therefore was not expected to followup concerning Plaintiff's cancer workup.

Plaintiff was suspected to have laryngeal cancer when seen by Dr. Kornak at the ENT clinic on November 13, 2001. Palpation of Mr. Broder's neck was negative. Dr. Kornak observed "larynx reveals lesions on both cords causing his hoarseness." He did not observe "anything at the glottic introitus causing dysphagia." Dr. Kornak recommended a microlaryngoscopy with vocal cord stripping at Foote Hospital in 2-3 weeks.

On November 14, 2001 Dr. Mathai reviewed Dr. Kornak's report, and submitted a request for authorization by CMS for the microlaryngoscopy and vocal chord stripping procedures to the MDOC patient services liaison. The MDOC faxed the request to CMS on November 16, 2001.

On November 29, 2001 Dr. Mathai completed an "Offsite Specialty Referral 30 Day Follow-Up Form." Upon inquiry Dr. Mathai was informed that authorization of the procedures recommended by Dr. Kornak was in the process of being reviewed. Therefore Dr. Mathai answered "yes" to a question on the form, "Is it acceptable to continue to wait completion of offsite?" Based on her inquiry she believed the procedures would be scheduled shortly.

CMS approved the procedure on December 5, 2001, and faxed the authorization to the MDOC's Patient Services on December 7, 2001 to schedule the procedure. Patient Services scheduled Plaintiff to receive the microlaryngoscopy and vocal cord stripping from Dr. Kornak on January 11, 2002. Dr. Kornak testified at his deposition that there was no delay in scheduling these procedures.

On January 2, 2002 Dr. Mathai followed up on the status of Plaintiff's microlaryngoscopy and vocal chord stripping by completing a second "Referral 30 Day Follow-Up Form." Dr. Mathai observed that the procedures were scheduled to be completed by Dr. Kornack on 1/11/02, therefore again she answered "yes" to the question "is it acceptable to continue to wait completion of offsite?"

Dr. Kornak completed the microlaryngoscopy and vocal cord stripping on January 11, 2002

as scheduled. In his Operative Report¹, Dr. Kornak observed “lesions were on both true vocal cords and limited to the true vocal cords.” Portions of the lesions were stripped off both vocal chords and sent to the Pathology lab for examination. On January 11, 2002, Dr. Kornak was unable to diagnose whether Plaintiff had laryngeal cancer until he received the biopsy results from the pathology lab. He recommended Plaintiff to rest his voice for 10 days, and return to the ENT clinic in 2 weeks to discuss the biopsy results. Dr. Mathai reviewed Dr. Kornak’s recommendations promptly on January 16, 2002.

Plaintiff returned to see Dr. Kornak for his 2 week followup appointment as recommended on January 22, 2002. On this date Dr. Kornak reviewed the biopsy pathology report with Plaintiff. The pathologist Dr. Devany diagnosed Plaintiff with “invasive and in-situ moderately differentiated keratinizing squamous carcinoma.” This is the first date on which Plaintiff’s cancer was diagnosed. Dr. Kornak did not perform any staging of the cancer, and was unaware at what stage Plaintiff’s laryngeal cancer was at on January 22, 2002. Dr. Kornak completed a Special Consult Report requesting Plaintiff to receive a referral to the Radiation Oncology department at Foote Hospital “ASAP.” Dr. Kornak testified that he expected that the radiation oncologist would stage Plaintiff’s cancer by performing a CT scan and possibly an MRI, as well as recommend a course of radiation and possibly chemotherapy treatment. Dr. Kornak testified he required no further followup with Plaintiff until after he received his cancer treatment. The same date Dr. Mathai entered a progress note acknowledging Plaintiff received his followup ENT visit with Dr. Kornak. Plaintiff’s radiation oncology consultation requested by Dr. Kornak was approved by CMS the same day as well, and scheduled to occur promptly on February 5, 2002.

Dr. Mathai examined Plaintiff on January 30, 2002. She again reviewed the recent recommendations by Dr. Kornak, and verified with Patient Services that the radiation oncology consult was scheduled to occur in the next week. Plaintiff complained of “dysphagia and throat pain at night” and Dr. Mathai ordered Ultram pain medication for same.

On February 5, 2002 Plaintiff received his offsite specialty consultation with the radiation oncology clinic as scheduled. The consultation was performed by James Hayman, M.D., who was

¹ While this report concerns the microlaryngoscopy and vocal chord stripping procedures on January 11, 2002, the admission date and report date inaccurately state they occurred in February 2002. Dr. Kornak testified he does not recall why the report was not prepared immediately.

covering for Christine Tsien, M.D. Dr. Hayman and Dr. Tsien are both radiation oncologists. Dr. Kornak's operative report concerning the January 11, 2002 microlaryngoscopy was not available, so Dr. Hayman states he was unaware if Plaintiff's cancer was in Stage I or more advanced, and that his assumption it was Stage I was his "best guess" based on the information available to him. However, Dr. Hayman's report states, "Assuming the patient in fact has stage I larynx cancer, we would recommend treatment with radiation therapy to be given with curative intent". [emphasis added] The consultation reports states, "arrangements will be made for patient to return for treatment planning and to begin treatment soon". Dr. Hayman wrote, "recommend treatment with radiation (7 wks M-F) - will be calling with appt of simulation initiation of treatment".² Dr. Hayman also completed a Specialty Consult Report the same date. Dr. Hayman marked the recommendations as non-urgent, and requested a follow-up visit in 2 weeks. Dr. Hayman did not order a CT scan or an MRI to initiate staging of the cancer. Dr. Hayman testified he did not order a CT scan to confirm the staging of the disease because he knew it would be done as part of Mr. Broder's treatment planing with the radiation oncology department. Dr. Mathai reviewed Dr. Hayman's Specialty Consult Report on 2/8/02, and submitted it to the MDOC who faxed it to CMS on 2/11/02. CMS authorized the requested recommendations of Dr. Hayman on 2/12/02, and faxed the authorization back to the MDOC Patient Services to schedule the procedures on 2/19/02. Patient Services scheduled the simulation for treatment to occur on 3/12/02, and the radiation therapy to begin at Foote Hospital on 3/19/02.

On 2/13/02, Dr. Tsien reviewed Dr. Hayman's report, observed that cancer staging had not been initiated by Dr. Hayman, and immediately recommended a "CT scan of head and neck ASAP". The recommendation is cc'd to Dr. Kornak. She observes the patient has "stage I larynx cancer". There is no indication a request for authorization for the CT was ever properly submitted to CMS, or that the report was received and reviewed by Dr. Mathai.

Dr. Mathai examined Plaintiff on 2/22/02, during which time she was unable to examine Plaintiff's chart because it was out on an FOIA request [requested by Plaintiff by letter on January 24, 2002]³. Dr. Mathai observed continued dysphagia, and primarily addressed Plaintiff's dietary concerns. Plaintiff's simulation of treatment and radiation treatment were scheduled to begin on

² Simulation of treatment is required to be performed prior to initiating cancer treatment.

³ The fact that Plaintiff's chart was unavailable also likely explains why Dr. Tsien's request for a CT was not reviewed by Dr. Mathai.

March 12, 2002 and March 19, 2002 respectively. This is the last time Plaintiff was seen by Dr. Mathai prior to her maternity leave beginning 3/9/02 to 5/15/02.

On March 8, 2002, Marcella Clark, MD, covering for Dr. Mathai, reviewed the chart and observed Dr. Tsien's request for a CT scan. Dr. Clark requested an "urgent" CT scan of Plaintiff's head and neck concerning the "newly diagnosed larynx cancer". CMS approved the request on 3/13/02, and faxed the authorization to MDOC Patient Services on March 14, 2002 for scheduling. Patient Services scheduled the head and neck CT for April 1, 2002. However, the simulation recommended by Dr. Hayman was completed as scheduled by Dr. Tsien on March 12, 2002, at which time the CT was also completed. The CT was reviewed by Dr. Michael Shanks, MD (radiologist). Dr. Shanks observed "tumor appears to involve the larynx on the left with extension into the epiglottis". The CT indicates for the first time that Plaintiff's cancer was more advanced than originally assumed by Dr. Hayman on February 5, 2002, since it extended into the epiglottis. Dr. Shanks recommended a "diagnostic MRI could be performed as needed". The report was sent to Dr. Tsien.

On March 18, 2002, Dr. Tsien reviewed Plaintiff's CT and observed the CT report and noted the larynx cancer extended to the "epiglottic/parapharyngeal" region. Therefore she submitted a specialty consult report requesting a head and neck MRI on an urgent basis, as recommended in the CT report. On March 21, 2002, Dr. Tsien's consult report was reviewed by MSP Dr. Bey, who was covering for Dr. Mathai while on maternity leave. Dr. Bey prepared and faxed a CMS Authorization Request for the MRI requested by Dr. Tsien. CMS authorized the MRI the same day "ASAP" and faxed the authorization to the MDOC Patient Services who scheduled the MRI for March 27, 2002. Dr. Bey also submitted an Specialty Consult Report requesting Radiation Treatment be postponed and rescheduled after the MRI results were reviewed.⁴ Plaintiff received the MRI as scheduled.

On March 25, 2002, Dr. Bey requested that Plaintiff receive chemotherapy for his laryngeal cancer within 2 weeks. The request was reviewed by CMS on March 26, 2002, and Plaintiff was authorized to be seen at the cancer clinic on March 28, 2002. On March 27, 2002 Plaintiff's MRI was completed as scheduled. The results were not read yet.

Plaintiff's was seen by John Axelson, M.D. at the cancer clinic on March 28, 2002, as

⁴ The MRI was needed for staging. If the MRI indicated Stage III cancer, chemotherapy is required in addition to radiation treatment.

scheduled. Dr. Axelson is Plaintiff's treating oncologist/hematologist. Dr. Axelson noted Plaintiff's cancer was previously diagnosed as stage I, however recommended radiation therapy was not begun due to Dr. Shanks observations from the head and neck CT. He observed Dr. Tsien followed up by ordering an MRI. Dr. Axelson placed a call to Dr. Tsien and Kornak "for more rapid follow-up". Axelson recommended follow-up with Dr. Kornak by April 2, 2002, which he faxed to CMS on March 28, 2002. On March 29, 2002, CMS authorized a consult with Dr. Kornak "ASAP". The consult was scheduled for April 2, 2002 as recommended by Dr. Axelson.

On April 1, 2002, the MRI report was completed and reviewed by Dr. Tsien. Dr. Tsien diagnosed Plaintiff with "Stage III T2N1 squamous cell carcinoma of the left true vocal cord extending into the supraglottis". Chemotherapy and radiation therapy were recommended. Dr. Axelson testified within a reasonable degree of medical probability that in January 2002, Plaintiff's cancer was advanced at Stage III, and never at Stage I.

On April 2, 2002, Plaintiff was hospitalized, and chemotherapy and radiation therapy were begun. Dr. Mathai returned from maternity leave after May 15, 2002, at which time Plaintiff continued to receive his radiation treatment. She first saw Plaintiff after her return on May 20, 2002. She observed Plaintiff still had dysphagia, was not taking his Ultram as prescribed, but he was not in any pain. Plaintiff continued his radiation treatment, and she recommended follow-up in 1 month.

Plaintiff completed his radiation treatment on May 23, 2002. Plaintiff was authorized and received continued follow-up with oncology by Dr. Tsien. His radiation therapy was restarted by Dr. Tsien on June 6, 2002. On June 10, 2002, Dr. Heizel (radiologist) observed the tumor was diminished by approximately 50%. On June 13, 2002, Dr. Kornak performed a microlaryngoscopy and biopsy of arachnoid and right false cord. No evidence of tumor was found. On July 22, 2002 Plaintiff's radiation treatment was completed, and Dr. Tsien observed Plaintiff was free of cancer and "in stable condition with no evidence of recurrent disease." On August 27, 2002 Plaintiff received a 2 month routine followup with Dr. Kornak at the ENT clinic. Dr. Kornak recommended another followup in 2 months. By September 30, 2002 Plaintiff's sore throat was completely resolved.

Plaintiff's cancer treatment was completed successfully. Plaintiff's cancer is currently in complete remission.

IV. Statement Of Opinions To Be Expressed:

1. Was Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS deliberately indifferent to the serious medical needs of Mr. Broder?

ANSWER: NO.

2. Did Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS delay the diagnosis of Plaintiff's laryngeal cancer?

ANSWER: NO.

3. Did Dr. Mathai and/or Dr. Antonini breach the applicable medical standard of practice and care during all dates in question.

ANSWER: NO.

4. Did Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS cause any injury to Plaintiff?

ANSWER: NO.

5. Were the alleged actions and/or inactions of Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS the proximate cause of any injury to Plaintiff?

ANSWER: NO.

Early on Dr. Mathai observed Mr. Broder with an intermittent sore throat, without progressive symptoms. Therefore, she was not required to suspect laryngeal cancer during this time. Laryngeal carcinoma can be accompanied by hoarseness and dysphagia (difficulty swallowing), which were not complained of until October 12, 2001). The earliest date on which Dr. Mathai could have suspected laryngeal cancer was during her exam on August 20, 2001, since Plaintiff complained of a sore throat for 2 weeks. The sore throat only became persistent thereafter, therefore a diagnosis of suspected laryngeal cancer within 2 months after August 20 is within the applicable medical standard of practice and care under Plaintiff's circumstances. There was no unreasonable delay in suspecting laryngeal cancer.

Dr. Antonini properly suspected laryngeal cancer on October 12, 2001, and made appropriate recommendation for an ENT consultation. He reasonably expected that his recommendations would be implemented, and was not required to followup with the patient since he was only covering for Dr. Mathai. Dr. Antonini's examination on this date was within the applicable medical standard of

practice and care. Plaintiff's Expert Reports do not allege that Dr. Antonini breached the medical standard of care, nor do they allege that his actions in any way caused any injury to Plaintiff.

Defendants complied with the applicable medical standard of practice and care by referring Plaintiff's diagnosis and treatment for laryngeal cancer to appropriate specialists promptly, which specialists include but are not limited to: Ronald Kornak, M.D. (ENT); James Hayman, M.D. (Radiation oncologist); Christine Tsien, M.D. (Radiation oncologist); John Axelson, M.D. (Hematologist). Once Plaintiff was referred for specialty consultation for diagnosis, staging, and treatment of his laryngeal cancer, Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS reasonably relied on the recommendations and progress of the specialists. Their reliance on the specialists recommendations, and expectation that the specialists would properly and promptly work-up and treat Plaintiff's laryngeal cancer is within the applicable medical standard of practice and care under Plaintiff's circumstances. Pursuant to the applicable medical standard of practice and care, any alleged delay in Plaintiff's diagnosis and treatment caused by his specialists can not be attributed to Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS. Dr. Mathai was not responsible for Plaintiff's care and treatment while she was on maternity leave from 3/9/02 to 5/15/02, since other physicians took her place as Plaintiff's primary care physician during that time period.

The actions of Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS were not the proximate cause of any injury alleged by Plaintiff. The medical records show no evidence that Plaintiff had "Stage I" cancer during any time in question in the Complaint. The first time that cancer was properly staged was after the completion of a CT scan and MRI at the end of March, 2002. Prior to this time, any mention of staging was speculation. Plaintiff was observed with Stage III cancer of the glottis, therefore the cancer had already metastasized.⁵ In January 2002 when laryngeal cancer was diagnosed by Dr. Kornak, the cancer was already at Stage III. Further, based on a reasonable degree of medical certainty, the cancer was at least Stage II from April when Mr. Broder was first seen by Dr. Mathai, through September 2001. At the time laryngeal cancer was first suspected by Dr. Antonini on October 12, 2001, the cancer was most probably Stage III. Any alleged delay by Defendants that can be reasonably attributed to Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS did not change the required treatment.

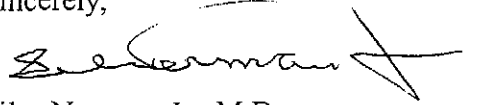
During all dates the CMS health care administrators had in place and followed policies and

⁵ The opinion of Plaintiff's expert Carol R. Bradford, M.D. in her report that Plaintiff's cancer progressed to Stage 4 as a result of Defendants' alleged delay is completely without merit.

procedures to review, authorize, and schedule offsite specialty procedures recommended by Plaintiff's medical primary care providers and/or specialists. These policies and procedures did not cause any delay in the diagnosis and treatment of Plaintiff's medical condition.

Dr. Mathai, Dr. Antonini, Dr. Hutchinson, and/or CMS were not deliberately indifferent to Plaintiff's serious medical needs. At all times they acted consistent with Plaintiff's best interests in treating and eradicating his laryngeal cancer. The expert reports of Plaintiff's experts constitute a difference in medical opinion concerning Plaintiff's treatment and care. Further, Plaintiff's expert reports are based on a statement of facts supplied to Plaintiff's experts that do not fairly state the facts and circumstances of this case.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Norman, Jr.", with a stylized flourish at the end.

Silas Norman, Jr., M.D.

July 6, 2006.