[Cite as *Spencer, Admr. v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-1714.]

IN THE COURT OF CLAIMS OF OHIO

BETTY SPENCER, Admx., etc.	:	
Plaintiff	:	CASE NO. 99-03961
v.	:	DECISION
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	Judge Russell Leach
Defendant	:	

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{¶1} This case was tried to the court on the sole issue of liability. Plaintiff alleges claims for medical negligence and the wrongful death of her brother, William Reynolds. Defendant denies liability.

{¶2} At all times relevant to this action, Reynolds was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. On March 12, 1998, Reynolds arrived at the Corrections Reception Center (CRC) at Orient, after having been housed at the Greene County Jail for the previous week beginning March 4, 1998.[1] The "Greene County Sheriff's Office Inmate Medical Transfer Sheet," a form that was sent with Reynolds to CRC, included the following medical history and current medical problems: "Asthma, ulcers, mental illness, bad leg from motor vehicle accident, complaining of flu-like symptoms for three months. Previously treated with Zithromax." The transfer sheet also stated that Reynolds used a walker, that he was a "regular" at the county jail and that his health had deteriorated dramatically in the past two years.

[1]Reynolds began serving a fourteen-month sentence of incarceration for abusing harmful intoxicants, specifically, sniffing spray paint.

{¶3} Upon his admission to CRC, Reynolds was examined by a nurse. His Health History Form noted that his current health problems included asthma, weakness of both legs, depression and flu-like symptoms. Reynolds was given Tylenol and referred to a physician.

{¶4} The following day, March 13, 1998, Dr. James Coulter, Medical Director at CRC, examined Reynolds and noted that he admitted to a history of paint sniffing, significant psychological problems, bedspring ingestion, and a spine injury resulting in lower extremity weakness. Dr. Coulter also noted that Reynolds' lungs were "CTA"; *i.e.*, clear to auscultation. A chest x-ray was taken, as was customary for every inmate admitted to CRC. Reynolds was categorized as a "class 2" inmate, meaning that he was suitable for being housed in the general population.

{¶5} On March 15, 1998, Reynolds complained of weakness in both legs and of not feeling well, stating that he was too weak to stand. Later that day, he was admitted to the infirmary for observation. He complained of weakness in the legs, lack of appetite and depression since his mother's death in July 1997. His vital signs were taken and his temperature was 97 degrees.

{¶6} On March 16, 1998, Reynolds was discharged from the infirmary and told to use a wheelchair for transportation. On the same date, his chest x-ray was read by Dr. William McLemore, a radiologist.

{¶7} On March 17, 1998, based upon his reading of Reynolds' chest x-ray, Dr. McLemore noted that there was a dense infiltrate in the left lower lobe that was suspicious for pneumonia. Follow-up and clinical correlation were recommended.

{¶8} On March 18, 1998, Reynolds went to med-bay, complaining of a stomach ache. He denied vomiting, diarrhea, or any increase in weakness. He appeared pale and his extremities had a mottled appearance. Reynolds claimed that he had suffered circulation problems since a motor vehicle accident several years previous. His vital signs were taken and his temperature was 98.2 degrees.

{¶9} On March 19, 1998, Reynolds was seen on an emergency basis due to vomiting. At that time, he stated that he had been vomiting for the past three or four days. He was given Pepto Bismol, monitored, and remained in med-bay for observation. His temperature was 96 degrees and his respirations were even and non-labored. It is unclear when he was sent back to his pod.

{¶10} On March 20, 1998, an officer took Reynolds to med-bay and stated that Reynolds had vomited and urinated all over himself. He had increased weakness, was confused, and looked emaciated. When Dr. Coulter was notified of Reynolds' condition, he ordered Reynolds to be transported to the emergency room at OSU Medical Center (OSUMC). Upon arrival, Reynolds was treated with antibiotics for possible aspiration pneumonia and given IV fluids for dehydration.

{¶11} On March 23, 1998, Reynolds died at OSUMC. An autopsy revealed that he had an undiagnosed cancerous tumor in his lung that had spread to his brain and kidneys. The autopsy report stated that the underlying cause of death was metastasizing carcinoma of the lung, and the immediate cause of death was pneumonia.

{¶12} Plaintiff asserts that defendant was negligent in its medical care, and that its negligence in failing to timely diagnose and treat Reynolds' pneumonia proximately caused his death. Specifically, plaintiff alleges that defendant was negligent by: 1) failing to obtain adequate medical records from Greene County; 2) incorrectly classifying Reynolds' health condition upon admission to CRC; 3) failing to interpret the chest x-ray in a timely manner; 4) failing to notify Dr. Coulter that the x-ray showed signs of pneumonia; 5) failing to render adequate follow-up care; and, 6) failing to treat Reynolds' severe weight loss and dehydration.

{¶13} In order to prevail on a claim of medical malpractice or professional negligence, plaintiff must first prove: 1) the standard of care recognized by the medical community; 2) the failure of defendant to meet the requisite standard of care; and, 3) a direct causal connection between the medically negligent act and the injury sustained. *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony. *Id.* at 130. That expert testimony must explain what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id.*

{¶14} Plaintiff's medical expert, Dr. Ahmed Elghazawi, M.D., testified that he was board-certified in forensic medicine and forensic sciences and that he served as the Medical Director for the Cuyahoga County Correctional Center, where he provided patient care and supervised eleven physicians of diverse disciplines. Dr. Elghazawi opined that defendant's assessment of Reynolds' medical condition was untimely; that the three-day delay between taking and interpreting the x-ray was not within the standard of care; and that Reynolds should have been given IV fluids and

antibiotics for ten to fifteen days and another chest x-ray to monitor any progress. Dr. Elghazawi further opined that the delayed diagnosis of pneumonia was the proximate cause of Reynolds' death.

{¶15} Dr. Elghazawi agreed that the typical pneumonia syndrome is characterized by the sudden onset of fever, productive cough, and signs of pulmonary consolidation, and that the medical records showed that Reynolds did not have a fever and that no cough was noted. However, he further stated that in his experience, only ten to fifteen percent of those who develop pneumonia exhibit a cough or fever, and that the patient's entire presentation must be taken into account to diagnose his condition.

{¶16} Robert Cotter, RN, the Health Care Administrator at CRC, testified that there are two CRCs in the state, and that every incoming inmate is sent to a CRC for medical evaluation before being housed in a parent institution. A chest x-ray is taken of each inmate upon arrival for screening purposes, not for diagnostic purposes. The x-rays are taken at CRC but are sent to Corrections Medical Center to be read by a radiologist and then returned to CRC. He further testified that all medical histories are self-reported by the inmates, although on occasion, county jails are contacted for additional medical histories.

{¶17} Dr. McLemore, a board-certified radiologist employed by Mid-Ohio Radiology, interpreted Reynolds' chest x-ray. Although he concluded that the findings were suspicious for a left lower lobe pneumonia, he could not clinically diagnose pneumonia without further testing. He further stated that the dense infiltrate could have been either the tumor in Reynolds' lung or pneumonia. He explained that the term "suspicious for pneumonia" is a significant finding. He also stated that when there is a positive finding on an x-ray report, he writes a note on the request slip and the technologist calls the institution with a verbal report.

{¶18} Dr. James Coulter, Medical Director at CRC, testified that his duties included patient care, physicals and sick calls. He stated that Reynolds' x-ray looked consistent with lung-scarring for a patient who had a history of inhalant sniffing. He further stated that inmates can be treated for pneumonia in the infirmary or in their pod.

{¶19} Carl P. Boesel, M.D., performed the autopsy on Reynolds. He opined that the direct cause of death was cardiac arrest, secondary to pneumonia and underlying cancerous tumors.

According to Dr. Boesel, the cancer was in stage four, the final stage for lung cancer. He further stated that he could not determine when the pneumonia started.

{¶20} Defendant's expert, George Gianakopoulos, M.D., testified that he was board-certified in internal medicine and infectious diseases and was a specialist in infectious diseases. He opined that on March 13, 1998, Reynolds' chest x-ray was suspicious for pneumonia, but clinical evidence reflects that the x-ray showed lung cancer, not pneumonia. He also stated that within one day of being admitted to OSU, Reynolds started to develop pneumonia but that it was incidental to his cancer. He opined that the intervention with antibiotics would not have affected the outcome; that by March 12, 1998, chemotherapy or radiation treatment were not appropriate for Reynolds' condition; that he had a weakened immune system in general; that the pneumonia would affect him faster because of his underlying cancer; that the autopsy shed light on the entire disease process; and, that the cancer had existed for at least months if not a year.

{¶21} Further, Dr. Gianakopoulos stated that he could not determine whether Reynolds' pneumonia was viral or bacterial in nature; that by March 20, 1998, Reynolds was dehydrated; and that the deterioration that was noted in the past two years could have been attributed to the cancer. The autopsy showed massive cerebral swelling. Dr. Gianakopoulos opined that the brain swelling caused by cancer was the main reason for Reynolds' rapid deterioration, and concluded that the medical records did not show a delay in assessing plaintiff's problems.

{¶22} Based upon the evidence presented at trial, the court finds that the time defendant took to interpret Reynolds' chest x-ray was reasonable, since it was a routine screening x-ray. Furthermore, the court finds that defendant properly categorized Reynolds as a class 2 inmate upon admission pursuant to DRC policy 320-01 because he had mobility problems and asthma, and his stage four cancer had not been diagnosed. In addition, the inmate transfer sheet from Greene County provided enough information about Reynolds' health in order for defendant to render medical care to him. In these respects, plaintiff has failed to prove that defendant breached any duty of care.

{¶23} However, the court finds that defendant failed to treat Reynolds for the possibility of pneumonia after the chest x-ray was returned with Dr. McLemore's finding and recommendation on March 17 even though defendant periodically administered medical care to Reynolds from March 12 to March 20. It is this failure to follow up with treatment for possible pneumonia where defendant

fell below the standard of care. Dr. Elghazawi testified that early intervention is important in any infection, especially pneumonia. The medical notes from OSUMC state that Reynolds was treated for dehydration and possible aspiration pneumonia on March 20. Although it is unknown whether Reynolds actually had pneumonia on March 13, the court finds that further treatment for pneumonia was warranted based upon the x-ray that showed signs suspicious for pneumonia and the follow-up recommendation.

{¶24} Proximate cause is established where the negligent act "in a natural and continuous sequence produces a result which would not have taken place without the act." *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 287.

{¶25} The court accepts Dr. Gianakopoulos' opinion that due to Reynolds' advanced stage of cancer, the treatment for possible pneumonia would not have prevented his ultimate death from cancer. However, the court finds that defendant breached a duty it owed to Reynolds when it failed to render follow-up care for treatment of possible pneumonia, and that pneumonia was a proximate cause of Reynolds' death. The court further finds that Reynolds suffered physical harm from March 17 to 20 when he was in defendant's custody and control due to defendant's failure to render follow-up care. Accordingly, judgment is rendered in favor of plaintiff.

RUSSELL LEACH
Judge

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