[Cite as *Lewis v. Ohio State Univ. Med. Ctr.*, 2004-Ohio-4718.]

IN THE COURT OF CLAIMS OF OHIO

MARK LEWIS, Admr.	:	
Plaintiff	:	CASE NO. 2001-08153 Magistrate Lee Hogan
v.	:	
		MAGISTRATE DECISION
OHIO STATE UNIVERSITY MEDICAL CENTER, et al.	:	
	:	
Defendants		

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{¶1} Plaintiff brought this action against defendants, Ohio State

{¶2} University Medical Center (OSUMC) and the Ohio Department of Rehabilitation and Correction (DRC), alleging claims of negligence and wrongful death. The issues of liability and damages were bifurcated and the case was tried to a magistrate of the court on the issue of liability.

{¶3} At all times relevant to this action, the decedent, Michael Byrd, was an inmate in the custody and control of DRC pursuant to R.C. 5120.16. It is undisputed that Byrd was admitted to OSUMC in August 1999 for repair of an abdominal wall hernia and that the operation was performed by Dr. Anant Praba. The surgery was uneventful and Byrd was returned to prison the same day. Over the next several months, the hernia recurred and after re-examining Byrd in January 2000, Dr. Praba recommended another surgical repair. When Byrd subsequently developed an open, ulcerated area at the hernia site, he was admitted to OSUMC on February 28, 2000, for emergent hernia repair utilizing mesh to reinforce the weakened areas of the abdominal wall. According to plaintiff, medical records maintained by DRC documented that Byrd had previously tested positive for Hepatitis B and C, and that his laboratory test results, such as a decreased platelet count and abnormal liver function values, were indicative of Byrd's underlying, albeit asymptomatic, liver disease. Plaintiff alleged that DRC was negligent in failing to ensure that these records accompanied Byrd when he was transported to OSUMC for the second surgery.

{¶4} On March 1, 2000, Byrd underwent the second surgical procedure. Dr. Charles Cook, who performed the surgery, noted during the procedure that ascitic fluid was present in the abdominal cavity. The hospital records reflect in the progress notes that Dr. Cook drained approximately 1,200 ccs of ascitic fluid from Byrd's abdomen and that the hernia was repaired. After surgery, Byrd was transported to a room designated for inmate patients at OSUMC. The room was staffed at all times with at least one corrections officer (CO) and by nurses employed by the hospital to provide patient care.

{¶5} According to the testimony and evidence presented at trial, Byrd's postoperative course was initially uneventful. His vital signs (blood pressure, pulse, respiratory rate, and temperature) were within normal limits and he did not seem to be experiencing any unusual distress. The nurses' notes reflect that he tolerated

{¶6} sips of clear liquids and ambulated with assistance to the restroom. Although Byrd did exhibit some bruising and swelling across the abdomen, the medical staff attributed the swelling to either trapped gas in the intestines or to recurrent ascites. On March 4, 2000, a medical student opined in the progress notes that Byrd may need a paracentesis, a procedure to drain the ascites. Additionally, postoperative laboratory results revealed that Byrd did indeed test positive for Hepatitis B and C. His daily blood counts showed that there was a slow, gradual drop in his hemoglobin and hematocrit levels.

{¶7} At approximately 1:30 a.m., on March 5, 2000, Byrd was observed by his nurse, Robert Gibson, to be agitated, confused, and attempting to climb out of bed. Nurse Gibson testified that he believed that Byrd was experiencing an adverse reaction to the medication Phenergan that had been administered to him earlier in the evening. Gibson recalled that Byrd's vital signs were taken at midnight and that they were within normal limits. According to Gibson, he called Dr. Eric Stine, the doctor on call for the surgical service, and was given verbal orders for soft restraints to be applied to Byrd's wrists and a "posey" vest to be placed across his chest to keep him from climbing out of bed. Dr. Stine also ordered that a dose of Ativan be administered as sedation. Gibson testified that he implemented the verbal orders and that he went to Byrd's bedside and checked his condition every

hour thereafter, at 2:30 and 3:30 a.m. Gibson related that on each occasion he assessed Byrd's skin temperature and circulation to ensure that the restraints were not too tight; he also stated that he talked with Byrd to ascertain his level of orientation.

{¶8} At approximately 4:00 a.m., Gibson was advised by the CO on duty that Byrd did not appear to be breathing. Gibson testified that he immediately approached Byrd's bedside, observed that Byrd was not breathing, and called a "code blue." Gibson stated that he scarcely had time to lower the head of the bed before medical personnel rushed into the room and commenced resuscitation efforts. Blood samples were sent to the laboratory during the code and the results revealed that Byrd's hemoglobin level had fallen from an earlier level of 9.8 to 3.5, an indication of hemorrhage and significant blood loss. The resuscitation efforts were in vain, and Byrd died at approximately 4:45 a.m. The autopsy report lists the cause of death as severe gastrointestinal hemorrhage and states that esophageal varices[1] and erosions of the lining of the stomach provided the source of the bleeding.

{¶9} Plaintiff alleges that Byrd's death was the result of negligence on the part of both DRC and OSUMC. Defendants have denied liability on all of plaintiff's claims. Additionally, OSUMC asserts that Byrd died from ruptured esophageal varices, an event that was sudden and unforeseeable. For the reasons that follow, this court recommends that judgment be entered in favor of defendants.

{¶10} Plaintiff alleges that DRC was negligent in failing to ensure that Byrd's inmate medical records, including his abnormal laboratory values, were provided to medical personnel at OSUMC prior to the second surgery. It is plaintiff's position that, had the records been made known to medical personnel, Byrd's liver disease would have been more closely monitored or managed differently. Specifically, plaintiff contends that Byrd should have been referred to a gastroenterologist for evaluation prior to the second surgery.

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[1] Esophageal varices is defined as: "[a] tortuous dilatation of an espohageal vein, esp. in the distal portion. It may be associated with any condition that causes chronic obstruction of venous drainage from the esophageal veins into the portal vein of the liver. Cirrhosis of the liver is frequently associated with this condition." Taber's Cyclopedic Medical Dictionary (18 Ed. 1997) 675.

{¶11} In order for plaintiff to prevail upon his claim of negligence against DRC, he must prove by a preponderance of the evidence that defendant owed Byrd a duty, that it breached that duty, and that the breach proximately caused Byrd's injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285.

{¶12} DRC contends that plaintiff cannot meet his burden of proof for several reasons. According to DRC, there exists no policy or regulation requiring that inmate medical records be sent to the service provider when an inmate receives treatment at an outlying facility. In addition, DRC noted that no evidence or testimony was presented at trial to substantiate that DRC had such a policy in place. DRC further argues that the OSUMC records from the initial surgery were available to Byrd's physicians, and that the surgical team members certainly became aware of Byrd's liver disease when they encountered ascites during the hernia repair, and again, upon learning the results of the laboratory tests performed after the surgery.

{¶13} Plaintiff alleges that OSUMC was negligent in its medical and nursing care, and that its negligence in failing to timely diagnose and treat Byrd's liver disease, both before and after the hernia repair, proximately caused his death. Specifically, plaintiff alleges that OSUMC was negligent in: 1) failing to obtain adequate medical records from DRC; 2) failing to manage Byrd's liver disease prior to and after surgical intervention; 3) failing to culture the ascitic fluid removed during surgery; 4) failing to accurately measure intake and output amounts and daily weights, postoperatively; 5) failing to recognize uncontrolled bleeding as indicated by the falling hemoglobin levels; and, thus 6) failing to recognize and treat the nature of Byrd's distress, prior to the code blue.

{¶14} In order to prevail on a claim of medical malpractice or professional negligence against OSUMC, plaintiff must establish: 1) the standard of care recognized by the medical or nursing community; 2) the failure of defendant to meet the requisite standard of care; and 3) a direct causal connection between the negligent act and the injury sustained. *Wheeler v. Wise* (1999), 133 Ohio App.3d 564; *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony. *Bruni*, at 130. The 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. Similarly, in order to maintain a wrongful death action on a theory of negligence, plaintiff must establish three elements: 1) a duty owed to plaintiff's decedent; 2) a breach of that duty; and 3) proximate causation between the breach of duty and the death. *Littleton v. Good Samaritan Hosp. & Health Ctr.* (1988), 39 Ohio St.3d 86, 92, citing *Bennison v. Stillpass Transit Co.* (1966), 5 Ohio St.2d 122, paragraph one of the syllabus.

{¶15} In support of his claims, plaintiff offered the expert testimony of Dr. Paul Priebe, Associate Professor of Surgery at Case Western Reserve University in Cleveland, Ohio. Dr. Priebe initially testified that, in his opinion, both DRC and OSUMC deviated from the requisite standard of care and that their deviations proximately caused Byrd's death. Dr. Priebe stated that DRC was negligent in failing to send Byrd's laboratory results when he was transported to OSUMC. According to Priebe, if the records had been with Byrd upon admission, Byrd would have been referred to a gastroenterologist to receive preoperative treatment of his liver disease. In addition, Priebe opined that the doctors would have intervened earlier on the morning of March 5, 2000, because of Byrd's increased risk for bleeding.

{¶16} Priebe testified that OSUMC was negligent in that: 1) Dr. Cook was not made aware of pre-surgical test results and, after surgery, he did not order a culture of the ascitic fluid to test for the presence of bacteria; 2) Dr. Stine did not come to Byrd's bedside and assess his condition prior to 4:00 a.m. on the morning of his death; 3) postoperative care and fluid management were inadequate, causing Byrd to retain an excessive amount of fluid; and 4) postoperative laboratory testing should have been done to assess Byrd's platelet count and clotting times.

{¶17} Dr. Priebe went on to testify that although the autopsy report showed that Byrd's esophagus and stomach were filled with clotted blood, and that the small and large intestines were filled with hemorrhagic fluid, it was his opinion that there was not enough blood volume found in the gastrointestinal (GI) tract to cause exsanguination. Dr. Priebe further stated that although GI bleeding had occurred, it was not, in his opinion, the cause of Byrd's death. Over defendants' objections, Dr. Priebe offered several opinions as to what conditions may have contributed to Byrd's death, such as sepsis, respiratory distress, and hepatic encephalopathy. Nevertheless, on

cross-examination, Dr. Priebe acknowledged that there was no way to ascertain from the medical records what caused Byrd's change in mental status at 1:30 a.m. Dr. Priebe also admitted that he did not have an opinion as to the specific cause of Byrd's death and that he could only speculate as to what the cause may have been.

{¶18} OSUMC presented the expert testimony of Dr. David Grischkan, who was board-certified in general surgery and who maintained a private practice that was concentrated in the area of hernia repairs. Dr. Grischkan opined that the treatment provided to Byrd by OSUMC's medical staff comported with the requisite standard of care. According to Dr. Grischkan, Dr. Stine's order for physical restraints was appropriate because nothing had been reported by the nursing staff other than Byrd's restlessness and confusion; he stated that such a change in mentation was not unusual in a patient with liver disease. In addition, Grischkan explained that the gradual drop in hemoglobin and hematocrit that Byrd experienced postoperatively was not abnormal. He attributed the drop to the effect of dilution due to the introduction of intravenous fluids into Byrd's bloodstream. Dr. Grischkan further testified that, in his opinion, Byrd died as a result of a massive esophageal hemorrhage from esophageal varices. According to Grischkan, that type of event can occur suddenly, without warning, and can result in death within ten minutes or less.

{¶19} DRC presented the expert testimony of Dr. Stephen E. Markovich, Associate Director of the Family Practice Residency Program at Riverside Methodist Hospital in Columbus, Ohio. Dr. Markovich testified that, in his opinion, DRC met the standard of care in treating Byrd prior to the second surgery. According to Dr. Markovich, Byrd did not need to be referred to a gastroenterologist inasmuch as his condition was stable according to his laboratory test results; he did not exhibit any jaundice; and there were no outward signs of bleeding. In addition, Dr. Markovich stated that there was nothing in the records held by DRC that would have caused OSUMC to postpone the repair surgery; thus, he concluded that even if the records had been sent to OSUMC, the outcome would have been the same.

{¶20} Based upon the totality of the evidence and testimony presented at trial, this court is convinced that, more likely than not, Byrd died a result of sudden, unexpected, ruptured esophageal

varices that caused a massive hemorrhage into his gastrointestinal tract, and that his death in this manner was unforeseeable. In reaching this determination, the court has carefully considered and weighed the testimony of the expert witnesses. While Dr. Priebe was an extremely knowledgeable and forthright witness, the court finds that his testimony did not substantiate plaintiff's allegations or meet his burden of proof on the medical negligence theory. Consequently, the court finds that the objections and arguments expressed at trial concerning the admission of this evidence have been rendered moot.

{¶21} In contrast, the court finds that the testimony of Drs. Grischkan and Markovich was not only comprehensive and forthright but also rational, reasonable, and credible. Among other things, the doctors' testimony substantiated the necessity for the hernia-repair surgery notwithstanding the deteriorated condition of Byrd's liver. The testimony also explained the unpredictable nature of esophageal varices and its appearance in patients with liver disease. Their testimony is supported by hospital records that demonstrate that Byrd never complained of either vomiting blood or passing bloody stools; that no medical personnel described seeing such conditions prior to the code blue; and that Byrd's vital signs were all within normal limits four hours before his collapse. In addition, nurse Gibson testified, quite credibly, that from 1:30 to 3:30 a.m. he performed hourly assessments of Byrd's skin temperature, circulation to his fingertips, and his mental status. Accordingly, the court specifically finds that plaintiff failed to present sufficient evidence to prove that the actions by OSUMC nursing or medical staff fell below the standard of care required under the circumstances or that any action or inaction on their part proximately caused Byrd's death.

{¶22} Further, the court finds that plaintiff failed to prove by a preponderance of the evidence that DRC was negligent or that any act or omission on its part proximately caused Byrd's death. The court is persuaded that, even assuming that DRC had a duty to forward Byrd's lab reports and medical records, the failure to do so did not adversely affect his care and treatment, much less amount to a proximate cause of his death.

{¶23} For the foregoing reasons, the court finds that plaintiff has failed to prove any of his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendants.

{¶24} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

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LEE HOGAN
Magistrate

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LH/cmd
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