Failure to discontinue medication

by Louise Walling and Laura Hale Brockway, ELS

This closed claim study is based on an actual malpractice claim from Texas Medical Liability Trust. This case illustrates how action or inaction on the part of the physicians led to allegations of professional liability, and how risk management techniques may have either prevented the outcome or increased the physician’s defensibility. An attempt has been made to make the material less easy to identify. If you recognize your own case, please be assured it is presented solely to emphasize the issues of the case.

Presentation and physician action
A 34-year-old woman came to an ob-gyn for prenatal care on May 25. This was the patient’s fifth pregnancy. An ultrasound was performed and the patient’s estimated delivery date was determined to be December 8. The patient reported that she was taking benazepril 10 mg for hypertension, prescribed by her primary care physician.

The patient’s next appointment was June 8. It appears from the record that her dosage of benazepril was increased to 20 mg on this visit. The patient was again seen on June 28 and July 13.

During a July 16 visit, the patient complained of a greenish vaginal discharge. The ob-gyn admitted the patient that day. Her assessment was a 32.5-week pregnancy with prolonged rupture of the membranes, meconium-stained fluid, and breech presentation. The ob-gyn performed a cesarean delivery, delivering a girl. The placenta was noted to be small and the umbilical cord was “very thin.”

The baby was diagnosed with renal failure with anuria, hyaline membrane disease, and pulmonary hypertension. She was transferred to a children’s hospital where it was determined that she could not regain renal function. The baby was taken off life support and she died on July 28.

According to the autopsy report, the primary diagnosis was ACE inhibitor fetopathy with anuria, along with poorly controlled hypotension; hemodynamic changes of fluid overload; acute and terminal brain hypoxic ischemic changes; and findings associated with prematurity.

The pathologist wrote, “In conclusion, it should be noted that not all women treated with ACEI during pregnancy have untoward effects and it is likely that a combination of dosage, duration of treatment as well as genetic variations in different populations influenced the eventual fetal outcome.”

Allegations
A lawsuit was filed against the ob-gyn. The plaintiffs alleged that benazepril is a dangerous drug for pregnant women and is known to be associated with significant morbidity and mortality to the fetus. This medication should have been discontinued and substituted for a safer ACE inhibitor.

continued on page 2
Legal implications
An ob-gyn who reviewed this case for the defense was critical of the prescription and continuation of benazepril to the patient. The medication should have been discontinued immediately at the first prenatal visit. This ob-gyn referred to the failure to discontinue benazepril as a “serious error that allowed the fetus to be exposed to the dangerous medication for additional weeks prior to her birth.” Two other ob-gyns who were consulted on this case agreed. The defendant ob-gyn also agreed that she should have discontinued benazepril.

Risk management considerations
Being an educated prescriber of medications is vital for physicians. When a patient comes to her first prenatal visit with a list of medications, it is good risk management practice to review the list for patient and fetal safety. Some medications may be safely discontinued; but, if the patient has a condition that requires close monitoring, then prescribing a safe substitute is optimal.

Many electronic medical records come with prescribing programs that feature black box warnings for medical conditions, drug/drug interactions, and drug/food interactions.

At each visit, the patient should be asked about the medications she is taking and if there have been any changes since the last visit. If the physician prescribes a new medication, document that the patient was told about the side effects and potential adverse interactions.

Disposition
This case was settled on behalf of the ob-gyn.

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The area of law that deals with these kinds of events is referred to as employment practices liability. Typical allegations in employment practices lawsuits include harassment, discrimination, FMLA violations, hostile work environment, and wrongful termination. Employment practices claims are not only embarrassing, but can also be expensive to defend or settle. Insurance that covers these types of claims is called employment practices liability insurance (EPLI).

The good news for TMLT policyholders is that beginning February 1, 2013, EPLI has been added to all policies at no extra charge. Policyholders will begin receiving information about this new coverage as they renew their policies.

**EPLI claim statistics**

Approximately 100,000 employment-related claims were filed through the Equal Employment Opportunity Commission (EEOC) in 2012, totaling $364 million paid to claimants (excluding awards through litigation). Approximately 30,500 discrimination claims were filed with the EEOC and Fair Employment Practices Agencies (FEPA) in 2012. 1

Regarding the types of claims, there were three notable increases in recent years:

**Discrimination based on religion**

- 3,790 in 2010
- 4,151 in 2011
- an increase of 9%

**Retaliation**

- 36,258 in 2010
- 37,344 in 2011
- an increase of 3%

**Discrimination based on national origin**

- 11,304 in 2010
- 11,833 in 2011
- an increase of 4.6%

The cost of settlements and verdicts from employment-related claims can be huge. For example:

- In 2009, Wal-Mart settled a race bias suit for $17.5 million. 2
- In 2008, New York City paid more than $20 million to settle a racial discrimination suit filed against their Department of Parks and Recreation. 3
- In 2003, California’s public pension fund paid $250 million to settle an age discrimination suit. 4

**TMLT’s EPLI coverage**

After February 1, 2013, all TMLT policies include an EPLI endorsement. The endorsement covers several kinds of alleged, wrongful employment practices including:

- violation of any federal, state, local, or common law, prohibiting any kind of employment-related discrimination;
- harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment and including workplace harassment by non-employees;
- abusive or hostile work environment;
- wrongful discharge or termination of employment, whether actual or constructive;
- breach of an implied employment contract or promissory estoppel (an understanding based on a previous action or statement);
- breach of an actual or written employment contract as long as another wrongful employment practice is also alleged;
- wrongful failure or refusal to hire or promote, or wrongful demotion;
- wrongful failure or refusal to provide equal treatment or opportunities;
- employment termination, disciplinary action, demotion, or other employment decision that violates public policy or FMLA or similar state or local law;

Continued on page 4
Liability coverage ... continued from page 3

- defamation, libel, slander, disparagement, false imprisonment, misrepresentation, malicious prosecution, or invasion of privacy;
- wrongful failure or refusal to adopt or enforce adequate workplace or employment practices, policies, or procedures;
- wrongful, excessive, or unfair discipline;
- wrongful infliction of emotional distress, mental anguish, or humiliation;
- retaliation, including retaliation for exercising protected rights, supporting in any way another’s exercise of protected rights, or threatening or actually reporting wrongful activity of an insured such as violation of any federal, state, or local “whistle blower” law;
- wrongful deprivation of career opportunity, negligent evaluation, or failure to grant tenure;
- violation of the Uniformed Services Employment and Reemployment Rights Act; or
- negligent hiring or negligent supervision of others, including wrongful failure to provide adequate training, in connection with training.

A claim must be reported to TMLT as soon as practicable, but no later than 60 days from the date the policyholder becomes aware of the claim. Policyholders can also report circumstances they believe might lead to a claim.

For more information about EPLI coverage visit our web site or contact your underwriter at 800-580-8658.

Sources