

Three Legal Decisions Bolster Doctor-Patient Relationship

Richard C.W. Hall, MD

Court cases in Arizona, California, and Florida have resulted in rulings that have assisted physicians in providing better care to their patients by maintaining the doctor-patient relationship, which is so often disrupted in managed care systems. The cases described here suggest that physicians should not be forced to make decisions against their patients' best interest, that physicians are responsible for their behavior, and that they need to stand up for their patients.

MCO Medical Director Held Responsible for "Medical Decision"

Murphy v Board of Medical Examiners

In an important suit, *Murphy v. Board of Medical Examiners* (1), the court decided that John F. Murphy, Medical Director for Blue Cross/Blue Shield of Arizona, made a "medical decision" when he overruled a patient's physicians and denied precertification for treatment.

On December 29, 1992, Dr. Murphy refused to pre-certify a patient's laparoscopic cholecystectomy (gallbladder surgery). Dr. Murphy opined that the surgery was "not medically necessary." His decision contradicted the advice of the patient's surgeon and her referring physician, Dr. Johnson. The surgery was performed despite Blue Cross's refusal to pre-certify.

Dr. Johnson registered a complaint with the Board of Medical Examiners, and in February of 1993 the Board sent Dr. Murphy a copy of Dr. Johnson's complaint and requested a response. Dr. Murphy returned the letter, questioning whether the Board of Medical Examiners could review his action because he was "not involved in patient care and not involved in the practice of medicine." He provided the requested information "as a courtesy" and to avoid "a claim of unprofessional conduct." In October 1993, the Board ordered an investigation and subpoenaed Blue Cross documents concerning 20 cases in which Dr. Murphy denied pre-certification. Blue Cross objected to the subpoena and said that the Board lacked jurisdiction because Dr. Murphy worked for an insurance company and that he was not practicing medicine.

The Court ruled that although Dr. Murphy was not engaged in the traditional practice of medicine, to the extent that he renders medical decisions his conduct is reviewable by the Board of Medical Examiners. The Court found that Dr. Murphy substituted his medical judgment for that of the patient's physicians and determined that the surgery was "not medically necessary." The Court ruled that such decisions were not insurance decisions but, rather, medical decisions because they required Dr. Murphy to determine whether the

procedure was "appropriate for the symptoms and diagnosis of the condition," whether it was to be "provided for the diagnosis, care or treatment," and whether it was "in accordance with standards of good medical practice in Arizona."

Patient Care Supersedes Profits

The Self Case

In April 1998, a San Diego jury awarded Thomas Self, M.D., a pediatrician, \$1.7 million after finding that he was fired in a malicious fashion and that he had been defamed. As reported in the *Orlando Sentinel* (2), Dr. Self sued the medical group for which he worked after he had been discharged. He contended that he was fired because he spent too much time with patients, ordered too many tests that did not generate profit, and refused to perform unnecessary surgeries. The jury agreed with Dr. Self.

The Sentinel noted that this was the first verdict of its kind in the country, setting an important precedent when Dr. Self successfully argued that the medical company's emphasis on the bottom line precluded doctors from providing good medical care. Many observers have suggested that this case sends a signal of the public's growing unease about the disproportionate balance between corporate profits and the medicine that is delivered to patients.

The basis of the Self suit was a 1993 California statute that prohibited medical groups and MCOs from retaliating against physicians for giving patients appropriate care. About half the states in the country have enacted similar laws.

Medical Necessity Defined in Medicaid Case

Tallahassee Memorial v Cook

A constant source of tension that exists between physicians and MCOs is the disallowance of care as "not medically necessary." An important decision recently rendered in Florida, *Tallahassee Memorial Regional Medical Center v. Cook* (3) addresses this issue.

In this suit, hospitals that provided inpatient psychiatric care for adults and adolescents under the Florida Medicaid program brought an action against the Florida Agency for Health Care Administration (AHCA), challenging AHCA's failure to provide reimbursement for medically necessary outpatient psychiatric services to adolescents in inpatient settings.

The U.S. District Court for the Northern District of Florida entered a judgment for the hospitals. AHCA appealed. The Court of Appeals held that the Boren Amendment to the Federal Medicaid Act required AHCA to reimburse inpatient hospital providers who provide lower-level care to patients once medical necessity for inpatient acute care ceases but where appropriate required alternative care settings for the patient are unavailable.

In the original opinion, the trial judge addressed the peer review organization's denial of medical necessity for suicidal patients subsequently admitted to the hospital and the defined federal criteria in the Eleventh Circuit (Florida, Georgia, Alabama, and Mississippi) for "medical necessity." The judge ruled that medical necessity was determined by a two-pronged test of facts in the circumstances surrounding each case. In this case the court found,

1) inpatient services during admission and treatment must be consistent with "appropriate medical care."

2) alternative placements must be considered when ordering inpatient services.

The trial judge defined "appropriate medical care" as services that are delivered to alleviate a harmful medical condition. "Services alleviate a harmful medical condition if they are reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of conditions in the recipient that endanger life, cause suffering or pain, result in illness or infirmity, threaten to cause or aggravate a handicap, or cause physical deformity or malfunction." The judge's definition of "appropriate care" provides important guidance to physicians.

In speaking to the use of illness intensity/severity/discharge criteria used by reviewers of MCOs, the judge noted that the criteria are *general guidelines* for determining the medical necessity of inpatient services but do not determine medical necessity. He noted that these criteria are "not binding on the treating physician," and that the treating physician can override them "based on his or her clinical judgment concerning a particular recipient." The clinical judgment to override these criteria must be consistent with appropriate medical care (3) (4).

Conclusion

The Murphy case suggests that managed care medical directors, at least in Arizona, are accountable to their Board of Medical Examiners when they inappropriately practice medicine by denying pre-certification for care. The standards for care are based upon the "reasonable person," "reasonable physician," "community standard" as determined by the physician seeing a patient who is acutely ill. The Self case represents the tip of an increasingly visible public outcry against the abuses of managed care. The trial judge's ruling in the Tallahassee Memorial Hospital case defines appropriateness of care, medical necessity, and the tests that should be used to determine both. This test sets a standard to be applied against the criteria often applied by MCOs and is important for physicians to remember when responding to denials of "medical necessity" from managed care companies.

References

1. *Murphy v Board of Med. Examiners*, 949 P.2d 530 (Ariz. Ct. App. 1997).
2. "Doctor's Victory Revives Proponents of Quality Care, *Orlando Sentinel*, April 26, 1998, p. A-21.
3. *Tallahassee Mem'l Reg'l Med. Ctr. v. Cook*, 109 F.3d 693 (11th Cir. 1997).

4. *Orlando Gen. Hospital v Department of Health and Rehabilitative Servs.*, 567 So. 2d 962, 965 (Fla Dist. Ct. Appl. 1990).

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