

## The Elderlaw Forum: Physician ignores ruptured appendix complaint

by Professor\_Michael\_Myers

Physicians make mistakes. Occasionally they admit their mistakes. Their insurance companies and lawyers do not.

A senior legal helpline caller encountered such denial. He is 62 and a member of a state health plan through he was required to choose a primary "gatekeeper" physician. "I've never really liked the doctor I selected; more importantly I've never felt he was competent," the caller said.

After feeling poorly for several weeks he visited his designated physician, who treated him for arthritis by administering a series of cortisone shots. But the caller continued to experience abdominal pain and overall fatigue. Two weeks later, while on a hunting trip, he went to the emergency department of a hospital 300 miles from his home.

"They diagnosed me immediately as having appendicitis, telling me that my appendix had been ruptured for a long time," he said. "The surgeon said my infected abscess was the largest mass he had ever removed in his 30 years of practice." The caller then spent 25 days in the hospital recuperating from a near-fatal condition.

His medical chart showed that while he was being treated for arthritis his white cell count was two-to-four time greater than the normal range of 4,500 to 10,000 cells per microliter. "A first-year biology student knows that infection is a common cause of an elevated white cell count," said the caller. "He should have checked for an infection, and if he had he would have discovered that my appendix had ruptured."

He should have; but he did not, and when confronted with the caller's complaint, he referred it to his malpractice carrier. The caller's demand is modest. He asked the clinic to reimburse him for a \$1,700 deductible he incurred during his hospital stay.

The clinic referred the caller's complaint to its insurance company, who promptly and unequivocally denied the caller's claim. The caller then filed his claim in small claims court, a venue designed to adjudicate claims of such small amount. The insurance company has removed the claim from small claims court. The caller asked me for assistance. I can help on one important condition: that he finds a physician who, without compensation, will testify that the treating physician was negligent in not testing for a ruptured appendix.

It is hard to find a physician willing to acknowledge a mistake. It is even harder to find a physician who will testify that another physician made a mistake.

(Pro bono legal information and advice is available to persons 55 and older through the University of South Dakota Senior Legal Helpline, 1-800-747-1895; mmyers@usd.edu. Opinions solely those of the author, not the university).

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