Medical Legal Issues in Dermatology

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Relevant Disclosures

- None
Discussion

- Medical Malpractice
- Employment Issues
- Teledermatology
Medical Malpractice

- Laser Complications
- Recurrence of Basal Cell Carcinoma
- Missing the diagnosis of melanoma
Negligence

Legal Analysis

- Duty
- Breach of duty
- Causation
- Damages
Laser Case

• Fitz IV Individual – recently tanned
• Was not asked about tanning
• Did not look tanned
• Complained that previous 3 txs were not aggressive enough
• Treated with alexandrite laser at 40 J/cm² and 3 msec pulses – plus cooling
What is the Breach in Duty?

• In a Lawsuit, What Will Happen?
Recurrent BCC

• 72 y.o. male had a recurrent BCC after Mohs surgery
• Patient kept follow-ups with dermatologist and Mohs surgeon
• Sued for negligence because of recurrence
What is the Breach in Duty?

• In a Lawsuit, What Will Happen?
Labial MM

- Treated as pigmented actinic keratosis 2 times over course of 6 months
- Biopsy shows melanoma
- Metastases occur 2 years later – death follows
- Lawsuit over missed melanoma
What is the Breach in Duty?

• In a Lawsuit, What Will Happen?
Employment Law
Our Office Employees

- Status of Employee
- Nature of Employment
Issues

• The Contract
• Benefits
• Liability
• Review
Status of Employee

• Agent

• Independent Contractor
Status of Employee

Agent

- Employee
- Defined benefits
- W2
- Scope of employment
Status of Employee

Independent Contractor

- Self employed
- No benefits
- 1099
Status of Employee

Legal Implications

• Medical Malpractice
• At Will
• Contract
At Will

- Employment and Termination at will
- Hourly salary
Nature of Employment

**Contract**

- Bound by terms of contract
- Annual salary
Nature of Employment

Terms of Contract

- Salary
- Benefits
- Basis for termination
- Restrictive covenant
Nature of Employment

Litigation

• Basis for termination
• Restrictive covenant
Real Life Cases

Litigation

• Basis for termination
Basis of Termination

- Mutual Termination
- Death
- Dissolution of Practice
- With or Without Cause not less than...
- For “Just Cause”
“Just Cause”

• Loss of License
• Loss or Limitation of Hospital Privileges
• Disability for more than .... ? Days
• Failure to adhere to rules of practice
• Loss of eligibility to participate in 3rd party payers
“Just Cause”

• Conviction of felony
• Participation in dishonest acts
• Damaging reputation of practice
• Failure to perform acts in competent and professional manner
Real Life Cases

Litigation

• Restrictive covenant
Restrictive Covenant

- Relationship with company is one of trust and confidence
- All records, trade secrets, referral sources
- Time and distance
- Money damages will not adequately compensate
Restrictive Covenant - Reasonableness

• In terms of time

• In terms of distance
Restrictive Covenant- Reasonableness

• The restriction must last only as long as is necessary for departing physician’s (or other provider) replacement to demonstrate effectiveness

• For the public to disassociate the departing physician from the employer’s practice
Restrictive Covenant - Reasonableness

- No black-letter rule as to what “time” is reasonable
- Shorter is better
- 2-3 years is usually considered reasonable
Restrictive Covenant - Distance Reasonableness

- Most litigated issue
- Determined case by case (rural vs. urban)
- 5-75 miles are reasonable
- Should not exceed the “drawing” area of the dermatology practice
- Most courts require breaching MD to pay monetary damages
Teledermatology and the Law
Communication Technology

• Today it is easy to conduct high-resolution video chats between mobile phones anywhere in the world
Telemedicine

• Use of telecommunications technology to deliver health care at a distance from the medical provider
• Available for 20 years in medicine and dermatology
• Just now really taking off in dermatology
Telemedicine-Vietnam War

• If available, 1/3 of American lives would have been saved
• Over $100 billion/year could be saved if quality telemedicine was universally available
• Cuts costs by eliminating needless tests and record duplication
Telemedicine
Simplest Level

• Physician provides advice by telephone
• Today, represents the provision of diagnosis or treatment at a distance in reliance upon technologies
• Telemedicine has been used extensively in primary care and radiology
Telemedicine
Simplest Level

• Physician provides advice by telephone to patient

• Physician provides advice by telephone to another doctor who tells patient

• Is there a difference?
Teledermatology

• Interaction of telemedicine and dermatology
Teledermatology

• Dermatology natural fit for telemedicine
• Dermatology is uniquely visual
Methods of Teledermatology

- Phones
- Fax machines
- Computer lines
Teledermatology Improves Access to Care

• Patients in underserved areas
• Patients with rare diagnoses
• Patients who are homebound
• Physicians who take call from home
Teledermatology at VA Hospitals

• 86% of dermatologists report that teledermatology was good addition to regular patient services
Teledermatology at Kaiser Permanente Hospitals

• Shorter time to biopsy in more remote areas
• Improved triage methods
Teledermatology

- Medical Issues
- Social Issues
- Legal Issues
Teledermatology

• Medical Issues
Medical Issues

• Accuracy of diagnosis
Studies

• Patients randomized to receive care in person vs teledermatology
• No evidence of difference in clinical outcome at 9 months
Studies

• Useful screening tool for melanoma
• Favorable effect on initial prognosis
Studies

• Correlation between correct diagnosis and quality of photograph
Telemedicine

• Social Issues
Social Issues

- Impact on the patient physician relationship
- Issues of support rather than replacing quality medical treatment
- Issues of informed consent and confidentiality
Telemedicine

• Legal Issues
Legal Issues

- State licensure vary from state to state
- Professional disciplinary bodies
- Standards of care
- Federal and state laws on fraud abuse and antitrust
Most states

• Consider telemedicine the practice of medicine
• If one practices teledermatology over state lines, a medical license is required in that state
• Most states require that physician limit practice to state where he/she is licensed
State Issues-Example

• Patient in isolated LA town seeks derm expertise for a pigmented lesion specialist in CA

• Specialist asks his staff to download patient’s images, biopsies and other medical records to aid in diagnosis and treatment protocol

• Specialist discovers patient is pregnant and notifies staff
State Issues-Example

• In CA, patient’s right to confidentiality has been breached
• In LA, the patient has no such right
• Which states confidentiality laws should apply?
• There is no answer
Limiting Factors of Teledermatology

- Physician fees for company HIPAA compliant server
- Patient must log in and pay fee
- Patients may not be accepting of required “insurance waiver”
- Med mal issues (current vs. new patients)
Examples
Facts

- 27 yo South Indian with ephiledes on her right cheek
- A verbal discussion took place with her original dermatologist and a consultant
- Treatment was undertaken with a 532nm Q-switched Nd:YAG laser
- Post-inflammatory hyperpigmentation occurred
Issues

• Where does she live?
• HIPAA issues
• Will this be a lawsuit?
• Are payments worth it?
Facts

• 52 yo woman from KA receives a non HA filler at the advice of a dermatologist in FL
• She develops long term lumps at the injection sites
• She is treated for a bioflim.
• 2 years later still having problems
• She files a lawsuit
Issues

- Where does she live?
- HIPAA issues
- Will this be a lawsuit?
- Are payments worth it?
How to Minimize Risks of Liability

• Broad Disclaimers
• “See a Dermatologist”
• Use teledermatology only on your own patients.
Future

• Teledermatology is here to stay
• Federal and state government increasing involvement
• Increasing mobile/computer apps will lead to better performance of new technologies