



View this article online: <https://www.insurancejournal.com/news/east/2021/02/11/600927.htm>

Massachusetts Superior Court Says Woman's Medical Malpractice Claims Can Proceed

A Massachusetts superior court has ruled that a woman can bring claims for medical malpractice and unfair consumer practices against a hospice company for overmedicating her with narcotics and falsely certifying that she was hospice eligible.

Plaintiff Patricia Marble and her husband filed the action against defendant Amedisys, a national provider of hospice services, after becoming suspicious that Marble had lived for five years in hospice care.

Summary judgment records indicated not only that Marble was overmedicated with unnecessary doses of narcotics while continuing to be certified as eligible for hospice care at an Amedisys facility, but that Amedisys had a bonus structure in place that served, in part, as financial incentive for staff to admit and retain hospice patients, according to the Superior Court ruling.

Five Years of Hospice Care

This comes as Marble suffered from chronic obstructive pulmonary disease, diabetes, severe pulmonary hypertension, obesity and congestive heart failure, and her primary care physician, Dr. Eric Poston had initially prescribed medically necessary supplemental oxygen. In May 2007, Dr. Poston determined that Marble suffered from chronic respiratory failure, was permanently disabled and unable to maintain employment.

As a result, he and the hospice medical director of an Amedisys care center in Athens, Tennessee, later decided Marble was eligible for hospice care. She entered hospice care in April 2011 at her home in Tennessee.

After Marble moved to Massachusetts in August 2011, Dr. Poston referred her to Beacon Hospice, which is owned and operated by Amedisys and runs the Plymouth Care Center. Beacon Medical Director Dr. Peter Roos and Eileen McCoy, employees of Amedisys at Beacon's Plymouth Care Center, began treating Marble while there.

While in hospice care with Beacon, Dr. Roos prescribed Marble narcotic pain medications including a fentanyl patch, Vicodin and oral morphine. Beacon paid for these medications and was reimbursed by the federal government.

The superior court ruling stated, however, that these high doses of narcotic medication left Marble stupefied, unable to leave the house or have normal relationships with her husband, family and friends.

Amedisys had a Patient's Rights Policy under which patients had the right to refuse any treatment, including the use of narcotic pain medication. The policy stated that patients should be prescribed the lowest possible dosage of narcotic pain medication required to get symptom relief, but there was no policy regarding the maximum amount of narcotic pain medication that a patient should receive per day.

In August 2011, Dr. Roos signed a Hospice Initial Certification stating that Marble had a limited life expectancy of six months or less if her terminal illness ran its normal course. He wrote that Marble qualified for hospice based on pulmonary disease due to progressive respiratory failure. The purpose of the certification form was to ensure compliance with Medicare regulations, according to the superior court ruling.

Dr. Roos testified that he believed Marble had a life expectancy of six months or less based on her clinical condition and continued certifying her for hospice care over the course of several years. He said he did not believe her conditions were caused by the narcotics.

In May 2016, however, Marble's family became suspicious that she had lived for five years in hospice care. They decided to have her seen by a physician outside of Amedisys and transferred her to Good Samaritan Medical Center. There, the physicians noted her high doses of opiates.

Marble then signed a revocation of her election of hospice care benefits, stating that she was "seeking skilled rehabilitative/services in a skilled nursing facility."

After being weaned off of the narcotic medications, Marble had fewer breathing problems and was no longer confined to her bed or home, the superior court ruling stated.

"It was as if someone turned the light switch back on after 5 years," Marble said as reported in the superior court ruling. The ruling added that "Marble suffered stress, anxiety, anguish and worry for five years believing that she could die at any moment."

Unfair and Deceptive Practice Allegations

In February 2018, Marble sent Amedisys, Beacon, Dr. Roos and McCoy a Chapter 93A demand letter alleging that their repeated false Medicare certifications constituted an unfair and deceptive practice. The letter demanded \$16 million in damages.

Marble then filed this action in superior court against Amedisys, Beacon, Dr. Roos and McCoy in April 2018. The superior court ruling specified that Marble was not suing a Medicare Advantage organization for negligence, but that her lawsuit claimed the defendant hospice providers breached the standard of reasonable medical care in administering unnecessary and dangerous amounts of narcotics that left her in a stupefied state so that she remained in hospice care.

In a January 2018 letter, Dr. James Baker, a certified emergency room physician and certified hospice medical director, said Dr. Roos and McCoy fell below the standard of reasonable care by falsely certifying Marble as eligible for hospice care dozens of times over five years and overmedicating Marble with unnecessary, inappropriate and dangerous doses of narcotics, according to the superior court ruling.

According to Dr. Baker, Marble's medical records did not indicate that her chronic obstructive pulmonary disease was terminal or required opioids. In fact, regular entries in her medical records showed Marble had no symptoms and was not medically declining, Dr. Baker said.

He noted that Medicare regulations require patients to be discharged from hospice care if they are not terminally ill and claimed that the defendants negligently kept Marble in a lethargic state so that she appeared terminally ill.

Evidence of Medical Malpractice

According to the superior court ruling, the summary judgment record contained evidence supporting Dr. Baker's claims of overmedication and false certification of hospice care for Marble.

The evidence also showed that Amedisys provided a financial incentive for staff to admit and retain hospice patients through a bonus structure that was in place from 2011 to 2016, the superior court ruling stated, adding that McCoy received bonuses during the period of time she cared for Marble.

Sandra Cummings, the director of operations for Beacon's Plymouth Care Center, received \$39,255.39 in incentive plan payments between 2012 and 2015. Amedisys also had a Case Manager Incentive Plan, in which McCoy received bonus pay totaling \$1,000 between September 2012 and February 2016, the superior court ruling outlined.

One factor considered under the incentive plans was the number of patients admitted into the Plymouth Care Center. Another factor was the live discharge qualifier, meaning the number of patients who were still alive when they left Beacon's care. The lower this number, the greater the potential for a bonus, the superior court ruling stated.

Although the summary judgment record did not show evidence that Dr. Roos received any direct financial benefit, there was evidence that the staff, including Dr. Roos, was pressured to recertify patients for hospice eligibility, according to the superior court ruling.

Brandy Dobbins, a former nurse case manager at Beacon's Plymouth Care Center, stated when interviewed by Amedisys in September 2013 that she resigned because she felt pressured to admit and recertify patients who were not terminal and not appropriate for hospice care.

Former nurse case manager Bernadette Montalvo similarly reported that Beacon pressured staff to admit patients who had diseases but were not hospice appropriate. Nurse case manager Randi Karling stated that she felt pressured to admit every patient and has a few patients that she feels are no longer eligible for hospice but have been recertified despite little evidence of decline, the superior court ruling stated.

Amedisys also interviewed McCoy, nurse practitioner Thomas Vivieros and case managers Amy Sanborn and Megan Stone, who said that they had no concerns about inappropriate care. Cummings denied ever pressuring staff to admit or recertify patients as hospice eligible, the superior court ruling said.

That said, the superior court found that the summary judgment record presented "a genuine issue of material fact with respect to whether the defendants not only committed medical malpractice, but also injured Marble through unfair and deceptive conduct that was motivated by financial gain."

With this in mind, the superior court denied the defendants' motion for summary judgement, allowing Marble to proceed with her claims.

The case is *Patricia Marble & another v. Amedisys, Inc. & others*.

More from Insurance Journal

[Today's Insurance Headlines](#) | [Most Popular](#) | [East News](#)