PATIENT SAFETY BLOG

PATRICK MALONE & ASSOCIATES, P.C.
From Tragedy To Justice - Attorneys For The Injured

Toll Free: 888.625.6635
(888.MaloneLaw)
Local: 202.742.1500

Baltimore Medical Malpractice Scandal Shows Systemic Problems of Hospital Peer Review

Posted On: May 22, 2010 by Patrick A. Malone

Hundreds of patients appear to have received cardiac stents that they didn't need from Dr. Mark Midei, a cardiologist at St. Joseph's Hospital in Towson, Maryland. So why did no one at the hospital blow the whistle? And why did the patients not realize that Midei was rushing them into unwise and risky surgery?

Heart surgery is highly profitable, and there are no incentives for doctors or hospital administrators to rock the boat by raising questions when one cardiologist is putting stents into far more patients than his colleagues.

Patrick A. Malone
Patrick Malone & Associates, P.C.
1331 H Street N.W.
Suite 902
Washington, DC 20005

pmalone@patrickmalonelaw.com
www.patrickmalonelaw.com
202-742-1500
202-742-1515 (fax)

As for the patients, we Americans have a bias toward dramatic action. If one doctor tells us we need a stent to prop open the coronary arteries in the heart, and another doctor says all we need to do is take a pill every day, most of us will tilt toward the big intervention. Which can be a big mistake, because we then get a piece of metal permanently implanted in a blood vessel, and we have to take medicines anyway for the rest of our life to avoid getting blood clots from the metal that could cause a devastating stroke or more heart damage.

Recently in this blog, I pointed readers toward an excellent review by the Harvard Medical School of the scientific evidence on who should -- and shouldn't -- get the balloon and stent treatment for opening their heart arteries. Many studies have found that unless a patient is having repeated symptoms, the stent treatment does nothing to extend his or her life, even if an artery looks dramatically narrowed.

In the case of Dr. Midei, it appears that outright fraud might have been involved. You have to have a significant narrowing of the artery, 70 percent or more, to even start to qualify for stent treatment, and Midei aggressively over-read his own X-ray studies of the heart's blood vessels to make it seem that patients had much worse narrowing than they really did, according to the published allegations about his practice.

This raises a Fox/Henhouse issue: How is it that a cardiologist can do his own testing to see if someone needs treatment, and then be the one to profit mightily if the decision is yes, they need it? Should second opinions be mandatory on any patient with blood vessel narrowing?

Dr. Bob Wachter, a patient safety pioneer at UCSF medical school in San Francisco, wrote a thoughtful blog on this topic. I'm reprinting part of it below, and urge readers to read the whole article here.

Dr. Wachter writes:

Patrick A. Malone
Patrick Malone & Associates, P.C.
1331 H Street N.W.
Suite 902
Washington, DC 20005

pmalone@patrickmalonelaw.com
www.patrickmalonelaw.com
202-742-1500
202-742-1515 (fax)

Obviously, the Mideis of the world could be caught by requiring that every cath [blood vessel X-ray] undergo an independent second reading. Some insurers in New Jersey now require such readings before they authorize a stent, and at least one SoCal Kaiser hospital mandates that each cath be presented at a conference before a treatment decision is rendered, analogous to what many tumor boards do for cancers.

Such required peer review might have benefits beyond simply preventing the rare case of fraud. If done well, it might also ensure that other conflicts of interest and non-evidence-based decisions are avoided to the degree possible. For example, a meta-analysis in last month's Annals of Internal Medicine illustrates the limited value of percutaneous coronary interventions – whereas older studies found that PCI was more effective than medical therapy in treating angina, more recent studies show that these differences have narrowed or even vanished. I'd guess that, when recommending a treatment for a patient with mild angina and a 60% LAD lesion, a peer review group is more likely to pay attention to this kind of evidence than the average cath jock – who may not only be staring at his kid's private school tuition bill but also at a patient whose bias is to see a stent as a more intuitively satisfying solution than "just medications."

Some will argue that mandating second opinions for every cath is the equivalent of hitting a nail with a sledgehammer, and they might well be right. However, I do favor at least random over-reads of a sample of catheterization studies. Something like this already happens in a few specialties. In many teaching hospitals, a random sample of pathology studies is reviewed by a second provider. In a few forward-thinking practices, radiologists re-read a sample of x-rays, looking for discrepancies. In response to this case, in fact, St. Joseph's now

Patrick A. Malone
Patrick Malone & Associates, P.C.
1331 H Street N.W.
Suite 902
Washington, DC 20005

pmalone@patrickmalonelaw.com
www.patrickmalonelaw.com
202-742-1500
202-742-1515 (fax)

requires that 5% of its cath cases undergo a random and blinded re-review. Random audits won't catch every case of fraud, any more than IRS audits catch every tax scofflaw. But they do help keep people honest, particularly if the audits are coupled with a culture in which the docs welcome feedback and strive for continuous improvement.

Speaking of which, the Midei case made me wonder about the institutional culture at St. Joseph's. Was Midei a rogue interventionalist working in isolation? Perhaps so – it's common for no other doc to be looking over the shoulder of a cardiologist and his cath readings. But cardiologists don't perform caths on desert islands – they are assisted by cath techs and nurses. In my experience, these folks become as adept at reading cath films as any physician. If the allegations against Midei are true, it strains credibility to think that no one in the lab knew that inconsequential lesions were being read as tight stenoses and treated with stents.

And what about the hospital administrators? Stents are big business. When Johnson & Johnson first launched their drug coated Cypher stent in 2003, Dr. Midei told the Baltimore Sun, "This is the hottest thing in cardiology in years." And it was: Maryland hospitals chalked up nearly $250 million in stent business in 2009, and St. Joseph's stent revenues were $38 million, up more than 50% in 5 years. Before the case broke, St. Joseph's advertised itself as the busiest cath hospital in Maryland, averaging nearly 20 interventional cases daily. While it is possible that no St. Joe's leader knew precisely what was happening, I'm guessing that some did but chose to look the other way: the pressure to steer clear of the golden-egg-laying goose must have been intense. Perhaps the fact that the hospital's CEO and two other senior executives resigned after the case broke provides a clue as to who knew what when.

Patrick A. Malone
Patrick Malone & Associates, P.C.
1331 H Street N.W.
Suite 902
Washington, DC 20005

pmalone@patrickmalonelaw.com
www.patrickmalonelaw.com
202-742-1500
202-742-1515 (fax)

> Cases like this one are terribly troubling, not just because they harm individual patients but because they do violence to the trust that is so fundamental to the physician-patient relationship. Part of the solution must be more robust oversight procedures, such as mandatory second readings of randomly selected cath films.
>
> But these cases also force us to consider the kind of culture that could allow such a fraud to take root and go on for years – a culture that likely prized the hospitals' and physicians' financial health over the clinical health of their patients. If the allegations are true, the penalties should be severe, not only for Dr. Midei but also for leaders who knew – or should have known – what was going on, yet remained silent.

Patients need to know that this is not just an issue of a few rogue bad apples. Medicine's fee-for-service payment system pushes doctors toward advocating for more aggressive and profitable interventions. The only way to find out what your body really needs is to shop for second and third opinions, every time. I have more on this subject in chapter 9 of my book, "The Life You Save."

The chapter title says it all: "The Second Opinion: Always Your First Choice."

People interested in learning more about our firm's legal services, including medical malpractice in Washington, D.C., Maryland and Virginia, may ask questions or send us information about a particular case by phone or email. There is no charge for contacting us regarding your inquiry. A malpractice attorney will respond within 24 hours.

Patrick A. Malone
Patrick Malone & Associates, P.C.
1331 H Street N.W.
Suite 902
Washington, DC 20005

pmalone@patrickmalonelaw.com
www.patrickmalonelaw.com
202-742-1500
202-742-1515 (fax)