Trust the Process

By Brent Kinney, J.D.

As an avid sports fan, I routinely hear athletes mention that they need to “trust the process.” The origin of “trust the process,” as used ubiquitously in sports, apparently goes back to 2013 when the Philadelphia 76ers’ new general manager, Sam Hinkie, advocated an emphasis on process over outcome in his first speech with the team. The 76ers’ fans coined the phrase during a rough time for their team and it essentially means, “things may look bad now, but we have a plan in place to make it better.” Dr. Wexler[i] had to be reminded to “trust the process” when he faced his first health care liability action in the same year “trust the process” was coined by the 76ers’ fans.

The patient in Dr. Wexler’s lawsuit was a 75-year-old female who had an MRI that showed a high-grade partial thickness tear of the tendon in the right shoulder. Based on the results of the MRI, Dr. Wexler recommended and performed a right shoulder hemiarthroplasty. Dr. Wexler encountered a bleeding vessel during the surgery, which he chose to tie off with a suture. There was a small amount of blood loss, but the rest of the surgery was uneventful. Dr. Wexler, per his routine, checked the patient’s pulses before he left the operating room. Nursing notes that were charted immediately after the surgery recorded

brisk capillary refill and strong pulses. The patient's radial pulses were also checked by the nursing staff repeatedly throughout her hospital admission following the surgery. The patient was discharged from the hospital three days following the surgery with no circulation issues documented in the medical chart.

A circulation problem was first documented twenty-eight days later, at which time the patient presented to her primary care physician, Dr. Green. Dr. Green referred the patient to Dr. Sunderland, an interventional radiologist. Dr. Sunderland ordered a CTA and angiography, which showed an occlusion of the axillary artery at the axillo-brachial junction with collaterals. Dr. Sunderland concluded that the patient had a chronic occlusion of the axillo-brachial junction and referred the patient to Dr. Castro, a cardiovascular and thoracic surgeon.

Dr. Castro performed a right axillary exploration on the patient. Dr. Castro's operative note indicated that there was a large amount of scar tissue at the point of transition for the brachial to the axillary artery, and he also noted that a silk stitch was "through the artery" approximately 4 mm proximal to this. The artery was noted to be completely occluded and scarred down for approximately 1 cm. Dr. Castro performed an end-to-end anastomosis and circulation was restored by the graft. Unfortunately, the patient later developed a thrombus.

The patient then had another CTA of her right upper extremity, which showed that the right axillary artery was again occluded. To address this, Dr. Castro performed a thrombectomy of the axillo-brachial, ulnar, and radial arteries by axillary incision, and a brachial-to-brachial bypass with cryopreserved vein. Following the surgery, Dr. Castro described an excellent radial pulse.

The patient later commenced a health care liability action against Dr. Wexler alleging that Dr. Wexler deviated from the standard of care, in part, "by placing a stitch/suture in/through the axillary artery at the axillo/brachial junction with collaterals." The patient claimed she had significant loss of sensation and diminished use of her right arm and hand as a result of the alleged damage to the vessel.

Defense counsel for Dr. Wexler reported that upon first meeting with Dr. Wexler, he seemed to have the impression that he would be automatically liable simply for placing the stitch. Defense counsel discussed with Dr. Wexler that the occurrence of the complication itself does not establish negligence; instead, the circumstances of his placement of the stitch would dictate whether the placement was negligent. In other words, Dr. Wexler needed to "trust the process." Although things looked bad from Dr. Wexler's personal view, his defense counsel was already developing a solid defense plan.

It was apparent, however, that Dr. Wexler was anxious about the litigation process. Upon recommendation of defense counsel, a witness consultant was engaged to assist Dr. Wexler in preparing for his deposition and trial testimony. After first meeting with Dr. Wexler, the witness consultant noted that he was completely "crazed" about the lawsuit and that he had a hard time thinking since he was so anxious about the case. The witness

consultant noted that Dr. Wexler, more than anything, needed confidence, hope, and a plan. Again, he needed to “trust the process.”

The case eventually proceeded to trial. During trial, the patient’s counsel attempted to prove that Dr. Wexler placed the stitch through the lumen of the axillary artery and tied down the stitch, which caused the axillary artery to occlude. Defense counsel argued that had Dr. Wexler placed a stitch through the lumen of the axillary artery and tied down the stitch, the occlusion and patient’s circulation problem would have been apparent almost immediately; instead, the first documentation of any circulation problem was twenty-eight days after the patient was discharged from the hospital. The proof offered by the defense showed that Dr. Wexler encountered bleeding from a collateral branch vessel off the axillary artery that was avulsed by use of a retractor during the procedure. Defense counsel argued that Dr. Wexler, consistent with the standard of care, placed a suture around the branch vessel to control the bleeding. Defense counsel conceded that the stitch did, in fact, lead to the occlusion of the axillary artery twenty-eight days later; however, the occlusion was not due to a placement of the stitch through the lumen of the axillary artery as argued by the patient’s counsel. Defense counsel argued that although the stitch may have accidentally entered a portion of the axillary artery, doing so was not a deviation from the standard of care. The source of the bleed was deep within the surgical site, visibility was limited, and the suture unfortunately encountered the axillary artery despite the best efforts of Dr. Wexler to avoid doing so. Furthermore, with the assistance of defense counsel and the witness consultant, Dr. Wexler performed admirably and confidently on the stand at trial in defending his care and treatment of the patient. The jury deliberated for one-and-a-half hours and returned a verdict in favor of Dr. Wexler.

Being accused of medical negligence is almost always stressful for a healthcare provider. Although the litigation process is painfully slow, it can quickly wear down a healthcare provider both mentally and physically. For Dr. Wexler, the anxiety from being sued escalated quickly as he believed he was liable simply for placing the stitch. You should be mindful, however, as defense counsel discussed with Dr. Wexler, that an injury alone does not raise a presumption of negligence. Although things seemed bad from Dr. Wexler’s perspective when he was served with the patient’s Complaint, his defense counsel formulated a defense plan to make things better. Ultimately, defense counsel secured a verdict in favor of Dr. Wexler because Dr. Wexler trusted his defense counsel, trusted his defense counsel’s plan, trusted the witness consultant’s plan, and trusted his own care and treatment of the patient – the process worked.

[i] All names have been changed.

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