

No Good Deed Goes Unpunished...Or Not?

By Kenneth W. Rucker, JD

A physician, even if approaching a situation with the best of intentions, must be careful not to go outside the bounds of his/her training and expertise.

Samantha Smith^[1] had struggled with back pain and muscle spasms through her teenage years due to the development of extremely large breasts. This led to problems with self-esteem, depression, and had a negative impact on her overall quality of life. Samantha had sought care from several medical providers, but none were willing or in a position to provide her with any treatment options.

An ENT physician practicing in the town where Samantha lived began expanding his practice to include various cosmetic procedures involving the face and neck. Seeing that the physician offered cosmetic services, Samantha obtained an appointment with this physician. At this initial appointment, Samantha explained how she suffered from chronic back pain caused by her large breasts that resulted in her being in constant pain, resulting in severe depression and even thoughts of suicide at times. She explained that she did not have the financial resources to pay for breast reduction surgery and set forth that she had been turned down by several other physicians when she sought treatment. The physician initially declined to perform the surgery stating that he was not a plastic surgeon and that he was not experienced in breast reduction surgery. Ultimately, the physician agreed to perform the surgery if the procedure was approved by the patient's insurance carrier as being medically necessary. The insurer approved the procedure, and the surgery was scheduled.

Since the physician was not credentialed for breast reduction surgery in any surgery center or hospital, the decision was made to perform the procedure in the office setting with the use of conscious sedation. The patient understood and agreed to have the procedure performed in the office as she was desperate for

the relief the procedure would provide. The breast reduction went forward as planned with the physician removing just over three pounds of tissue from each breast.

Initially, Samantha felt much better following the procedure and expressed great appreciation for the relief the physician provided through the breast reduction surgery. However, her attitude changed quickly once she developed wound infections in both breasts. Wound care continued over the next 7 months which included multiple procedures for debridement of the wounds and a scar revision surgery. At the end of this treatment, the infection had cleared and the wounds had healed, but Samantha was left with deformities in both breasts that would require further surgical treatment.

As would be expected, Samantha consulted with an attorney, and a lawsuit was filed. This lawsuit alleged multiple bases for negligence including lack of training and qualifications for the procedure; failure to obtain adequate informed consent; improper performance of the extensive procedure in an office setting; improperly performing the procedure under conscious sedation; and overall mismanagement of the care. Further, the attorney for the plaintiff asserted that the procedure was not done with a proper motive and was instead done for the pecuniary benefit of the physician.

Even assuming that the physician's motive was pure, which was a disputed fact, a physician must recognize the limitations of his/her training and not succumb to pressure to perform a treatment or procedure outside of the physician's training or skill set. In this case, the decision to perform the procedure in an office setting may very well have violated the rules and regulations established by the licensing board for office based surgeries, making the case very difficult to defend and resulting in questions as to whether insurance coverage applied to the physician's actions. Experts who reviewed the case, while acknowledging that these complications could happen in the best of circumstances, were unwilling to look past the physician's lack of training for this procedure. Additionally, the experts felt that the technique (such as the type of incisions utilized) was not what would normally be utilized in this type of procedure for the best cosmetic outcome, and the type of incisions increased the risk of healing difficulties.

This physician expressed surprise upon receipt of the lawsuit. In his mind, he had provided a medical service for the patient that was needed and which he had agreed to perform to give her a better quality of life. But a “good deed” is only really good if it is actually in the best interests of the patient.

[1] Names have been changed.

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