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The Bulletin

Lawyer pins fatal cancer on BMC doctor

By Sheila G. Miller / *The Bulletin*

Published: September 06, 2012 4:00AM PST

A patient's personal choices and a doctor's professional responsibilities were at the center of opening arguments Tuesday in a \$5.5 million lawsuit between a cancer patient, Bend Memorial Clinic and her doctor.

Mia A. Bongers, 84, sued Dr. Thomas Warlick and BMC in November 2011, alleging personal injury and medical malpractice. Warlick has worked at BMC since 1977.

In his opening statement, attorney Patrick Block said Bongers was in "remarkably good health" until her diagnosis of terminal metastatic colon cancer, which has since spread to her lungs.

"It is not curable and it will ultimately kill her," Block told jurors.

Colon cancer, he said, is curable if detected and treated early. But Block told jurors that if Warlick had conducted colon cancer screenings or colonoscopies during Bongers' visits in 2007 and 2009, she would likely have made a full recovery.

Block said Warlick conducted a number of tests in 1992 — including one for colon health — then never again offered or ordered colon cancer screening tests, even when she visited him in the wake of a 2009 hospitalization for diverticulitis, a colon-related illness.

'Absolute obligation'

"He knows she's now 81, that she's never had a colonoscopy, that she's had no screenings since 1992," Block told jurors. "He doesn't discuss a colonoscopy at all."

Warlick had an "absolute obligation" to order the test, Block said.

Block told jurors he will present an expert witness who will testify that if Bongers' colon had been tested in 2007, evidence of colon cancer would have been found, and she could have been treated and cured. Instead, in the summer of 2009, a doctor friend gave her an exam and felt what he believed was a mass in her abdomen.

By November 2009 Bongers had undergone surgery, during which the cancer was discovered and she began treatment.

Eventually doctors determined her cancer was not curable. She continued chemotherapy through July 2010, and as a result now suffers from numbness and tingling in her hands and extremities, Block said.

Bongers doesn't want to know how much time she has left, Block said, although her oncologist is expected to testify that it's "much shorter than it would be had the cancer been cured."

That, Block said, is because of Warlick's negligence.

But Warlick's attorney, Gordon Welborn, told jurors the trial came down to Bongers' choices.

"She was never looking for a preventative maintenance physician," Welborn said. Instead, he said, Bongers only saw the doctor for acute care issues.

Welborn pointed to Bongers' 22 visits to Warlick between 1986 and 2009, noting that over 11 years, she only went to the BMC urgent care clinic.

Warlick suggested Bongers "get in for a routine screening" each time he saw her, Welborn said, which would have included a colon cancer screening. "She chose not to."

The trial rests on two visits Bongers made to BMC and Warlick — one in April 2007 and the other in June 2009.

At the 2007 visit, Welborn told jurors, she came in complaining of cold symptoms and was diagnosed with sinusitis. Welborn said Warlick made it a practice to suggest his patients make an appointment for preventive screenings, and would have done so at the close of the appointment.

The 2009 visit was a follow-up after she'd been hospitalized for diverticulitis. She was also suffering from an unrelated infection, for which Warlick prescribed antibiotics and told her to follow up after they were finished, Welborn said. Her diverticulitis had "resolved," Welborn said chart notes show, and Bongers failed to tell Warlick of her previous bouts of diverticulitis.

"Does a patient have responsibility for her own care?" Welborn asked.

And, Welborn told jurors, Bongers' own oncologist will testify that even with a colon cancer screening in 2007, it's unlikely the cancer would have been present.

He told jurors Bongers' husband and children all work in the medical field, making it unlikely she'd never heard the word colonoscopy until October 2009, as she testified in a deposition. Her depositions also show, Welborn said, that she doesn't remember either the 2007 or 2009 visit.

And because she didn't have routine physicals, including failing to have mammograms after four breast biopsies in the 1960s, Welborn said it wasn't Warlick who was negligent.

"There are choices people can make. A doctor can't force you to do something," he said. "It's too bad she has cancer. But it's not as a result of the negligence of Dr. Warlick in this matter."

The trial is expected to last two weeks.

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