

Lyme Disease: Jury Finds Clinic Nurse Practitioner Did Not Depart From Standard Of Care.

The Court of Appeal of California reviewed the evidence in meticulous detail and approved a jury's verdict of no negligence in a patient's lawsuit over Lyme disease allegedly contracted from a tick bite for which she was treated at a state university student health center where the treating nurse practitioner was on duty.

Second Opinion Was Advised

The nurse practitioner advised the patient to seek a second opinion when she adamantly objected to his decision not to start prophylactic antibiotics.

The court accepted his explanation that he told her to get a second opinion because of her anxiety, not because he believed he himself was not competent to handle the situation or had any doubt about his diagnosis and prognosis.

The nurse practitioner did not give antibiotics, a decision based on the CDC's published recommendations, because of the possibility of an allergic reaction and because antibiotics can give a patient a false sense of security that the problem is solved and the patient need not watch for signs and symptoms and return to the clinic if necessary.

Blood tests were not ordered, again because it would be contrary to the CDC's recommendations.

According to the experts, antibodies which would indicate a positive test result do not appear for four to six weeks and testing would have been inconclusive at the time of treatment.

No Follow Up Appointment

No Negligence

If the nurse practitioner had been the one to inform the patient about the possibility of Lyme disease, the experts said, he should have scheduled a follow up appointment thirty to forty-five days down the line.

However, the patient in this case was the one insisting she had been exposed to Lyme disease and thus she was fully aware of the signs and symptoms and the need for medical attention if they showed up. **Conser v. California State Univ., 2008 WL 4950975 (Cal. App., November 20, 2008).**

The patient showed no signs or symptoms of Lyme disease, although that is far from definitive in a patient who reports a tick bite only seven hours earlier.

The nurse practitioner did not prescribe prophylactic antibiotics, based on CDC guidelines against doing so for Lyme disease. The CDC's overall rationale is to clamp down on overuse of antibiotics that might lead to community resistance.

The nurse practitioner knew there is a low incidence of Lyme disease in the locale where the patient was bitten, based on prior conversations with physicians, medical literature he had read and seminar presentations he had attended.

The nurse practitioner had also read literature that Lyme disease transmission requires the tick to attach for twenty-four to seventy-two hours and is usually accompanied by the head of the tick remaining within the wound. The patient reported she brushed the tick away just as she was bitten and the nurse practitioner carefully examined the wound and found nothing within.

COURT OF APPEAL OF CALIFORNIA
November 20, 2008