Meeting an 'Unmet Legal Need'
Thomas Adcock
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Edward J. Hazelton could have been dead from brain cancer this month. Instead, he spent part of an afternoon last week in Albany with a law professor and two students who persuaded Empire Blue Cross and Blue Shield to pay for life-sustaining chemotherapy treatments that cost $42,000 a month.

The result of legal work by Professor Joseph M. Connors, director of the Health Law Project at Albany Law School, and students Donald J. Labriola and Daniel M. Lindenberg may well have statewide and national impact, according to the professor.

With its successful challenge to Empire's initial denial of payments for the expensive treatments Mr. Connors said his clinic has identified "an unmet legal need" and established a valuable lesson for future students in "the concept of medical-legal collaboration, which holds that doctors and lawyers working together can achieve what neither can acting alone."

As part of the clinic's outreach effort to patients in similar disputes with insurers, Mr. Connors has posted many of the documents relating to the Hazelton case at the clinic's Web site at www.albanylaw.edu/sub.php?navigation_id=66.

The professor and his students took on the case in late August, following a summer in which Mr. Hazelton endured up to 30 seizures a day and continuous refusal by Empire to provide coverage review for drugs required to battle the progressive disease of gemistocytic small cell glioblastoma,

"We had to learn new vocabularies in translating medical documents into legal documents," said Mr. Labriola. "All of a sudden, we were into something that connected the law we were learning in the classroom to the real world."

He added, "We saw the power of the legal profession to change people's lives."

Mr. Lindenberg, who is simultaneously pursuing a master's degree in bioethics from Union College in Schenectady under a dual study program with Albany Law, said he was "ecstatic"
on receiving a terse letter on Sept. 12 from Dr. John Whitney, medical director of the Medical Management Department of Empire Blue Cross.

Dr. Whitney said his company had "determined that the [chemotherapy] . . . is medically necessary," a change in the policy it adhered to through the summer.

"We basically made them abide by the law," said Mr. Lindenberg, citing New York State Insurance Law §3221(1)(12) and §4303.

Under those sections of the statute, according to a statement issued by Eric R. Dinallo, superintendent of the New York State Insurance Department, in response to a request for comment:

If a health plan provides coverage for a drug that has been approved by the [Federal Drug Administration] to treat a particular type of cancer, the health plan cannot refuse to provide coverage for that drug simply because it has been prescribed to treat a different type of cancer. However, the drug's use in treating the second type of cancer must be recognized by other authorities listed in applicable statutes. Those authorities include peer reviewed articles in major medical journals.

A statement released by Empire spokeswoman Lisa Greiner took issue with Mr. Lindenberg's characterization of her company's eventual commitment to covering Mr. Hazelton's chemotherapy while at the same time acknowledging the Albany Law clinic's involvement in appealing the insurer's denials.

The law clinic, wrote Ms. Greiner, was "very helpful in the construction of Mr. Hazelton's appeals."

The decision by Empire to cover Mr. Hazelton's treatment, she said, was based on a 1997 policy "voluntarily instituted" by the insurer regarding "treatments deemed 'experimental.'" Under such procedure, Empire policyholders may seek "impartial external review . . . [to] determine whether the treatment proposed is appropriate."

The statement added, "If the external review recommends coverage, Empire will agree to do so."

Ms. Greiner said Empire's 1997 review policy was developed in cooperation with New York state "to ensure that it became adopted as an industry standard."

The drug treatment in question - involving the compound Avastin/CPT-11, prescribed as Mr. Hazelton's treatment by Dr. Susan A. Weaver of New York Oncology Hematology at Albany
Medical Center - was originally developed to treat colon cancer.

In a Sept. 6 letter of appeal from the Albany Law team to physicians at Empire, citations from prominent medical journals reported the compound’s successful alternate applications. In addition, the letter cited reports of "impressive results" of Avastin's alternate use found by the Brain Tumor Center at Duke University Medical Center.

In an affirmation document accompanying the Albany Law appeal, Dr. Weaver said so-called "experimental" usage of cancer drugs - and Avastin/CPT 11 in particular - "has become very common among neuro-oncologists across the country and is routinely approved by other insurance companies." She said Empire's initial denial of Avastin treatment was "not only wrong, but [caused] harmful stress to Mr. Hazelton and his family."

Nevertheless, Dr. Nady Cates, whose title is also medical director of the Medical Management Department at Empire, maintained in a July 30 letter that "Avastin is not approved because there is no documentation of it being used as a first-line or second-line treatment" in the instance of Mr. Hazelton's disease.

Ms. Greiner suggested that Dr. Cates' unfamiliarity with Avastin's secondary usage was an aberration. While Empire's policy-making process is "very thorough and thoughtful" and "intended to reflect current scientific data and clinical thinking" based on peer-reviewed medical literature, said Ms. Greiner, instances such as the Hazelton case "clearly demonstrate the effectiveness of having an appeals process in place."

Dr. Cates invited appeal of the company's decision, or litigation. Ms. Greiner said such invitation is required under the federal Employee Retirement Income Security Act §502(a).

'Improved Quality of Life'

While his long-range prognosis remains terminal, according to Dr. Weaver, as well as physicians at Memorial Sloan-Kettering Cancer Center in Manhattan, who had estimated Mr. Hazelton would die by year's end, the chemotherapy now provided by Empire means that his remaining years will be relatively pain-free.

Chemotherapy has "improved . . . [his] quality of life and likely expanded the precious time [Mr. Hazelton] has left to be with his family and friends," according to the Albany Law clinic letter of Sept. 6, requesting expeditious reversal of Empire's conduct during the summer that Messrs. Connors, Labriola and Lindenberg termed "unconscionable."

The Albany Law team noted in that letter that Empire Blue Cross had refused "numerous attempts to obtain prior approval decision . . . so that Mr. Hazelton could make an informed decision about whether to commence treatment," followed by refusal to provide coverage once the Hazeltons filed claim after scraping together $30,000 to begin chemotherapy.

Ms. Greiner said prior approval - which she alternately termed "pre-service review" or "predetermination" - was not "part of [the] benefit plan" of Mr. Hazelton's particular Empire
policy.

But as a result of Mr. Hazelton's case, Ms. Greiner said further, "Empire reviewed and changed our approach [in July 2007] to a whole class of older indemnity benefit plans." From now on, she said, "predetermination of coverage will be extended to all members, regardless of their benefit plan. We did so because it is the right thing to do."

Mr. Hazelton's counsel said in the September letter that he had been "forced to choose between foregoing life-prolonging treatment and starting treatment, only to face the stress associated with not knowing whether treatment would be covered, as well as the uncomfortable position of having to go to family and friends to secure loans to even begin treatment."

Mr. Hazelton, who had run an insect exterminating company in the Adirondack village of Fort Edward, N.Y., is covered under an Empire policy held by his wife, Faith, a school bus driver in the community.

Ms. Hazelton described the summer-long fight as a frustration that went on "every single day for hours and hours" until her husband's doctors referred them to the Albany Law clinic.

After depleting their own resources - "our credit rating hit rock-bottom," said Mr. Hazelton in an affidavit accompanying the Albany Law letter of Sept. 6 - the couple's children and neighbors collected money through some 700 community dinners and a charity dance.

Mr. Hazelton, 51, now undergoes Avastin treatments twice monthly, at $21,000 a session, at New York Oncology Hematology, across the street from Albany Law.

"My husband wouldn't be here today if it wasn't for the law school helping us with the insurance company that was giving us such a hard time," Ms. Hazelton said in a phone interview from the medical center.

In September 2006, a year prior to the Albany Law team's success in the Hazelton case, the widow of the late Barry Gold, a prominent local attorney with the Albany firm Thuillez, Ford, Gold, Butler & Young, made a substantial gift to the law school clinic. Sherry Gold's endowment was $1 million.

The Golds' son, Benjamin, is a 2006 graduate of Albany Law School who is now a criminal defense attorney with the nonprofit Appellate Advocates of Manhattan.

"My dad took pride in taking on insurance companies," said Benjamin Gold. Of the clinic students' results on behalf of Mr. Hazelton, he added, "It's awesome that it worked out for them. It's scary how many people don't get the representation they need."

**Career Paths Set**

Experience gained in the Hazelton case has set meaningful career paths for Mr. Connors'
two students.

"I come from a medical family and knew since the ninth grade that I wanted to help disadvantaged people," said Mr. Lindenberg, 26. "But I didn't know whether I'd become a doctor or a lawyer."

He added, "At first, my dad, a doctor, wasn't too fond of my decision to go to law school. He used to say that lawyers start problems and doctors fix them."

Now that Mr. Lindenberg has firmly decided on a career in health law, he said, his father's outlook has changed.

Mr. Labriola, meanwhile, said he intends to launch his own poverty law agency in the Albany area on completion of his J.D. work. He said he especially wants to help elderly people with insurance problems and HIV/AIDS victims facing discrimination.

After careers as a mechanical engineer and an author specializing in computer science, Mr. Labriola, 53, said he "got bored a couple of years ago and decided to give myself a treat by going to law school.

"Intellectual property law would be an obvious choice for a guy like me, but I really like the work I've done here at the health clinic," said Mr. Labriola. "It's interesting, it's very rewarding. I helped someone who would have died if not for the treatment he's now got."

He added, "I consider this [Hazelton] matter as my first case. I'll remember it all my life."

- Thomas Adcock may be reached at tadcock@alm.com.