

Prison ordeal

Death row inmate struggles with cancer

By Gary Grado - gary.grado@azcapitoltimes.com

Published: September 16, 2013 at 8:41 am

A lab discovered death-row inmate Robert Murray had cancer the same day a Scottsdale surgeon removed his tonsils, but his disease went unknown to him and untreated for seven more months.

As Murray, 48, and his lawyers try to figure out what went wrong with his medical treatment, one thing is certain. The breakdown coincided with the turmoil surrounding the Department of Corrections' transition to a private health care provider for Arizona prisoners, and his situation didn't improve after the first company parted ways with DOC and a new company came under contract.

Murray endured long, painful delays between doctor's appointments, a misdiagnosis, and a time in which blood from a burst abscess on his tonsil gushed from his mouth. He came to learn he had cancer when the surgeon he hadn't seen in months asked him if he was finished with radiation to treat the illness, a treatment he never had.

Despite the delays, the cancer didn't spread. Murray said an oncologist told him that although the situation could have become grave, he should have a full recovery with proper treatment.

"It was prayer, luck it just didn't explode like it could have," Murray said in a 21-minute interview from death row in Arizona State Prison Complex-Florence, where he's been locked up since October 1992.

Such allegations aren't unusual. A class-action lawsuit alleging DOC has provided inadequate health care for years offers other medical horror stories. And a suit recently filed by the survivors of an inmate who died in October 2012 alleges employees of Wexford Health Sources Inc. of Pittsburgh refused to treat him while he convulsed on the floor. Wexford is a company that provides prisoner health care in Arizona and elsewhere.

"We get weekly at least one letter that is equivalent, literally, to this fellow on death row," said Dan Pochoda, the legal director for ACLU-Arizona.

Pochoda is one of more than 20 lawyers involved in the class action suit. He said the medical hardships of prisoners don't resonate with the public, but they should because the state has a heavy obligation to provide adequate health care once it takes control of someone's life.

"To paraphrase Dostoevsky, the test of a society is how they treat persons in prison," Pochoda said.

Pleas for help

Murray and his brother, Roger Murray, are on death row for convictions in the May 14, 1991, robbery and murders of Dean Morrison, 65, and Jacqueline Appelhans, 60, at their store in Grasshopper Junction in Mohave County.

Morrison and Appelhans were found face down in their bathrobes, shot several times each in the head with shotguns and handguns. Appelhans was clutching Morrison's arm.

Murray wrote a book titled "Life on Death Row" in which he denied committing the murders.

He has contended with an assortment of health problems during his 21 years in prison, and it was during an examination in February 2012 that he first complained of a lump in his throat.

Murray's tonsils were becoming swollen and sore by April 2012, which was one of the final months that DOC provided medical care. Murray saw a DOC doctor in May and was diagnosed with an infected tonsil and given antibiotics.

Just days before his appointment, DOC and Wexford Health Solutions announced the company had been awarded a five-year contract to provide onsite medical, dental, pharmacy and mental health care, as well as the administration of third-party services.

Murray claims in a nine-page affidavit that the antibiotics had no effect and his many requests over the next month to see a doctor went unfulfilled as the swelling worsened and swallowing became difficult.

"His neck and face were visibly deformed," said Murray's attorney, Jennifer Garcia, a deputy federal public defender.

Wexford took over on July 1, 2012, and the company informed Murray he was on a waiting list to see a doctor, even as he continued to submit medical requests pleading for help.

"At least once during this period I overheard RX delivery nurses state that 'Wexford has no available doctors for (the infirmary),' " Murray wrote.

In a Cure Notification, a letter to Wexford to outline how it wasn't complying with the contract, DOC said the company's staffing shortage created "inappropriate scheduling gaps in on-site medical coverage."

In his requests to see a doctor, Murray writes about shooting pains in his ear, choking and coughing and difficulty breathing. He saw a nurse practitioner on July 20, 2012, who became alarmed by his condition and prescribed "magic mouthwash," a formula of various medicines used to treat ulcers in the mouth.

Four days later the abscess burst.

"A warm fluid gushed into my mouth, I thought I may be vomiting and hurried to my sink," he wrote.

He was rushed to the hospital, but he didn't see a surgeon until September and wasn't on the operating table until Nov. 19, 2012.

DOC, meanwhile, was already unhappy with Wexford's performance, stating in the Cure Notification that the company was inadequately staffed, administered medication incorrectly, inconsistently and incompletely, and lacked a sense of urgency in addressing crisis situations.

DOC referred to several incidents in which it said Wexford did not comply with the terms of the contract, including not giving medication to a mentally ill inmate who hanged himself and a nurse who contaminated diabetes insulin with syringe tainted with Hepatitis C and continued to inject inmates with it.

Wexford responded with a letter of its own explaining that "the majority of the problems Wexford now faces are long-standing issues, embedded into (DOC) health care policy and philosophy, and which existed well before Wexford Health Sources assumed responsibility of the program."

Wexford also alleged that DOC kept key information hidden during the procurement process.

An aggressive form of cancer

Dr. Joel Cohen of the Allergy Ear Nose and Throat Center in Scottsdale removed Murray's tonsils on Nov. 19 and sent them to a nearby lab. The lab confirmed he had cancer and phoned the results to Cohen the next day, according to the pathology report.

Dr. Sun Yi, a University of Arizona professor who specializes in cancers of the head and neck, said that after diagnosis, blood work and scans would be done to determine the severity, or stage, of the cancer, a process that generally takes a few months.

From there, the patient would be referred to various oncologists.

"With malignancy, the more time you wait the more time the tumor has to continue to populate and grow," said Yi, who is not involved in the case. "The worst case scenario is the cat's out of the bag situation where it metastasizes and becomes phase four and for most cancers incurable at that point."

Yi said cancer in the throat is extremely aggressive.

There are no records of any of the steps Yi described in Murray's medical file.

Murray said Cohen wanted to see him 14 to 21 days after the surgery, but "ADOC-Wexford failed to take action."

Cohen said he reported the cancer by telephone to a doctor at DOC on Nov. 20, 2012, and recommended treatment.

The doctor said he regularly treats prisoners and he understands there are all sorts of prison protocol that must be followed for each visit. He typically wants to see a patient for post-operative visit in 10 to 14 days.

"The prisoners can't always come back when they're told to come back," Cohen said.

He said it is not his responsibility to prescribe the cancer treatment.

A spokesman for DOC and spokeswoman for Wexford declined to comment for this story. The agency and company agreed Jan. 30 to end the contract and DOC signed a new one with St. Louis-based Corizon Health Inc., which took over services on March 4.

Murray's throat was still irritated and swollen in the meantime, and he got an appointment with Cohen on May 14.

"He's talking to Corizon all the time about this problem and no one seems to be addressing them for months either," Garcia said. "It doesn't seem to me things have been measurably better under Corizon."

Murray said Cohen asked him about his radiation treatment, which he never had, but the doctor still didn't tell him about the cancer.

Records indicate Murray was prescribed radiation and a CT scan that day, but there is nothing in the record explaining why. When Murray returned to the doctor's office on June 7 he saw Lee, Cohen's associate.

"He said, 'You have cancer, you didn't know,'" Murray said. "It was kind of an astounding moment, surreal. I kind of expected something was not right."

Ray Norris, a medical malpractice attorney with the firm Gallagher and Kennedy, said medical negligence is determined by whether a doctor fell below the standard of care.

Norris, who is not involved in Murray's case, said standard of care is measured by what an ordinary, prudent, and reasonable health care provider would do under the same circumstance.

"If there was a breach of the standard of care, the question then becomes causation, or in other words, what difference did it make," Norris said.

Murray's theory is he thinks Cohen expected him to return for a follow up visit within a few weeks and was going to inform him then about the cancer, but when Wexford failed to schedule the appointment Cohen never followed up. "I think it was probably just an accident, but an accident can be easily overlooked," Murray said.

Murray is still undergoing treatment, and while it isn't going at the pace he would prefer, he said he's been assured it is normal pace for treating such a cancer. He said he is still considering his options on filing a lawsuit and looking for a civil lawyer.

Health Decline

May 2012: Inmate Robert Murray diagnosed with possible infected tonsils and given antibiotics. Wexford Health Solutions is awarded \$349 million contract to provide health services to Arizona prisoners.

June 2012: Swelling in neck worsens.

July 1, 2012: Wexford takes over medical services.

July 24, 2012: Abscess in neck bursts and Murray rushed to hospital.

Aug. 17, 2012: In an incident not related to Murray, Wexford nurses are accused of improperly administer medication by making inmates lick powdered medication from hands.

Aug. 23, 2012: Mentally ill inmate who didn't receive psychiatric medication for weeks found hanged in cell.

Aug. 27, 2012: Wexford nurse allegedly contaminates diabetes insulin with syringe tainted with Hepatitis C.

Sept. 21, 2012: Arizona Department of Corrections informs Wexford of assorted contract breaches.

Nov. 19, 2012: Murray, whose face is deformed from swelling, undergoes tonsillectomy and lab results show he has cancer.

January 2013: Murray's requests for follow up with surgeon unfulfilled, problems and pain with neck persist. Wexford and DOC agree to cancel contract. Corizon becomes new contractor.

June 7, 2013: Murray informed he has cancer that went untreated for seven months.
