“Within the Standard of Care”

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This is the story of my interactions with the UCLA Health System and my experience with the UCLA Pain Management Center. I feel I was deceived, neglected and abused by the UCLA Health System and this is my story of the circumstances involved in my complaint. It will be for the readers to decide if indeed my claims are within reason or if UCLA acted “within the standard of care”.

In the summer of 1995 I started to experience severe headaches to the left side of my face. The pain was always in the same place, just above my left eye. It’s hard to describe the pain to someone who has never had this type of headache but it feels like a “brain freeze” that can last for 45 minutes to an hour and a half. Women describe the pain as equal to child birth. When I first experienced these headaches I would try the normal over the counter remedies like aspirin and Tylenol with no effect. At one point I was taking as many as 8 extra strength Tylenol at a time but even that amount wouldn’t relieve the pain. As the pain continues to increase in severity a salty liquid would start to flow from my left nostril and eye as if the pressure had forced it out. I had never experienced pain so severe in my life and would go to drastic measures to try and ease the pain. A belt wrapped as tight as a tourniquet around my head or standing in a shower and letting scalding hot water run over the painful area was common. I have experienced the pain of a bullet entering my right tibia (knee) and never felt the need to cry out but with each of these attacks I could not control myself from groaning and moaning in agony.

From what I’ve read on the internet I was fortunate to have a primary care doctor that recognized the symptoms of Cluster Headache back in 95’. Cluster Headaches are a rare form of migraine that is suffered by approximately .01% of the population, with women making up about one third of the total. For the next 12 years I followed one neurologist’s course of medication and then another and as the years went by my headaches increased in frequency from about 2 a week to an average of about 5 a day by the end of 2008. With most chronic Cluster Headache sufferers “episodes” of increased attacks seem to be some what seasonal. In my case September or October thru February was the worst time for me with spring being not as bad. Starting in late June or early July I would start to get relief from the attacks and then with autumn the attacks would increase in frequency again.

Starting in 2007 I was under the care of an excellent headache specialist at UCLA Medical Center in Brentwood, California, Yoon-Hee Cha, MD. I must say that for the first time since my diagnosis by my primary care doctor in ’95 I felt that the doctor had compassion and was familiar with this disease. Over the next 2 years she tried several combinations of medications and different dosages in hopes of controlling my increasing attacks. During my worst episodes she would prescribe Prednisone (steroids) to stop the episode. When I first started the steroids I had pretty good success with them but by the end of 2008 their effectiveness was less and less. The one medication that would stop an attack within 5 to 20 minutes was Imitrex injections; the problem was that the manufacture stated that a patient should not use more than two injections in a 24 hour period. I was having several attacks a day and the thought of braving an attack without pain medication was out of the question. At the risk of the health of my heart and with my doctor’s knowledge I continued to inject Imitrex with each CH (Cluster Headache) along with several other preventative medications prescribed to decrease the number of attacks I was experiencing. I have to say that while doctor Cha was trying to adjust my medications she was in constant contact with me by E-mail and there has never been a more caring and compassionate doctor.

By November 2008 my neurologist had increased the dosage of my preventative medications to the point that I could no longer function. Slurred speech, lack of any short term memory and a constant feeling of being "under the influence" were destroying my professional career. Sometimes friends and family thought I was drunk. After losing a position as Regional Manager of a national manufacture in 2007 due to the disease, I tried to revive my career with a new position of Western Regional Manager in November of 2008 but I was hanging on by a thread. My lack of concentration, memory and slurred speech was a result of the combination of medications I was taking along with the fact that I was up every hour or two at night giving myself injections to stave off the agony of the Cluster headaches.

My neurologist now asked me to try some more evasive procedures in hopes of getting my CHs under control. I was referred to the UCLA Pain Management Clinic. The doctor I was referred to was Dr Michael Ferrante. My first visit with Dr Ferrante was unusual to say the least. I was told that He believed I was suffering from multiple sclerosis (MS) and not Cluster Headaches. After having the disease for 15 years I was actually somewhat relived that I might have a disease that doctors understood. Dr Ferrante told me that there would be some test (MRI of the spine) to determine if I indeed had MS. Later that day I was excited to E-mail my neurologist the news about Dr Ferrante's possible diagnosis. My confidence in Dr Ferrante was somewhat diminished when my neurologist told me that she totally disagreed with Dr Ferrante's diagnosis stating that the problem was obviously in my brain and not in my spine, she added that if Dr Ferrante insisted on the spinal MRI that she would refer me to another specialist for another procedure. Dr Ferrante, upon consulting with my neurologist changed his diagnosis and decided to try another procedure for relief of CHs.

The first procedure was a spinal block (C1-C2 block) which had favorable results for about one week. I wish I could explain what a C1-C2 block is but all I know is that a needle is inserted in the spinal cord and some sort of medication is injected in hopes of blocking or diminishing pain. When the spinal block resulted in a very temporary fix (one week of partial relief) I was asked to undergo a temporary implant (ten day trial) of an Occipital Nerve Stimulator (ONS). An Occipital Nerve Stimulator (ONS) is a medical device implanted that sends electrical pulses to the Occipital nerve (located at the back of the head just above the neck) to confuse the body into felling the impulses instead of pain such as a Cluster Headache. There are leads attached to the occipital nerve that run out the back of your head and into a control box that is worn on your belt. This is an outpatient procedure.

During the first 2 or 3 days of the trial I noticed that the leads would move so I wouldn't fell the electrical pulses unless I moved my head in one direction or another; the leads were slipping. Now the dressings protecting the incisions where the leads had been implanted were falling off exposing the wounds. I went to Dr Ferrante's office to let them look at the problem. Dr Ferrante was at the hospital so I saw a women in his office whose qualifications escape me; she may have been a fellow. She examined the area where the leads came out of the back of my head and where the dressings where now falling off and said she would consult Dr Ferrante. When she came back to the examination room she asked me what % of success I was experiencing from the trial. I told her that I could not put a percentage on it and that after 3 days I didn't think that there was sufficient time to determine the effectiveness of the device. Still she insisted that I give her a percentage of success and grudgingly I gave her a percent of 80% just to get the dressing changed but said that I wasn't sure. Again she left the

examination room to consult with Dr Ferrante by phone and when she returned I was astonished to hear that the doctor said the trial was a success and that she should remove the leads. I voiced my concern that it had only been 3 or 4 days and that the leads slipped almost all of that time so I was not getting coverage of the Occipital nerve. I told her that I wanted the trial to last at least the ten days I was told it would last. After consulting with Dr Ferrante again she said that Dr Ferrante had stated that if the device had had stopped one Cluster headache than the trial was a success and the leads should be removed. I knew this was too short a time for me to properly evaluate the effectiveness of the device and so I declined having the leads removed and was again astonished that she did not even clean or redress the incisions where the dressings where falling off. I drove to my daughter's home so she could clean and redress the wounds; my daughter is a RN. During the next week I tried to intentionally bring on a Cluster Headache by taking a medication that had always caused me to have an attack. When the taking of the medication did not bring on an attack and under the advice of two other UCLA doctors that if the device stopped one attack it was successful I agreed to have the permanent device implanted against my own better judgment.

On March 11th, 2009 I called the doctor's assistant to let her know that I had decided to go ahead with the ONS procedure. She told me that insurance approval normally takes two months and that they would require a psychological evaluation prior to their approval. This extensive authorization procedure, I believed was due to the fact the patient is agreeing to have a device implanted in their body for life. I noted that she also mentioned that the doctor had a cancelation of a surgical procedure for that Monday the 16th but that it was probably not possible to get me in. I was very surprised when she called me back in one hour and said that the ONS procedure had been approved for the following Monday. When I asked her how this was possible she just said "I'm goooood". Many months from then I would remember that conversation and think I should have questioned it more.

On March 16th, 2009 I entered UCLA Santa Monica for the procedure to implant the Medtronics Occipital Nerve Stimulator; a procedure that took approximately 5 hours and was done on as outpatient procedure. The doctor was the same Dr Michael Ferrante who had recommended the surgery and had assured me he had "preformed hundreds of this procedure", a claim that I now feel is very questionable. Doctor Ferrante apparently does not discriminate between using the device for different diagnosis. During the procedure incisions were made to the back of my scalp and neck to a "paddle" and leads that would be run to my back and down to the Medtronics device that would be located at my belt line and control the device. Once I was situated in a bed to prepare me for surgery two of the Medtronics Reps. Came to my bedside and a casual conversation was started. The Reps. asked me what procedure I was having and when I told them the procedure (Occipital Nerve Stimulator) and that it was for Cluster Headaches they both seemed baffled and told me they had not seen the device used for headaches before. I was surprised and concerned but what could I do, I was hooked up to IV's, prepped and surgery was scheduled in 30 minutes. I was later to discover that their surprise was due to the fact that the Medtronics device had been used, to some success to help patients with chronic back pain and knee pain. Medtronics had offered the device after testing some patients with Cluster Headaches as a way to reduce the occurrence of attacks. I was later to review the results of this test and found Medtronics numbers did not calculate the number of patients that found no pain relief when the temporary device

was installed. Apparently the Manufacture felt the public didn't need to know that the majority of patients did not respond favorably to the device during the trial. The percentage of success that the test recorded and publicized did not account for those who received no relief from the trial.

During the procedure the patient is semi conscious so the doctor can test the device and ask where you are feeling the simulator and adjust accordingly. The implantation of the permanent device was not as uncomfortable as the procedure in part due to the fact that I told the anesthesiologist how painful the implantation of the temporary device was. After the procedure Dr Ferrante did not come to recovery to see how I was doing, or if he did I was not aware of his presence. I always feel more comfortable if the doctor comes in after a surgical procedure to reassure the patient that everything went well and check on the patient's well being. I was sent home with no prescription for pain medication even though I had sutures from the back of my scull to my hip. Within 4 to 5 hours I was experiencing significant pain and had nothing but Ibuprofen to relieve the pain. I E-mailed Dr Ferrante about my discomfort and he offered to call in a prescription but you would think that a "Pain Management Clinic" would have assumed that after a procedure that required 5 incisions that the patient would have significant discomfort. I ended up using a prescription from a previous knee surgery. For next several weeks the pain continued and there was a marked loss of mobility and stiffness to my neck. This is not a simple procedure in regard to recovery in my opinion.

Within 5 hours of surgery I had my first Cluster headache with no relief from the Medtronics device. Just prior to surgery Dr Ferrante came in the area where I was being prepped for surgery and spoke briefly to me and the Medtronics Reps. The question was raised by the Reps. if I would keep the device pulsating 24/7 or turn it on at the onset of an attack. Dr Ferrante just looked baffled and didn't give an opinion so I said I would prefer not to have the pulsations going on constantly but turn the device on when I felt an attack coming on. This was the time that Dr Ferrante should have given his opinion based on his "hundreds" of times implanting this device but he did not. I was to learn from a CH's website that in order for the device to be effective for Cluster Headaches it should be on constantly. I still don't know if the doctor didn't know the proper function of the device or just didn't offer me the correct directions. Over the next 6 months I tried to adjust the device so the pulsations would have some positive effect but nothing worked. I had appointments with Dr Ferrante and the Medtronics Rep. and still the device had no therapeutic benefit. I was astonished to learn that there was no guidelines of how the device should be set so it was just guess work. During this 6 month period Dr Ferrante never gave an opinion or direction as to how the device should be set or adjusted for maximum benefit.

During this 6 month period I tried to look up everything I could about the Occipital Nerve Stimulator and was shocked to learn that most insurance companies will not authorize the implant of this device for chronic Cluster Headaches and that fact made me remember Dr Ferrante's assistant gaining such a rapid approval, "I'm Goooood" is what the assistant had said when I asked how they had received such a quick and positive response. I decided to question my approval with my insurance carrier, Anthem Blue Cross. I first tried to ask the question; do you require a psychiatric evaluation before approving the implantation of an Occipital Nerve Stimulator and was referred to the "Fraud investigation unit. I also conveyed my concerns about the unusual circumstances involving the eminent

approval for such an evasive procedure. After 1 month I received a form letter from Anthem that did not answer my question but thanked me for my inquiry. I had been through too much pain and suffering to just let this go and I felt something wasn't right. For over a year I talked with different people at Anthem trying to get an answer but got the "run around". After more than a year of countless phone calls and some correspondence with Anthem I located the original authorization document for the procedure and was shocked to see that the authorization was for a procedure I did not have performed. The authorization read "Spinal Nerve Stimulator" and not Occipital Nerve Stimulator which was the procedure I actually had preformed on me.

A Spinal Nerve Stimulator is the primary use for the Medtronics device I had implanted but is used for relief of chronic pain of the back and knee as well as other pain. Insurance companies widely approve of this procedure for back and knee pain but will not authorize its use for headaches. To me this was a fraudulent authorization and obviously insurance fraud but most importantly an act witch completely negated my right of informed consent for the procedure that was preformed. My insurance carrier and many more found this Occipital Nerve Stimulator to be "Investigational and not medically necessary". I could not believe that Anthem would not pursue the insurance fraud issue with Dr Ferrante and UCLA but that is exactly what happened. Although I was requested to send Anthem the documentation, I was told by Ms Patricia McGinnis (head of Grievance and Appeals Department for Anthem) that Anthem was aware of the fraud but choose not to notify me because "I must have needed the surgery". This was a $ 60,000.00 + procedure and it's hard to believe that Anthem would just say Oh well. Why would Anthem ignore the obvious fraud and not recoup their money? I have never found the answer to that question.

I was furious that I had been put through all this pain and suffering when the request for an authorization of an Occipital Nerve stimulator should have come back as "Investigational, not medically necessary". I placed a complaint to UCLA's patient relations but was told I could not know the outcome of their investigation. Absolutely worthless to a patient with a complaint. I tried to find an attorney to address my concerns but here in California the insurance lobbyist got a bill passed that limits the award the courts can levy for malpractice. If you die due to malpractice the highest award can be no more than $ 250,000.00, unless punitive damages are received. Since I was alive and only scared for life the potential damages were not enough to interest a law firm. Why is it that each time we are asked to pass a law that benefits the insurance carriers that the consumer ends up getting the short end of the of the stick while insurance premiums soar and insurance companies profits rise. In each case we are told that if we pass a law (seatbelt, helmet and malpractice reform) that this will lower our rates but we never see a reduction of our premiums?

I am not a person who is looking to hit the lottery by suing for no reason. The following year I had cataract surgery at UCLA and the doctor mistakenly implanted the wrong lens so I had to go back the following week and have the incorrect lens removed and the correct lens implanted. I this case the doctor admitted his mistake and apologized and I was happy with that. I felt no need to even complain to UCLA. But what if you did want to seek compensation for your pain and suffering? You couldn't find an attorney to take the case in California and that is wrong.

By now I wanted this device out of my body at least so I would not have to be frisked when the metal in the device set off every metal detector I passed through. I wanted to be free of this device but wanted to see a different doctor. When I asked to see another doctor other than Dr Ferrante at the UCLA Pain Management Clinic I was refused and told that since he had implanted the device he would be the only one who I could see; no second opinion at UCLA? This went on for over a year with me sending E-mails to Dr David Feinberg (CEO UCLA Health System and Associate Vice Chancellor) who referred my case to Ms Johanna Klohn (Chief Risk Management Officer). After several months of not hearing from Ms Klohn I finally received a letter from Sedgwick CMS (UCLA's insurance carrier) stating that after they reviewed all of the billing and medical documents that they found there was "no breaches in the applicable standard of care, fraud or misrepresentation". I was surprised that Sedgwick CMS did not even make an offer for a monetary settlement based on the fraudulent documents and evidence that I had sent them in my letter. I guess I shouldn't be surprised when the insurance carrier of the hospital who committed the fraud say's there is no breaches in the standard of care.

I was still not willing to believe that UCLA Medical Center was without compassion and moral ethics and so I E-mailed Dr David Feinberg (CEO) so he could see the fraudulent authorization and Anthem's policy regarding Occipital Nerve Stimulators. I let Dr Feinberg know that I needed to have all these wires, plates and control box removed from my body and did not want Dr Ferrante to do the procedure but that the pain management center would not let me talk to another doctor. It is important to note that during this time I reported to Anthem Blue Cross the problems I was having with UCLA at finding another doctor to remove the ONS and was told that they would see that I saw another doctor. In reality Anthem never helped me see another surgeon. I was later to receive an E-mail from Ms Johanna Klohn (UCLA Risk Management) stating the she was asked by Dr Feinberg to reopen the case and would let me know of their findings. My faith in UCLA was temporarily restored while I awaited there findings.

Even when after 2 years when the area at the back of my head became swollen and painful UCLA'S Pain Management Clinic would not let me see another doctor. When the pain became too much to bear I agreed to see Dr Ferrante. It turns out that a plastic stitch from the original ONS surgery had some how worked its way through my skin and was oozing a clear liquid that would form a scab. Each time I bathed the wound would again be open. I was fortunate that another UCLA doctor prescribed antibiotics to reduce the swelling and pain. Upon my appointment with Dr Ferrante I was told that the stitch was "there to keep things together" but given no explanation of why it was now exposed. Dr Ferrante said that obviously the device should come out and I took the opportunity to confront Dr Ferrante with the fraudulent authorization form and tell him that I did not trust him to do the procedure. Doctor Ferrante categorically denied any intentional act to defraud but explained that there was no code for the ONS procedure he preformed. He did not explain why the fraudulent authorization form had been spelled out, Spinal Nerve Stimulator and could not have said Occipital Nerve Stimulator. To my surprise Dr Ferrante agreed to ask another surgeon at the clinic if she would look at me. This was surprising because for the last 2 tears the staff of the clinic had told me that no one but Dr Ferrante preformed the ONS procedure and that is why I could only see him.

I finally had an appointment with a Dr Irene Wu and was pleased to hear that she would be happy to perform the procedure to remove the ONS. I could not help but tell the doctor my opinion of the device and how I hope she would look at the patient's Cluster Headache history (calendar) before going through with implanting an ONS device. I was surprised that the doctor told me without hesitation that she would never use this Medtroics device for Cluster Headaches. A very real example of why I should have had a second opinion before my surgery. The surgery was successful and I now have the Medtronics device out of my body. Once again I had to experience the pain of recovery and later the removal of approximately 60 staples from my body but this time the doctor made sure that I had appropriate pain medication to help make the recovery bearable. Except for the horrible scars left I am very pleased to finally have the Occipital Nerve Stimulator device removed. I would recommend Dr Wu to family and friends.

After 8 months of E-mails to Ms Klohn (Risk Management) asking what was the status of my inquiry I received a 2 page letter from Ms Marti Arvin (UCLA's Chief Compliance Officer) detailing why UCLA "determined there is no preponderance of evidence to support your complaint of fraudulent practices by Dr Ferrante and the UCLA Health System". The letter written by Ms Arvin made inaccurate statements of the facts in my case and seemed to have no other purpose but to hold Dr Ferrante and the UCLA Health System not responsible for their fraudulent, misleading and unethical practices. While I have sent a reply to Ms Arvin's letter I no longer have any faith in UCLA Health System ever doing the right thing and admitting they have a problem. Based on the results of my experience, the UCLA Health System feels it is completely within the standard of care to have your doctor lie or misrepresent the surgical procedure a patient is having preformed in order to secure an insurance carrier's authorization for that surgery. UCLA has a "Code of Conduct" which, in my case was breached on several occasions and I find that that Code of Conduct means nothing to a patient who's right to informed consent was abandoned.

I am publishing this story in hopes that someone might learn from my experience with Dr Ferrante and the possible implantation of an Occipital Nerve Stimulator and give their decision some very serious thought. I would also hope to find legal counsel willing take on the UCLA Health system before the statute of limitations runs out on my fraud allegations.

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