

# MICHIGAN LAWYERS WEEKLY

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## Verdicts & Settlements

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## 'No cause' verdict for med-mal matter

### Emergency room doctor not negligent

The plaintiff, a 57-year-old female, was taken by her daughter to the emergency department at Spectrum-Reed City Hospital at approximately midnight on Jan. 6, 2001. The plaintiff complained of right hip pain from a fall that had occurred several hours earlier. She was, however, able to ambulate into the emergency department reception area.

The plaintiff was examined by Dr. Sattar Abdus Sheikh, an emergency room physician. Dr. Sheikh took a history and examined the plaintiff's hip. The doctor could not recall the encounter, but testified as to how thorough a hip examination performed by him normally would be for a suspected fracture.

The plaintiff and her daughter, however, testified that the doctor performed virtually no examination and that he ordered X-rays of the hip only after the plaintiff's daughter asked him to do so.

No radiologist was on call at the time of this accident which occurred on a weekend evening. The plaintiff was instructed that her X-rays had not been read by a radiologist but that a subsequent review by a radiologist might reveal an injury which was not identified in the emergency room.

Defense counsel said the main issue in dispute is whether the plaintiff was instructed to be non-ambulatory. The defendant testified that such instructions would routinely be given, despite the fact that the box on the discharge instructions which advised the plaintiff not to ambulate was not checked. The plaintiff and her daughter testified that the plaintiff was given no instructions about not ambulating or not bearing any weight.

Two days later, the plaintiff saw her primary care physician. At approximately the same time, the X-rays were read by the radiologist who diagnosed a non-displaced subcapital fracture of the femur. The primary care physician was contacted and a referral to Dr. Aleksandar Tomic, an orthopaedic surgeon, was made. Dr. Tomic ordered additional X-rays, which showed that the fracture had become displaced. Dr. Tomic testified that the displacement was caused by the fact that the plaintiff had been ambulatory. He testified that had the fracture not become displaced he would have performed a simple pinning procedure. However, due to the displacement, the plaintiff required an artificial hip (semi-hemiarthroplasty), a more involved surgery that caused the plaintiff to have decreased range of motion and function in her hip compared to the amount of function she would have had from a pinning procedure.

The defendants' experts testified that the doctor performed an examination that did not fall below the standard of care and that his failure to detect the fracture was not malpractice. In fact, at trial, the plaintiff's expert agreed that the failure to diagnose the fracture on the X-ray, itself, was not malpractice. The defendants' experts further testified that, under the circumstances, it was not a violation of the standard of care to not tell the plaintiff she should not ambulate.

In addition, expert witness Dr. Susan Day testified that, even if the fracture had not become displaced, the surgery of choice would have been the semi-hemiarthroplasty mainly due to the fact that there was a significant chance of the plaintiff developing avascular necrosis in the ball of the hip, due to the fracture alone, which, had a pinning procedure been done, would have placed the plaintiff at risk for a further surgery, which was the surgery that was performed under the circumstances anyway.

The plaintiff accepted a \$70,000 case evaluation award. The defendant rejected it and offered nothing. There were no further settlement discussions.

An Osceola County jury returned a no cause / no negligence verdict.

The key to winning, defense counsel said, was attacking the plaintiff's claim on malpractice as well as causation.

**Type of action:** Medical malpractice; emergency room failure to diagnosis hip fracture

**Type of injuries:** Unnecessarily complex surgical procedure

**Name of case:** Horn v. Sheikh, et al.

**Court/case no./date:** Osceola County Circuit Court; #03-9834-NH; July 19, 2006

**Name of judge:** Michael Matuzak (substituting for Judge Scott Hill-Kennedy)

**Verdict amount:** \$0 (no cause for action; no negligence)

**Attorney for the plaintiff:** Withheld

**Attorney for the defendant:** Robert B. Aardema

**Name/city of most helpful experts:** Michael Clark, M.D., emergency medicine, Lansing; Robert Hoogstra, M.D., emergency medicine, Muskegon; Susan Day, M.D., orthopaedic surgery; Grand Rapids

**Insurance carrier(s):** ProNational Insurance Company

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