

# MICHIGAN LAWYERS WEEKLY

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## 'No cause' verdict for surgical malpractice case

### Bad result didn't establish standard of care violation

The 73-year-old plaintiff presented to defendant Alpena Surgical Associates with a large midline abdominal incisional hernia.

On Sept. 13, 2002, defendant Dr. Michael D. Paulsell attempted to repair the hernia, which involved placing 12" x 12" Vicryl mesh over the wound.

During the procedure, the defendant had to surgically lyse numerous adhesions and inadvertently put two small enterotomies, or perforations, into the small bowel. These were closed with a single layer of sutures.

The plaintiff alleged that the defendant committed malpractice in this regard and that the standard of care required that the enterotomies be closed with a double layer of sutures.

The plaintiff contended that, once the enterotomies occurred, the wound was contaminated and that the defendant committed further malpractice by continuing forward with the placement of the Vicryl mesh, which would have caused an increase in the chance of developing infection.

After the plaintiff was discharged from the hospital, he developed increasing abdominal pain and copious fluid discharge. He was admitted to the hospital through the emergency department, where wound drainage increased and became feculent. The plaintiff developed an abdominal fistula emanating from the small bowel. A second surgery was performed by the defendant on Sept. 22, 2002.

The plaintiff alleged that the standard of care required that the defendant resect the injured

portion of the small bowel during the second surgery.

The defendant, however, maintained that, by the time the second surgery had been performed, infection of any abdomen made resection impossible. The defendant therefore attempted to close off the fistula with sutures.

Thereafter, the plaintiff had a large, open abdominal wound that would not heal. He sought treatment through a variety of facilities including William Beaumont Hospital and the University of Michigan Hospitals. Finally, the plaintiff went to the Mayo Clinic in April 2003, at which point the damaged bowel was removed and the wound was closed. However, the plaintiff still has a large hernia that could not be repaired at that time with mesh and he continues to have the hernia up to the present time.

The parties agreed, in exchange for the plaintiff's agreement not to appeal, that the defendants would waive a portion of their taxable costs.

Defense counsel said that the keys to winning were persuasive experts who were able to show that the defendant's action complied with the standard of care, and that just because the plaintiff had a bad outcome did not establish that the defendant violated the standard of care.

**Type of action:** Medical/surgical malpractice

**Type of injuries:** Abdominal infection with resultant open wound and additional surgery

**Name of case:** Keller v. Alpena Surgical Associates, PLLC, et al.

**Court/case no./date:** Alpena County Circuit Court, #04-3431-NH; March 16, 2006

**Name of judge:** Thomas W. Brookover (substituting for Judge John F. Kowalski)

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

**Attorney for the plaintiff:** Withheld

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

**Name/city of most helpful experts:** Dr. Yvan Silva, M.D., Pontiac; Dr. David Scheeres, M.D., Grand Rapids

**Insurance carrier(s):** ProNational

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