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Woman's med-mal matter gets 'no cause'

Defense disproved plaintiff's argument, expert testimony

On May 19, 2000, plaintiff Deborah Schippers — a 39-year-old single mother who was employed as a factory worker — came into the emergency room at Borgess Medical Center, complaining that two of the fingers on her left hand were blue and painful. She also complained of numbness in her forearm.

The ER doctors ordered an arterial and venous Doppler flow study and contacted the defendant, on-call vascular surgeon, Dr. Eugene Simoni. Because Simoni was in the middle of an operation when he received the call, he agreed to see the plaintiff when he was done.

Simoni reviewed the arterial and venous Doppler flow study and then evaluated the plaintiff. Based on the negative results of the flow study, the good pulses in the plaintiff's arm, and the good flow through the palmar arch, the defendant concluded the plaintiff likely had vasospasm. He instructed her to call his office to schedule an appointment for the following week and prescribed Procardia — a calcium channel blocker that had provided some relief in the ER and is used to treat vasospasm — as well as aspirin.

When the plaintiff left the ER, she started vomiting and had multiple episodes of vomiting over the next day, which she did not report to the defendant or the ER physicians. The evidence was ambiguous as to whether the patient continued to smoke.

On May 21, 2000, the plaintiff returned to the hospital with an ischemic arm that was essentially dead from the forearm through the fingertips. The defendant ordered a STAT arteriogram, which demonstrated a clot almost completely obstructing the left subclavian artery, the main artery providing flow to the arm.

The defendant performed an emergency bypass to isolate the clot to prevent embolization up the

vertebral artery into the brain and to prevent further embolization into the forearm. He removed as much of the clot as he could with a balloon catheter and then infused TPA. Although flow was initially restored, the plaintiff re-clotted continuously thereafter. It was subsequently determined the plaintiff had a previously undiagnosed, underlying hypercoagulability syndrome.

When the patient awoke from surgery, she was blind as some of the clot had gone up the vertebral artery causing cortical blindness. Moreover, she had undergone an above-the-elbow amputation of her left arm.

In her lawsuit against the defendant, the plaintiff claimed the cause of her blue fingertips on May 19, was tiny clots in her arteries. She alleged the standard of practice required the defendant to perform an arteriogram, which would have led to the diagnosis. The plaintiff also contended that amputation and blindness could have been prevented if the defendant had treated her with thrombolytics such as TPA, which would have dissolved her clots.

In support of her theory, the plaintiff presented the testimony of vascular surgeon Dr. Richard K. Spence, who asserted the clots in the plaintiff's fingertips had propagated backwards up to the elbow between May 19 and May 21.

However, the defense insisted it was vasospasm the plaintiff was suffering from in the ER on May 19, and only after she had left the ER did she develop a clot in her subclavian artery. The defense argued the new clot embolized, thereby causing the ischemic hand and forearm seen when the patient returned two days later.

According to defense counsel, vasospasm results from the contraction of the muscles in small blood vessels of the hands or feet and is characterized by mild pain, paresthesia (burning, tingling and numbness) and persistent distal cyanosis.

In contrast, defense counsel explained, the five cardinal features of arterial insufficiency are referred to as the five "P's": pain (usually severe), paralysis, paresthesia, pallor and pulselessness.

Defense counsel stated that while the evidence established the plaintiff bore all the signs of vasospasm, it revealed that she only demonstrated one or two of the five P's associated with acute ischemia.

Moreover, the defense urged that Dr. Spence's theory was medically and pathologically impossible. According to defense counsel, it is a commonly understood tenet of vascular surgery that a clot can only propagate backwards to the next open branch of the artery. Therefore, because the plaintiff had full flow through the palmar arch, it would have been impossible for clot in the fingertips to back up through the palmar arch and travel up the arm.

In terms of challenging the plaintiff's expert's testimony, defense counsel explained they targeted his qualifications. Spence testified he was board certified in general and vascular surgery and that he had re-certified in both, adding that his vascular surgery certification was good until the year 2009. After Spence testified, the defense contacted the American Board of Surgery and determined that Spence's vascular surgery certification had, in fact, lapsed on July 1, 2004.

In response to the plaintiff's opening statement advising the jury they would hear the testimony of one of the most "outstanding, nationally renowned experts in the world" who is "held in outstanding esteem," the defense argued that the plaintiff had instead provided the jury with the testimony of a doctor who misrepresented his qualifications and would not have been allowed to maintain his vascular surgery privileges at either the defendant's hospital or that of the defendant's expert because both facilities required maintenance of subspecialty certification.

The defense was able to prove Spence's misrepresentation by obtaining an affidavit from the executive director of The American Board of Surgery (complete with *Apsey* certificate) and also obtaining the agreement of the executive director to give a deposition in the event plaintiff's counsel would not stipulate to the admissibility of the affidavit. Plaintiff's counsel did stipulate and was unable to present evidence establishing Spence's board certification status.

Defense counsel told Lawyers Weekly the jury had indicated it took five minutes to reach a consensus as to "no liability." Moreover, the jury explained that it was the unbelievability of Spence's testimony, not his misrepresentation regarding his qualifications, that convinced them.

Prior to trial, the plaintiff rejected a case evaluation award of \$650,000 and settled with Borgess for \$50,000. The defense made no offers. At trial, the plaintiff asked the jury for approximately \$3 million.

The defense is filing a motion for taxable costs and attorney fees which should exceed, by a significant amount, the settlement plaintiff received from the hospital. The defense is also moving for an order requiring the plaintiff to post a surety bond.

Type of action: Medical malpractice

Type of injuries: Above elbow amputation of left arm; cortical blindness; permanent disability

Name of case: Schippers v. Simoni, et al.

Court/case no./date: Kalamazoo County Circuit Court; #D02-0540-NH; May 5, 2005

Name of judge: Philip D. Schaefer

Verdict amount: \$0 (no cause of action)

Allocation of fault: N/A

Attorney for the plaintiff: Withheld

Attorneys for the defendant: Brian W. Whitelaw and John R. LaParl

Name/city of most helpful experts: Walter Whitehouse, M.D., vascular surgery, Ann Arbor; O. William Brown, M.D., vascular surgery, Bingham Farms

Insurance carrier(s): ProAssurance

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