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Defense Verdict For Failure To Diagnose 7-Month-Old's Meningococemia

Bone Plate Destruction; Several Toes, Much Of Calf Muscle Amputated

A 7-month-old male child cried inconsolably for about nine hours before presenting to the emergency room. In the ER, it was noted that the child had a finger that was mildly red and an inability to bear weight on one leg. The plaintiff family testified he also had two small red petechial lesions on his back.

X-rays of the hand and hip/leg were negative. The child had normal vital signs and seemed to improve after Ibuprofen in the ER. He was discharged with a diagnosis of right leg pain of uncertain etiology and advised to follow-up with his pediatrician in the morning.

He was returned to the ER several hours later, febrile and covered from head to toe with purpuric lesions — a hallmark sign of meningococemia. Antibiotics were administered and blood drawn 26 minutes later showed the bacteria had been eliminated.

Unfortunately, the child went on to suffer multiple amputations, loss of a large amount of his right calf muscle, and injuries to the growth plates in his ankles, causing the feet to turn inward.

The defense argued that the child did not present with the typical signs associated with meningococemia, such as fever, nausea, vomiting, malaise, purpuric rash, decreased level of consciousness, elevated pulse and elevated breathing rate.

In addition, counsel for the defendant physician argued a directed verdict motion based on Michigan's "junk science" statute (MCL 600.2955).

The plaintiff's pediatric infectious disease expert testified he was more than 80 percent certain that earlier antibiotic treatments would have prevented the child's injuries. He also agreed,

however, that there was no scientific study of any significance concluding that earlier antibiotic treatment prevents skin necrosis and amputations. The studies show a reduced incidence of death, but not the sort of sequela that the minor plaintiff suffered.

The plaintiff's reply was no study concluded earlier treatment did not result in a better outcome, just that there was not enough data upon which the authors of said studies could reach such a conclusion. The plaintiff further argued it would be unethical to conduct a study whereby antibiotics are withheld from a patient with suspected meningococemia.

Moreover, the hospital attorney argued a motion for directed verdict on ostensible agency. Even though the family was looking to the hospital to provide care and treatment for the child, no agent of the hospital took any action to cause the family to believe the care was going to be provided by a hospital employee.

Further, the plaintiff mother signed a form consenting to treatment, which form acknowledged the patient understood the treatment was going to be provided by the defendant physician and that the health care providers may not be hospital employees.

The jury returned a no-cause verdict in approximately 16 minutes. The judge then issued a ruling granting both defendants' motions for directed verdict.

The key to winning, according to Brian Whitelaw, counsel for defendant emergency room physician, was that "the three defense standard of care witnesses were in perfect harmony as to their opinion that Dr. Gloystein complied with the standard. The plaintiff's expert was effectively shown to be of easy virtue."

Moreover, Whitelaw added, "as to the directed verdict motion on proximate cause, obtaining the agreement of the plaintiff's pediatric infectious disease specialist that there was no statistically significant study supporting his opinion was critical."

Type of action: Medical malpractice

Type of injuries: Alleged failure to diagnose meningococemia leading to amputations of three toes, one finger and a large amount of calf muscle along with ankle bone plate destruction leading to ambulation disabilities in a 7-month-old

Name of case: Thorn v. Lakeview Community Hospital, et al.

Court/case no./date: Van Buren County Circuit Court, #01-48-811-NHB, March 5, 2003

Name of judge: William C. Buhl

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

Allocation of fault: N/A

Attorney for the plaintiff: Withheld

Attorneys for the defendant: Brian Whitelaw (for defendant emergency room physician) and John M. Kruis (for defendant hospital)

Name/city of most helpful experts: David Hoerle, M.D., emergency medicine; Robert Hoogstra, M.D., emergency medicine; Andrew Wilson, M.D., emergency medicine; Stephen Ross, M.D., infectious diseases

Insurance carrier(s): ProAssurance; MHAIC

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