



Medical Professional Liability News

A weekly update of significant news articles from around the nation and the world relating to medical professional liability insurance and reinsurance. This news recap is provided with our compliments by ReSource, an Integro Company.

Legal Battle Ends, but Brooklyn Mother's Fight for Normal Life May Never be Over

*New York Daily News, New York, NY
March 5, 2012*

A brave Brooklyn mom whose hands and feet were amputated in shocking medical nightmare has won a \$17.9 million settlement from the city and a hospital.

The payout means the end of a three-year legal battle for Tabitha Mullings — though her fight to live a normal life may never be over.

“The reality is, I’m going to be like this the rest of my life,” said Mullings, 35, who was also partially blinded by a massive infection after doctors sent her home from the hospital and paramedics refused to take her back.

“I’m always going to have to have help to do everything, using the bathroom, using a toothbrush. I can’t do anything on my own,” said Mullings, who has three sons.

Money, she said, will no erase the grim reality she faces when she opens her eyes each morning.

“I dream about running and jumping rope double Dutch and then I wake up and it’s not like that,” she said. “Waking up is a nightmare.

“I may be the strongest woman on Earth; at the end of the day someone has to put a pin in my hair.

Mullings’ tale of horror began in September 2008 when she went to the Brooklyn Hospital Center emergency room and was sent home with the diagnosis of a kidney stone and some painkillers.

The next day Mullings was beset by agonizing pain and numbness and called 911 twice. FDNY medics did not take her back to the hospital.

Her fiancé rushed her to the Fort Greene hospital the next day, but she had developed a sepsis infection that spread through her body.

She lapsed into a coma and gangrene spread to her extremities. When she woke, her hands and feet were gone, and she was legally blind in one eye.

She filed suit while still in the hospital and has been waging a court battle while trying to recover from her devastating injuries.

<http://www.nydailynews.com/life-style/health/multiple-amputee-tabitha-mullings-wins-17-9m-settlement-article-1.1033059?localLinksEnabled=false>

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Greenwich Widow Files Malpractice Suit Against Tully Center

Greenwich Time, Greenwich, CT
March 5, 2012

A Greenwich woman filed a multi-million-dollar lawsuit this week against the Tully Health Center and its emergency room medical contractor for failing to diagnose a fatal condition that killed her husband two years ago.

Susanne Wilke, whose husband, Frank Hermann, died Feb. 20, 2010 at age 46 from a pulmonary embolism, alleges that the Tully Center and the contractor that provides its emergency medical physicians were negligent in missing pulmonary embolisms in both her husband's lungs that led to his death 10 days after seeking help at the immediate care center owned by Stamford Health System

According to the medical malpractice lawsuit filed in state Superior Court in Stamford, Hermann went to the Tully Health Center on Strawberry Hill Court on Feb. 11, 2010, and complained about "flank pain." The Tully Health Center discharged Hermann the same morning after performing a CT-scan on his abdomen without performing further testing, the lawsuit said.

Nine days later, Hermann was rushed by ambulance to Stamford Hospital in critical condition. A CT-scan of his chest revealed a pulmonary embolism -- or a blockage of one or more arteries in one's lungs -- and Hermann died the next day while in intensive care.

An autopsy on Feb. 22 revealed Hermann died from weeks-old pulmonary embolisms in both lungs, according to the lawsuit.

Craig Yankwitt, a lawyer for Stamford litigation firm Silver Golub & Teitell, said the Tully Center staff should have caught the pulmonary embolisms by conducting the proper diagnostic tests before sending him home.

"They were simply not permitted to discharge without ruling out whether he was suffering from a life-threatening condition," Yankwitt said in an email. "Had they performed the additional testing, Mr. Hermann would still be alive."

Wilke is seeking several million in damages in the lawsuit. The lost earnings from Hermann's untimely death at age 46 will be a large component of the damages, Yankwitt said.

<http://www.greenwichtime.com/local/article/Greenwich-widow-files-malpractice-suit-against-3381084.php>

Gastric Banding Patient Receives \$4.3M Settlement

Outpatient Surgery Magazine, Malvern, PA
March 2, 2012

Here's a bariatric surgery complication that you don't hear very often: a lacerated aorta, allegedly caused by a surgeon's wayward grasper, according to a patient's medical malpractice lawsuit.

A Massachusetts bariatric surgeon has denied liability for the procedure gone wrong, but has agreed to a \$4.3 million settlement with the patient, who claims the ill effects of a lacerated aorta linger more than 6 years later.

The then-62-year-old patient, whose name was withheld from court records, underwent the elective laparoscopic surgery on Oct. 25, 2005. During the case, which the defendant performed with assistance from a resident, 3 attempts were made to pass the band behind the upper part of the stomach with a blunt-tip grasper. The resident performed the first attempt, with the defendant - whose name was also withheld - making the second and third tries.

Each time, however, the grasper could not be found on the other side, according to court records. After the third attempt, the patient's blood pressure dropped and he suffered cardiopulmonary arrest. Upon opening the patient's chest, the physicians found that the patient's descending thoracic aorta above the level of the diaphragm had been lacerated, which resulted in massive bleeding. The patient was quickly placed on cardiopulmonary bypass and the laceration was surgically repaired.

The patient later sued the surgeon for malpractice. A surgical expert testified that the defendant deviated from accepted standards of care when placing the grasper above the diaphragm and into the thoracic cavity, using excessive force and tearing the plaintiff's thoracic aorta. According to court documents, the patient suffered multiple post-operative complications resulting from profound hypotension, including kidney failure and changes in his cognitive functioning. He received hemodialysis for more than 4 years before undergoing a kidney transplant. At the time of the settlement, the plaintiff claims to still experience "significant difficulty with short-term memory."

Names of the defendant's attorneys were withheld from...

<http://www.outpatientsurgery.net/news/2012/03/5-Gastric-Banding-Patient-Receives-4-3M-Settlement>

Hospice Firm Settles Medicare Case

*Fox 11, Green Bay, WI
March 2, 2012*

Odyssey HealthCare Inc., one of the nation's largest providers of hospice care, has agreed to pay \$25 million to settle a Medicare fraud case, federal attorneys said Thursday.

The agreement follows claims made by a former company nurse in Milwaukee who filed a whistle-blower lawsuit.

Odyssey, which operates in about 27 states, was purchased by Atlanta-based Gentiva Health Services Inc. in 2010.

Thursday's settlement resolves allegations that Odyssey submitted false claims to the Medicare program for continuous home care services that were unnecessary or that were not performed in accordance with Medicare requirements between January 2006 and January 2009, the U.S. Department of Justice said.

Gentiva did not immediately return a phone call Thursday.

Medicare provides a benefit meant to cover hospice care for the terminally ill, but it covers 24-hour in-home nursing service only during limited crisis periods. According to the False Claims Act suit filed in 2008 but just unsealed Thursday, Odyssey practiced a pattern of enrolling and recertifying nonterminally ill patients and billing for continuous care that wasn't necessary or reasonable.

"The federal government pays for the hospice care of Medicare patients to make them more comfortable during the last months of their lives. Yet it is alleged that Odyssey used a diagnosis of terminal illness as an opportunity to bill taxpayers for unnecessary services," Inspector General Daniel R. Levinson of the U.S. Department of Health and Human Services said in a news release Thursday.

Registered nurse Jane Tuchalski was fired by Odyssey after raising concerns about company operations. She filed the federal suit in 2008, the Milwaukee Journal Sentinel reported.

It's the second such settlement in six years for Odyssey. The company paid the federal government \$12.5 million in 2006 following another lawsuit by a Wisconsin-based employee fired by Odyssey after she questioned the company's bills to Medicare for hospice services. Court records in that case said the company did not admit wrongdoing.

"The real heroes of these cases are the medical...

<http://www.fox11online.com/dpp/news/wisconsin/odyssey-healthcare-settles-medicare-fraud-case>

'Alarming' Number of Lawsuits Against Brookdale

*NY Daily News, New York, NY
March 1, 2012*

Brookdale University Hospital and Medical Center is the target of more than 100 open lawsuits by patients who claim they — or their dead relatives — were harmed instead of healed, Brooklyn Supreme Court records show.

At least a dozen cases allege patients died due to malpractice or negligence at the cash-strapped Brownsville hospital — including a mugging victim with traumatic brain injuries and two patients whose severe pressure ulcers led to fatal infections.

"The number of suits against Brookdale is alarming," said state Assemblyman Nick Perry (D-East Flatbush), who called it "a very strong indication that something is definitely wrong with how the hospital is run."

State Assemblyman Karim Camara (D-East Flatbush) said the heavy load of lawsuits is "further evidence there needs to be a change at the highest levels of management."

The Rockaway Parkway facility, one of five financially-troubled Brooklyn hospitals recommended for mergers by a state panel, is the most burdened of the group with lawsuits.

Accusations of sloppy care range from letting a diabetic's puncture wound get so infected that his toes had to be amputated to giving penicillin to a patient wearing a bracelet showing she was allergic to it. A doctor's alleged negligence during childbirth is blamed for a baby's permanent brain and nervous system injuries.

"It sounds like there's an epidemic of medical malpractice at this hospital," said Joanne Doroshow, executive director of the Center for Justice and Democracy at New York Law School, who called the volume of suits "egregious."

For each case filed, it's likely 100 other patients felt they got shoddy care but didn't sue, said Doroshow.

"When a hospital is so unsafe, it costs the hospital a tremendous amount of money," she said. "There are proven ways to clean up your act, patient safety improvements that are well-known. It is pure negligence not to do them."

http://articles.nydailynews.com/2012-03-01/news/31112015_1_beds-brooklyn-hospital-center-state-panel

Medical Malpractice Lawsuit Tossed by Appeals Court

Thomson Reuters, New York, NY
March 1, 2012

A woman whose fetus was stillborn cannot sue the doctor who performed an emergency Caesarian section in a futile attempt to save its life, an appeals court ruled Thursday.

In dismissing malpractice claims brought by the mother, Katherine De Jesus, against Dr. Aruna Mishra, the Appellate Division, First Department, rejected what it called De Jesus's "extraordinary" legal argument.

While De Jesus is pursuing claims against the Bronx-Lebanon Hospital and other staff for failing to immediately notice the fetus' heart problems, those claims could not be pressed against Mishra, since she was called after the problem became clear and did not allow an excessive amount of time to elapse between her diagnosis and the surgery, the court wrote.

Instead, De Jesus offered an alternate theory that the court found untenable.

"It is based on the notion that Dr. Mishra should not have proceeded with the c-section because in the intervening minutes between her diagnosis of fetal distress and her commencement of the procedure, it appeared that the fetus had died," wrote Justice David Saxe for a unanimous five-judge panel.

The court said there was no factual basis for asserting that Mishra could have concluded the fetus was beyond help, based solely on the inability to detect a heartbeat. Indeed, Saxe wrote, "physicians are expected and often required to attempt to resuscitate individuals who stop breathing or...

http://newsandinsight.thomsonreuters.com/Legal/News/2012/03 - March/Medical_malpractice_lawsuit_tossed_by_appeals_court/



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