

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, MONDAY, JUNE 20, 2011

VOL 243 • NO. 118 An **ALM** Publication

Jury Awards \$21 Mil. In Med Mal Case Over Brain Damage

BY AMARIS ELLIOTT-ENGEL

Of the Legal Staff

A Philadelphia jury awarded \$21.3 million on Friday to a diabetic man with brain damage over the care he received in the emergency room of Temple University Hospital.

The jury found that the hospital was 90 percent responsible and Ronald S. Campbell was 10 percent responsible for Campbell sustaining metabolic encephalopathy, or a brain disorder. Campbell is now mentally incapacitated and requires custodial care, according to the plaintiff's court papers.

The jury awarded \$635,807 for past medical and other expenses, \$1.75 million in past non-economic losses, \$4.88 million in future non-economic losses and \$14.24 million in future medical expenses, according to an unofficial verdict sheet. The jury awarded \$1.19 million for future medical expenses in 2011 and \$686,581.80 for every year between 2012 and 2030.

Along with Campbell, Campbell's guardian, Marsha Campbell, was a plaintiff.

Philadelphia Common Pleas Court Judge Frederica A. Massiah-Jackson presided over the trial.

Thomas J. Duffy and John Mirabella of Duffy + Partners were plaintiff counsel.

Charles A. Fitzpatrick III and William C. McGovern of Rawle & Henderson were Temple's defense counsel.

The defense argued in court papers that when Campbell, an insulin-dependent diabetic, was taken to the hospital Oct. 13, 2007, he was administered glucagons and glucopaste by emergency medical technicians. His initial blood sugar was 74 by the time he arrived in the emergency room at 9:10 p.m., 79 by 10:40 p.m. and 118 by 12:14 a.m. Campbell was discharged at 1:05 a.m. in the company of family members and went to bed at 3 a.m.

Campbell's relatives found him unresponsive at 11 a.m.

According to the defense pretrial memorandum, Campbell's medical history included schizophrenia, depression, pancreatitis and alcohol abuse.



Tom Duffy



John Mirabella

Campbell was brought to the hospital 11 times for high or low blood sugar levels in the five years prior to his Oct. 13, 2007, visit to the emergency room, and he was frequently noncompliant with taking insulin, the defense argued.

The defense papers said there was no breach of the standard of care in not admitting Campbell to the hospital.

"The Emergency Department physicians and staff met the standard of care for treating diabetics with an episode of low blood sugar," defense papers said. "The standard is to restore the patient's blood sugar level either by administering glucophage or by having the patient eat a meal with carbohydrates and to monitor him to see that the blood sugar is maintained."

The plaintiffs, however, said that the standard of care owed Campbell was breached because he was not admitted to the hospital or its clinical decision unit.

Duffy said they argued to the jury that because Campbell had visited the emergency room Oct. 11, 2007, due to a severe episode of hypoglycemia, and returned to the emergency room two days later for the same issue, it was a breach of the standard of care to release Campbell without admitting him and investigating why Campbell was repeatedly having hypoglycemic episodes.

Campbell was taking the drug Lantus, a form of long-acting insulin, and Duffy said his belief is that the Lantus triggered Campbell to have hypoglycemia again.

"Diabetics who suffer from repeated episodes of hypoglycemia develop a condition termed 'hypoglycemic unawareness' in which the brain becomes less sensitive to lower and lower glucose levels. ... Under

these circumstances, discharging Mr. Campbell in the middle of the night was a recipe for disaster," the plaintiffs' papers said.

Campbell incurred \$2.5 million in medical bills as of Sept. 2, and the state Department of Public Welfare is asserting a \$525,000 lien, the plaintiffs' papers said.

Duffy said he felt confident about the case and was surprised that Temple did not make better offers. He said that he teared up when the verdict was rendered because the verdict will mean a client needing long-term care will have the funds available for that care.

Beth Koob, chief counsel for health sciences for Temple University and Temple University Health System, said in a comment e-mailed by a spokeswoman: "This case involved care provided to a patient who had been seen by our Emergency Department staff over and over for failure to properly manage his diabetes due to noncompliance with medical advice. On each occasion, including the visit that is the subject of this case, he was treated, stabilized, observed and discharged to the care of his sister, with whom he lives. The treatment provided to him in the Temple University Hospital Emergency Department was appropriate and consistent with all standards of care. The jury finding of liability is inexplicable, and the amount of the award outrageous. We intend to exercise all of our appeal rights to see this case is properly adjudicated."

The emergency room doctors differed on whether one of them treated Campbell, Duffy said. Dr. Michael DeAngelis filed a certificate stating he had not treated Campbell, while Dr. Joseph R. Lex Jr. and Dr. Christopher C. Vates disputed DeAngelis' account, Duffy said.

The jury deliberated for about four hours, Duffy said.

Temple is insured by Lexington Insurance, according to the defense papers. •