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Jury Issues Award of \$4.5 Million Over Med-Mal Claims

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A Philadelphia Common Pleas jury awarded the estate of a 39-year-old meat cutter \$4.5 million after the plaintiff's attorney argued that doctors at Misericordia Hospital misdiagnosed him and then failed to run the proper tests, which led to his death four years ago.

In the case, *Ruth Smith (Administrator of the Estate of David Smith) v. Mercy Health System*, jurors returned from early a day of deliberations to Judge Marlene Lachman's courtroom late Friday afternoon with a verdict against the hospital and two of its doctors.

The case revolves around David Smith, who was rushed by his mother, Ruth Smith, to the hospital in the early morning hours of January 4, 1997, after he experienced stomach pain. Smith's lawyer, Thomas Duffy of Duffy & Keenan, said the emergency room staff performed blood tests and discovered an elevated level of enzymes that are commonplace for those with pancreatitis— an inflamed pancreas. He was admitted at about 6 a.m.

Duffy said the hospital ER staff failed to run basic tests such as an electrocardiogram, chest X-ray and a complete blood work-up, which would have shown early signs of an aortic dissection— where the lining of the aorta opens up, leaking blood into the pericardium, the sac around the heart, and causing Smith to eventually bleed to death.

Smith was first seen by the attending internist, Dr. Loc Van Tran, at 11 a.m. Tran did not order any chest or cardiovascular X-rays but did request gastrointestinal and

surgical consults, Duffy said.

Duffy said Tran had no further contact with his patient, and the surgical consult was conducted by a third-year surgical resident named Daniel Nevarre, who



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saw the patient shortly after a 12 p.m. ultrasound proved inconclusive.

Duffy said Nevarre looked in on Smith shortly after the ultrasound was performed and documented that his blood pressure was abnormally high but failed to notice an irregular pulse that would have led to cardiovascular testing. He did, though, order the chest X-ray but Duffy said the results were not interpreted until after Smith's death.

Nevarre testified that he discussed Smith's case with an attending surgeon, Dr. Orlando Castillo, and a radiologist, Dr. Matthew Pasto, but there was no documentation of such conversations nor did either doctor recall them, Duffy said.

Smith had asked for more pain medication at about 8 p.m. and died about 20 minutes later— before the medication arrived. The cause of death was a ruptured aortic aneurysm.

During the two weeks of testimony, Duffy's experts included a vascular surgeon, radiologist, internist and economist, as well as all the doctors named as defendants to the stand.

The defense had its own set of similar experts and, according to Duffy, argued that there were no obvious signs of a dissecting aorta and that it was reasonable to diagnose

the pancreatic condition on the basis of the high enzyme reading.

The jury found the hospital 60 percent negligent, Nevarre 30 percent and Tran 10 percent. Smith's estate was awarded \$1.5 million for wrongful death and \$3 million in survival. Smith is survived by a 15-year-old son, who is the sole beneficiary of the verdict, said Duffy.

Duffy said he expects delay damages will increase the verdict by about 10 percent. During a pre-trial conference Duffy said there was an agreement in principle for a \$1.5 million settlement but that the defense failed to get back to him by the pre-determined deadline date of May 10. On May 11 he said, a \$1 million offer from the defense was rejected and from that point on, the plaintiff had decided to proceed on to trial and not settle.

“I don't think the jury believed Nevarre when he said he spoke with the attending and the radiologist,” Duffy said. “And the hospital took a hit because its staff misdiagnosed David and then neglected to run the proper tests on what was a life-threatening condition.”

The hospital and Nevarre were both represented by Christine McCafferty of Mylotte David & Fitzpatrick, who could not be reached for comment yesterday afternoon.

David Griffith of Harvey Pennington Cabot Griffith & Renneisen, Tran's attorney, was also unavailable for comment yesterday afternoon.

Thomas Savon of Goldfein & Hosmer, represented Pasto (released for liability after the plaintiff presented his case), the MCMC Radiology Group (found not negligent), and Castillo (found not negligent).