

Medical Malpractice Law & Strategy
March, 1996

Verdicts

MICHIGAN VERDICT HIGHLIGHTS REFUSAL-OF-TREATMENT ISSUES

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A \$16.5 MILLION verdict against a Flint, Mich., hospital highlights some of the difficult issues raised for health care providers in refusal-of-treatment situations. The award against the hospital went to a woman with severe brain damage and her family for keeping the woman on life support against the family's wishes. The woman, Brenda Young, now lives at home, virtually bedridden, in a semi-vegetative state. Her family had sued the hospital for lack of informed consent and medical battery. **Osgood v. Genesys Regional Medical Center**, No. 94-26731-NH (Genesee Cty. Cir. Ct. Feb. 16). Ms. Young, an epileptic who is now 34 years old, was admitted to Genesys Regional Medical Center in February 1992 during a seizure, where she lapsed into a coma. She was put on a life-support system consisting of mechanisms for dialysis, blood transfusion, medication and ventilation. She was discharged from the hospital in April 1992. The patient's mother, Ramona Osgood, insisted that she repeatedly told the hospital that her daughter should not be kept on life support. The hospital claimed that it did, in fact, get the mother's consent.

Plaintiffs' co-counsel Clark Shanahan of Owosso, Mich.'s Shanahan & Kremsky maintained that the "consent" the hospital asserted it obtained was based on a "lie." "It wasn't a genuine informed consent," said Mr. Shanahan, who tried the case along with his partner, Victoria Kremsky, and Gordon Hoy of Peachtree City, Ga. He added that every time Ms. Osgood asked about the equipment Ms. Young was hooked up to to make sure it wasn't for life support, the hospital "outright lied about it and said, 'No, it will just make her more comfortable.'"

At trial, plaintiffs' expert Carl Cohen, director of medical ethics at the University of Michigan School of Medicine in Ann Arbor and a professor of philosophy at the university, described the situation as "a textbook case of lack of informed consent." Plaintiffs' medical expert Dr. William J.A. Ford, a private practitioner and medical consultant in Owosso, testified, "Without the application of these systems, Ms. Young would have died a peaceful and painless death."

Under Michigan's Patient Rights and Responsibilities Act, a patient may refuse treatment "even if it leads to death," Mr. Shanahan noted. Under the state's Uniform Durable Power of Attorney Act, an incapacitated (i.e., comatose) patient's advocate (a relative or guardian) may refuse treatment for the patient. Most states have patient rights and responsibilities laws, which allow patients to refuse treatment and to document their treatment wishes in a "living will." Michigan law also allows an incapacitated patient to refuse treatment via an advocate or guardian.

The hospital did not fall below the standard of care in the way it administered life support, Mr. Shanahan explained. Rather, it "applied procedures on Ms. Young which she didn't want and the patient's advocate didn't want." He added that "they should have withdrawn the life supports+while she was still in the ICU." He pointed out that Ms. Young was hooked up to a ventilator immediately upon entering the emergency room; however, this is standard emergency procedure and, as such, was not in dispute. At issue was whether life support should have been continued after Ms. Young was transferred

from the emergency room to the intensive care unit. Ms. Osgood claimed that, based on a statement Ms. Young had made the previous year, she repeatedly told the hospital staff not to continue life support if the patient could not recover. "They knew or should have known that she was not going to recover to her full self," said Mr. Shanahan.

The award to the plaintiffs consisted of compensatory damages totaling slightly more than \$16.5 million: \$15 million for the patient's pain and suffering and \$360,000 for her future medical care; \$1 million to the patient's mother for mental anguish and \$108,000 for the care she rendered to her daughter prior to the verdict; and \$100,000 to the patient's daughter, now 19, for mental anguish. Michigan law does not allow for punitive damages.

How 'Informed' Is Informed Consent?

Mr. Shanahan feels that standard hospital consent forms are "only pieces of paper." He advises attorneys to "Rely on your client or client's representative" to ascertain whether a consent is a "true" informed consent -- i.e., whether the patient or the patient's advocate was aware of all the ramifications of what he or she was signing. "Under the statutes of many states," said Mr. Shanahan, "hospitals are required to prove a genuine informed consent+the believability of hospital personnel isn't sufficient." In the instant case, at least three physicians testified that they "could not recall if they had discussed the issue of life support in sufficient detail" with any of the plaintiffs. This case serves to illustrate the "general feeling of doubt" regarding the extent of physicians' discussions with patients, Mr. Shanahan observed.

Anna Moretti, director of programs for Choice in Dying, a nonprofit New York -based group that provides information on end-of-life issues, pointed out that treatment in an emergency room comes under a different standard than hospital care in general. In the ER, "time is of the essence," and the ER staff often has the time to consider only the patient's immediate condition and treatment. Once the patient is out of the ER, the hospital and physicians should consider the patient's wishes, as expressed in a living will or by power of attorney. Liability may attach to the health care providers, claims Ms. Moretti, "if they have knowledge that what they are doing is against the patient's wishes." Ms. Moretti stressed the importance of proper documentation of conversations between the patient (or his or her representatives) and all family members, health care providers, clergy members and social workers to ascertain the patient's true wishes.

In a published report, Young S. Suh, president of Genesys, said that the verdict may force the hospital, and many others, to rethink some of their procedures. He could not be reached for further comment. Mark Harris, a spokesman for the medical center, declined to comment on the litigation, since an appeal is pending.

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