

Med Mal Case Settles for \$6.6 Million

Doctors Admit Responsibility

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JULY 1, 1999

The Legal Intelligencer

In his 20 years of litigating medical malpractice cases, says Tom Kline, he never heard of a settlement which included defendants' open admissions of liability and a stipulation that the economic terms of the agreement be a matter of public record - until yesterday, when he negotiated a \$6.6 million settlement with a hospital and doctor who admitted responsibility for the death of a 16-month-old child.

Kline, of Kline & Specter, represented the parents of Steven Patrick Donnelly, who died in November 1997. Kline said the liver condition that ultimately caused the child's death was a complication of an injury suffered 16 months earlier, just after his birth, when a twisted bowel went undiagnosed for too long by the nursery staff at Phoenixville Hospital.

The settlement came six days into a jury trial in Philadelphia Common Pleas Court. Attorney Michael E. McGilvery of Wright Young & McGilvery represented defendants Clinical Care Associates of the University of Pennsylvania and Dr. Maurice S. Rozwat, who was the physician on call the night after Steven Donnelly's birth. Daniel J. Sherry, of Marshall Dennehey Warner Coleman & Goggin's Newtown Square office defended Phoenixville Hospital.

According to Kline, signs of the newborn infant's condition were visible for hours before he was given the emergency surgery necessary to correct the condition, and by the time surgery was performed, the bowel had to be removed.

The events giving rise to the suit occurred between midnight and 9:30 a.m. on July 10, 1996. The suit alleged that while the baby was in the nursery, nurses noted on his medical chart that he was shaky, was spitting up green vomit, and was ashen in color with bluish hands and feet - all clear signs, Kline said yesterday, of "malrotation and mid-gut volvulus," a condition which occurs in infants.

Untreated, the twisted bowel condition cuts off blood flow to the intestines, and the bowel effectively "dies," Kline said.

Kline said that the nurse who made the notations on Steven Donnelly's chart was a "floater" who was temporarily assigned to the nursery that night and was uncertified in neonatal care. The primary nurse who was assigned to the baby's care has never been identified, he said.

According to trial testimony, nurses called Rozwat at home at 1 a.m. to report Steven Donnelly's symptoms, and he ordered a standard blood test. The results of the test were abnormal, and

Rozwat was called again, a nurse testified. But nothing was done about the baby's condition. In fact, Kline said yesterday, a nurse testified that after she had suctioned more greenish emesis from the infant at 5 a.m., she sent him to his mother to be breast-fed. Kline said key testimony at trial was given by physician Amy L. Siegel, who was the day-shift physician overseeing Steven Donnelly's case - and who finally recognized the baby's condition was an emergency requiring immediate surgical intervention. Siegel was a defendant, but the Donnellys ultimately dismissed Siegel from the suit, and she is not a party to the settlement. At the end of the plaintiffs' case, Kline said, he called Siegel as on cross, and her dramatic recitation of the events was "instrumental" in demonstrating the responsibility of the night-shift medical personnel who failed to diagnose the twisted bowel. Siegel, in testimony Kline characterized as "direct and blunt," said on the stand that green bilious vomiting in a baby is a sign of a surgical emergency and that when she realized Steven Donnelly had been spitting up green emesis all night, her "heart fell," and she "knew it was a five-alarm fire." She immediately arranged to have the baby transferred to Jefferson Hospital for surgery "because that was the standard of care," Kline said, and she testified that she wondered why nothing had been done earlier. When emergency surgery was performed on the baby, doctors removed most of his bowel, which was by that time "blackened and necrotic," Kline said. Two days later, Jefferson surgeons had to remove the remainder of the infant's bowel. Siegel also testified under Kline's cross examination that the Donnelly's expert witnesses, who had opined that green bilious vomiting in an infant should always be treated as an emergency, had written what she considered the authoritative textbook for pediatricians on the intestinal ailments like the one suffered by Steven Donnelly. Shortly afterwards, when Rozwat took the stand in his own defense, he admitted responsibility for the failure to diagnose Steven Donnelly's condition and acknowledged that it was a deviation from the standard of care owed by a physician to his patient.

Rozwat had denied liability in deposition testimony, Kline said.

In a telephone interview yesterday, McGilvery, who represented Rozwat, said that he and his client decided during trial that "these events occurred on his watch, and it was his obligation to make sure he had enough information." "Our only choices," he said, "were to accept the responsibility or blame the nurses for not giving him the proper information... He was not going to take the stand and blame the nurses." Rozwat, who had hospital privileges at Phoenixville, was employed by a practice group owned by the University of Pennsylvania, while the nurses were employed by the hospital itself. At trial, Kline said, the hospital proceeded on the theory that Rozwat, not the nurses, was responsible for recognizing the gravity of the baby's condition and ordering the proper treatment. Cross-examination of an expert witness on nursing care was under way when settlement was reached, Kline said. As part of the settlement, the hospital, too, admitted liability. The bulk of the money will come from the University of Pennsylvania, its affiliated business Clinical Care Associates and its employee, Rozwat. A part of the settlement is confidential; the defendants agreed to take "measures" whose nature is not to be disclosed - and descriptive adjectives are blacked out of the court transcript memorializing the settlement. Kline said that some jurors wept openly as Suzanne Donnelly described the pain suffered by her son, who, because he ultimately lost his entire small intestine, was able to take nourishment only intravenously or through a feeding tube and underwent several painful surgical procedures during the 16 months of his life. As a result of the toxins in intravenous foods which are particularly dangerous to infants, Kline said, the boy eventually developed liver poisoning. A co-

worker of his father, a heating and air-conditioning mechanic, donated part of his liver to Steven in a transplant operation, but the transplant was rejected by the child's immune system. An economist was retained to calculate the likely earning capacity of the boy, and he arrived at a figure of about \$1.5 to \$1.8 million net economic loss, Kline said. But he said that he thought the major factors motivating so high a settlement figure were "the egregious nature of the conduct, which was admitted for the record."

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