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Stroke After Dental Procedure Brings $17.5 Mil. Verdict

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A federal judge has awarded more than $17.5 million in a medical malpractice suit against the Veterans Administration brought by a former Marine who suffered a disabling stroke after a dental procedure in which his blood pressure had dropped precipitously several times.

Plaintiff Christopher Ellison suffered extensive brain damage because he had the stroke in his car, just a few blocks from the dentist's office, but was not found for several hours. The suit alleges that the dental procedure should have been aborted because of the seriousness of Ellison's symptoms and that he should have been monitored for several hours rather than discharged.

In his 55-page opinion in *Ellison v. United States*, U.S. District Judge William H. Yohn Jr. concluded that the VA hospital dentist, Mark Abel, committed malpractice by continuing the dental procedure after Ellison's first hypotensive episode, and by repeatedly resuming the procedure after several more episodes.

SPECTER

Yohn also found that Ellison's September 2007 stroke might have been prevented, and that the severity of brain damage from the stroke could have been limited, if Abel had not allowed Ellison to drive himself home without an escort, and instead had referred him for a medical evaluation.

In his verdict, Yohn awarded Ellison more than $3.1 million in past and future medical expenses; more than $1.1 million in past and future lost earnings; $2.5 million for past pain and suffering; $7.5 million in future pain and suffering; $226,000 to cover the costs of buying a new home and having it modified to be accessible; and $3 million to his wife, Cheryl Ellison, on her loss of consortium claim.

The ruling is a victory for attorneys Shanin Specter, Regan Safier, David C. Williams and Charles L. Becker of Kline & Specter.

Malpractice suits against the United States are filed under the Federal Tort Claims Act and plaintiffs therefore are not entitled to a jury trial.

In an interview, Specter said the verdict "was a substantial one because this was a substantial case."

The evidence, Specter said, showed that Ellison was a "vibrant" 49-year-old man working in a skilled job who now has an IQ of 68, walks with a three-point cane and his speech cannot be understood.

In his opinion, Yohn made extensive findings about Ellison's enjoyment of life prior to the stroke and concluded that "because of Mr. Ellison's severe mental and physical deficits as a result of his stroke, he is now unable to participate in any of the activities he

(continued from pg 1) used to enjoy prior to the stroke. Even more importantly, he has lost a major portion of his ability to share and enjoy his life with his wife and children."

Yohn also found that the stroke has forced Cheryl Ellison to quit her job to become her husband's caretaker and has destroyed their sex life.

Assistant U.S. Attorney Thomas F. Johnson argued in his post-trial brief that no malpractice occurred because "the alleged connection between the conduct of the VA dentists and the subsequent stroke is pure speculation."

Under Pennsylvania law, Johnson argued, the plaintiff in a medical malpractice case cannot prevail if there are "two schools of thought" about the proper treatment and the physician properly follows one of them.

Although the plaintiffs' expert testified that the dental procedure should have been halted after the first drop in blood pressure, Johnson noted that four experts called by the government disagreed and said it was not common practice to do so and that leading dental schools do not teach their students to do so.

But Yohn found that one of the government's experts, Raymond J. Fonseca, conceded that a textbook he edited specifically said that when a patient suffers a loss of blood pressure and loses consciousness during oral surgery, "the anesthetic should be stopped, the surgery should be rescheduled, and the patient should be given the appropriate oral premedication to be taken at home."

Yohn concluded that a "reasonable oral and maxillofacial resident" such as Abel, who held both dental and medical degrees, "would have terminated the procedure where it was not necessitated by medical or dental emergency, the risk outweighed the benefit, and the doctor knew that the patient had seven known cardiovascular risk factors."

When Ellison's blood pressure dropped to 50/20 less than a minute after Abel resumed the procedure, Yohn found that the episode should have been treated as "catastrophic" and "indicative of a significant cardiovascular problem."

Yohn found there was no medical literature on the treatment of a patient with multiple low blood pressure episodes because "such an occurrence is rare because dental procedures are terminated after one, or at most two" such episodes.

Abel testified that he interrupted the procedure each time Ellison's blood pressure dropped, but that he thought it was proper to continue after each one because Ellison recovered and was stabilized.

The repeated episodes of low blood pressure, Abel testified, "was just further, perhaps manifestations of his anxiety."

Yohn disagreed, finding that "Abel should have stopped the procedure to prevent additional hypotensive episodes and further cardiovascular instability."

"Instead," Yohn wrote, "he allowed Mr. Ellison to suffer a total of four syncopal episodes."

A spokeswoman for the U.S. Attorney's Office, Patty Hartman, said the government is "reviewing the judge's decision" and would have no immediate comment.