

Jury awards \$10.1M in malpractice case against CHOP

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A Philadelphia Common Pleas Court jury has awarded \$10.1 million to a mother and her son, whose physicians at Children's Hospital of Philadelphia failed to timely diagnose his bacterial meningitis following several trips to the emergency room.

Shamir Tillery, now 6, suffers from hearing loss, language disorder, developmental and learning delays, and a loss of balance.

He was 11 months old when he came down with meningitis.

"You just have to ask yourself how this kid can go, this baby can go, to CHOP three days in a row with this problem and it takes them that long to say, 'You know, he really is having a problem,' " the family's lawyer, **Andrew Stern**, said Wednesday.

The \$10.1 million verdict rendered Monday includes \$1.5 million for future medical care, \$1.1 million for loss of earnings, and \$7.5 million for pain and suffering.

The verdict, while substantial, is hardly the largest for medical malpractice in Philadelphia. The largest

was a \$100 million award in 2000 to the family of a young girl who suffered brain damage and the amputation of an arm because of a botched surgical procedure. Stern was also the plaintiff's lawyer in that case.

Shamir's mother first took him to the emergency room at CHOP on Dec. 21, 2009. He had actually been sick for several days before that with fever and other symptoms. On that first visit, the hospital diagnosed his problem as an upper respiratory infection and sent him home with little in the way of treatment, Stern said.

"They really didn't do much of anything," said Stern, of the Philadelphia law firm of Kline & Specter.

Shamir's symptoms worsened, however, and he was taken back to the hospital the following day with a high fever, an abnormal respiratory rate, and a rapid heartbeat. Stern argued to the jury that CHOP physicians should have tested Shamir for bacterial infection, a commonly accepted practice, but failed to do so.

When Shamir was taken to the hospital a third time, on the following day, it took more than an hour

before he was examined by a resident physician, Stern said. But it wasn't until nearly midnight that the blood work was done that would reveal the true cause of his sickness. It took until 3 a.m. for the hospital to administer the antibiotics needed to fight Shamir's bacterial meningitis.

By then, however, it was too late to avert permanent brain damage and other injuries, Stern said.

"He will be 7 years old in January; he is functioning like a 3-year-old in terms of language development, and he will be functionally illiterate," Stern said.

Lawyers for CHOP had argued during a four-week trial that Shamir's symptoms were consistent with bronchitis and that his condition seemed to improve as a result of treatments administered at the hospital. It therefore was reasonable for the hospital to release him, they said.

The jury disagreed, however, taking only three hours to find for Shamir and his mother, Shantice Tillery of West Philadelphia.