

FEATURED VERDICT

Medical Malpractice

Primary care doc solely to blame for patient's death: surgeon

Defense Verdict

Reynolds v. Steele

San Diego County Superior Court, Vista

Plaintiffs' Attorney Amy R. Martel; Chihak & Martel; San Diego

Defense Attorney Barton H. Hegeler; Hegeler & Anderson; San Diego

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SAN DIEGO COUNTY

FEATURED VERDICT

MEDICAL MALPRACTICE

Failure to Diagnose — Failure to Refer — Failure to Test — Surgeon

Primary care doc solely to blame for patient's death: surgeon

| VERDICT | Defense |
|-------------|---|
| CASE | Janet Reynolds, individually, and as Successor in Interest of James E. Reynolds, deceased v. Thomas E. Rastle, M.D.; Graybill Medical Group Inc.; and John T. Steele, M.D., No. 37-2015-00004509-CU-PO-NC |
| COURT JUDGE | Superior Court of San Diego County, Vista Ronald F. Frazier |
| DATE | 9/18/2018 |
| PLAINTIFF | |
| ATTORNEY(S) | Amy R. Martel, Chihak & Martel, San Diego, CA |
| DEFENSE | |
| ATTORNEY(S) | Barton H. Hegeler, Hegeler & Anderson, San Diego, CA (John T. Steele, M.D.) None reported (Thomas E. Rastle, M.D., Graybill Medical Group Inc.) |

FACTS & ALLEGATIONS On Sept. 5, 2013, plaintiff's decedent James Reynolds, 62, a carpenter, underwent an emergent left inguinal hernia repair by Dr. John Steele, the on-call surgeon at Palomar Medical Center, in Escondido. Reynolds then presented to Steele on Sept. 24, 2013 for a routine follow-up visit following the surgery. It was determined that Reynolds was recovering as expected.

On Nov. 20, 2013, Reynolds returned to Steele with complaints of abdominal pain. After getting a history and performing an examination, Steele determined that Reynolds' complaints were unrelated to his hernia surgery. Steele then personally telephoned Reynold's primary care physician at Graybill Medical Group Inc., Dr. Thomas Rastle, whom Reynolds had seen since the early 2000s and for most of his adult life. Steele asked Rastle to see Reynolds for his current complaints and perform the necessary work-up since Rastle was his longstanding, primary care physician. Rastle indicated he would direct Reynolds care.

On Dec. 8, 2013, Reynolds passed away from septic shock due to a small bowel obstruction.

The decedent's wife, Janet Reynolds, acting individually and on behalf of her husband's estate, sued Steele, Rastle and Graybill Medical Group.

Rastle and Graybill Medical Group settled out of the case before trial. (Neither Steele nor his medical group had any relationship with Rastle's group.)

Plaintiffs' counsel contended that Steele failed to diagnose and treat the decedent for the small bowel obstruction and that based upon the decedent's signs and symptoms, Steele should have personally referred the decedent for imaging studies of his abdomen, rather than sending him to Rastle. Counsel also contended that a radiographic study would have demonstrated a small bowel obstruction that could have been addressed.

The plaintiffs' expert colon and rectal surgeon opined that it was Steele's responsibility to order imaging of the decedent's abdomen and that if imaging had been performed, a bowel obstruction would have likely been identified and treated.

The defense's surgery expert opined that Steele's care and treatment of the decedent on Nov. 20, 2013 was reasonable and that Steele did not deviate from the standard of care. He also testified that a general surgeon under similar circumstances would be reasonably expected to direct a patient's further work up to the primary care physician. The expert testified that Steele appropriately performed a post-operative examination of the decedent's incision and groin, and that Steele believed that the surgery was successful. The expert also testified that after Steele ruled out complications due to the hernia repair, it was reasonable for Steele to allow Rastle to provide primary care to the decedent, which Rastle agreed. The expert surgeon further testified that while a partial bowel obstruction may have been possible on Nov. 20, 2013, the decedent was not exhibiting any signs or symptoms that would have indicated to Steele that the decedent was unstable or acutely ill. In addition, he opined that after the decedent was stabilized and discharged to follow-up with Rastle, Steele had no duty to re-establish a doctor-patient relationship with the decedent and that by the time the decedent presented to the emergency department on Dec. 8, 2013, it was unfortunately too late to prevent the decedent's death.

The defense's surgery expert opined that responsibility for the decedent's death was with Rastle and that Rastle was unable to articulate an explanation for allowing the decedent to be discharged from his office on Dec. 5, 2013. At the time of discharge, the decedent was allegedly demonstrating signs and symptoms of progressive septic shock, including ongoing abdominal pain, weakness, profoundly low blood pressure, and a low heart rate. The expert opined that the patient's symptoms mandated evaluation in an emergency department, but that Rastle failed to refer the decedent. The expert further opined that if Rastle responded appropriately to clear evidence of progressive septic shock, the decedent likely would have survived.

Steele's counsel noted that Rastle saw the decedent on Nov. 21, 2013 and Dec. 5, 2013, that Rastle asked for no further input from Steele, and that Rastle made judgments regarding the decedent's condition and necessary care. However, counsel contended that Rastle performed an abdominal examination on Nov. 21, 2013 that was recorded as entirely normal, but that the examination was

inconsistent with the plaintiffs' expert colon and rectal surgeon's contention that imaging at that stage would have demonstrated an obstruction. Steele's counsel noted that the plaintiffs' expert opined that Rastle violated the standard of care and that Rastle's negligence was responsible for the decedent's untimely death. Counsel specifically noted that the plaintiff's expert was critical of Rastle's management of the decedent and that the expert opined that it was "extraordinarily ill-advised and a mistake" to send the decedent home on Dec. 5, 2013. The plaintiffs' expert also opined that Rastle was negligent in electing to treat a hypotensive patient, rather than sending him directly to an emergency department, and that Rastle's omissions led to the decedent's death. In addition, the expert opined that if Rastle had correctly sent the decedent for necessary lifesaving treatment on Dec. 5, 2013, the decedent likely would have survived.

INJURIES/DAMAGES *death; gastrointestinal complications; loss of society; septic shock*

James Reynolds died from septic shock on Dec. 8, 2013. He was 62. He was survived by his wife, Janet Reynolds, then a 64-year-old carpenter.

The decedent's wife sought recovery of \$250,000 in general wrongful death damages, based on the MICRA cap. She also sought recovery of \$2,857.90 in funeral expenses.

The plaintiffs' expert economist opined that the value of Ms. Reynolds past and future loss of household services, which was provided by the decedent, totaled \$469,329.

The defense's expert economist opined that Ms. Reynolds' potential economic loss, based on the loss of household services, totaled \$219,114.

RESULT The jury rendered a defense verdict. It found that Steele was not negligent in the treatment of the decedent.

| | |
|---------------------|---|
| DEMAND | \$150,000 |
| OFFER | None reported |
| INSURER(S) | Doctors Co. for John T. Steele, M.D. |
| TRIAL DETAILS | Trial Length: 5 days Trial Deliberations: 2 hours Jury Vote: 12-0 Jury Composition: 6 male, 6 female |
| PLAINTIFF EXPERT(S) | Timothy Lanning, M.A., economics, Santa Ana, CA Adrian E. Ortega, M.D., colon & rectal surgery, South Pasadena, CA |
| DEFENSE EXPERT(S) | Edward H. Phillips, M.D., general surgery, Los Angeles, CA David J. Weiner, M.B.A., economics, Los Angeles, CA |

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' and defense counsel.

—Priya Idiculla

MEDICAL MALPRACTICE

Surgeon

Surgeon: Pre-surgery meds not to blame for post-surgery bleeding

| ARBITRATION | Defense |
|-------------|--|
| CASE | Ruben Berton and Marisela Berton v. Hugo H. Barrera, M.D.; Gonzalo Hernandez; and Sharp Chula Vista Medical Center, No. 37-2014-00041177-CU-MM-CTL |
| COURT | Superior Court of San Diego County, San Diego |
| NEUTRAL(S) | Thomas Nugent |
| DATE | 8/23/2018 |
| PLAINTIFF | |
| ATTORNEY(S) | Peter S. Cameron, Law Offices of Peter S. Cameron, San Diego, CA Elliot N. Kanter, Law Offices of Elliot N. Kanter, San Diego, CA |
| DEFENSE | |
| ATTORNEY(S) | Storm P. Anderson, Hegeler & Anderson, San Diego, CA Barton H. Hegeler, Hegeler & Anderson, San Diego, CA |

FACTS & ALLEGATIONS On Dec. 19, 2013, claimant Ruben Berton, 57, a contractor, underwent laparoscopic, robot-assisted, hiatal hernia repair. The procedure was performed by Dr. Hugo Barrera, a general surgery surgeon, at Sharp Chula Vista Hospital, in Chula Vista. Berton had a postoperative bleeding complication that extended his hospitalization and caused injuries to his lungs.

Berton sued Barrera; a nurse that allegedly administered too much morphine for pain, Gonzalo Hernandez, and Sharp Chula Vista Medical Center.

The matter ultimately went to arbitration, in lieu of a jury trial, with Barrera as the only respondent.

Berton's counsel contended that Barrera violated the standard of care by performing the surgery, given Berton's reported history of ingesting medications that could have affected the ability of his blood to coagulate. Counsel also contended that Barrera failed to order Berton's return to surgery at 1 p.m. on Dec. 20, 2013, instead of at 4 p.m. that day.

Barrera's counsel asserted that the surgery was indicated and consented to by Berton and that Berton reported to

Barrera that he had taken ibuprofen within two days of the surgery, which was not a contraindication to performing surgery. Counsel also contended that there was no indication of abnormal bleeding at the time of the surgery or in the immediate post-operative period that would have been suggestive of a coagulopathy. Defense counsel further contended that it was after Berton was administered Lovenox as prophylaxis against deep vein thrombosis that signs and symptoms, in retrospect, suggested that he may have been having a postoperative bleeding complication from the surgery. In addition, counsel asserted that Barrera took a reasoned, stepwise approach to addressing Berton's condition.

The defense's expert general surgeon, who specializes in laparoscopic surgery, opined that Berton was an appropriate candidate for the proposed surgery and that Barrera's pre-operative work up of Berton exceeded the standard of care. The expert also opined that there was no contraindication to performing the surgery based upon the information that Barrera received from Berton regarding ibuprofen and naproxen, as any effect on platelets from those medications would have dissipated within 24 to 48 hours. Further, the expert testified that he did not believe that any medication ingested pre-operatively had any impact on Berton and that if the medication ingested two days before surgery was responsible for the post-operative bleeding complication, Barrera would have noticed abnormal bleeding at the time of surgery. In addition, the general surgeon testified that he believed that, in retrospect, to a reasonable degree of medical probability, the post-operative bleed was caused by the Lovenox and that it would have been below the standard of care to not give the patient Lovenox.

The defense's general surgery expert opined that Barrera complied with the standard of care for a general surgeon in taking Berton back to surgery when he did and that returning Berton to surgery any sooner would have subjected Berton to more risk than waiting, in that it was prudent to give Berton blood products to stabilize his blood pressure and blood values, and see if he improved. He also testified that post-operative bleeding complications are common in this type of surgery and often resolve without the need to return to surgery.

Lastly, the general surgery expert testified that returning Berton to surgery at 1 p.m., rather than 4 p.m., made no difference in his post-operative course and that Berton would have still needed blood products, been intubated and had the same course.

The defense's emergency medicine expert, who is a medical toxicologist, testified that the ibuprofen that was reported to Barrera does not have an antiplatelet aggregation effect after approximately 24 hours and that ibuprofen consumed more than 24 hours in advance of surgery does not increase the risk of bleeding. The expert also opined that ibuprofen did not cause the bleeding experienced by Berton and that there was no evidence that Barrera was advised that Berton consumed aspirin. Instead, the expert opined that Lovenox significantly contributed to the bleeding.

INJURIES/DAMAGES *collapsed lung; respiratory*

Due to the post-operative bleeding complication, Berton's lungs collapsed and were found to contain liquid.

Berton claimed that he now suffers a long-standing decrease in lung capacity with related fatigue, pain, and poor health. He also has to use medicine and an inhaler due to his lungs injury. He further claimed that he experiences ongoing pain in his chest, back and kidney area while breathing.

Berton alleged that due to his injury, he lost his ability to perform many of his duties and activities that he once performed prior to the incident. Specifically, he had to cut his working hours short because he could no longer go to the office to take care of the daily responsibilities as a small business owner, which created great financial harm. He was also unable to properly complete two of his projects and gain new clients. In addition, Berton had to eliminate many of his leisure activities.

Berton sought recovery of medical costs, lost earnings, and damages for his past and future pain and suffering. His wife, Marisela Berton, sought recovery for her loss of consortium. In the plaintiffs' statement of damages, they requested \$5 million.

RESULT Arbitrator Thomas Nugent, of Judicate West, ruled in favor of Barrera. He found that the evidence did not establish that Barrera's care and treatment of Mr. Berton fell below the standard of care as required by law.

DEMAND \$290,000
OFFER None

INSURER(S) Doctors Co. for Barrera

PLAINTIFF
EXPERT(S) None reported

DEFENSE
EXPERT(S) Sunil Bhoyrul, M.D., surgery, La Jolla, CA
Richard B. Clark, M.D., toxicology, San Diego, CA

EDITOR'S NOTE This report is based on information that was provided by Barrera's counsel. Plaintiffs' counsel did not respond to the reporter's phone calls, and the remaining defendants' counsel were not asked to contribute.

—Priya Idiculla

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