

VERDICTS & SETTLEMENTS

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FRIDAY, MARCH 18, 2011

PERSONAL INJURY**MEDICAL MALPRACTICE**

Lack of Informed Consent

VERDICT: Defense.

CASE/NUMBER: v.
Andres Falabella, M.D. / GC040325.COURT/DATE: Los Angeles
Superior Pasadena / Feb. 24, 2011.

JUDGE: Hon. Joseph F. De Vanon.

ATTORNEYS: Plaintiff - Benjamin C.
Johnson, Cynthia E. Fruchtman (The
Boesch Law Group, Los Angeles).Defendant - Yuk K. Law, Kent T.
Brandmeyer (Law, Brandmeyer +
Packer, LLP, Pasadena).MEDICAL EXPERTS: Plaintiff
- Antonio Aldrete, M.D.,
anesthesiology/arachnoiditis,
Birmingham, Ala.; Hart Cohen,
M.D., neurology, Los Angeles;
Barbara Greenfield, R.N., B.S.N.,
C.C.M., life care planning, South
Pasadena; Irv Klein, M.D., internal
medicine and anesthesiology, Van
Nuys.Defendant - Matthew Lotysch, M.D.,
neuroradiology, Bakersfield; Gerald
Manecke, M.D., anesthesiology,
San Diego; Bernard Ullman, M.D.,
neurology, Redondo Beach; Michael
Wienir, M.D., neurology, Tarzana.

FACTS: Plaintiff

age 43, underwent a spinal tap at an outside hospital. Although the spinal tap was negative, she experienced severe headaches after the procedure. Plaintiff was diagnosed with a slow leakage of spinal fluid out of the hole created by the spinal tap needle. This was felt to be the cause of her headaches. Through a friend, she therefore was referred to defendant anesthesiologist Dr. Andres Falabella at the City of Hope. Dr. Falabella decided to treat the problem with a "blood patch" procedure. This procedure involves withdrawing blood from the patient's arm and then injecting that blood into her epidural space in her lumbar region. The clotting properties of the blood when injected through the needle into the patient should plug the pinhole previously left by the spinal tap needle, stopping the leakage of cerebral spinal fluid and curing the patient's headache.

Dr. Falabella introduced his epidural needle into what he believed to be the epidural space using the "loss of resistance air technique," which involves an anesthesiologist pushing a needle into the patient's back by feel until he believes he is in the correct space. When Dr. Falabella began the procedure,

plaintiff screamed in pain and lost consciousness. When she awoke several minutes later, her pain was unbearable and was defined by her as "a 20 on a 1-10 scale." Her pain never abated and continues to this day.

PLAINTIFF'S CONTENTIONS:

Plaintiff contended that defendant did not obtain adequate informed consent for the blood patch procedure because he did not disclose that blood injected after he punctured the dura (puncture being a known risk) could cause severe, lifelong pain. Plaintiff also contended that defendant was negligent in the performance of the procedure itself because after he knew or should have known he punctured the dura, he injected blood into Plaintiff's subdural space. As the blood was broken down by the body, the blood products irritated the arachnoid membrane, causing permanent scarring. Plaintiff claimed that defendant pushed the epidural needle too far in and punctured her dura, which is the membrane barrier between the epidural space and the subarachnoid space; and that defendant injected blood directly into her subarachnoid space, damaging her spinal cord and cauda equina nerve roots.

Plaintiff alleged that defendant stated "Oh my God, I punctured the dura." Plaintiff also alleged that defendant tried to cover up his mistake by accusing plaintiff of having a psychiatric disorder as the actual cause of her pain complaints.

Plaintiff called as a witness an unrelated third party who was present near the procedure and overheard what happened, including the allegedly damaging admissions made by defendant. This third-party witness was on another side of the curtain drawn around the plaintiff and the defendant during the procedure. This third-party witness also described defendant as refusing to stop injecting blood into the plaintiff's spinal cord even after the plaintiff was screaming and pleading for him to stop. This third party was cross-examined using the hospital records of her dead daughter, who was also treated by Falabella even though the third party had left specific orders that Falabella was not to touch her daughter.

DEFENDANT'S CONTENTIONS:

Falabella contended that he did obtain proper informed consent. Puncturing the dura during the placement of an epidural needle is a recognized, accepted complication of this procedure since the needle is placed blindly by the doctor. Falabella's technique in placing the epidural needle was appropriate and pursuant to his many years of training as an anesthesiologist. Although Falabella may have nicked the dura, no blood entered the subarachnoid space and touched the spinal cord. Some blood may well have entered the subdural space based upon post-procedure MRI scans. Falabella denied stating "Oh my God, I punctured the dura" because he did not feel that he did so. He did, however, ask the plaintiff's mother whether the patient had a psychiatric history given her extreme pain complaints, which were disproportionate to what one would expect from this procedure. Indeed, discovery did establish a psychiatric history of untreated hypochondria and perhaps even Munchausen's disorder (a patient assuming the sick role and seeking out medical attention in the absence of actual organic illness for attention-seeking purposes or to simply hold their psyche together).

INJURIES: The plaintiff contended that since March 14, 2007, when she underwent this procedure, she has been unable to work or even function outside of her home. She requires assistance to carry out her activities of daily living. She has difficulty bathing and dressing herself and cannot cook for herself. She requires ice packs all night and most hours during the day to tolerate her pain. She is essentially bedridden.

Plaintiff alleged that the blood injected directly into her spinal canal caused her to develop a condition known as arachnoiditis. This condition occurs when the cauda equina nerve roots actually adhere or clump together from scar-tissue formation. The plaintiff alleged that this permanent, lifelong condition is the cause of her incapacitating pain complaints.

The defendant contended that this plaintiff does not have arachnoiditis. This is a radiologic diagnosis, and the plaintiff underwent a series of MRI scans of her lumbar spine after the blood patch procedure. None of these showed any clumping of nerve roots, the radiographic hallmark of arachnoiditis. Rather, the defense alleged that the plaintiff's pain complaints, while apparently real to her, are due to non-organic, somatoform causes.

DAMAGES: The plaintiff alleged that she has spent \$500,000 out of her own pocket in medical expenses, which were not covered by insurance. She also claimed that she requires the services of a nursing aid for the remainder of her life expectancy. She alleged that she must see a number of physicians yearly to keep her pain under control and medicated. According to her experts, this will cost between \$85,000 and \$125,000 per year. Plaintiff therefore made a claim of approximately \$4.9 million in past and future medical expenses.

The plaintiff asked the jury to award \$500,000 in general damages.

JURY TRIAL: Length, 12 days; Poll, 12-0; Deliberation, 55 minutes.

RESULT: Verdict was for the defense on the element of breach of the standard of care. This entitled the defendant to enhance costs pursuant to C.C.P. § 998.

OTHER INFORMATION: The defense of Dr. Falabella was originally with a different law firm. Attorneys from that firm and plaintiff attended a mediation. After negotiating all day, \$420,000 was offered by the defense to settle the case. The defense also requested that confidentiality be part of the settlement. The plaintiff took the position that, if the defense wanted confidentiality, it would cost them an additional \$30,000 and therefore made a demand of \$450,000. The claims representative for the defense insurance carrier then withdrew the prior offer of \$420,000 and stopped all settlement negotiations. The defense of Dr. Falabella was transferred to Law, Brandmeyer + Packer and proceeded to trial. Before trial, an offer for a waiver of costs in exchange for a dismissal was made to plaintiff. This was not accepted.