

VERDICTS & SETTLEMENTS

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FRIDAY, MARCH 20, 2015

PERSONAL INJURY

MEDICAL MALPRACTICE

Pacemaker Battery Replacement

VERDICT: Defense.

CASE/NUMBER: Richard A. Yeager v. HealthCare Partners Medical Group, Stanley K. Kawanishi, M.D. / NC058703.

COURT/DATE: Los Angeles Superior Long Beach / Feb. 10, 2015.

JUDGE: Hon. Michael P. Vicencia.

ATTORNEYS: Plaintiff - Lynn E. Moyer (Law Office of Lynn E. Moyer, Long Beach).

Defendant - Yuk K. Law (Law, Brandmeyer & Packer LLP, Pasadena).

MEDICAL EXPERTS: Plaintiff - Michael Brodsky, M.D., cardiology and electrophysiology, Santa Ana.

Defendant - C. Alan Brown, M.D., cardiology, Santa Barbara.

FACTS: In May 1996, plaintiff Richard A. Yeager experienced an abnormally slow heart rate, or bradycardia, following a right carotid endarterectomy. It was believed that the vagus nerve was stimulated intraoperatively, causing the bradycardia. In July 1996, a pacemaker was placed in plaintiff after he had bradycardia and resulting syncope. In September 2005, plaintiff's pacemaker was replaced after it was determined that the pacemaker battery was about to be depleted.

Plaintiff became Dr. Stanley K. Kawanishi's patient in or around August 2010. Dr. Kawanishi is a cardiologist employed by HealthCare Partners Medical Group. Dr. Kawanishi monitored plaintiff's pacemaker status through March 2011, and was aware of the pacemaker battery status as at the elective replacement indicator, meaning the battery was soon to be depleted. Plaintiff's pacemaker was not replaced.

On Jan. 20, 2012, plaintiff, 84, had syncope while driving his car, crashing it off the side of the street, sustaining damage to his car. Paramedics took him to Long Beach Memorial Medical Center's emergency department, where he had asystole that lasted about nine seconds, presumably due to the bradycardia that could not be paced by a non-functioning pacemaker. Dr. Kawanishi was consulted and he placed a new pacemaker in plaintiff's chest.

PLAINTIFF'S CONTENTIONS: Plaintiff claimed that Dr. Kawanishi should have replaced the pacemaker as early as Aug. 16, 2010, when it was determined that the pacemaker battery was about to be depleted. Plaintiff contended that the standard of care was for Dr. Kawanishi to tell plaintiff that the pacemaker had to be replaced in order to protect him from bradycardia and syncope. Plaintiff contended that Dr. Kawanishi was incorrect in believing that the pacemaker was originally implanted as a result of the vagus nerve stimulation in 1996, which, if true, would have resolved and not have caused bradycardia throughout the years, necessitating a pacemaker replacement in 2005.

Plaintiff contended that had Dr. Kawanishi replaced the pacemaker in 2010 or 2011, he would not have experienced the syncope and car accident in January 2012. Plaintiff also claimed that Dr. Kawanishi did not give plaintiff the proper informed consent information for him to choose the replacement of the pacemaker.

Additionally, plaintiff contended HealthCare Partners Medical Group was negligent in allowing the technicians to re-program plaintiff's pacemaker in 2010 without Dr. Kawanishi's order, and for poor record-keeping due to Dr. Kawanishi's late signatures on plaintiff's electronic medical records.

DEFENDANT'S CONTENTIONS: Dr. Kawanishi contended that he knew plaintiff's pacemaker battery was running low in August 2010, and he tried to preserve the

battery life by re-programming it to go into the ventricular pace mode at a lower threshold of 40 bpm and by turning off the atrium sensing feature. He also monitored and interrogated the device to determine that plaintiff was pacing less than 1 percent of the time between December 2010 and March 2011, indicating that plaintiff was not pacemaker-dependent. Accordingly, he gave plaintiff the options to either undergo outpatient surgery to replace the pacemaker, or to be followed clinically for symptoms of lightheadedness, fainting, shortness of breath, fatigue and syncope in order to decide whether to replace the pacemaker. Dr. Kawanishi claimed he gave plaintiff the risks and benefits of the two options, and plaintiff chose not to replace the pacemaker.

Dr. Kawanishi also testified that he did the reprogramming of the pacemaker, and he was late in signing some of the electronic medical records, but the records were complete and accurate at the time they were entered by him during plaintiff's office visits. Dr. Kawanishi and HealthCare Partners Medical Group also contended plaintiff could not rule in the January 2012 syncope was caused by bradycardia, as plaintiff had a history of episodic seizure disorder.

INJURIES: Plaintiff alleged the failure to replace the pacemaker caused him to have syncope and the January 2012 car accident, resulting in anxiety, depression, fear of driving, and the loss of enjoyment of life. He also alleged he sustained out-of-pocket damages to repair his car, increased auto insurance premium, and medical expenses.

DAMAGES: Plaintiff sought \$3,147 in property damage. Plaintiff also asked the jury to return \$500,000 for past and future non-economic damages.

SPECIALS IN EVIDENCE: MEDS: \$253.

JURY TRIAL: Length, four days; Poll, 10-2 (no negligence); Deliberation, 55 minutes.

SETTLEMENT DISCUSSIONS: Plaintiff demanded \$150,000 to Dr. Kawanishi and \$150,000 to HealthCare Partners Medical Group. Defendant offered a waiver of costs.

RESULT: Defense verdict.