

Case Summary

Edden Bargai, by and through Neta Bargai, v. Nancy Carlson, M.D., District Court, City and County of Denver, Case # 2006 CV 1550. Date of verdict, 18 June 2007.

In this pediatric medical negligence case, a nine year old boy presented to his primary care pediatrician in October, 2004 with symptoms of frequent urination, and neck "stretching." History given during this visit included that 2 years prior, the child had been worked up for short stature with a CT Scan, which was normal, and HGH levels which were slightly below normal. Urinalysis revealed a specific gravity of 1.005 g/ml, which pediatrician reads as normal. Pediatrician diagnoses urinary frequency and motor tic, most likely secondary to anxiety and / or stress, brought about by the child's recent move from another country to the United States.

Undisputed evidence that mother of child consults with pediatrician by phone on at least two occasions following the October, 2004 office exam. Both phone calls are not recorded in the medical chart. Undisputed that mother reports occasional headaches and fatigue in one of these calls. Otherwise, defendant disputes other symptoms reported by mother of continuing and increasing urination, and worsening of the motor tic in the neck.

Child is seen for an office exam on March 15, 2005, reporting headaches, dizziness, visual disturbances, shoulder pain, and increased fatigue. Pediatrician's assessment remains that symptoms are stress or anxiety related. The child is seen again on March 30, 2005, with complaints of acute shoulder pain. Pediatrician orders blood tests, formulates plan including referrals and radiologic study if blood tests return normal.

April 1, 2005, child's blood tests return normal. Pediatrician speaks to mother by phone, stresses psychological etiology, and suggests that child seek psychological evaluation. Radiologic study and other referrals not done. Mother takes child to see school psychologist.

Between April 1, 2005 and May 9, 2005, child's pain symptoms worsen, and evolve. Triage notes from phone calls by mother in mid-April and early May note "pain all over" migrating to groin, missing school, ongoing and progressive visual disturbances, and difficulty sleeping. Pediatrician notes "doubt underlying organic diagnosis."

May 9, 2005, child examined by defendant pediatrician's partner, who finds child unable to bend over. Partner directly admits child to The Children's Hospital, Denver. Exam there demonstrates progressive weight loss for past several months, with the child now at the 5th percentile for weight, <3% for body mass. Hospital work up includes MRI of the C-spine which

reveals a juvenile pilocytic astrocytoma (JPA) in the suprasellar / hypothalamic region of the child's brain, noted to be "obliterating" the third ventricle. Ophthalmologic exam demonstrates severe papilledema.

The child is scheduled for ventriculostomy to decompress and reduce intracranial pressure. Following decompression, the tumor bleeds, necessitating craniotomy to debulk the tumor.

The bleed and craniotomy cause profound cognitive deficits, blindness in the right eye, partial blindness in the left eye, diabetes insipidus, significant Tourette-type tics, and other significant damage.

Plaintiffs brought suit against the pediatrician only, on the contention that she negligently failed timely to refer the child for a diagnostic MRI based upon the history of headaches, visual disturbances, worrisome and inexplicable radiating pain in neck, shoulders, and groin, and in the face of progressive weight loss.

On causation, testimony from plaintiffs' experts was that a diagnosis made 30 days earlier would have allowed for sufficient time to institute 3 cycles of chemotherapy, which would have the effect of controlling further growth of the tumor, thus preventing the bleed and the need for craniotomy.

Verdict:

For plaintiffs: total verdict of \$10,100,000.00, comprised of \$9,000,000.00 in economic damages, including life care planning, lost earnings, and future medical expenses for the child, and \$1,100,000.00 in economic damages for mother for past medical expenses and future medical expenses until the child turns age 18. No damages awarded for pain, suffering, impairment, or disfigurement. (Colorado caps such non-economic damages in any event at \$300,000.00).

Plaintiffs' Experts:

David Kessel, M.D., Arvada Pediatrics, Denver, CO, (retained expert), pediatric standard of care.

Michael Handler, M.D., Chief of Pediatric Neurosurgery, The Children's Hospital, Denver (treating physician), causation.

Nicholas Foreman, M.D., Chair of Neuro-Oncology, The Children's Hospital, Denver (treating physician), causation.

Phil Zeitler, M.D., Ph.D., University of Colorado Health Sciences Center (treating physician), endocrine damage.

Jeanne Dise-Lewis, Ph.D., The Children's Hospital, Denver (treating neuropsychologist), cognitive damage.

Stefan Mokrohisky, M.D., Kaiser Permanente, Denver (current treating pediatrician), visual and neurologic damage.

Jim Gracey, Ph.D., Colorado Institute for Injury Rehabilitation, Denver, CO (retained expert), life care plan.

Pat Pacey, Ph.D., Pacey Economics, Boulder, CO (retained expert), net present value of life care plan and economic losses.

Alan Meyers, M.D., Yale School of Medicine, Guilford, CT (retained expert), certified case under Colorado's certificate of review pre-filing statute.

Defendant's experts:

Paul N. Tschetter, M.D., Denver, pediatrics.

Kenneth Cohen, M.D. Ph.D., Johns Hopkins, neuro-oncology and pediatrics.

Leland Albright, M.D., University of Wisconsin, pediatric neuro-surgery.

John C. Riley, M.D., Denver, radiology.

Counsel for plaintiffs: Jim Chalath (AAJ President's Club) and Chris Koupal, of Chalath Hatten Law Offices, P.C., Denver, Colorado.

Counsel for defendant: Peter Pryor and Kevin Ahearn of Pryor,Johnson, Carney, Karr, Nixon, Denver, Co