

Medical Malpractice

Verdicts, Settlements & Experts

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June, 2020

HIGHLIGHTS

- Failure to Timely Diagnose and Treat Severe Coronary Artery Disease Led to Cardiac Arrest/Death — \$6.3 Million Pennsylvania Verdict, p. 3
- Failure to Treat New-Onset Angina — Death — \$3.9 Million Florida Settlement, p. 3
- Iliac Artery Lacerated During Cardiac Catheterization — \$2.125 Million Pennsylvania Death Case Settlement, p. 4
- Failure to Observe Early Signs of Oral Carcinoma — \$2.1 Million New Jersey Verdict, p. 5
- Non-Existent Multiple Sclerosis Treated for Six Years — \$2 Million Massachusetts Settlement, p. 5
- Failure to Properly Treat and Diagnose Myocardial Infarction Symptoms — \$2 Million New Jersey Defense Settlement., p. 6
- Failure To Order Ultrasound or Conduct Internal Exam — Cervical Cancer — \$9.6 Million Pennsylvania Verdict, p. 6
- Failure to Timely Diagnose and Treat Aortic Rupture — Death — \$1 Million Massachusetts Settlement, p. 7
- Abbott Nav6 Emboshield Catheter Defect — Stroke — \$5 Million Gross Verdict in Texas, p. 7
- Tobramycin Poisoning — \$4.31 Million Michigan Verdict, p. 7
- Traveling Nurse Fails to Properly Monitor Infant During Extended Labor — Hypoxic Brain Injury, Quadriplegia — \$30.6 Million Massachusetts Verdict, p. 11
- Lack of Supervision and Monitoring Blamed for Death at Assisted Living Facility — \$6 Million Florida Verdict, p. 12
- Hypoxic Ischemic Encephalopathy After Delayed Vacuum-Assisted Delivery — \$2 Million Virginia Settlement, p. 13
- Failure of Defendant Ophthalmologist to Create Wider Incision Before Removing Displaced Intraocular Lens — \$1.151 Million New York Verdict, p. 13
- Failure to Diagnose Lateral Talus Fracture — \$1.204 Million Virginia Verdict, p. 13
- Failure to Timely Diagnose and Treat Hyperbilirubinemia — Permanent Brain Damage, Spasms, Cerebral Palsy — \$1.3 Million Virginia Settlement, p. 14
- Burns of Part of Small Bowel During Polyp Surgery Result in Death — \$13 Million New York Verdict, p. 16
- Instrument Count Protocol Ignored, Sponge Left in Patient — \$950,000 South Carolina Settlement, p. 16

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June 2020

TABLE OF CONTENTS

Anesthesiology	3
Cardiology	3
Dental & Oral Surgery.....	5
Dermatology	5
Diagnosis Errors	5
Drugs and Devices	6
Emergency Medicine	7
Hospitals	8
Medicine	9
Neonatology	10
Neurology	11
Nursing	11
Nursing Homes	12
Obstetrics	13
Ophthalmology.....	13
Orthopedics	13
Pain Management	14
Pediatrics	14
Pharmacy.....	15
Radiology	15
Surgery	15

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ANESTHESIOLOGY

Failure to Monitor Elderly Patient During Spinal Surgery — Blindness — \$500,000 New Jersey Settlement. The plaintiff, a seventy-two year old man who was undergoing his third spinal surgery, contended that the defendant anesthesiologist negligently failed to adequately monitor him during a six hour surgery. The plaintiff maintained that as a result, he was in a hypotensive state for an excessive portion of the surgery, resulting in hypoperfusion that caused severe injury to both optic nerves. He was left totally blind. The defendant asserted that he properly monitored the patient and acted appropriately. The defendant contended that the injury stemmed from extensive co-morbidities.

The case settled for \$500,000.

Plaintiff's Experts: Peter Salgo, M.D., anesthesiology, New York, NY, Robert Leon Tomsak, M.D., neurology, Detroit, MI. **Lancin v. Lee, et al.** Bergen County (NJ) Superior Court Case No. BER-L-9433-15. Ernest Fronzuto and Adam Boyle, Woodland Park, NJ for the plaintiff.

MMVSE No. 200625

Failure to Prevent or Properly Treat Respiratory Distress During Anterior Cervical Discectomy — Texas Confidential Settlement. The plaintiff's husband, a forty-four year old incapacitated man, was admitted to the hospital for neck pain and bilateral hand numbness that he had been experiencing for the past six weeks. The patient underwent a C3-6 anterior cervical discectomy with interbody fusion and application of biomechanical interbody spacers at C3-4, C4-5, C5-6, and C3-6 which was performed by the defendant surgeon. Following the surgery, the patient began to feel a choking sensation which he reported to the nurses, who reported it to the defendant. The defendant ordered Decadron 6mg IV, 6 hr. for 24 hrs. The patient developed severe respiratory distress, became unresponsive, lost his pulse, and a code was called. Due to a number of breaches in the standard of care, it took over 50 minutes to establish an airway. The patient was found to have suffered severe brain injury which left him in a persistent vegetative state. The plaintiff alleged the defendants were negligent in failing to properly monitor and assess the patient's condition, failing to adequately inform his physicians of significant changes in condition, failing to timely transfer him to the ICU and failing to have the necessary equipment readily available. The plaintiff alleged that the defendant surgeon was negligent in failing to adequately respond to a change in condition, failing to transfer the patient to the ICU, and failing to order an emergency airway kit. The defendants made a general denial of all allegations of negligence.

The parties reached a confidential settlement.

Plaintiff's Expert: William J. Mazzei, M.D., anesthesiology, San Diego, CA.

LaTanya Brown, individually and as next friend for Arthur James Berger, IV and C.B., a minor v. Methodist Health Centers et al. Harris County (TX) District Court Case No. 201821217. Levi Glenn, Dallas, TX for the plaintiff. John C. Landa, Jr., Houston, TX for the defendants.

MMVSE No. 200639

CARDIOLOGY

Failure to Timely Diagnose and Treat Severe Coronary Artery Disease Led to Cardiac Arrest/Death — \$6.3 Million Pennsylvania Verdict. The forty-eight year old decedent went into cardiac arrest while he was out jogging. He had been treated by the defendant cardiologist six weeks earlier. The plaintiff alleged that the defendant negligently failed to appreciate signs and symptoms of severe coronary artery disease and to render treatment which would have prevented his death. When the defendant cardiologist saw the decedent on July 11, 2016, he diagnosed him with anxiety and panic attacks. The plaintiff contended that the decedent was suffering from unstable angina at the time of his visit. On August 23, 2016, the decedent collapsed while jogging. A neighbor attempted CPR and called 911. The decedent was transported to the hospital where he was pronounced dead. An autopsy listed his death as an arrhythmia and cardiac arrest due to severe coronary artery disease. The plaintiff argued that the autopsy also showed severely constricted coronary and anterior descending arteries, which should have been discovered by the defendant. The defendant denied falling below the standard of care. The jury awarded the plaintiff \$6.3 million.

Plaintiff's Expert: Emil Hayek, M.D., cardiology, Hudson, OH.

Cowher v. Kodail and St. Luke's University health Network. Lehigh County (PA) Court of Common Pleas Case No. 2018-C-0264. Andrew Youman, Philadelphia for the plaintiff.

MMVSE No. 200615

Failure to Treat New-Onset Angina — Death — \$3.9 Million Florida Settlement. According to plaintiff, decedent advised the defendants of his medical history which included coronary artery disease and that two percutaneous coronary interventions with multi-vessel stent placement had been performed several years earlier. In February 2017, the defendant primary care physician prescribed phentermine for weight loss to the decedent, which was contraindicated in patients with a history of coronary artery disease. The same month, the defendant also prescribed testosterone, despite the decedent's blood test not showing

testosterone levels outside the normal range, and also that it was contraindicated with patients diagnosed with coronary artery disease. In April 2017, in response to the decedent's blood tests showing high testosterone and estradiol levels, the defendant physician did not discontinue testosterone, but instead prescribed anastrozole (used by postmenopausal women with breast cancer). The plaintiff alleged that the FDA warned that this drug is also associated with increased incidence of ischemic cardiovascular events. On September 22, 2017 the defendant P.A. was the only medical provider present when the decedent presented at the defendant health clinic with complaints of new onset chest pain, lightheadedness, dizziness and pain and pressure radiating into his left arm. The P.A. ordered an EKG which the plaintiff argued showed markers of ischemia, possible necrosis and infarction. The plaintiff alleged that the P.A. advised the decedent to follow up with the defendant cardiology center 22 miles away. There decedent came under the care of the defendant cardiologist on September 28, 2017. The decedent underwent a nuclear stress test on October 6, 2017. The plaintiff alleged that, within the first several minutes of the exercise portion of the test at low heart rate, the decedent demonstrated chest pain, EKG changes diagnostic for ischemia, and a drop in blood pressure. Despite these early positive, high-risk findings, the plaintiff alleged that an unnecessary chemical stress test was performed immediately afterwards and also revealed high-risk changes indicative of ischemia. The plaintiff claimed that the decedent was negligently permitted to leave the center, without any lifesaving medications, instructions, warnings or a plan to address his high-risk state. The next day, the decedent collapsed and died of a heart attack at age forty-six.

The case was settled for \$3.9 million.

Moran v. Deerfield Florida House, Inc., et al. Broward County (FL) Circuit Court Case No. CACE17023221. Catherine C. Darlson, Ft. Lauderdale, FL for the plaintiff. MMVSE No. 200628

Iliac Artery Lacerated During Cardiac Catheterization — \$2.125 Million Pennsylvania Death Case Settlement. The plaintiff's decedent, sixty-five with a history of pneumonia, DVT and idiopathic pulmonary fibrosis, presented to the defendant hospital with cardiac issues. Cardiology concluded after testing that the decedent should undergo a cardiac catheterization, which was performed by the defendant cardiologist. Defendant performed a high needle stick in the right iliac artery. Immediately following the procedure, the decedent complained of right quadrant pain and right flank pain. A CT-scan was ordered, along with blood work and pain medications. Decedent began thrashing in pain and suffered changes in mental and physical status. The decedent suffered a large retroperitoneal bleed. Defendant attempted to control the bleed via medications but was unsuccessful and the decedent's condition deteriorated. Ten hours later the decedent was taken back to surgery where an active right iliac artery bleed was found. Intraoperatively, the decedent developed DIC, renal failure and multi-organ failure and he died. The plaintiff maintained that the defendants were negligent in failing to properly and timely address the decedent's post catheterization pain, failing to recognize the significance of the right lower quadrant and right flank pain and failing to properly evaluate and treat his severe pain.

All defendants were dismissed from the action except the defendant surgeon, his practice and the defendant hospital. The defendant settled with the estate for \$2.125 million.

The Estate of Seane Zolliner by James Zolliner v. University of Pittsburgh Physicians, James O'Toole, M.D., Pittsburgh Cardiology Consultants, P.D. Viktor Okwiya, M.D. and Medical Thoracic Associates. Allegheny County (PA) Court of Common Pleas Case No. GD-16-007591. Regan Safier, P ittsburgh for the plaintiff. John C. Conti, Pittsburgh for the defendants. MMVSE No. 200608

Failure to Properly Treat and Diagnose Myocardial Infarction Symptoms — New Jersey Defense Verdict. The decedent, a thirty-nine year old man, presented via ambulance to the ER, on October 2, 2014. He complained of difficulty breathing and an EKG was performed. The defendant cardiologist called the defendant ER physician with his findings. According to the cardiologist, he advised the defendant ER physician that his interpretation of the EKG revealed new findings consistent with myocardial infarction. The defendant ER physician denied receiving that information and discharged the plaintiff with a diagnosis of bronchitis. The morning after his discharge, the plaintiff collapsed at home and was taken to the hospital where he died as a result of cardiac arrest. The plaintiff wife was in the same hospital when the decedent initially presented to the ER because she had given birth to the couple's son two days prior. Neither defendant was a hospital employee. The defendant cardiologist denied any wrongdoing.

The jury found no cause of action against the cardiologist.

Estate of Joshua A. Fischel v. Lejla Mujic, M.D., et al. Essex County (NJ) Superior Court Case No. L-004249. Dennis M. Donnelly, Summit, NJ for the plaintiff. Russell L. Hewitt, Cranford, NJ; Rachel M. Schwartz, Morristown, NJ for the defendants. MMVSE No.200629

Alleged Mismanagement of Use of Amiodarone — Louisiana Defense Verdict. The plaintiff's decedent had a long history of cardiac problems that included defibrillator placement in the 1990s. A prior cardiologist had prescribed Verrett Amiodarone. The defendant cardiologist began to supervise the decedent's care starting in 2002. He did not prescribe Amiodarone to the decedent but continued to monitor him. In April of 2007, there was proof that decedent had a pulmonary problem. A year later the decedent's dosage was inexplicably doubled from 200 mg to 400 mg. That was apparently due to an error at a Wal-Mart

pharmacy. In March of 2010 the defendant examined the decedent and appreciated an apparent pulmonary dysfunction. Defendant discontinued the use of Amiodarone and referred him to a pulmonologist. She identified that the decedent had developed APT. He died two years later. The plaintiff alleged both a dosage error by Wal-Mart (which settled) and that defendant physician failed to manage the decedent's medication use beginning in 2002. The defendant contended that he had never actually prescribed the medication to the decedent.

The jury found in favor of the physician.

Defendant's Expert: David Elizardi, cardiology, M.D., New Orleans, LA.

The Estate of George Verrett v. George Thomas, M.D., et al, St. Tammany County (LA) District Court Case No. 14760. Harry T. Widmann, Metairie for the plaintiff. C. William Bradley, Jr. and Benjamin J. Biller, New Orleans for the defendant.

MMVSE No. 200619

DENTAL & ORAL SURGERY

Failure to Observe Early Signs of Oral Carcinoma — \$2.1 Million New Jersey Verdict. The plaintiff, a fifty eight year old man, contended that the defendant dentist negligently failed to consider that a small area of red ulceration constituted signs of squamous cell carcinoma. The plaintiff maintained that timely investigation would have revealed either a precancerous condition, or at worst, a very early cancer that could have been treated with excision only. The plaintiff asserted that because of the delay and progression, he required very extensive reconstructive surgery entailing the use of muscle and bone from his leg. The defendant contended that she performed a very careful exam that would have disclosed the lesion if it had been present. The plaintiff maintained that the moderate cosmetic deformity is permanent in nature. He also claimed that he has difficulties eating and must drink from a straw.

The jury awarded the plaintiff \$2.1 million.

Plaintiff's Experts: James Scuibba, D.D.S., dentistry, Baltimore, MD. Michael Most, M.D., otolaryngology, Morristown, NJ. Daniel Schmid, M.D., plastic surgery, Morristown, NJ.

Anonymous Fifty-Six Year-Old Man v. Anonymous Dentist, Union County (NJ) Superior Court Case No. ___. Jack Wurgaft, Springfield for the plaintiff.

MMVSE No. 200612

DERMATOLOGY

Failure to Timely Diagnose and Treat Malignant Melanoma — \$500,000 Florida Verdict Against Pathologist. The plaintiff presented to the defendant dermatology practice for a routine dermatological examination. The treatment included removal of an abnormal nevus from this right chest wall. The excised tissue was reviewed and interpreted by the defendant pathologist on June 11, 2014, and classified as a non-malignant edematous intradermal nevus. In February 2016, there was a recurrence of the lesion in the area of the previously removed nevus. A second biopsy showed residual malignant melanoma present in lateral and deep margins with scar tissue consistent with prior surgical procedure. The plaintiff contended that corrected report of the previous 2014 biopsy revealed malignant melanoma nodular type with nevoid features invasive to level IV and a measured thickness of 2 mm which was missed by the defendant. The plaintiff alleged that the delay in diagnosis and treatment caused a diminished chance of surviving the cancer and increased the risk of the melanoma recurrence. The defendant pathologist maintained that he rendered a reasonable interpretation of the plaintiff's tissue sample in light of the pathological presentation of the 2014 biopsy. The jury found the defendant pathologist negligent and awarded the plaintiff \$500,000.

Plaintiff's Expert: David Molthrop, M.D., oncology, Orlando, FL.

Clyde v. Dermatology Assoc. Palm Beach County (FL) Circuit Court Case No. 502016CA009584XXXXMB. F. Gregory Barnhart, West Palm Beach, FL for the plaintiff.

MMVSE No. 200602

DIAGNOSIS ERRORS

Non-Existent Multiple Sclerosis Treated for Six Years — \$2 Million Massachusetts Settlement. The plaintiff was treated by the defendant neurologist for a period of almost seven years. Following a misdiagnosis of multiple sclerosis, the defendant then embarked on a treatment plan that consisted of chemotherapy and numerous medications. These unnecessary treatments and medications caused the plaintiff to suffer complications, including pulmonary embolisms, a compromised immune system, hair loss, fatigue and ultimately, infertility. The plaintiff actually suffered from migraines which she unnecessarily endured and suffered from throughout this period of time, receiving no treatment from the neurologist. The defendant denied any wrongdoing. The parties reached a \$2 million settlement. **Anonymous Misdiagnosed Patient v. Anonymous Neurologist Roe.** __ County (MA) District Court Case No. ___. Kevin Donius and Ralph F. Sbrogna, Worcester for the plaintiff.

MMVSE No. 200610

Lung Cancer Misdiagnosed as Fungal Pneumonia — Death — Pennsylvania Defense Verdict. The plaintiff's decedent was hospitalized from December 4, 2013 to December 17, 2013 with what was believed to be pneumonia. On December 12, 2013, the decedent underwent a CT Thorax without contrast. The radiologist interpreted the CT as a small mass-like foci in the left upper lobe and commented: "An underlying malignancy cannot be excluded. Tissue sampling might be warranted". On December 13, 2013, decedent underwent a bronchoscopy. The results yielded no useful diagnostic information, yet defendant took no steps to diagnose the etiology of the process in the decedent's left-upper lobe. On January 24, 2014, the decedent was seen for an office visit. He underwent an x-ray for his shoulder for an issue unrelated to his lung issues. The radiologist interpreted the shoulder x-ray and noted an opacity in the left upper lobe and included in his impressions the need for follow-up. On February 5, 2014, the decedent was seen by defendant physician for a follow-up visit. During the visit, the defendant incorrectly diagnosed the decedent with fungal pneumonia. On June 3, 2014, the decedent underwent a CT-scan which revealed inflammatory lung issues, with possible malignancy. A needle biopsy was performed; however, the tissue sampling was too small and it was recommended that the decedent give more tissue if clinical evidence of a tumor persisted. No further tests were taken by the defendants. On May 13, 2015, the decedent presented again to the defendant with multiple complaints. He was sent to the ER for stat labs due to fever, tachycardia and looking generally unwell. Decedent was diagnosed with Stage IV non-small cell carcinoma of the lung. The cancer had metastasized to his lymph nodes. He died on July 18, 2015.

The jury found no negligence on the part of the defendants.

The Estate of Felix Taylor by Venus Taylor v. Mohammad A. Sayeed, M.D., Suburban Pulmonary Medicine, P.C., et al. Philadelphia County (PA) Court of Common Pleas No. 170600944. Jason S. Weiss, Philadelphia for the plaintiff. Michael E. McGilvery, Prussia for the defendants.

MMVSE No. 200638

DRUGS AND DEVICES

Abbott Nav6 Emboshield Catheter Defect — Stroke — \$5 Million Gross Verdict in Texas. The seventy-three year old plaintiff was admitted to the hospital for placement of a stent to treat severe carotid artery stenosis. The defendant first attempted to use an Abbott Accunet to open the patient's artery. When he encountered difficulty in advancing the wire, he changed instruments and attempted to open the artery with the defendant Abbott's Nav6 Emboshield catheter. During the procedure, the Nav6 filter came off the end of the wire and floated into the patient's cerebral vasculature leading to his brain and causing a severe stroke which led to his death two years later. The estate brought suit against the defendant surgeon, the catheterization technician, the defendant hospital and the company that manufactured the catheter, for negligence. The defendants except for the manufacturer were dismissed prior to trial. The estate alleged the defendant manufacturer's device was defective. As a result of the stroke, the decedent lost the use of his entire left side of his body. The defendant denied liability.

The jury found the physician 70% liable, the defendant hospital was 20% liable and the defendant medical device manufacturer was 10% negligent. The jury awarded the estate \$5 million in damages.

The Estate of Charlie Acebo, Jr. by Gail Stephens Acebo v. Abbott Labs, Tomball Regional Medical Center, Waqar Kahn, M.D. and Chris Davis. Harris County (TX) District Court Case No. 201657965. Timothy Dennis Riley, Houston, TX for the plaintiff. Christopher Michael Raney, Houston, TX for the defendants.

MMVSE No. 200614

Tobramycin Poisoning — \$4.31 Million Michigan Verdict. The plaintiff presented to the defendant physician's primary care physician complaining of a fever, chills, nausea and lethargy. The defendant suspected that she had an infection. He ordered a C&S, CBC, and a chest x-ray. Plaintiff was started on Rocephin before the results of the C&S were obtained. Plaintiff was discharged from defendant hospital. The defendant advised plaintiff to continue IV Tobramycin therapy on an outpatient basis. Given the dose of Tobramycin prescribed, 300 mg IV every 24 hours, and the duration of time plaintiff was to take the medication, plaintiff argued that defendant should have ordered trough and peak level monitoring of the drug. Instead, she only received the concentrations and trough for three days. Plaintiff alleged that the failure to monitor her for Tobramycin poisoning was a violation of the standard of care. Almost one month later the plaintiff received the last dose of Tobramycin and had blood drawn. The results were abnormal including, but not limited to, elevated BUN and creatinine. The lab results suggested that she was toxic and her kidneys were starting to fail. Subsequently, she was diagnosed with eighth cranial nerve palsy and vestibular nerve damage. She was diagnosed with vestibular disease, secondary to the Tobramycin. Defendants argued that plaintiff had fully recovered from her vestibular dysfunction within a matter of weeks and that she was back to baseline. Defendants denied liability. Defendants argued that plaintiff had approximately six months to live when she was started on the medication, and permanently damaging her kidneys cured her of magnesium wasting syndrome and, consequently, saved her life.

The jury awarded the plaintiff \$4.31 million.

Julie Harris v. Bonnie Hafeman, M.D., et al. Houghton County (MI) Circuit Court Case No. 12-015344. Brian J. McKeen, John R. LaParl Jr. for the plaintiff. Ryan Ewles, Susan MacGregor for the defendants.

MMVSE No. 200623

EMERGENCY MEDICINE

Failure To Order Ultrasound or Conduct Internal Exam — Cervical Cancer — \$9.6 Million Pennsylvania Verdict. The minor plaintiff, an eleven year old girl, presented to the defendant ER with an approximate six-month history of continual vaginal bleeding, the defendant ER physician negligently failed to either order an ultrasound or conduct an internal exam. The plaintiff asserted that as a result, cervical cancer, which was then at Stage I or II and was confined to the cervix, was allowed to get worse. The plaintiff maintained that as a result of the nine-month delay, the cancer advanced to Stage IV, invaded the distal portion of the vagina and that in addition to chemotherapy and radiation treatments, which would not otherwise have been necessary, the plaintiff required extensive surgeries including a pelvic exenteration. These procedures removed her bowel, bladder, rectum, anus and vagina and a colostomy, a urostomy tube and a nephrostomy tube, which has to be drained every three months, were installed. The plaintiff was placed on experimental medication which matches the genetic makeup of the cancer. The medication has cardiac consequences. It is doubtful that the minor plaintiff will live beyond 25 years old. The defendant physician denied that the testing advanced by the plaintiff was required by the standard of care.

The jury found that the settling primary care physicians were not negligent, that the settling ob/gyn was 50% negligent and that the hospital and its ER clinic were a total of 50% negligent. They then rendered a gross award of \$9.6 million.

Plaintiff's Expert: Charles Mitchell Goldberg, M.D. , emergency medicine, San Francisco, CA.

Anonymous Eleven Year-old Girl v. Anonymous Defendant Hospital, et al, Berks County (PA) Court of Common Please Case No. ___. Joshua VanNaarden, Philadelphia, PA for the plaintiff.

MMVSE No. 200627

Failure to Properly Treat and Diagnose Myocardial Infarction Symptoms — \$2 Million New Jersey Defense Settlement.

The decedent, a thirty-nine year old man, presented via ambulance to the ER, on October 2, 2014. He complained of difficulty breathing and an EKG was performed. The defendant cardiologist called the defendant ER physician with his findings. According to the cardiologist, he advised the defendant ER physician that his interpretation of the EKG revealed new findings consistent with myocardial infarction. The defendant ER physician denied receiving that information and discharged the plaintiff with a diagnosis of bronchitis. The morning after his discharge, the plaintiff collapsed at home and was taken to the hospital where he died as a result of cardiac arrest. The plaintiff wife was in the same hospital when the decedent initially presented to the ER because she had given birth to the couple's son two days prior. Neither defendant was a hospital employee. The defendant cardiologist denied any wrongdoing.

The ER physician settled before trial for \$2 million.

Estate of Joshua A. Fischel v. Lejla Mujic, M.D., et al, Essex County (NJ) Superior Court Case No. L-004249. Dennis M. Donnelly, Summit, NJ for the plaintiff. Russell L. Hewitt, Cranford, NJ; Rachel M. Schwartz, Morristown, NJ for the defendants.

MMVSE No.200630

Failure to Timely Diagnose and Treat Aortic Rupture — Death — \$1 Million Massachusetts Settlement. The forty-five year old decedent presented to the ER of the defendant hospital with complaints of shortness of breath and chest pain. A portable chest x-ray was used and the defendant radiologist read the x-ray as normal. The decedent still complained of significant pain and shortness of breath, he was admitted to the hospital for further observation. He was found by the defendant's staff on the floor of his room twitching and foaming at the mouth. He was given Ativan and a nonrebreather mask and put back into bed. He was found a second time, shortly thereafter, on the floor with vomit. At that time, an echocardiogram was performed which revealed an ascending aortic dissection significantly dilated at 7.2 cm. He was emergently transferred to a tertiary care facility for emergency surgery. He became unresponsive as he was induced for surgery and could not be resuscitated. The decedent suffered a fatal aortic rupture. The plaintiff alleged the defendants were negligent in the treatment of the decedent. The defendants denied any wrongdoing.

The parties agreed to a \$1 million settlement.

Estate of Anonymous Decedent v. Hospital Roe. __ County (MA) District Court Case No. __. Andrew C. Meyer, Jr. and Kraysia J. Syska, Boston, MA for the plaintiff.

MMVSE No. 200632

Ambulance Passenger Suffered Injuries After Driver Speeds Through an Intersection Crashing Into Another Vehicle — \$66,770 Kentucky Verdict. The plaintiff, a fifty five year old man, suffered a fall at his home. This set off a seizure. An ambulance was called, and the plaintiff was taken to the hospital. As the defendant ambulance driver proceeded on U.S. 60, traveling at 71 mph as he went through a red light at an intersection, his lights and sirens were operating. At the same time, defendant vehicle driver was proceeding on an adjacent highway and went through the intersection. She didn't appreciate the speeding ambulance as the light turned green for her and she started forward. A collision occurred in the intersection. The plaintiff was thrown and jostled by the impact and struck the ambulance's wheel well. He suffered a significant cut to his head in that process. A second ambulance was summoned and it safely transported the plaintiff to the ER. The plaintiff blamed the other

vehicle for failing to yield. She settled with the plaintiff for \$25,000. The plaintiff also alleged that the ambulance driving was speeding through the intersection. The defendant denied liability and blamed the defendant vehicle driver for the collision in failing to yield to the ambulance. A witness indicated that she was on her cellphone in the moments before the wreck. The jury assessed 75% fault to the defendant and the remaining 25% to the vehicle driver. The jury awarded the plaintiff \$66,770. **Ronald Thompson v. Ballard County Fiscal Court.** McCracken County (KY) Circuit Court No. 17-1010. Mark Edwards and Chuck Tveite, Paducah for the plaintiff. William E. Pinkston and Alex Blackwell, Paducah for the defendant. MMVSE No. 200643

HOSPITALS

False Claims Act Proceeding Based on Medicare Fraud — \$10.9 Million Mississippi Verdict. The defendant operated a company called Corporate Management Inc. The defendant CEO took over plaintiff's hospital that had been closed and reopened it in 2002. It was designated a critical access hospital for purposes of Medicare and thus was entitled to more favorable Medicare reimbursement. The defendant paid himself millions in salary to run the hospital. His wife was also paid a large salary for her consulting and management. There was proof defendant also leased a BMW automobile and billed it to Medicare. The realtor filed a sealed False Claims Act lawsuit in May of 2007 which alleged that the defendants had defrauded Medicare by improperly billing for services that were never rendered. The lawsuit was not unsealed until 2016 after an investigation lasted eight years. The plaintiff argued that at times the defendant's salary equated to \$1,300 an hour. The defendants denied they had done anything wrong.

The plaintiff prevailed on both False Claim Act and Unjust Enrichment counts against the defendants. The plaintiff was awarded \$10.9 million.

James Aldridge, et al v. Corporate Management Inc. U.S. District Court S.D. Mississippi No. 1:16-369. A. Thomas Morris and Elspeth A. England, Washington, D.C. and Angela G. Williams, Jackson, MS; John F. Hawkins, Jackson and J. Brad Pigott, Jackson, MS for the plaintiffs. D. Ronald Musgrove, Ridgeland, MS; Brett Ross and Daniel Harris, Birmingham; AL Nicole C. Huffman, Gulfport, MS for the defendants. MMVSE No. 200620

Failure to Respond to Cardiac Alarm Blamed for Death — \$900,000 Michigan Settlement. The plaintiff's decedent, a fifty-two-year-old man, had undergone laparoscopic hernia repair surgery, and was recuperating at the defendant hospital. Three days following the surgery, the decedent was experiencing shortness of breath and pain in his chest. During the day, the rapid response team was called twice. The decedent's oxygen saturation levels dropped to below sixty percent, and he was given oxygen and medication for the pain. A bedside cardiac alarm was activated to monitor the decedent, and if he experienced distress, the alarm would sound. Early the next morning, the alarm went off and printed a cardiac monitor strip because the defendant was experiencing irregular heart rhythm. No one responded to the sound of the alarm. After a while, the decedent's heartbeat went back to normal, but soon after, he suffered a respirator event. His oxygen saturations dropped, his heart slowed, and finally stopped. The decedent was finally resuscitated, but he had been deprived of oxygen for too long and was brain dead. He remained on life support for four months until he died. The plaintiff alleged that had the hospital personnel responded to the decedent's alarm when it sounded, they could have known the decedent's oxygen saturations were descending and could have monitored him more closely, avoiding the episode where his heart stopped, preventing his eventual death.

The case settled for \$900,000.00.

Estate of Anonymous Fifty-Two Year Old Man v. Anonymous Hospital, et al, _____ County (MI) Circuit Court No. _____. Andy Dragovic for the plaintiff. MMVSE No. 200646

Fall Follows Solumedrol Injection — \$400,000 New Hampshire Verdict. The plaintiff presented to the defendant ER with swelling of his eye. After examination by a physician's assistant, it was determined that the plaintiff would be given an injection of solumedrol. The injection was to be given directly into the plaintiff's eye. The plaintiff advised the nurse who was administering the medication that he was deadly afraid of needles. The defendant's nurse summarily dismissed his comments stating "everyone was afraid," administered the shot and then directed the plaintiff to immediately get up and follow her. When the plaintiff stood up, he suffered a vasovagal response and fainted. Falling on his face on the floor. The plaintiff suffered various injuries as a result of the fall, including a comminuted bilateral fracture of his jaw, multiple avulsed teeth, a degloving injury to his gum line and a permanent nerve injury to the area below his chin. The plaintiff alleged that the defendant's nurse failed to follow proper procedures and failed to assess the plaintiff prior to making him walk unattended which resulted in his fall. The defendant denied the allegations and maintained that there was no causal relationship between the plaintiff's fall and the injection by the nurse.

The jury awarded the plaintiff \$400,000.

Aaron Wedgewood v. HCA health Services of New Hampshire, Inc. Rockingham Co. (NH) Superior Court No. 218-2017-CV-00534. Joseph J. Russon, Nashua, NH for plaintiff.
MMVSE No. 200631

Failure to Have Full-time On-Site Interpreter — Arizona Federal Court Awards “Legal Fees” as Damages. The plaintiff was admitted to a hospital with abdominal pain. She remained hospitalized for nine days. During that period, plaintiff and her husband, both hearing impaired, struggled to communicate with hospital staff. The hospital did not have an on-site interpreter. It instead used an auxiliary video system with an off-site interpreter. The video was not clear and the system essentially did not work. The plaintiffs were forced to communicate with notes. They believed this was inadequate and left them frustrated, fearful and anxious about the plaintiff’s condition and how they were communicating it. The plaintiffs alleged the defendants engaged in ADA disability discrimination. They argued the hospital chain should have had a full-time, on-site deaf interpreter. The hospital defended that it did have interpreters available to its patients that are provided in 80 different languages. The hospital also argued it would be too much of a burden to require a 24-hour seven day a week interpreter for a service that is rarely used.

Although the jury found for the plaintiffs on the disability discrimination count, it awarded only “legal fees” as damages. The court vacated that damage award for “legal fees” and denied the plaintiffs motion for a new trial. The plaintiffs have appealed. A motion for statutory attorney fees as prevailing party in the amount of \$333,359.92 is pending.

Dawn and Mitchell Siegel v. Chandler Regional Medical Center. U.S. District Court D. Arizona No. 2:14-2561. Elizabeth D. Tate, Phoenix AZ for the plaintiff. Elizabeth D. Stallard and Jennifer L. Williams, Sacramento, CA for the defendant.
MMVSE No. 200601

Patient Falls Off MRI Table — Michigan Defense Judgment. The plaintiff, a woman with complaints of back pain, reported to the emergency room and was given a prescription for an MRI. The plaintiff returned to the hospital several days later for her MRI. The imaging was performed in a mobile MRI unit owned and operated by the defendant. The technician greeted the plaintiff and began the test. While in the machine, the plaintiff told the technician she was in pain and wanted to be removed. The technician removed the plaintiff and went to the next room to get help. While the technician was gone, the plaintiff fell off the MRI table and was injured. The plaintiff alleged the defendant and the technician were guilty of medical malpractice. The defendant was granted summary judgement.

LaFave v. Alliance Healthcare Services Inc., Marquette County (MI) Circuit Court No. MiLW 07-102419. Stephanie L. Arndt for the plaintiff. Scott L. Feuer, Feuer Bruening, Troy, MI for the defendant.
MMVSE No. 200649

MEDICINE

Alleged Failure to Diagnose Pulmonary Emboli Crisis — Kentucky Defense Verdict. The plaintiff’s decedent, a thirty four year-old man weighing 440 pounds, was brought to the hospital via ambulance. He was suffering from severe shortness of breath. The ER physician ordered a CT scan which showed extensive bilateral pulmonary emboli. He was admitted to the hospital under the care of defendant hospitalist. Anticoagulation regimen was started and decedent was discharged to a sub-acute floor two days later. He was discharged ten days later to a friend’s home, which had stairs that he could not manage. Decedent returned four days later to the ER, again complaining of shortness of breath. An EKG and troponin level was ordered. The decedent coded two hours later and he could not be revived. The cause of death was listed as pulmonary thromboembolism with obesity as a contributing factor. The plaintiff alleged that defendant physician failed to order sufficient diagnostic testing. The defendant argued that his care was reasonable as he succeeded in achieving a therapeutic level of anticoagulation.

The jury returned a defense verdict.

Plaintiff’s Experts: Jeffrey Roth, M.D., internal medicine, Clearwater, FL. Tunay Kuru, M.D., pulmonology, Washington, DC.

Defendant’s Experts: Eric Kirschner, M.D., pulmonology, Lima, OH. Jeffrey Kopin, M.D., internal medicine, Chicago, IL. James Dunnington, M.D., pathology, Campbellsville, KY. Richard Krause, M.D., emergency medicine, Buffalo, NY. Robert Hyzy, M.D., critical care, Ann Arbor, MI.

The Estate of Christopher Maynard v. Chris Wong, M.D., et al. Campbell County (KY) Circuit Court Case No. 14-870. Miller Kent Carter, Pikeville; Christian R. Harris, South Williamson and Michael Lucas, Williamstown for the plaintiff. Benny C. Epling, II and Charles D. Aaron, Jr. Lexington; Ellen M. Houston and Ryan M. McClane, Crestview for the defendants.

MMVSE No. 200645

Alleged Failure to Timely Diagnose and Treat Spinal Injury — Florida Defense Verdict. The plaintiff presented to the defendant on April 27, 2012 with complaints of low back pain. He presented again with the same complaints two weeks later. On June 5, 2012, the plaintiff contacted the defendant by telephone with complaints that his symptoms had significantly worsened. The defendant ordered pain medication and PT. The plaintiff subsequently suffered paralysis of his feet which he alleged was caused by nerve root damage of the lumbar spine. The plaintiff contended that the defendant doctor deviated from the required standard of care in failing to order appropriate testing to diagnose and treat the condition. The plaintiff alleged that, as a result of the defendant's negligence, he suffered permanent injury to the nerve roots of his lumbar spine. The defense maintained that the defendant rendered reasonable treatment.

The jury returned a defense verdict.

Albarado v. Ng, et al. Seminole County (FL) Circuit Court Case No. 2013-CA-003428-09. Craig S. Foels, Michael A. Estes and Clayton M. Williams, Maitland, FL for the defendant.

MMVSE No. 200635

Alleged Failure to Diagnose Prostate Cancer — New York Defense Verdict. The plaintiff presented to defendant physician, his primary care physician, with symptoms that he alleged should have suggested the existence of prostate cancer. At the time, the plaintiff claimed the defendant physician did not take action to rule it out. Therefore, the plaintiff argued that the cancer was given time to escape the capsule; thereby becoming increasingly difficult to treat. The plaintiffs argued that the defendant's care departed from accepted practice and delayed the diagnosis of prostate cancer. The defendants denied departing from the accepted standards of care. Defense argued that the plaintiff's own negligence led to the delay. Plaintiff denied these allegations.

The jury returned a defense verdict.

Richard Desantis and Christine Desantis v. Paval Romano, M.D., and Cohen, Bergman & Klepper. Suffolk County (NY) Superior Court Case No. 609896/2015. James Wilkens, New York, NY for the plaintiff. Brian J. Greenwood, Islandia, NY for the defendants.

MMVSE No. 200624

Alleged Failure to Properly Care for Patient with Parkinson's Disease and Bipolar Disorder — New Jersey Defense Verdict. The plaintiff's decedent was a sixty-eight year old man with bipolar disorder and advanced stage Parkinson's disease.

He was readmitted to the hospital on August 29, 2010, where he was found to be suffering from severe rigidity and contractions of his extremities as a result of his advanced Parkinson's disease. He subsequently passed away from the disease. The plaintiffs contended that the defendant failed to properly administer the decedent's psychotropic medication, which resulted in extreme changes in dosage, and eventually led the decedent to suffer from neuroleptic malignant syndrome which went undiagnosed for a period of time due to its similarity to the decedent's Parkinson's symptoms. The plaintiff argued that the onset of NMS exacerbated the decedent's decline from Parkinson's. The defendant argued that he increased and decreased the decedent's medication dosage on the advice of the treating psychiatrist and neurologist, the physicians responsible for the decedent's psychiatric care, and thus, was not the party ultimately responsible for the decedent's neuroleptic malignant syndrome. The defendant asserted that the plaintiffs failed to demonstrate that any alleged deviation from the standard of care caused harm to the decedent.

The jury returned a defense verdict.

Plaintiff's Expert: Perry Starer, M.D., geriatrics, Elmhurst, NY.

Ericson v. HHC, LLC, et al. Monmouth County (NJ) Superior Court Case No. L-000022. Christian Mastondrea, Shrewsbury, NJ for the plaintiff. William G. Theroux, Princeton, NJ for the defendants.

MMVSE No. 200605

NEONATOLOGY

Failure to Appreciate Signs and Symptoms of Neonatal Seizures in Infant — Confidential Texas Recovery. The infant boy was born at 35 2/7 weeks gestation. He was taken to the NICU for evaluation. It was noted that he had still not passed any stool and exhibited bilious emesis the following day. He was transferred to defendant hospital for further evaluation and diagnostics related to a possible bowel obstruction. Imaging studies confirmed bowel obstruction. He was emergently transferred to surgery where 43 cm of bowel was removed. Four days later, a second surgery was required where another 12 cm of bowel was removed. He needed a third surgery to close his previous wound. At that same time, a Gtube was placed. He remained intubated four days. When he self-extubated, the infant's blood pressure began to rise significantly. The infant began having spells of apnea and bradycardia which continued through the day and evening. A chest x-ray and head ultrasound were performed, both of which were normal. His condition continued to decline. Following an intubation, an electrolyte panel was taken, revealing that the infant's blood sodium level was very low. He was given several boluses of normal saline throughout the day. A respiratory therapist noted

that the breathing tube was not properly lodged. The infant's heart rate dropped, requiring the initiation of CPR. The infant was switched from a conventional ventilator to an oscillator. Unfortunately, he was unable to be weaned from the ventilator. The hospital offered to take the infant off the ventilator and provide palliative care. However, the mother decided to continue with a tracheostomy. The infant was discharged home with a home ventilator. The plaintiff alleged that the defendant hospital's staff was negligent in the treatment of her son. The infant suffered profound deficiencies related to hypoxic ischemic encephalopathy. The infant suffered cerebral palsy and is likely to develop spasticity of the trunk and extremities. The defendant denied all allegations of negligence.

The parties reached a confidential settlement, and a special needs trust was established for the child.

Plaintiff's Expert: Jonathan Muraskas, M.D., neonatology, Maywood, IL.

Moikan Rijo and Hilario Arias, Jr. Individually and as next friends of Abdiel Arias, a minor v. Texas Children's Hospital. Harris County (TX) District Court Case No. 201609252. Charles D. Brown, Houston, TX for the plaintiff. Kevin William Yankowsky, Houston, TX for the defendant.

MMCSE No. 200633

NEUROLOGY

Non-Existent Multiple Sclerosis Treated for Six Years — \$2 Million Massachusetts Settlement. The plaintiff was treated by the defendant neurologist for a period of almost seven years. Following a misdiagnosis of multiple sclerosis, the defendant then embarked on a treatment plan that consisted of chemotherapy and numerous medications. These unnecessary treatments and medications caused the plaintiff to suffer complications, including pulmonary embolisms, a compromised immune system, hair loss, fatigue and ultimately, infertility. The plaintiff actually suffered from migraines which she unnecessarily endured and suffered from throughout this period of time, receiving no treatment from the neurologist. The defendant denied any wrongdoing. The parties reached a \$2 million settlement. **Anonymous Misdiagnosed Patient v. Anonymous Neurologist Roe.** __ County (MA) District Court Case No. __. Kevin Donius and Ralph F. Sbrogna, Worcester for the plaintiff.

MMVSE No. 200611

NURSING

Traveling Nurse Fails to Properly Monitor Infant During Extended Labor — Hypoxic Brain Injury, Quadriplegia — \$30.6 Million Massachusetts Verdict. The plaintiff mother presented to the defendant hospital for the birth of her first child following an uneventful pregnancy and came under the care of a traveling nurse. This was the first time the defendant nurse was acting without any instructor. The plaintiff experienced a very lengthy second stage of labor and during that time, the defendant nurse monitored the infant's vitals every 5 to 15 minutes via a handheld device. Since there was no continuous fetal monitoring, the plaintiff contended that the nurse instructed her to push during the last 1 ½ hours of labor without having any information as to the status of the infant or its heart rate. The plaintiff alleged the umbilical cord had become caught on the infant's neck and the child was suffering oxygen deprivation during the last part of labor. The infant was not breathing and severely acidotic at delivery. The child had suffered hypoxic ischemic brain injury. He was diagnosed with cerebral palsy and spastic quadriplegia. The plaintiff maintained that the defendants were negligent in their care and treatment of the plaintiff and the infant during labor and failed to properly monitor the infant. The plaintiff contended that both the hospital and the staffing agency were negligent in placing the nurse, who had no experience, alone with the plaintiff during a difficult labor and without any oversight. The plaintiff further contended that the nurse was negligent in failing to comply with hospital policy and procedure with regard to the continuous monitoring of the infant during labor. The defendant denied any wrongdoing.

The jury awarded \$25.5 million to the child and \$5.05 million to the plaintiff mother and father for their loss of consortium.

Kimberly Kirkwood-Boulter, et al. v. Cross country Staffing, Inc., et al. Suffolk County (MA) District Court Case No. 1584CV02372. Benjamin R. Zimmerman and David P. McCormack, Boston, MA for the plaintiff.

MMVSE No. 200626

NURSING HOMES

Lack of Supervision and Monitoring Blamed for Death at Assisted Living Facility — \$6 Million Florida Verdict. The decedent was a resident of the defendant's assisted living facility for some ten years before she sustained a fall which the plaintiff alleged resulted in her death. The plaintiff contended that the decedent suffered dementia with resulting confusion and, therefore, required close supervision and monitoring from the defendant's staff. The decedent rode her electric scooter to the defendant's outdoor courtyard area, as she had done on previous occasions. The decedent fell from the scooter onto the ground. The plaintiff alleged that the defendant failed to check on her, and that she was left alone in the 93-degree hot summer sun for some four hours. The decedent was found by another resident family member, unconscious, with her scooter tilted over. She was transported to the hospital where her temperature was 105.7 degrees due to heat exposure. She was also diagnosed with second-degree sun burns and a heat stroke event. She died as a result some 86 days after the fall. The decedent was 97 years old. The defendant denied allegations of negligence and asserted that its actions did not raise to the level warranting punitive damages. The jury found negligence on the part of the defendant which was a legal cause of the decedent's death.

The jury awarded the plaintiffs \$6 million.

The Estate of Kathleen Menard v. Port St. Lucie Retirement Investors, LLC d/b/a The Harbor Place at Port St. Lucie. St. Lucie County (FL) Circuit Court Case No. 2018-CA-001152. Scott Mitchell Fischer and Robert E. Gordon, Palm Beach Gardens, FL for the plaintiff.

Failure to Monitor Elderly Resident at Assistant Living Facility — Kentucky Defense Verdict. The plaintiff's decedent, a seventy six year old man, was hospitalized for 20 days. There was proof he had a history of wandering and required supervision at a facility with skilled nursing. When it was time to leave the hospital, the decedent's brother met with staff at a personal care home. The decedent eloped from the facility several weeks later. He walked some two miles before falling and breaking his hip. He suffered dehydration and hypothermia as well. Decedent underwent surgery to repair the fracture, but was never able to walk again before he died. The decedent's estate alleged the nursing facility was negligent in accepting the placement of the decedent in the first place. The plaintiff alleged that the defendants failed to assess, monitor and control the decedent. The estate pursued a negligence claim against the hospital – this was predicted on the hospital's discharge plan to the nursing facility. The hospital settled before trial. The defendants denied liability. A defense verdict was returned.

The Estate of Charles Woods v. Crestview Personal Care, Pulaski Co/ (KY) Circuit Court No. 16-754. Tyler Koch and Josh Autry, Lexington and David V. Dufour, Jr., Louisville for the plaintiff. Wesley R. Tipton, Jeffrey R. Tipton and Sarah Reeves Tipton, Corbin for the defendants.

MMVSE No. 200644

Alleged Failure to Timely Diagnose and Treat Impending Stroke — Florida Defense Verdict. The decedent, an eighty year old woman, had been hospitalized for pseudomembranous colitis. She was on Coumadin from a mitral valve replacement, to reduce the risk of embolic stroke. After being discharged from the hospital on October 10, 2013 for treatment of fever and abdominal pain, the decedent became a patient at the defendant's facility. Her discharge instructions were to reduce her Coumadin dose from 38 mg to 21 mg weekly. The plaintiff alleged that, during that time, the decedent's INR was in the 1.3 range and she showed signs of an impending stroke. On October 14, 2013, the defendant's nursing staff reported to the primary care physician that the decedent's INR was 1.5. Her Coumadin was increased to 24 mg weekly. On October 19, 2012, the decedent exhibited acute onset facial drooping, and was sent to the hospital via ambulance. The plaintiff's experts testified that the decedent suffered an embolic CVA. The decedent was left immobile, bedridden, incontinent, and unable to swallow and with severe cognitive impairment as a result of the stroke and remained in that state until her death four years later. The defendant contended that decedent's pre-existing conditions led to her inevitable decline.

The jury returned a defense verdict.

Plaintiff's Experts: Leonard Williams, M.D., hospice/palliative medicine, Seminole, FL. Kenneth C. Fischer, M.D., neurology, Miami, FL. Santo Steven Bifulco, M.D., physical medicine/rehabilitation, Tampa, FL.

Defendant's Experts: Bruce E. Robinson, M.D., geriatrics, Sarasota, FL. Ryan Murtagh, M.D., radiology, Tampa, FL. Patricia A. Jay, C.R.N.P., nursing, Williston, FL.

Meola v. Westchester Gardens, LTD partnership, et al. Pinellas County (FL) Circuit Court Case No. 15-004093. Daniel A. Shapiro and Mary Elizabeth Lanier, Tampa, FL for the defendants.

MMVSE No. 200607

OBSTETRICS

Hypoxic Ischemic Encephalopathy After Delayed Vacuum-Assisted Delivery — \$2 Million Virginia Settlement. The plaintiff minor, now age five, suffered hypoxic ischemic encephalopathy at birth after a delayed vacuum-assisted delivery. Following the induction of labor, initial fetal heart rate strips were reassuring. When labor failed to progress, medication was administered to speed up delivery. Uterine contraction patterns of the mother showed persistent tachysystole. Despite resuscitative measures to achieve a return to a reassuring fetal heart rate, Pitocin administration was increased. After 38 hours of labor, Category Three fetal heart rate tracings were indicative of a hypoxic risk to the fetus. The delivering ob-gyn attempted a manual rotation of the baby, then employed a vacuum extractor and encountered a shoulder dystocia. At delivery, the baby weighed six pounds and 10 ounces, had no respiratory rate, muscle tone or reflex and was cyanotic. After resuscitation, he developed seizures. The infant was diagnosed with hypoxic ischemic encephalopathy, cystic encephalomalacia, microcephaly, spastic cerebral palsy, hemiparesis and cortical blindness.

The case settled for \$2 million.

Anonymous Newborn v. Anonymous Ob-gyn, et al. __ Co. (VA) Circuit Court No. ____. Bellamy Stoneburner, Lewis Stoneburner and Stephanie Grana, Richmond, VA for the plaintiff.

MMVSE No. 200641

OPHTHALMOLOGY

Failure of Defendant Ophthalmologist to Create Wider Incision Before Removing Displaced Intraocular Lens — \$1.151 Million New York Verdict. The plaintiff, a sixty five year old woman, had previously undergone the removal of a cataract from the right eye. She contended that the defendant negligently performed the removal of a cataract from the left eye which caused a retinal tear and a detached retina. Despite some five surgical attempts, she was left with a permanent blindness in the left eye. During the procedure, plaintiff experienced a known risk of a posterior capsule tear. The plaintiff maintained that after the intraocular lens injection, the defendant thought that it was not properly situated and opted to remove it for placement at a later time. The plaintiff asserted that the defendant negligently pulled the 6 mm intraocular lens through the same 2.75 mm incision without enlargement to 6 mm and that as a result, the plaintiff suffered a severe retinal tear that left her blind in the one eye. Defendant denied negligence and claimed that the plaintiff suffered a known risk of the procedure.

The jury awarded the plaintiff \$1.151 million in damages.

Anonymous 65 Year Old Patient v. Anonymous Ophthalmologist. New York County (NY) Superior Court Case No. __. Victoria Wickman, Manhattan for the plaintiff.

MMVSE No. 200609

ORTHOPEDICS

Failure to Diagnose Lateral Talus Fracture — \$1.204 Million Virginia Verdict. The plaintiff, a sheriff's deputy was injured in a car crash, suffering injuries to his right ankle. He presented to defendant orthopedic surgeon. An MRI revealed a possible lateral talus fracture. The radiologist recommended a CT scan to confirm the fracture. Defendant physician did not inform the plaintiff about the possible fracture and did not recommend a CT scan. Defendant simply monitored the plaintiff's condition over a period of months, while encouraging him to go to PT. The plaintiff's pain worsened, and he was unable to bear weight on his injured ankle. Several months later, the defendant commented to the plaintiff and his wife that the pain must be in the plaintiff's head, the plaintiff sought a second opinion. The second opinion revealed a talus fracture. Plaintiff underwent a repair surgery, but the fracture had been neglected for too long, preventing a successful union. He required two more surgeries. The plaintiff was left with a fused ankle, arthritis and a limited range of motion, making it difficult for him to perform the duties of his job and other physical movements.

The jury awarded the plaintiff \$1.204 in damages.

Plaintiff's Expert: Francis McGuigan, M.D., orthopedics, Washington, DC.

Defendant's Expert: Jason Nascone, M.D., orthopedics, Baltimore, MD.

Thomas Lancaster III v. Cyrus M. Press, M.D., et al. Prince William County (VA) Circuit Court Case No. CL17003534-00. Cory R. Ford and Peter Pentony, Leesburg for the plaintiff. D. Lee Rutland, Annapolis, MD for the defendant.

MMVSE No. 200642

Failure to Timely Order Doppler Study — \$550,000 New Jersey Verdict. The plaintiff, a woman in her late sixties, underwent peroneal tendon repair surgery of the ankle. She contended that in multiple post-operative visits, she complained that the cast, placed by the PA, was too tight, and that she had a calf irritation during one of the visits, and on the third visit, she exhibited swelling to her foot. Blood clots, which reached above the abdomen were discovered on November 18, at the time of a Doppler study. The plaintiff asserted that the Doppler study should have been ordered earlier. The defendant contended that the casts were

appropriately placed and that when the plaintiff complained that the casts felt tight, the physician properly split the casts. The defendant denied all allegations of negligence. The plaintiff contended that she needs to wear a compression stocking much of the day, cannot spend extensive time on her feet, is uncomfortable due to swelling, and that her ability to travel and live an unrestricted lifestyle in anticipated retirement will be permanently impacted.

The jury found that the defendant orthopedic physician was negligent in his direct care and treatment and awarded 500,000 to the plaintiff and \$50,000 to her husband.

Plaintiff's Expert: Hervey Sicherman, M.D., orthopedics, Wayne, NJ.

Defendant's Expert: Stuart Levine, M.D., orthopedics, Princeton, NJ.

Scott v. Goldberger. Morris County (NJ) Superior Court Case No. MRS-L-2185-17. Susan Fetten Connors, Roseland, NJ for the plaintiff.

MMVSE No. 200606

PAIN MANAGEMENT

Inappropriate Touching by Physician — \$317,500 Michigan Settlement. The plaintiffs were recovering opioid addicts, and under the care of the defendant physician. The first plaintiff had treated with the defendant for years. The defendant supplied her with opioid medication for a pre-existing back injury. He then began to make advances toward her including rubbing her, hugging her, spending an inordinate amount of time with her in the exam room, commenting on her appearance, and acting “creepy”. The behavior advanced to the point to where he would kiss plaintiff on the neck, cheek and mouth. He began to French kiss the plaintiff when she went to get treatment. The second plaintiff was a short-term patient of defendant physician. The defendant began acting inappropriately toward this plaintiff by insisting on giving her massages and physical manipulation for her back issues where he would put his hands in her groin area. He also began to hug her for extended periods, and kiss her on the mouth, cheeks, and neck. On the first plaintiff's last visit with the defendant, she recorded him on her cell phone because she thought no one would believe her, and she was dependent on defendant for her medicine and medical care. Defendant initially denied liability, but plaintiff's counsel produced the video evidence.

The parties' resolved the matter for \$317,500.

Anonymous Sexual Assault Victim v. Anonymous Physician. ___ County (MI) Circuit Court Case No. ___. Jon Marko for the plaintiff.

MMVSE No. 200621

PEDIATRICS

Failure to Timely Diagnose and Treat Hyperbilirubinemia — Permanent Brain Damage, Spasms, Cerebral Palsy — \$1.3 Million Virginia Settlement. We thank plaintiff's counsel, Stephen C. Swain, for the report of this case. The plaintiff, a young child, was born prematurely to a mother over the age of forty. The infant was breast fed and had a sibling who had been treated for jaundice as a child. With these risk factors, it was not surprising that at thirty-six hours past his birth, the infant's level of total bilirubin was high, and it developed jaundice. The defendant pediatrician knew of the plaintiff's history and risk factors, but failed to order any further bilirubin level tests, nor did he treat the plaintiff with phototherapy. The plaintiff, who already had Down's Syndrome, developed infant spasms and mini seizures. As a result, the child requires around-the-clock care, pulmonary suction, ventilation, tube feeding, multiple surgeries, removal of its teeth, a special diet, deafness, and blindness. At the child's first well-baby visit following discharge from the hospital two days earlier, the baby had slight yellowing on his truck, and had lost weight. The defendant told the plaintiff mother to bottle feed the baby with formula, and to return four days later for a re-check. Four days later, upon return, the child looked more jaundiced. The defendant instructed the plaintiff mother to go to the hospital immediately to have bilirubin testing. Several hours later, the plaintiff mother was called and told the lab had not taken enough blood for the test to be complete. The plaintiff mother returned the child to the hospital for more blood to be drawn. When the testing was complete, the defendant was told the child's bilirubin level was an extremely high thirty-two. The defendant called the plaintiff mother and told her to immediately take the child to the pediatric care hospital. There the child underwent a double transfusion but was already showing signs of brain damage. Later, the brain damage was confirmed by an MRI. The defendant denied any wrongdoing and claimed that the child's spasms and seizures were related to his Down's Syndrome, and led to the child's injuries and cerebral palsy, not the untreated high bilirubin levels. The case settled for \$1,345,000.00.

Plaintiff's Experts: Allen D. Elster, M.D., radiology, Winston-Salem, NC. M. Jeffrey Maisels, M.D., pediatrics, Royal Oak, MI.

Anonymous Mother and Child v. Anonymous Pediatrician, _____ Co. (VA) Circuit Court No. _____. Stephen C. Swain, Virginia Beach, VA for the plaintiff.

MMVSE No. 200647

PHARMACY

Amiodarone Prescription Doubled — Undisclosed Louisiana Settlement. The plaintiff's decedent had a long history of cardiac problems that included defibrillator placement in the 1990s. A prior cardiologist had prescribed Amiodarone. The defendant cardiologist began to supervise the decedent's care starting in 2002. He did not prescribe Amiodarone to the decedent but continued to monitor him. In April of 2007, there was proof that decedent had a pulmonary problem. A year later the decedent's dosage was inexplicably doubled from 200 mg to 400 mg. That was apparently due to an error at a Wal-Mart pharmacy. In March of 2010 the defendant examined the decedent and appreciated an apparent pulmonary dysfunction. Defendant discontinued the use of Amiodarone and referred him to a pulmonologist. She identified that the decedent had developed APT. He died two years later. The plaintiff alleged both a dosage error by Wal-Mart and that defendant physician failed to manage the decedent's medication use beginning in 2002.

Wal-mart settled for an undisclosed sum.

The Estate of George Verrett v. George Thomas, M.D., et al, St. Tammany County (LA) District Court Case No. 14760. Harry T. Widmann, Metairie for the plaintiff. C. William Bradley, Jr. and Benjamin J. Biller, New Orleans for the defendant.

[Ed Note: The jury found in favor of the cardiologist.

MMVSE No. 200618

RADIOLOGY

Failure to Diagnose Brain Aneurysm — \$912,500 Michigan Settlement. The plaintiff, a fifty-two year old man, went to the ER of defendant hospital complaining of severe head pain. The ER physician suspected an aneurysmal subarachnoid hemorrhage, based on his family's history, and ordered a non-contrast head CT to rule out a brain bleed and other abnormalities. The radiologist misinterpreted the brain CT and failed to recognize the hemorrhage. He reported the scan as negative for blood or other abnormality. The plaintiff received medication that resolved his headache, and after hearing the results of the scan, he advised the ER doctor he was ready to go home. The ER physician recommended a lumbar puncture to further rule out subarachnoid hemorrhage. The plaintiff declined the lumbar puncture and any further testing, choosing to leave the hospital against medical advice. Nine days later, the plaintiff suffered a rupture of the undiagnosed brain aneurysm with massive intracranial hemorrhage. Plaintiff was unable to return to any meaningful employment. He will need assistance and supervision with many daily living activities due to significant neurological damage. The defense argued that the plaintiff was more than 50% at comparative fault for leaving the hospital against medical advice and refusing further testing.

The case settled for \$912,500.

Anonymous Fifty-Two Year-Old Man v. Anonymous Radiologist, et al. ___ County (MI) Circuit Court Case No. ___. Andy Dragovic for the plaintiff.

MMVSE No. 200622

Alleged Failure to Timely Diagnose Breast Cancer — Florida Defense Verdict. The defendant physician interpreted the plaintiff's digital screening mammogram on December 20, 2011. The plaintiff alleged that the defendant breached the required standard of care by failing to report a suspicious breast abnormality in the upper outer quadrant of the plaintiff's left breast. The plaintiff was diagnosed with adenocarcinoma of the left breast on October 25, 2012. She underwent a lumpectomy, chemotherapy and radiation, but her condition was reported as terminal. The defendants contended that the mammogram in question was properly read by the defendant radiologist and depicted only dense breast tissue and not a suspicious mass.

The jury found no negligence on the part of the defendant.

Llanos v. Peterson, et al. Collier County (FL) Circuit Court Case NO. 11-2014-CA-001445-0001-XX. R. Clifton Acord, II, Richard B. Mangan, Jr. and David Rissman, Tampa, FL for the defendant.

MVSE No. 200637

SURGERY

Abbott Nav6 Emboshield Catheter Failure During Carotid Artery Procedure — Texas Jury Allocates 70% Fault to Physician — \$5 Million Gross Award. The seventy-three year old plaintiff was admitted to the hospital for placement of a stent to treat severe carotid artery stenosis. The defendant first attempted to use an Abbott AccUNET to open the patient's artery. When he encountered difficulty in advancing the wire, he changed instruments and attempted to open the artery with the defendant

Abbott's Nav6 Emboshield catheter. During the procedure, the Nav6 filter came off the end of the wire and floated into the patient's cerebral vasculature leading to his brain and causing a severe stroke which led to his death two years later. The estate brought suit against the defendant surgeon, the catheterization technician, the defendant hospital and the company that manufactured the catheter, for negligence. The defendants, except for the manufacturer, were dismissed prior to trial. The estate alleged the defendant manufacturer's device was defective. As a result of the stroke, the decedent lost the use of the entire left side of his body. The defendant denied liability.

The jury found the physician 70% liable, the defendant hospital was 20% liable and the defendant medical device manufacturer was 10% negligent.

The jury awarded the estate \$5 million in damages.

The Estate of Charlie Acebo, Jr. by Gail Stephens Acebo v. Abbott Labs, Tomball Regional Medical Center, Waqar Kahn, M.D. and Chris Davis. Harris County (TX) District Court Case No. 201657965. Timothy Dennis Riley, Houston, TX for the plaintiff. Christopher Michael Raney, Houston, TX for the defendants.

MMVSE No. 200614

Burns of Part of Small Bowel During Polyp Surgery Result in Death — \$13 Million New York Verdict. The plaintiff's decedent, a forty-three year old woman, went to NYU hospital to have a benign polyp removed from her colon. The decedent had previously undergone a procedure to remove most of a benign polyp from her colon. During the operation, the defendant was unable to locate the remnant, and converted the procedure to a full open surgery, wherein he burned part of the decedent's small bowel. Following the procedure, the decedent suffered from severe pain. The defendant ordered a CT-scan four days later and discovered an infection. The decedent went into septic shock and died. The widower of the deceased alleged that the defendant was negligent for breaching the standard of care, resulting in the death of his wife.

The jury awarded the plaintiff \$13 million.

Cheryl Raefski v. Christian Hirsch, M.D., et al. New York County (NY) Supreme Court Case No. 805440/2013. Judith Livingston, New York, NY for the plaintiff.

MMVSE No. 200636

Instrument Count Protocol Ignored, Sponge Left in Patient — Additional Surgeries, Incontinence, Permanent Injuries — \$950,000 South Carolina Settlement. The plaintiff was a woman who underwent a colonoscopy for removal of a polyp. The surgery became an open laparotomy. Nurses told the surgeons the instrument count was correct, however the nurses failed to follow surgical count protocol, and a sponge was left inside the plaintiff. Following the surgery, the plaintiff complained of drainage, wound dehiscence, fever, and discomfort. These symptoms lasted for six months, and the plaintiff underwent two exploratory surgeries with no results. The plaintiff insisted on radiological studies, and they revealed the problem. The plaintiff underwent an additional surgery to remove the sponge and thirty inches of her small bowel. The plaintiff now suffers from permanent backflow of colon bacteria, loss of nutrients, poorly digested food, and multiple bowel movements each day. She must wear pads to prevent soiling, take IV supplements and adhere to a strict diet. The plaintiff alleged the defendant failed to promptly diagnose and treat her post-surgical symptoms, resulting in erosion of her small bowel.

The case settled for \$950,000.00.

Undiscovered Husband and Wife v. Palmetto Health Alliance, Palmetto Health Richland, State of South Carolina, University of South Carolina School of Medicine and Specialty Clinics, _____ County (SC) Common Pleas Court, Case No. _____. Stephen Swain, Virginia Beach, VA, Jim Gillies, Greenway, CO, and Jon Hendrix, Lexington, SC for the plaintiff.

MMVSE No. 200648

Alleged Improper Thyroidectomy and Follow-Up Care Damages Vocal Cords — \$325,000 New York Verdict. The plaintiff underwent a thyroidectomy in order to address thyroid carcinoma. The defendant performed the procedure. While the plaintiff was recovering from surgery at the hospital, a fistula formed and was addressed by the defendant. The plaintiff was thereafter discharged, but returned to the defendant for postoperative care which was punctuated by several trips to the ER of the defendant hospital for complications related to the initial surgery and fistula. The plaintiff alleged that the defendants deviated from the standard of care during and after she was treated and she also levied a claim alleging lack of informed consent. She argued that the defendants were liable for improperly performing surgery and injuring her vocal cords. She also suggested that the defendants failed to prevent a post-operative fistula, pneumonia and pulmonary collapse, leading to vocal cord paralysis, difficulty swallowing and breathing; necessitating subsequent reconstructive surgery on her larynx. Defendants denied the allegations of negligence. The defendant hospital successfully moved for summary judgment. The jury found that the defendant doctor did depart from good and accepted medical practice by not referring the plaintiff to an otolaryngologist during the period of his follow-up care and that the departure was a substantial factor in her injuries.

The jury awarded the plaintiff \$325,000.

Francine Habib v. John Deysine, M.D. Kings County (NY) Supreme Court Case No. 500523/2012. Damon J. Velardi, NY, NY for the plaintiff. Paul E. Walker, NY, NY; Abrams, Fensterman, Eisman, Formato, Ferrara and Einiger, LLP, Lake Success, NY for the defendants.
MMVSE No. 200640

Alleged Failure to Properly Locate Tumor — Florida Defense Verdict. The plaintiffs alleged that after the defendant gastroenterologist performed a colonoscopy on the plaintiff, and biopsied a mass as being located in the hepatic flexure, defendant referred him to defendant surgeon. The surgeon removed plaintiff's right colon on October 30, 2014, despite being unable to identify and/or palpate any abnormality or mass in the hepatic flexure. Pathology reported that the mass was not in the specimen. Defendant removed additional traverse colon, including the splenic flexure, and 12 regional lymph nodes. The final surgical pathology indicated a 2.8 cm tumor in the splenic flexure, not the hepatic flexure, and all regional lymph nodes were negative. After complaining of severe abdominal pain on Nov. 5, 2014, the plaintiff underwent additional surgery the next day that revealed that the previous surgery had caused the left colon to go necrotic. Plaintiffs alleged that the defendant was negligent, inter alia, in erroneously identifying and marking the location of the tumor as being in the hepatic flexure and that the surgeon was negligent in resecting his right colon without appropriate identification of the tumor and despite his inability to palpate it. Defendants denied the allegations.

The jury returned a defense verdict.

Plaintiff's Experts: Peter Pappas, M.D., critical care surgery, Winter Park, FL.. Neil L. Julie, M.D., gastroenterology, Rockville, MD. George Stanley, M.D., radiology, Winter Park, FL.

Defendant's Experts: Joshua I.S. Bleier, M.D., surgery, Philadelphia, PA. Thomas R. Austgen, M.D., surgery, Jacksonville, FL. Malcolm Stanley Branch, M.D., gastroenterology, Bahama, NC. Joseph H. Kleinman, M.D., radiology, Naples, FL.

David T. Lucey and Monica Lucey v. Sovi Joseph, M.D., et al. Charlotte County (FL) Circuit Court Case No. 2016-CA-001509. Kevin J. cardena nd J. Clancey, Maitland, FL for the plaintiffs. Jeffrey M. Goodis, St. Petersburg, FL; Kevin W. Crews and Andrew Bogt, Naples, FL for the defendants.

MMVSE No. 200650

Laparoscopic Gallbladder Removal Followed By Sepsis — Indiana Defense Verdict. The plaintiff underwent a laparoscopic cholecystectomy on an outpatient basis. Four days later, the plaintiff called defendant's office and complained of extreme pain. She was admitted to the hospital, and two other physicians recommended that the defendant order an abdominal CT scan. Instead, he sent her home. Five days later the plaintiff was back in the hospital. The defendant drained fluid from plaintiff's abdomen and repaired an incisional hernia. She remained in the hospital another six days before the defendant once again sent her home. Nine days later the plaintiff presented to the ER where she was diagnosed with sepsis. She was taken to surgery and a hole was found in her small intestine. She spent two months in rehabilitation. Over the next several years she underwent at least six additional surgeries that she related to this incident. She presented the case to a medical review panel. The plaintiff alleged the defendant mismanaged her post-op care, resulting in sepsis and the necessity of a lengthy hospital stay. The plaintiff alleged that the defendant was negligent in the care and treatment of her condition. The defendant contended that the perforation of plaintiff's small intestine had occurred during the original gallbladder surgery. The defense denied any breach of the standard of care. The defendant claimed that the perforation had occurred during the third surgery rather than the original one. The jury returned a defense verdict.

Plaintiff's Experts: Samuel Feinberg, M.D., surgery, Urbana, IL. Lance Trexler, Ph.D., neuropsychology, Indianapolis, IN.

Defendant's Expert: Louis Flancbaum, M.D., surgery, Bergenfield, NJ.

Debra Davis v. Michael Grabowski, M.D., et al. Allen County (IN) Superior Court Case No. 02D01-1608-CT-412. Gloria J. Danielson and Kyle L. Hankins, Fortville for the plaintiff. Benjamin D. Ice, Ft. Wayne for the defendants.

Alleged Failure to Monitor Tracheostomy after Surgery Blamed for Death —New Jersey Defense Verdict. The plaintiff's decedent presented to defendant hospital on June 15, 2015 for removal of a small squamous cell oral cancer. Plaintiffs claimed that during the surgery, the defendant physicians should have known that a tracheostomy was necessary because the surgery they performed left the decedent bleeding internally and vulnerable to choking on her own blood. Plaintiffs alleged the defendants prematurely removed decedent's breathing tube leaving her unable to breathe until anoxia triggered cardiac arrest on June 17, 2015. Plaintiffs claimed that the co-defendant surgeon and co-defendant resident were negligent in the care of the decedent, resulting in critical time lost while the decedent's brain was deprived of oxygen. An emergent cricothyrotomy and tracheotomy was done on June 17, 2015, at the defendant hospital. That surgery failed to relieve or reverse the decedent's anoxia resulting in irreversible brain injury. The decedent was discharged from the hospital a month after her initial surgery in a conscious but

persisted locked-in state, completely and permanently disabled, unable to speak or move, resulting in catastrophic pain. She died on February 12, 2017. The defendants denied negligence in the care and treatment of the decedent.

The jury found no cause of action in favor of the primary defendant surgeon and the court dismissed the plaintiffs' case against all defendants.

Rodriguez-Sanchez v. Park, et al. Passaic County (NJ) Superior Court Case No. L-000789-16. Evelyn C. Farkas and Nancy Crosta Landale, Florham Park, NJ for the defendants.

MMVSE No. 200604

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