

CASE INFORMATION SHEET
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COUNTY and COURT: Orange County, Ninth Judicial Circuit

NAME OF CASE: Rosemarie Olszewski, as Personal Representative of the Estate of Robert J. Olszewski, deceased v. IHS of Central Park Village, Inc., Orlando Regional Healthcare System, Inc. d/b/a Sand Lake Hospital; Steven C. Corbett, M.D., P.A.; Jose Alberto Giron, M.D.; Orlando Infectious Disease Center, P.A.; Manuel Galceran, M.D.; and Galceran, Meyer & Hernandez, P.A.

CASE/DOCKET NO.: 04-CA-1057

JUDGE: Honorable Stan Strickland

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL

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AGE/SEX/OCCUPATION OF PLAINTIFF or DECEDENT

Robert Olszewski, a white male, was born on August 4, 1946. At the time of his time of his death on **January 5, 2003**, Mr. Olszewski was 56 years old. Mr. Olszewski was employed by the Orange County School Systems as an electrical engineer.

For WRONGFUL DEATH cases, please give age and relationship of survivors:

Plaintiff, Rose Marie Olszewski, as Personal Representative of the Estate of Robert Olszewski, sued the five health care providers referenced above. Rose Marie Olszewski, born July 8, 1949, was Mr. Robert Olszewski's wife and was 53 years old at the time of his death and 60 years old at the time of trial.

She was employed by Orange County School Systems at Dr. Phillips High School as the English Department Chair. She had been Teacher of Honors English III.

Mr. Robert Olszewski was also survived by his two sons, Robert Matthew Olszewski, born on September 7, 1977, and Matthew Joseph Olszewski, born on July 4, 1979.

DATE, TIME and PLACE OF ACCIDENT or OCCURRENCE:

Mr. Olszewski had a left hip replacement on December 12, 2002 performed by Dr. David Dore at Orlando Regional Medical Center. Mr. Olszewski was transferred on December 16, 2002 to Lucerne Rehabilitation Center where he remained until December 20, 2002. On December 20, 2002, Mr. Olszewski was transferred from Lucerne to IHS at Central Park Villages ("IHS").

IHS became the first defendant in the sequence of health care providers who provided treatment to Mr. Olszewski. Mr. Olszewski remained at the IHS facility until January 4, 2003.

According to some of the medical records and the family, Mr. Olszewski demonstrated aberrant behavior during his stay at

both Lucerne Rehabilitation Facility and IHS. This would have been during the time frame of December 16, 2002 through January 3, 2003.

The aberrant behavior included Mr. Olszewski lying in his own urine and excrement and otherwise being abusive toward the staff at these two successive rehabilitation facilities.

This behavior resulted in the family personally hiring Dr. E. Michael Gutman to conduct a psychological evaluation on December 30, 2002. Dr. Gutman concluded that the patient was in need of transfer to a hospital. Dr. Gutman, however, concluded the Plaintiff was of sound mind. This conclusion was not consistent with the plaintiffs' position that Mr. Olszewski had by this time developed a brain abscess which was never detected by subsequent healthcare providers.

The patient developed a fever on the morning of January 4, 2003, and was transferred from IHS to Sand Lake Hospital (ORMC) where he originally came into contact with Dr. Steven Corbett, an emergency room physician. ORMC and Dr. Corbett were defendants in this case.

Dr. Corbett consulted with the patient's primary care physician, Dr. Manuel Galceran who, in turn, consulted with Dr. Jose Giron, an infectious disease expert. Both of these physicians were defendants as well.

The patient presented at Sand Lake Hospital at approximately 3:50 p.m. on January 4, 2003 and ultimately died at 6:00 a.m. the following day, January 5, 2003.

It was during this approximate 16-hour period of time that Plaintiffs contended that the hospital and the three physicians were negligent for not arriving at a diagnosis of brain abscess. The patient did not present with any of the classic signs of a brain abscess but the Plaintiffs contended nonetheless that it was a brain abscess which ultimately caused Mr. Olszewski's death.

It should be noted that the Plaintiffs had originally contended in Answers to Interrogatories that the cause of the patient's death was neuroleptic malignant syndrome ("NMS"), a condition which is caused in part by Haldol. Parenthetically, the patient had received Haldol prescribed by Dr. Gutman on December 30, 2002 through January 3, 2003.

Plaintiffs initially contended in the litigation NMS was the cause of the patient's death. This was plaintiffs' theory for approximately two and one-half years until the 2006 time frame at which time the theory regarding cause of death became *brain abscess*. The patient died of sepsis and defendants contended that the cause of death was *clostridium difficile*, not an undiagnosed brain abscess.

PLAINTIFF'S EXPERT WITNESSES

A. John A. Sterba, M.D., Ph.D.
226 Center Street
East Aurora, New York 14052

Dr. Sterba, an emergency room physician, testified the patient was stable on admission to the emergency room and, hence, the Good Samaritan Act did not apply to Dr. Steve Corbett, the emergency room physician. Dr. Sterba also testified that if the patient was **not** stable, Dr. Corbett had acted in reckless disregard with respect to the patient's condition.

Importantly, Dr. Sterba stated that the patient was certainly unstable by midnight January 4, 2003 and could **not** have undergone any type of study, including a magnetic resonance imaging study, of the patient's brain in an effort to have potentially made the diagnosis of a brain abscess.

Dr. Sterba testified that he was the consulting expert for Plaintiffs when the original theory was neuroleptic malignant syndrome ("NMS"). Therefore, Dr. Sterba conceded that he was wrong with respect to the first theory of the case. At trial, Dr. Sterba changed his original opinion regarding NMS being the cause of death. The alternate opinion was the plaintiff died of a brain abscess.

B. Stuart Graham, M.D.
2500 South 35th Street
Ft. Pierce, Florida

Dr. Graham, a pathologist, testified the patient died of a brain abscess. He opined the patient did not die of clostridium difficile as the defense contended because there was no evidence of pseudo membranous colitis in the patient's colon upon autopsy. Dr. Graham conceded, however, that patient had not presented with any of the classic signs of brain abscess including but not limited to, nausea, vomiting, headache, intense intracranial pressure, hemiparesis and other neurological sequelae typically associated with this condition.

Dr. Graham testified that an MRI of the patient's brain, had one been performed, would have probably demonstrated a brain abscess. Dr. Graham also testified that if a brain abscess had been diagnosed via an MRI, a potential treatment might have included conservative treatment with the use of antibiotics (which was already being prescribed given the patient's suspected differential of sepsis, etiology unknown) or if the patient required further invasive intervention, a neurosurgeon might have been consulted who,

in turn, would have decompressed the brain abscess and drained the lesion using a wick.

C. Neal Crane, M.D.
5917 Plainview Road
Bethesda, Maryland 20817

Dr. Crane, an internal medicine physician and infectious disease expert, testified that Dr. Jose Giron and Dr. Galceran were negligent because they did not order an MRI of the brain expeditiously in order to arrive at a diagnosis of brain abscess. Dr. Crane conceded, however, that the patient had not demonstrated classic signs of a brain abscess. Dr. Crane also conceded that the MRI, had one been performed, needed to have occurred before midnight on January 4, 2003, as by that time, the patient had become extremely unstable.

Dr. Crane admitted Dr. Galceran was compliant with the standard of care in every regard except for failure to order an expedited MRI study of the patient's brain. Dr. Crane conceded that Dr. Galceran was not consulted until approximately 6:00 p.m. on January 4, 2003, and only had six hours to order this MRI in order to be complaint with the standard of care.

Dr. Crane testified that he spent many hours reviewing this case and that he had the benefit of hindsight to express his opinions, including standard of care and clostridium difficile. Dr. Crane further testified that asking Dr. Galceran to evaluate this case and arrive at a conclusion of suspected brain abscess within six hours "would not be fair."

Dr. Crane testified that an MRI, had one been performed, would have demonstrated a brain abscess but the treatment would either have been antibiotics (which were already onboard and prescribed) or surgical intervention during which a neurosurgeon would have needed to drill a hole into the patient's skull, decompress the brain abscess and drain the lesion.

Dr. Crane did not have an opinion as to whether the patient was stable enough to undergo this suggested surgical intervention, in the event a neurosurgeon had been consulted.

D. Lige Rushing, Jr., M.D.
Presbyterian Professional Building
8210 Walnut Hill Lane, Suite 120
Dallas, Texas

Dr. Rushing testified on behalf of Plaintiffs that the IHS facility deviated from the standard of care for failure to

transfer the patient to a hospital on January 1, 2 or 3, 2003.

DEFENDANT'S EXPERT WITNESS

- A. Kevin Inwood, M.D.
2141 Alternate AIA South
Suite 130
Jupiter, Florida 33477

Dr. Inwood testified that defendant, Dr. Manuel Galceran, was compliant with the standard of care and that the patient died of Clostridium Difficile.

- B. Donlin M. Long, M.D., Ph.D.
Department of Neurosurgery
John Hopkins University of Medicine
600 N. Wolfe Street, Carnegie 466
Baltimore, Maryland 21287

Dr. Long testified that the patient did not have a brain abscess and would not have been a candidate for brain surgery (within the 16 hours of admission but before he died) even if he had a brain abscess.

- C. Dale N. Gerding, M.D.
Hines Veterans Affairs Hospital
5000 South 5th Street
Hines, Illinois

Dr. Gerding testified that the patient died of Clostridium Difficile.

CO-DEFENDANTS' EXPERT WITNESSES

- A. James T. Noble, M.D.
250 Pleasant Street
Concord, New Hampshire 03301

Dr. Noble testified that Defendants, Jose Giron, M.D. and Orlando Infectious Disease Center, P.A., were compliant with the standard of care and the patient died of Clostridium Difficile.

- B. David Vukich, M.D., FACEP
13665 Queens Harbour Boulevard
Jacksonville, Florida 32225

Dr. Vukich testified Defendants, Steven C. Corbett, M.D., Steven C. Corbett, M.D., P.A. and Orlando Regional Healthcare System, Inc. d/b/a Sand Lake Hospital, were

complaint with the standard of care and the patient died of overwhelming sepsis.

C. Stephen M. Factor, M.D.
Jacobi Medical Center
1400 Pelham Parkway South
Bronx, New York 10461

Dr. Factor testified that Defendants, Jose Giron, M.D. and Orlando Infectious Disease Center, P.A., were compliant with the standard of care and that the patient died of an acute myocardial infarction.

D. Donlin M. Long, M.D., Ph.D.
Department of Neurosurgery
John Hopkins University of Medicine
600 N. Wolfe Street, Carnegie 466
Baltimore, Maryland 21287

Dr. Long testified that Defendants, Jose Giron, M.D. and Orlando Infectious Disease Center, P.A., were compliant with the standard of care and that the patient died of a septic syndrome.

E. Dale N. Gerding, M.D.
Hines Veterans Affairs Hospital
5000 South 5th Street
Hines, Illinois

Dr. Gerding testified that Defendants, Jose Giron, M.D. and Orlando Infectious Disease Center, P.A., were compliant with the standard of care and that the patient died of a Clostridium Difficile

DATE OF VERDICT: September 24, 2009
VERDICT: Defense Verdict for all defendants
COMPARATIVE NEGLIGENCE: Not applicable
JUDGMENT: Final Judgment
DATE OF JUDGMENT: October 28, 2009
DEFENDANT'S OFFER: Zero
PLAINTIFF'S DEMAND: \$1,500,000

DEFENSE ATTORNEY'S COMMENTS: A Final Judgment was entered on October 28, 2009, with all parties bearing their own attorney's fees and costs pursuant to a Joint Stipulation and Agreement of the parties.

Submitted by: Jennings L. Hurt III
Vance R. Dawson

Date: June 15, 2010

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