

CASE INFORMATION SHEET
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COUNTY AND COURT: CIRCUIT COURT, POLK COUNTY, Bartow, Florida

NAME OF CASE:

DALE MUSCO as the Personal
Representative of the Estate of
ANTHONY MUSCO, deceased,

Plaintiff,

v.

JOHN CANTO, M.D. and WATSON
CLINIC LLP,

Defendants

CASE DOCKET NO.: 09 CA 11381 (4) **JUDGE:** Ellen Masters

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

GARY FRIEDMAN, ESQUIRE
JOHN SELIGMAN, ESQUIRE
2600 Douglas Road
Suite 1011
Coral Gables, FL 33134

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

EDWARD M. COPELAND IV, ESQUIRE
R. CLIFTON ACORD II, ESQUIRE
Rissman, Barrett, Hurt,
Donahue & McLain, P.A.
1 N. Dale Mabry Hwy
11th Floor
Tampa, FL 33609

AGE/SEX/OCCUPATION OF DECEDENT:

ANTHONY MUSCO
Male, 64 years old
Deli Manager from Yonkers, NY

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

The death of Anthony Musco occurred on June 18 2008, in Lakeland, FL

CAUSE OF INJURY:

This was a medical malpractice wrongful death case involving a 64 year old deli manager with no prior health problems. On the evening of June 5, 2008, while in Florida on a golf vacation, he suffered a syncopal episode at Hooters after not eating all day, hitting his head on the floor.

EMS responded and an EKG strip in the field showed atrial fibrillation which quickly converted back to a normal sinus rhythm. Mr. Musco was taken to the E.R. at Lakeland Regional Medical Center where a CT of the head showed no bleeding of the brain. He was admitted to the hospitalist service and was started on Lovenox every 12 hours as clot prophylaxis by the attending hospitalist.

The attending hospitalist consulted Dr. Canto, a cardiologist, for a new onset atrial fibrillation work-up. Following his evaluation on June 6, 2008, Dr. Canto, a cardiologist, agreed with the work-up in progress and did not change the course of treatment which included both neurologic and cardiologic tests to identify the possible underlying cause of the syncope and atrial fibrillation.

By 8:00 a.m. on June 7, Mr. Musco had received an "extra" dose of Lovenox, receiving three doses in 16 hours. On June 8 the patient developed a massive brain bleed which was exacerbated by the Lovenox. He went into a coma and died 10 days later.

Plaintiff argued that Dr. Canto should have immediately stopped the Lovenox on June 6 because the patient had sustained a head injury and was thus at risk for a delayed bleed, especially given that 1) a pulmonary embolism had been ruled out as a cause of the syncope, and 2) the a-fib had not reoccurred. Plaintiff also argued that a neurology consult should have been ordered, as well as a repeat brain CT scan.

The defense argued that Lovenox does not cause a bleed; it can only exacerbate a bleed if it occurs. Also, once the CT in the ER ruled out a brain bleed the chance of a delayed bleed due to head trauma was remote and the benefit of Lovenox (clot

prevention) outweighed the risk of potentially exacerbating a yet to occur bleed. In addition, a neurology consult was not required because the patient was neurologically intact.

NATURE OF INJURY:

Brain hemorrhage leading to death.

PLAINTIFF'S EXPERT WITNESSES:

Edward Neff, M.D.
Miami, Florida

Dr. Neff is a cardiologist practicing in Miami. Dr. Neff's testimony was as follows:

1. Mr. Musco's syncopal episode was an obvious vasovagal syncope, not a cardiac syncope. As such, discharging Mr. Musco from the emergency room without further workup would have been appropriate.
2. As the cardiology consultant brought in to manage Mr. Musco's potential cardiac cause of his atrial fibrillation and syncope, Dr. Canto assumed the role of "principle" physician for managing the care, including Lovenox.
3. Despite the fact that the Lovenox should never have been initially started, once Dr. Canto became involved in the case, there were multiple windows of opportunity to stop the Lovenox and prevent the brain bleed from occurring.
4. Once the risk of pulmonary embolism was ruled out, the risk of continuing the patient on Lovenox following a head trauma far outweighed the benefits of continuing the patient on Lovenox while the remaining tests were pending, as the likelihood of the remaining tests finding a cardiac cause was essentially non-existent.
5. Throughout his hospitalization, Mr. Musco continued to develop signs and symptoms; i.e., headaches and facial bruising/trauma that were evidence of a brain bleed.
6. In the face of the neurologic signs and symptoms, in addition to the patient having been placed on Lovenox,

it was a breach of the standard of care not to order a neurology consult during this patient's workup.

7. Dr. Canto, as a cardiology consult, breached the standard of care by not being aware that the patient had received an excessive dose of Lovenox at the time the medication was initiated.

Kenneth Fischer, M.D.
Miami, Florida

Dr. Fischer is a neurologist practicing in Miami. Dr. Fischer's opinions were as follows:

1. Based upon the fact that this patient suffered a fall with head trauma, as evidenced by bruising under the eye and a chin laceration, placing the patient on Lovenox was contraindicated.
2. As a result of the neurologic signs and symptoms, if a patient were to be placed on Lovenox, it was imperative that there be a neurologist involved in this patient's care and treatment.
3. Had a neurologist been involved in this patient's care and treatment, the neurologist would have been able to detect the subtle signs and symptoms of the impending brain bleed.
4. Had a neurologist been involved, the neurologist would have ordered serial CT scans which would have detected the brain bleed earlier.
5. Based upon the size and presentation of the brain bleed on CT, the bleed had started at least 12-16 hours earlier.
6. The patient received an excessive dose of Lovenox (3 doses within the first 16 hours) which caused or significantly contributed to the bleed.
7. Had Dr. Canto made himself aware of the excessive dose of Lovenox by simply reviewing the chart in more detail and/or had Dr. Canto involved a neurologist, the Lovenox would have been stopped and Mr. Musco's brain bleed would have been prevented.

DEFENDANT'S EXPERT WITNESSES:

Mitchell Krucoff, M.D.
Durham, NC

Dr. Krucoff is a Professor of Cardiology at Duke University in Durham, North Carolina. It was Dr. Krucoff's testimony that Dr. Canto met the required standard of care. His opinions were as follows:

1. Dr. Canto, as a cardiology consult, was not the primary care physician in charge of coordinating this patient's overall care. Rather, that responsibility fell to Mr. Musco's primary care/hospitalist physicians.
2. As a consultant, Dr. Canto did not have the power or authority to override the orders written by other doctors absent a life-threatening situation. Rather, as a consultant, it was his responsibility to make appropriate recommendations to the primary care physicians for them to determine what orders needed to be entered based on those recommendations.
3. The use of Lovenox was appropriate. While a vasovagal syncope was one of the more likely causes of the syncopal episode, it was imperative that underlying cardiac matters be ruled out. Until such time as those cardiac concerns were ruled out, the standard of care required that this patient be kept on Lovenox. As Mr. Musco's event occurred prior to the last test to rule out cardiac issues; i.e., the Adenosine Myoview stress test, it was appropriate for him to be continued on the Lovenox.
4. Based upon this patient's presentation, both initially and throughout the hospitalization, a neurology consult was not necessary.
5. While it was a medication error for Mr. Musco to receive 3 doses of Lovenox in the first 16 hours, the standard of care would not have required Dr. Canto to be aware of this medication error as that information was contained within portions of the records that Dr. Canto would not ordinarily have reviewed.
6. Furthermore, as Lovenox does not cause bleeds, but rather increases the severity of the bleed once it occurs, it is clear that Mr. Musco was not adversely affected by the

excess dose as his bleed did not occur until more than a day later.

7. Mr. Musco's brain bleed, based upon the presentation of the bleed, clinical signs and symptoms, and the pharmacodynamics of Lovenox, did not occur until the morning of June 8, 2008.

VERDICT:

For Defendants

DATE OF VERDICT:

September 4, 2012

DATE OF FINAL JUDGMENT:

September 27, 2012

DEFENDANT'S OFFER:

Zero.

PLAINTIFF'S DEMAND:

\$190,000 Proposal for Settlement filed shortly before trial.

During closing arguments, Plaintiff asked the jury to return a verdict of \$10,000,000.

ATTORNEY'S COMMENTS:

Shortly before trial, both Lakeland Regional Medical Center and the primary care physicians settled the claims filed against them.

Submitted

By: Edward M. Copeland IV, Esq. **Date:** October 19, 2012
R. Clifton Acord Esq.

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