

**CASE INFORMATION SHEET**  
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**COUNTY AND COURT:** CIRCUIT COURT, MANATEE COUNTY, Naples,  
Florida

**NAME OF CASE:**

ROSEMARIE MURPHY,

Plaintiffs,

v.

DAVID LAMON, M.D. and NAPLES SURGICAL ASSOCIATES, P.A.,

Defendants

**CASE DOCKET NO.:** 12 CA 3144      **JUDGE:** Honorable Lauren L. Brodie

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

CRAIG R. STEVENS, ESQUIRE  
DANIEL W. SHEPPARD, ESQUIRE  
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**DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:**

RICHARD B. MANGAN, JR., ESQUIRE  
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Rissman, Barrett, Hurt,  
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1 N. Dale Mabry Hwy  
11th Floor  
Tampa, FL 33609

**AGE/SEX/OCCUPATION OF PLAINTIFF:**

ROSEMARIE MURPHY  
Female, 69 years old  
Part-time Health Care Consultant

**DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:**

The subject surgery took place on August 19, 2011 in Naples, Florida.

**CAUSE OF INJURY:**

This was a medical malpractice action involving a 69 year old female. The care in question involved an excisional biopsy of a cervical lymph node which caused injury to the spinal accessory nerve resulting in atrophy of the trapezius muscle, right shoulder drop leading to substantial physical deformity of the shoulder, loss of strength to the shoulder, loss of ability for Ms. Murphy to raise her arm above shoulder level, pain and numbness.

On Sunday, August 14, 2011, Rosemarie Murphy, a ten-year pancreatic cancer survivor, awoke to discover a large lymph node on the right side of her neck. Alarmed that this could be evidence of a return of her cancer, Ms. Murphy immediately contacted her primary care physician and was seen on Monday, August 15, 2011.

After discussions with her primary care physician regarding the possible need for biopsy, a CT exam was scheduled to confirm that the lump was a lymph node. The CT was performed the next day on August 16, 2011 and confirmed that the lump was a node. The CT also identified other enlarged nodes in the neck and supraclavicular areas.

On August 17, 2011, the primary care physician communicated the CT results to Ms. Murphy and arranged for her to be seen by Dr. Lamon to discuss treatment options. Dr. Lamon was able to work Ms. Murphy into his schedule to be seen the next day, Thursday, August 18, 2011.

Dr. Lamon saw and evaluated Ms. Murphy for the enlarged lymph node. During the evaluation, he and Ms. Murphy discussed two options - antibiotic therapy (as the node was most likely due to an infection) or excisional (complete) biopsy of the node. Due to concern that the node may either be a return of her

pancreatic cancer or lymphoma, Ms. Murphy elected to proceed to immediately biopsy. As such, she was worked in to Dr. Lamon's surgery schedule for the first thing the next morning, August 19, 2011. Following surgery, it became apparent that Ms. Murphy's spinal accessory nerve had been injured during the procedure.

At trial, Ms. Murphy argued that Dr. Lamon was negligent in not offering the additional options of a fine needle aspiration or a partial biopsy; that Dr. Lamon should not have biopsied the "visible" large node as there were other nodes that would not have put the spinal accessory nerve in jeopardy; that Dr. Lamon failed to obtain informed consent in that he never warned her of the risk to the spinal accessory nerve; and that Dr. Lamon failed to perform the procedure in an adequate manner as evidenced by the fact that the injury occurred.

Dr. Lamon presented evidence and testimony that antibiotic therapy and excisional biopsy were the only acceptable medical alternatives for Ms. Murphy; that the node in question was the node to be biopsied to determine its pathology as other nodes could not have confirmed that with certainty; that Dr. Lamon obtained informed consent by advising Ms. Murphy of the risks; and that Ms. Murphy's injury was a known complication of the procedure that can occur in the absence of negligence.

**NATURE OF INJURY:**

Spinal accessory nerve damage, causing atrophy of the trapezius muscle, right shoulder drop leading to physical deformity of the shoulder, loss of strength and range of motion as well as pain and numbness.

**PLAINTIFF'S EXPERT WITNESS:**

John Bogdasarian, M.D.  
Fitchburg, MA

Dr. Bogdasarian is an otolaryngologist practicing in the Boston, Massachusetts area. Dr. Bogdasarian's testimony was as follows:

1. Although Ms. Murphy presented to Dr. Lamon with one large palpable node and wanted to know what caused it, the CT scan identified numerous enlarged nodes.

2. A fine needle aspiration or other "partial" biopsy should have been offered as a potential option to determine the cause of her enlarged lymph nodes.
3. Ms. Murphy should have been given the option to biopsy one of the nodes identified in the CT scan as they were in less risky locations and the results of that biopsy, within 99% certainty, would have told her what was causing the node she was concerned about.
4. When performing an excisional biopsy near the spinal accessory nerve, the surgeon must protect that nerve from injury.
5. Dr. Lamon should have specifically identified a spinal accessory nerve injury as a potential risk in providing informed consent.

**DEFENDANT'S EXPERT WITNESS:**

Stephen M. Butler, M.D.  
Plant City, Florida

Dr. Butler is a general surgeon practicing in Plant City, Florida. Dr. Butler's opinions were as follows:

1. There would be no benefit to performing a fine needle aspiration as it is limited in its diagnostic benefit with a combined false-negative and non-diagnostic rate of 30% - 40%.
2. Dr. Lamon's options of antibiotic therapy or complete excisional biopsy were the only two medically reasonable options available to Ms. Murphy.
3. It would not have been a medically reasonable option to biopsy a different node on Ms. Murphy as the pathology in one would not, with certainty, be the cause of Ms. Murphy's main enlarged lymph node, the one she was concerned about.
4. The standard of care as to informed consent involves discussion with the patient which includes the discussion of risks and treatment options. The spinal accessory nerve does not need to be specifically identified during the consent process.

5. Dr. Lamon met the standard of care for informed consent by advising Ms. Murphy of the risks, benefits and medically reasonable alternatives to the excisional biopsy.
6. The spinal accessory nerve injury in this case was not the result of negligence. A spinal accessory nerve injury can occur during this type of surgery in the absence of negligence.

**VERDICT:**

For Defendants.

**DATE OF VERDICT:**

November 21, 2013

**DEFENDANT'S OFFER:**

Zero.

**PLAINTIFF'S DEMAND:**

\$500,000 Proposal for Settlement filed January 21, 2013.

During closing arguments, Plaintiff asked the jury to return a verdict of \$750,000.

**Submitted**     **Richard B. Mangan, Jr.**                     **Date: January 22, 2014**  
**By:**             **Edward M. Copeland IV**

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