

CASE INFORMATION SHEET
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COUNTY AND COURT:

Lake County Circuit Court

NAME OF CASE:

CHALEAH R. PAGAN, as Personal Representative of the Estate of
JOSE A. PAGAN,

Plaintiffs,

v.

JULIE SARANITA, D.O. and SOUTH LAKE PAIN INSTITUTE, INC., a
Florida Corporation,

Defendants

CASE DOCKET NO.: 15-CA-424

JUDGE: Michael G. Takac

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

Howard S. Grossman
Grossman Attorneys at Law
1098 NW Boca Raton Boulevard
Boca Raton, FL 33432

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

Richard S. Womble, Esquire
Christine V. Zharova, Esq.
Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P,A.
201 E. Pine Street
15th Floor
Orlando, FL 32801

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

55 year old/male/Retired law enforcement officer.

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

Chaleah Pagan, wife
51 years old

Cheyenne Pagan, daughter
19 years old

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

May 27, 2012, at the decedent's home in Clermont, FL.

CAUSE OF INJURY:

Jose Pagan was injured on the job in Afghanistan where he was working for a defense contractor. He injured his right shoulder and right knee. When Mr. Pagan returned from Afghanistan, he sought treatment with Dr. Michael Jablonski at Jewett Orthopaedic Clinic in Orlando, Florida. Dr. Jablonski performed a rotator cuff repair in June, 2011 and also recommended that Mr. Pagan undergo a repair of the torn meniscus of his right knee after completing rehabilitation.

In the eleven month interim between the surgeries, Dr. Jablonski referred the patient to Dr. Julie Saranita, a board certified pain management physician for the management of Mr. Pagan's chronic pain. Dr. Saranita prescribed MS Contin (an extended release Morphine).

At trial, it was undisputed that Morphine has a respiratory depression effect. Patients who have not previously taken Morphine are considered "naïve". Opioid naïve patients are started at low doses of Morphine and the doses are increased at a rate to develop respiratory tolerance.

Dr. Saranita saw Mr. Pagan every month beginning on June 20, 2011 and ending on March 13, 2012. She managed Mr. Pagan's pain with the use of long-acting opioids, Gabapentin and serotonin reuptake inhibitors (SSRIs). Mr. Pagan did not return for his usual monthly appointment with Dr. Saranita in April of 2012. Mr. Pagan next saw Dr. Saranita on May 21, 2012. At that time, Mr. Pagan told Dr. Saranita that he forgot to make his refill appointment.

On May 21, 2012, Mr. Pagan also advised Dr. Saranita of his upcoming arthroscopic knee surgery with Dr. Jablonski which was scheduled on May 24, 2012. Mr. Pagan also stated he ran out of his long-acting opioids, went through withdrawal and was in a significant amount of pain. Dr. Saranita prescribed 15 mg of MS Contin twice per day for three days and then increased the dose to 30 mg twice per day.

On May 21, 2012, Dr. Saranita re-started Mr. Pagan on MS Contin at 30 mg a day for three days followed by an increase to 60 mg a day.

When Mr. Pagan saw Dr. Jablonski for pre-operative clearance on May 22, 2012 and again at the time of the operation on May 24, 2012, Mr. Pagan was asked to list his medications. He failed to disclose MS Contin.

During trial, Mrs. Pagan admitted that it was Mr. Pagan who took care of his prescription medications. Mrs. Pagan admitted she never managed her husband's medication. However, according to Mrs. Pagan, on the evening of May 26, 2012, she for the very first time, administered a 30 mg pill of MS Contin to her husband.

Mrs. Pagan testified that she administered the MS Contin at approximately 6:00 to 7:00 P.M. She then heard her husband snoring loudly at 11:30 P.M. while he was wearing his Continuous Positive Airway Pressure (C-PAP) machine for sleep apnea. When Ms. Pagan checked on her husband at 10:00 A.M. the following morning he was unresponsive.

An autopsy and investigation was conducted by Dr. Kyle Shaw, the medical examiner and a forensic pathologist. Dr. Shaw concluded that there was insufficient evidence to prove that the morphine contributed to Mr. Pagan's death. Instead, Dr. Shaw found a significant left main coronary artery anomaly which is a known factor in cases of sudden cardiac death. Dr. Shaw concluded that Mr. Pagan died of atherosclerotic cardiovascular disease with a contributing factor of the coronary artery anomaly.

Ms. Pagan's told the investigator her husband was very regimented about taking his medication. The medical examiner's investigator inspected the Pagan home and found numerous partially filled prescription bottles containing long-acting opioids in varying doses that had been previously prescribed by Dr. Saranita. While Mr. Pagan told Dr. Saranita he ran out of his medication and was in a lot of pain, he did not fill his

prescription for MS Contin following his May 21, 2012 appointment.

Mr. Pagan had never made Dr. Saranita aware that he had not been taking his medication as prescribed. In fact, during every single office visit Mr. Pagan confirmed to Dr. Saranita that he was compliant with all instructions.

NATURE OF INJURY:

Death.

PLAINTIFF'S EXPERT WITNESSES:

Steven Bird, M.D.
Toxicology
Worcester, MA

Dr. Bird testified that Mr. Pagan's death was consistent with Morphine-induced respiratory depression. He testified that Mr. Pagan had lost his respiration tolerance to the effects of MS Contin when he stopped taking the medication for a month prior to May 21, 2012. Dr. Bird did not believe that Mr. Pagan was able to regain his tolerance to the medication during the six days (May 21 to May 26, 2012) that Mr. Pagan was allegedly taking the MS Contin prescribed by Dr. Saranita on May 21, 2012.

Milton Landers, M.D.
Pain Management
Wichita, KS

Dr. Landers testified that Dr. Saranita acted below the standard of care when she prescribed MS Contin (an extended release Morphine) on May 21, 2012 instead of a short acting opioid. Dr. Landers also testified that Dr. Saranita improperly titrated the medication because as of May 21, 2012, Mr. Pagan was opioid naïve as he had lost his tolerance to opioids by being off the medication for the previous month.

George Nichols, M.D.
Forensic Pathology
Louisville, KY

Dr. Nichols concluded that the cause of death for Mr. Pagan was due to the effects of MS Contin. He believed that Mr. Pagan fell into respiratory depression followed by cardiac and respiratory failure.

Marc Halushka, M.D.
Cardiovascular Pathologist
Baltimore, MD
Rebuttal to Defendants' expert, Dr. Factor

Dr. Halushka testified that based on his review of the pathology slides, there was no evidence of focal necrosis. This was in response to the defense theory that Mr. Pagan experienced an ischemic myocardial infarction prior to death which was the cause of his death.

DEFENDANT'S EXPERT WITNESSES:

Richard Rauck, M.D.
Pain Management
Winston-Salem, NC

Dr. Rauck testified that Dr. Saranita acted appropriately and within the standard of care. He believed that it was appropriate for Dr. Saranita to manage Mr. Pagan's pain with long-acting opioids. He also testified that Dr. Saranita started Mr. Pagan at an appropriate dosage and properly increased the dosage.

Kim Klancke, M.D.
Cardiology
Daytona Beach, FL

Dr. Klancke's opinion was that some of Mr. Pagan's prior complaints were consistent with an underlying cardiac condition. Mr. Pagan's pre-existing cardiac condition and a coronary anomaly were consistent with a sudden cardiac event causing death.

Stephen Factor, M.D.
Cardiac Pathologist
Bronx, NY

Dr. Factor examined a tissue specimen and concluded that there was evidence of necrosis in the septum of Mr. Pagan's heart which was caused due to the arrhythmia and ischemia that he experienced prior to death.

Kyle Shaw, M.D.
Forensic Pathology/Medical Examiner
Leesburg, FL

Dr. Shaw conducted the medical examination and autopsy. Dr. Shaw concluded that cause of death was atherosclerotic coronary

artery disease with a contributing cause of the congenital coronary artery anomaly.

Julie Saranita, M.D.
Pain Management
Clermont, FL

Dr. Saranita explained that it is appropriate to start an opioid naïve patient on 15 mg of extended release morphine twice per day and increase the dosage to 30 mg twice per day within three days. During trial Plaintiff introduced information contained within the product insert for MS Contin which Plaintiff argued was approved by the FDA.

In response, Dr. Saranita explained that the FDA has concluded that a patient becomes opioid tolerant after taking 60 mg of MS Contin per day for seven days. Dr. Saranita explained that this means that the FDA believes it is safe to give up to 60 mg per day of Morphine to an opioid naïve patient.

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT:

January 30, 2018

VERDICT:

Defense verdict.

COMPARATIVE NEGLIGENCE:

0

JUDGMENT:

For the defendant.

DATE OF JUDGMENT:

February 2, 2018

DEFENDANT'S OFFER:

0

PLAINTIFF'S DEMAND:

\$22 million

ATTORNEY'S COMMENTS:

This matter was tried for 11 trial days during which time the opioid crisis was being heavily reported in the media. During trial, the defense introduced evidence to show that Mr. Pagan did not take his medications as prescribed. After his death, the medical examiner found approximately three bottles of prescription MS Contin that contained unused MS Contin pills. Further, Ms. Pagan told the investigators that her husband would not take his medication as prescribed. He would not take the MS Contin during the day because it made him feel loopy.

Further, Mr. Pagan filled out forms at Jewett Orthopaedic Clinic on May 22, 2012 and May 24, 2012. The forms asked him to list his medications. He did not list MS Contin. This also supported the fact that Mr. Pagan was not taking his medications as prescribed.

The defense demonstrated through all experts and Mrs. Pagan that no one knew how many, if any, MS Contin Mr. Pagan took between May 21 and May 27, 2012. The defense proved that no one knew if Mr. Pagan took his MS Contin during this time-frame.

The defense also featured the videotaped deposition testimony of Kyle Shaw, M.D., the medical examiner. Dr. Shaw made a strong presentation and strongly defended his conclusion that Mr. Pagan experienced a cardiac death and not a Morphine related death.

Submitted By: Richard S. Womble and **Date:** March 27, 2018
Christine V. Zharova

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