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\$5.2 million malpractice award against ex-Wyomissing doctor upheld

Pennsylvania Superior Court has upheld a \$5.2 million medical malpractice suit award for the widow of a Spring Township pharmacist after a jury found a former Wyomissing doctor negligent in his death.

Gregory S. Volutza, 37, died of a heart attack while at work Jan. 24, 2003, in the pharmacy of the former Giant Food Store, 2251 Lancaster Pike, Cumru Township.

A Berks County jury on Feb. 9, 2009, found Dr. Donald J. McBryan Jr., formerly of Berks Internal Medicine in Wyomissing, negligent and awarded \$4 million to Dianne Volutza of Spring Township.

President Judge Jeffrey L. Schmehl later granted Volutza an additional \$1.2 million in damages for the delay in the conclusion of the case.

The defense has 30 days from the Aug. 16 decision to appeal the ruling to the state Supreme Court.

McBryan's attorneys, Michael M. Badowski of Camp Hill, Cumberland County, and Barbara S. Magen, of Philadelphia declined to comment.

Dianne Volutza's attorney, [Shanin Specter](#) of Philadelphia, said he is gratified by the court's decision.

"We hope this ends the matter said that the Valutza family and McBryan can gain closure," Specter said.

McBryan, a family physician, saw Volutza four days before his death because Volutza was experiencing chest and jaw pain and anxiety, according to testimony in the trial.

Specter argued that McBryan should have recognized Volutza's symptoms as a heart attack and immediately sent him to a hospital emergency room.

Volutza was overweight and had high blood pressure, high cholesterol and a family history of heart disease, Specter said.

The jury concluded the cardiologist, Dr. E. Berry Hey, and the radiologist, Dr. Randall S. Winn, were not negligent.

According to the opinion:

On Jan. 20 Volutza went to McBryan because he suffered chest pains. McBryan told Volutza he suffered from anxiety. Four days later, Volutza contacted McBryan because he had the same problem.

By the time McBryan returned the call around 10:45 a.m., Volutza was in cardiac arrest and paramedics were trying to revive him.

An autopsy showed Volutza had heart damage, indicating a heart attack several days before his death.

Superior Court agreed that Schmehl did not abuse his discretion by not overturning the jury verdict.