

Jury Awards \$15.2 Million for Med Mal

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A Philadelphia jury on Friday afternoon handed down a \$15.2 million verdict in a medical malpractice case where the body of a 13-month-old child undergoing heart surgery was cooled too fast, leading to neurological damage.

Thomas Kline of Kline & Specter, the lawyer for plaintiff Alec Sears and his parents, said that the team at Children's Hospital of Philadelphia, led by pediatric heart surgeon Marshall Jacobs, took only nine minutes to take the boy's body temperature down from 98.6 degrees Fahrenheit to about 63 degrees Fahrenheit (35 degrees Celsius to 17.2 degrees Celsius). The standard of care called for a 20-minute cooling-off period, Kline said.

Young Sears needed pediatric heart bypass surgery to correct a congenital heart defect, hypoplastic left heart syndrome, and in order to undergo the procedure, needed to be cooled so that the doctors could operate in a bloodless field and fix the heart.

"The repair of the heart was successful," Kline said, "but during the operation the patient sustained permanent and catastrophic brain injury."

The brain injury came, the plaintiffs argued, as a result of the too-rapid cooling process, which caused uneven cooling and allowed areas of vasoconstriction, or narrowed blood vessels, in the brain. These areas are called watershed infarcts and had the effect of a stroke in the child's brain.

Today, Alec is 7 years old, but is blind, unable to walk, feed himself or control bowel and bladder functions, Kline said. The jury awarded the child \$15 million in damages, and the parents \$225,000 for medical bills. The lead surgeon, Jacobs, was held 60 percent responsible and Children's Hospital 40 percent responsible under a vicarious liability theory. The registered nurse who ran the heart/lung machine to cool Sears down was under the direction and control of the hospital.

The decision by the jury of 12 came at the end of a three-week trial in Philadelphia Common Pleas Court before Judge Arnold New.

Kline said he was preparing a motion for about \$3 million in delay damages. He was vague as to whether defense counsel had placed an offer on the table during the course of the litigation, deferring an answer on that point to defense lawyers.

Neither Kenwyn Dougherty of Post & Schell, who represented Jacobs, nor Allan Starr of White & Williams, who represented CHOP, could be reached for an immediate comment late yesterday afternoon. A third defendant, an anesthesiologist, was found not liable, Kline said, because his alleged inaction in not objecting to the too-swift cooling process was not a cause of the child's injury. The anesthesiologist was represented by Peter Hoffman of McKissock & Hoffman.

The main defense, according to Kline, was a "two schools of thought" defense, in which the defendants said that many hospitals hewed to a standard of care that would allow for cooling-down of heart patients in as little as nine minutes.

Judge New instructed the jury on the "two schools" defense, but it was rejected.

Much of the trial was a battle of experts and medical texts on the question of how fast a heart patient should be cooled for surgery, Kline said.

Plaintiffs produced three texts - in the fields of pediatric heart surgery, pediatric anesthesiology and pediatric cardiopulmonary bypass surgery - that said the heart "should be cooled in no less than 20 minutes," Kline said. Defendants said there were many different "cooling strategies," according to Kline, so there was no breach in the standard of care when they opted for nine minutes of cooling rather than 20.

The procedure is performed in a room cooled to 65 degrees Fahrenheit, and the child's head is packed in ice. Meanwhile, the heart/lung machine is operated by the perfusionist, in this case a registered nurse, is circulating cool water to lower the temperature of the blood.

Sears, who is from Portland, Ore., and came to CHOP because it is one of the national centers for correction of congenital heart defects, awoke from the surgery with a seizure and evidence of brain injury. Nineteen days later, Kline said, magnetic resonance imaging showed that he had sustained neurological damage.

"The MRI showed that the child had the same type of injury that is described in medical literature as potentially occurring when cooling is too fast," Kline said. "And the plaintiffs proved that the cooling was too rapid and out of compliance with the accepted standard."

During the nine-minute cooling period, there was a one-minute period where Sears' body temperature dropped by eight degrees Fahrenheit.

"The perfusionist knew it was the standard of care to cool the patient at [a rate of] one to two degrees per minute," Kline said.

While the trial centered on the standard of care for cooling times, the complexity of the medical issues was such that the jury had to be given a lot of background on cardiothoracic surgical procedures, and two of the witnesses - the defense expert who is one of the originators of the surgical technique used on Sears, and the defendant anesthesiologist - each spent two and one-half days on the witness stand, Kline said.

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