



Philly Hospital Can't Overturn \$10.1M Med Mal Verdict

By Y. Peter Kang

Law360, Los Angeles (February 28, 2017, 8:25 PM EST) -- A Pennsylvania appeals court on Tuesday affirmed a \$10.1 million jury verdict in favor of a woman who sued a Philadelphia hospital over her infant's untimely bacterial meningitis diagnosis, rejecting the hospital's argument that the woman's expert medical testimony was speculative and based solely on conjecture.

A three-judge Superior Court panel upheld the jury verdict putting Children's Hospital of Philadelphia on the hook for Shantice Tillery's baby's brain damage, deafness and other serious injuries purportedly caused by doctors' late diagnosis of bacterial meningitis. The panel rejected the health care provider and Dr. Monika Goyal's argument that testimony provided by Tillery's expert witnesses was inadmissible because it was based on their own experience, rather than scientific or empirical evidence.

The appellate court issued a 28-page published opinion saying Tillery's experts provided testimony "with a reasonable degree of certainty" that the hospital and Goyal failed to use proper testing methods, which prevented the timely treatment of the meningitis. One such expert, Dr. Ron Waldrop, testified that had Goyal ordered blood work to be done on the infant, Shamir Tillery, she would have discovered abnormal results prompting further action, including admission, observation and intervention.

The panel noted that Waldrop formed his opinion by relying on the baby's hospital records, a peer review journal and a relevant chapter he wrote in a standard pediatric textbook discussing how to look for risk factors in children who have bacteria in their blood when the source isn't clear. In addition, two other expert opinions provided by Tillery were backed by decades of experience and supported by medical literature, the court said.

"Appellants' claim that the opinions were speculative, based solely on their personal conjecture and expertise, and not on science or empirical evidence, is belied by the record," the panel said in denying the hospital's motion for judgment notwithstanding the verdict.

The panel also rejected the hospital's argument that under Pennsylvania's Medical Care Availability and Reduction of Error Act, the trial judge should not have allowed Tillery's expert neuro-otologist, Dr. Dennis Poe, to testify about the proper standard of care since he wasn't board-certified in the same subspecialty as the defendant physicians. The appellate court said MCARE allows the court to waive the specialty requirement if it determines that the expert is competent to testify about the relevant medical issues.

"[Poe] is an active otolaryngologist and surgeon at Boston Children's Hospital, Brigham and Women's Hospital, and Massachusetts Eye and Ear Infirmary, with extensive knowledge and experience regarding the results of a failure to diagnose bacterial meningitis, the precise care at issue in this case," it said.

The appeals court also turned aside the hospital's argument that the trial judge erred by not reducing the \$7.5 million earmarked for compensatory damages for past and future pain and suffering, saying the award was justified given expert opinions that the case was a "worst-case scenario" due to the infant sustaining the injuries at only 11 months old.

"We agree with the trial court that the verdict was not 'so grossly excessive as to shock our sense of justice,'" the court said.

An attorney for Tillery told Law360 on Tuesday they were pleased with the decision.

"The time is long overdue for [Children's Hospital of Philadelphia] and its lawyers to acknowledge responsibility for CHOP's inexcusable negligence, which caused Shamir Tillery to suffer profound deafness and brain injury that he will endure for the rest of his life," said Andrew Stern of Kline & Specter PC.

Representatives for the other parties did not immediately respond to requests for comment Tuesday.

Tillery is represented by Andrew J. Stern, Charles Becker and Elizabeth A. Crawford of Kline & Specter PC.

The hospital is represented by Maureen M. McBride and James C. Sargent Jr. of Lamb McErlane PC, Benjamin A. Post and Kim. M. Funaro of Post & Post LLC

The case is Shantice Tillery et al. v. The Children's Hospital of Philadelphia et al., case number 1508 EDA 2016, in the Superior Court of Pennsylvania.