

Jury Delivers \$20 Million Med Mal Verdict Against Temple Hospital

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A Philadelphia jury handed down a \$20 million compensatory damage award against Temple University Hospital late last week in a case in which a University of Pennsylvania student suffered brain damage when hospital staff were slow to respond to his clogged tracheostomy, lawyers for the plaintiff said.

Yesterday, the jury added \$15,000 in punitive damages against the hospital for altering medical records and covering up other treatment records.

In *Gallagher v. Temple University Hospital*, 12 jurors found the hospital acted negligently in spring 2000 when caring for Hugh B. Gallagher IV in the hospital's intensive care unit, said Shanin Specter of Kline & Specter, who represented Gallagher with Andrew S. Youman.

During the trial, hospital administrators revealed that members of its staff had altered Gallagher's medical records and withheld the original copy of his hospital flow sheet until the first day of trial, Specter said. Gallagher then amended his complaint, asking the jury if it believed Temple University Hospital had acted willfully, wantonly or with reckless disregard for his rights, Specter said. The jury answered "yes" and handed down a punitive damage award yesterday.

Gallagher, from northwest Philadelphia, was a 19-year-old University of Pennsylvania freshman when he attempted suicide by lighting himself on fire in May 2000, Specter said. He suffered burns over two-thirds of his body. Weeks later, Gallagher was recuperating in the hospital's intensive care unit when built-up mucus plugged the tracheostomy tube that was helping him breathe, and his heart rate dropped, according to court documents.

The heart monitor set off an alarm when Gallagher's heart rate dropped below 60 beats per minute, Specter said. The alarm rings in the patient's room and at the nurses' station, according to court documents. It was disputed how long it took before a nurse went to Gallagher's room; his lawyers estimated between four and six minutes.

The hospital argued that the three nurses on duty that night were busy caring for other patients with breathing problems when Gallagher's alarm went off, according to court documents. Charles A. Fitzpatrick III of Mylotte David & Fitzpatrick, who represented the hospital, declined to comment on the facts in the case.

The nurse assigned to Gallagher's care, Janice Lawson, testified at deposition that she could not hear his alarm because the other two patients' alarms were sounding at the same time, according to court documents.

When Lawson went to Gallagher's room for a routine visit, she heard the alarm and saw that he wasn't breathing and had no heartbeat, according to court documents. By the time Gallagher was resuscitated, he had suffered brain damage after being deprived of oxygen for a length of time. Today, Gallagher can walk and talk but has trouble with his memory, learning and motor skills. He cannot care for himself and is likely to be institutionalized for the rest of his life, Specter said.

Gallagher and his parents sued Temple University Hospital in April 2001. Specter said that the cost of his future medical care was estimated between \$6 million and \$12 million. Specter said that Gallagher planned to become a doctor after graduating from Penn, and that his future lost earnings were estimated between \$3 million and \$13 million.

Specter said that the hospital offered the Gallaghers \$3 million to settle the case during jury selection. The family turned down the offer.

Gallagher's attorneys made six separate requests during depositions for the original copy of their client's flow sheet from the night his alarm went off. Records on the flow sheet, kept by nurses, detail patients' vital signs and the date and time the signs were read, Specter said.

The hospital's risk management office said it did not have the original copy of the document, Specter said.

However, the original copy of the flow sheet was produced on the first day of trial, Specter said, and several lines had been obscured, or "whited out," by a liquid concealer, and written over. The hospital's risk manager, Janet Leech, testified at trial that she had taken the original copy of the flow sheet from Gallagher's chart several days after the incident and stored the document in her office, Youman said.

Temple University Hospital's defense counsel informed the court at trial that he was told by the risk manager that the record could not be found, Specter said.

Lawson, Gallagher's nurse, testified on the witness stand that she had used whiteout to conceal several entries on the document and had written over the whiteout, Youman said.

Lawson told the court that she had gotten the whiteout from the nurses' station, where it was kept. (At her deposition, Lawson had told attorneys that she did not write anything on the flow sheet that was not visible on the photocopied document, Youman said.)

Specter noted that it is against hospital policy to have whiteout at a nurses' station and that it is against state law to alter medical records.

It was not established exactly how much time passed between when Gallagher's alarm went off and when the nurse found him in his room.

Lawson's entries over the whiteout made it appear that less time had elapsed between when Gallagher's heart rate dropped off and when a nurse found him. But the entries she found when Specter asked Lawson to use a flashlight and mirror to read the entries underneath the whiteout, suggested more time had elapsed, Specter said. However, not all of the figures were legible, he said.

Specter said that the most unusual aspect of the case was that punitive damages had been submitted to the jury because of the hospital's cover up.

"The cover up is always worse than the original act," said Specter. "Sometimes people just don't get the message."

Fitzpatrick, who represented the hospital, said his clients believe the evidence does not support the verdict, and they plan to appeal. Fitzpatrick declined to make any further comment.

Philadelphia Common Pleas Court Judge Alex Bonavitacola presided over the 10-day trial. Youman said that plaintiffs plan to seek \$1.66 million in delay damages.

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