

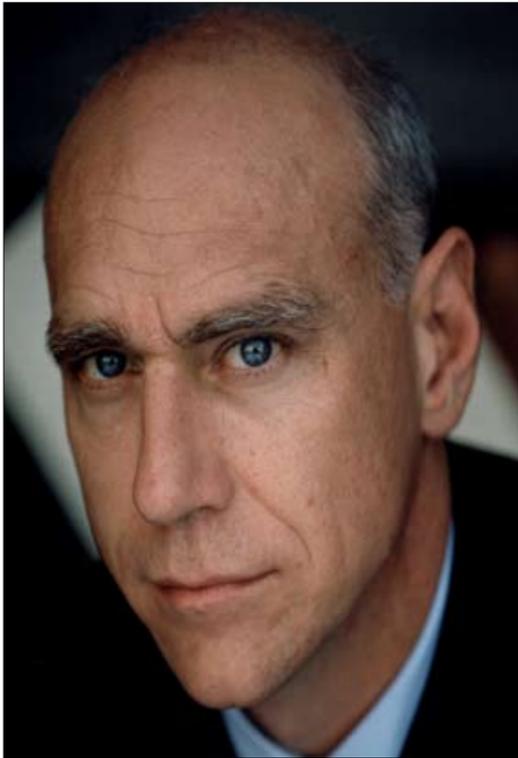
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WEEKLY

Woman settles over damage from drugs

Plaintiff alleged amount of opioid was too much



Brian Timothy Meyers

A Jackson County woman who allegedly suffered permanent brain damage from overdosing on opioids during a hospital stay settled for a confidential amount with the treating health center and prescribing physician.

The plaintiff, a 67-year-old retired nurse, went to

a hospital around midnight on July 27, 2006, with complaints of abdominal pain, nausea and vomiting. Upon examination, the confidential plaintiff was diagnosed with acute pancreatitis, or swelling of the pancreas, and several other secondary conditions. She was then admitted to the intensive care unit.

Pancreatitis can be particularly painful, so she was prescribed and administered a variety of pain medications, including Demerol, morphine and Duragesic fentanyl.

Duragesic fentanyl is a prescription pain medication used to treat moderate to severe chronic pain. The Duragesic patch delivers fentanyl, an opioid-based pain medication, into the body through the skin, where it works to relieve pain for up to 72 hours. Because of the powerful nature of fentanyl, the U.S. Food & Drug Administration has issued a black box warning — a warning that appears on the package insert of the drug — stating its potential to cause serious and even life-threatening adverse effects, including respiratory arrest.

Before and during her hospital stay, the plaintiff was “opioid-naïve” — meaning she had not developed a tolerance to strong opioid-based pain medications. According to the black box warning, fentanyl is not meant for opioid-naïve patients and should not be used to treat acute or short-term pain.

The pharmacological reasoning behind not using pain medications intended for chronic pain to treat acute pain is significant, said plaintiff’s attorney Brian Timothy Meyers.

“Pain acts as an antagonist to the drug,” he said. “With acute pain, when that pain then disappears, you’re still getting an enormous amount of pain

medication and no longer have pain to resist it.”

Over the course of her hospital stay, the plaintiff’s physicians prescribed an increasing amount of pain medication. On the third day of her stay, July 30, 2006, a doctor prescribed for her nearly 10 times the opioid dosing from the previous day. After the administration of the medication, the plaintiff suffered a respiratory arrest that left her severely and permanently brain damaged. Today, she has no short-term memory and requires full-time care.

The plaintiff alleged the amount of opioid prescribed by the confidential doctor was wholly unsafe and was responsible for the respiratory arrest and resulting brain damage.

The defendants claimed the plaintiff’s respiratory arrest was caused by her underlying illnesses and was not related to an opioid overdose. The defense argued the plaintiff did not show signs typical of overdose, such as a slowed heart rate and decreased breathing, and that in fact she was agitated up until the time she coded from respiratory distress.

The parties settled several weeks before a scheduled trial.

Plaintiff attorney Meyers said the FDA black box warning and bringing in medical negligence defense attorney Tim Aylward of Horn, Aylward & Bandy to mediate helped the parties reach a satisfactory outcome.

“When plaintiff has a strong case,” he said, “a solid defense attorney as mediator can grasp all of the underlying medical issues and can understand and explain the strengths and weaknesses of the respective parties’ positions.”

The defense attorneys declined to comment.

— Anna Vitale

■ Confidential settlement

MEDICAL NEGLIGENCE

- **Court:** Jackson County Circuit Court
- **Case Number/Date:** 0816-CV-21041/Feb. 5, 2010
- **Judge:** Brian Curtis Wimes
- **Mediator:** Timothy Aylward, Horn, Aylward & Bandy, Kansas City
- **Special Damages:** More than \$500,000 in past medical specials; life-care plan of more than \$3 million
- **Plaintiff’s Experts:** Dr. Charles F. Landers, San Diego (critical care); Laura Burchell-Henson, San Diego (nursing); Dr. David R. Rush, Kansas City (pharmacology/toxicology); Tracy Wingate, Kansas City (occupational therapy); Dr. Steven Simon, Overland Park, Kan. (physical medicine and rehabilitation); John Ward, Mission, Kan. (economics)
- **Defendants’ Experts:** Dr. Andrew J. Green, Overland Park, Kan. (endocrinology); Dr. Gary A. Salzman, Kansas City (critical care); Dr. Neal Benowitz, San Francisco (pharmacology/toxicology); Dr. Richard T. Katz, St. Louis (physical medicine and rehabilitation); Robert C. Fucetola, St. Louis (neurology); Dr. John Yanos, Columbia (critical care), Dr. John S. Daniels, St. Louis (endocrinology); Christopher Long, Berkeley (pharmacology/toxicology); Dr. Richard M. Dubinsky, Kansas City, Kan. (neurology); Dr. Paul H. Kurth, Mission, Kan. (internal medicine)
- **Caption:** Confidential v. Confidential
- **Plaintiff’s Attorneys:** Brian Timothy Meyers and Peter K. Andreone, The Law Offices of Brian Timothy Meyers, Kansas City
- **Defendants’ Attorneys:** Thomas G. Kokoruda and Blake Reeves, Polsinelli Shughart, Kansas City, for confidential hospital; Thomas W. Wagstaff and Thomas J. Preuss, Wagstaff & Cartmell, Kansas City, for confidential doctor