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\$12.9 Mil. Awarded to Woman Rendered Comatose After Neck Surgery

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Gina Passarella

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According to court papers in *Stokes v. Temple University Hospital Inc.*, Sharon Phillips suffered catastrophic brain injuries and is now comatose after getting her thyroid removed in June 2008.

After the 12-hour neck surgery, which the plaintiff alleged was excessively long, Phillips went to the post-anesthesia care unit of Temple University Hospital to recover. Her breathing tube was removed within hours despite what her son and guardian ad litem Eugene Stokes argued in court papers was a known history of his mother being difficult to intubate. After the tube was removed, Phillips began vomiting and then bled in her neck area, cutting off her airway, according to court filings by Phillips' attorney, David Kuritz of Oxman Goodstadt Kuritz.

According to pretrial memorandums from the defense, Phillips' surgery was long because she had an unusually large goiter that wrapped around her vocal chords. She was extubated after meeting the criteria for extubation and exhibited good vital signs after her breathing tube was removed. She complained only that she didn't like the way the morphine made her feel, the defense said. She was given Percocet.

Phillips was moved to a regular room at 1 a.m. June 24, 2008. As she was being transported, she began projectile vomiting and her drains began filling with blood. The defendants said in court papers that it was clear Phillips was developing a large neck hematoma. Phillips was taken back to the PACU, and a code was called before her breathing actually stopped. She was reintubated, but was losing oxygen as that process was going on. She was taken back to surgery, but no bleeding was found, according to court papers.

The damage was already done at that point, Kuritz had argued, because Phillips was without oxygen for several minutes. The main theory of the case was that Phillips should not have been given Percocet on an empty stomach with no other instructions to help prevent vomiting. He said it was the vomiting that caused the bleeding in her neck. It was then the way that bleeding was treated that caused her to go without oxygen. Phillips is now in a persistent vegetative state and lives in a long-term care facility, he said.

The jury found Dr. Dilipkumar Patel, the attending anesthesiologist during Phillips' overnight stay in the recovery room, 70 percent liable for her injuries. Ear, nose and throat surgeon Dr. Karl V. Whitley and resident Dr. Donald Solomon performed the thyroidectomy. They were each found 15 percent liable for Phillips' injuries, according to the verdict sheet.

Defendant Temple University Hospital, through the actions of resident Dr. Elisa Santora, was found to have performed at the appropriate standard of care, as were anesthesiologist resident Dr. Ellen Hauck and ENT resident Dr. Patrick O'Donnell. All three were listed as defendants.

Whitley was represented by Daniel P. Martz and Marie C. Plyter of Christie Pabarue Mortensen & Young. All of the other defendants were represented by George L. Young Jr. of Young & McGilvery.

The trial began Feb. 2 and concluded with a jury verdict Feb. 22. Philadelphia Common Pleas Court Judge Mark I. Bernstein presided over the trial. According to Bernstein's verdict sheet, the verdict was molded to additionally be in favor of the plaintiff

and against Temple University Hospital.

Kuritz said Temple University Hospital is on the hook for the entire verdict because all of the defendants were found to be employees or ostensible agents of the hospital.

Of the \$12.88 million awarded to Phillips, nearly \$3.02 million was for future pain, suffering and loss of life's pleasures. Nearly \$697,000 was for past medical expenses, \$28,659 was for past loss earnings, \$483,000 was for past pain and suffering and \$266,000 was for future loss of earnings. The rest of the damages were for future medical expenses apportioned yearly over the next 25 years, according to the verdict sheet.

Under the MCARE Act, the hospital has the ability to purchase an annuity and pay out the future medical expenses damages on a yearly basis for as long as Phillips is alive. Kuritz said there were never any settlement offers in the case.

He said he wasn't sure why the jury, which reached the 10-2 verdict in about six hours over two days, found Whitley and Solomon each 15 percent liable. Kuritz said the plaintiffs had no problems with how the difficult surgery was performed. The theory against Whitley was that he left after the 12-hour surgery without ensuring there were proper plans in place to combat a very rare but known risk of neck surgery — developing a hematoma from vomiting.

Kuritz said the theory against Solomon related to his job as a resident to enter post-op orders for Phillips' care. He ordered Percocet without giving additional instructions to combat the possibility of Percocet making Phillips nauseated.

The theory against Patel, who was found 70 percent liable, was that upon being the first to respond to the code, he should have cut open Phillips' stitches to let the blood out and take the pressure off of her windpipe and then worry about her airway. Instead, he went right to managing her airway, Kuritz said. He said Patel's defense was that he was afraid if he cut the stitches, Phillips would bleed to death.

Whitley's attorney, Martz, said in a statement that while his client sympathized with Phillips' condition, all of the experts agreed the surgery Whitley performed was done appropriately.

"The defense experts strongly disagreed with the criticism that there should have been a specific plan in place to deal with a known but uncommon post-operative complication," Martz said. Phillips "was in a monitored unit where she received one-to-one nursing care, with attending and resident physicians nearby in the event the patient developed any problems. At this point we are evaluating certain rulings made during the trial and our post-trial options."

The expert witnesses testifying on behalf of Phillips were endocrine surgeon Dr. Daniel T. Ruan of Brigham & Women's Hospital in Boston; anesthesiologist Dr. Robert Leckie of Beth Israel Deaconess Medical Center in Boston; damages expert and physiatrist Dr. Joseph Carfi of New Hyde Park, N.Y.; neurology expert Dr. Kenneth Brait of Ketchum, Idaho; and economist Andrew C. Verzilli of Lansdale, Pa.

Whitley's expert was head and neck surgeon Dr. Gregory Randolph of Massachusetts.

Temple's experts were ENT surgeon Dr. Edmund Pribitkin of Thomas Jefferson University Hospital and anesthesiologist Dr. Michael E. Goldberg of Cooper University Hospital. Dr. Richard Zorowitz of Hopkins BaySide in Baltimore testified on behalf of all the defendants.

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