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Top Verdicts & Settlements of 2005

MEDICAL MALPRACTICE

7. *Alexa Cardone, an infant, by her parents and natural guardians Kenneth Cardone and Nicole Cardone, and Kenneth Cardone, individually v. Maurice Gunsberger, M.D., Winthrop-University Hospital, Moris Angulo, M.D., Carlos Montoya, M.D., and Laura Beth Nimkoff, M.D.*

Settlement: \$3.5 million

Court: Nassau Supreme, Justice F. Dana Winslow, Jan. 10

Attorneys: Steven E. North of New York for the plaintiffs; Donald W. Henderson of Ryan & Henderson in Carle Place for defendant Laura Beth Nimkoff; Henry D. Nelkin of Chesney & Murphy in Baldwin for defendant Moris Angulo; Peter C. Kopff of Kopff, Nardelli & Dopf in New York for defendant Carlos Montoya; Raymond J. Furey, of Furey, Kerley, Walsh, Matera & Cinquemani in Seaford for defendant Winthrop-University Hospital; Stephen B. Geisler of Geisler & Gabriele in Garden City for defendant Maurice Gunsberger.

Facts and Allegations: On Aug. 5, 1999, Alexa Cardone, a 24-day-old girl, was taken to Winthrop-University Hospital in Mineola. She was lethargic and vomiting, and the doctors' admitting diagnosis was "failure to thrive." Alexa remained in the hospital for two weeks. During those 14 days, she progressively deteriorated. As the days went on, she required "vigorous stimulation" to elicit a response, was placed on a mechanical ventilator and was finally classified as "critically ill." The doctors performed numerous tests for common baby illnesses, but did not reach a diagnosis. They ultimately tested her urine to detect rarer diseases and determined that Alexa had sustained brain damage as a result of propionic acidemia, an inborn error in metabolism in which several essential amino acids are not adequately broken down as a result of a defect in the enzyme that performs that task. Without that enzyme, certain essential amino acids are only partially processed, thus leading to the formation of propionic acid. This initially causes poor feeding, vomiting, dehydration, floppiness and lethargy. Other toxic metabolites are also formed. These metabolites cause the inability of the body to naturally rid itself of ammonia. Uncontrolled propionic acidemia will cause a patient to experience a hyperammonia condition, which, if not ameliorated, may lead to brain damage and death.

Alexa was then transferred to the Mount Sinai Hospital in New York, where she remained until Sept. 14, 1999. Her parents, Kenneth and Nicole Cardone, acting individually and on Alexa's behalf, commenced a medical malpractice suit against Winthrop-University Hospital; its pediatric intensive-care physicians, Drs. Carlos Montoya and Laura Beth Nimkoff; its geneticist, Dr. Moris Angulo; and Alexa's private pediatrician, Dr. Maurice Gunsberger. They alleged that the defendants did not timely diagnose Alexa's propionic acidemia.

The plaintiffs claimed that proper diagnosis and treatment could have prevented brain damage. They contended that Alexa presented to the hospital with signs that should have immediately alerted the doctors to consider an error of metabolism and withhold and limit protein from her diet until a definitive diagnosis was confirmed. They also claimed that, after ordering the tests, the doctors failed to follow up and get the results as soon as possible. The plaintiffs also contended that Dr. Gunsberger should have had Alexa admitted to the hospital when he last saw her, on Aug. 3, 1999, and that the two-day delay contributed to her injury.

The defendants argued that propionic acidemia is a rare disease that is difficult to detect.

Injuries/Damages: Alexa, now 5, has moderate brain damage that affects her mental capacity and neuromuscular system. She has the intellect of a 2-year-old and experiences difficulty communicating. She will require lifelong care and now attends special school. No estimates were made regarding her future-life-care needs.

The parties agreed to a \$3.5 million settlement. Dr. Angulo contributed \$1.9 million, Dr. Nimkoff contributed \$750,000, Winthrop-University Hospital contributed \$500,000, Dr. Montoya contributed \$250,000, and Dr. Gunsberger contributed \$100,000.