

A Reminder of the Value of a Jury of Your Peers



By Alisa Wamble, JD

When talking with physicians about the litigation process, a common concern is that a jury seated to hear their case will be comprised of individuals who do not and cannot understand the complexities of the practice of medicine. Many feel it is too risky to put their fate in the hands of individuals who are from all walks of life in terms of age, employment, background, socioeconomic status, life experiences, etc. In the case at hand, through very unusual circumstances, one of our insured gynecological surgeons, Dr. Baker^[1], learned firsthand the value of having a jury of his peers hear the evidence in his medical malpractice case, weigh the credibility of the parties and the experts, and ultimately render a verdict in his favor.

The case involved surgical removal of a large cyst from Ms. Miller's abdomen to rule out cancer. Ms. Miller was a 65-year-old female who had hypertension, hyperlipidemia, gout, morbid obesity, rheumatoid arthritis, a history of an abdominal hysterectomy, and two C-sections. She was being evaluated for abdominal pain and constipation when she was

referred to Dr. Baker after a CT revealed a significant mass on the right side of her abdomen. After encountering extensive adhesions requiring adhesiolysis, Dr. Baker was able to remove the mass without any known complications. Dr. Baker stated in his op report that he retroperitoneally identified the ureters before removing the mass. Fortunately for Ms. Miller, the pathology revealed a benign condition, a serous cystadenoma. However, almost 18 months later, Ms. Miller went into renal failure. An ultrasound revealed the possibility of a chronic obstructive process of the left kidney, resulting in acute renal failure and necessitating dialysis. The plaintiff's theory in the lawsuit was that Dr. Baker had ligated the patient's ureter during the exploratory laparotomy (and bilateral salpingo-oophorectomy) he had performed a year and half earlier.

Filling in additional medical facts, Ms. Miller's BUN was 25, and her creatinine level was .82 immediately before Dr. Baker's surgery. On post op Day 1, her BUN was 26, and her creatinine was 1.25. She had good urine output and was afebrile. On post op Day 2, her BUN was 22, and her creatinine was 1.3. She had a mild post op ileus but was progressing appropriately and was discharged on post Day 3. The patient was to follow up with Dr. Baker six weeks post op, but she failed to do so. Six months after Dr. Baker's surgery, Ms. Miller saw her primary care physician for routine care. Labs ordered at that time showed that her BUN was 34, and her creatinine was 1.5. A year after those labs were drawn, Ms. Miller developed uremia and confusion, and an obstruction of the left ureter was ultimately diagnosed. The patient received hemodialysis and peritoneal dialysis. A nephrostomy tube was placed and subsequently removed. Ms. Miller never underwent a surgical reversal of the questionable left ureteral obstruction. Our experts surmised that she developed adhesions over the course of 18 months after Dr. Baker's surgery which ultimately caused an obstruction that led to the left kidney injury, in addition to the myriad of other health problems that likely also contributed to Ms. Miller's poor kidney function. The weak point in the case against Dr. Baker was that he and his office staff did not follow up with the patient after she failed to come in for her 6-week post op visit. An effort to call her, documented in the chart, and certainly a follow-up letter advising Ms. Miller that she needed to return for her 6-week post operative surgical checkup would have been invaluable in the defense of this case.

The lawsuit proceeded in a typical manner through the discovery process, which included disclosure of experts and depositions. However, the normal course of this litigation was drastically disrupted when the trial judge issued a surprising ruling wherein he found that Dr. Baker and his attorney had failed to comply with a local procedural court rule as the trial date approached. As a consequence, the judge determined that the case would not be tried by a jury and that he would conduct a bench trial instead. Over our strong objection, the bench trial proceeded. The judge heard all the evidence and rendered a written decision a couple of weeks after the trial. Inexplicably, the trial judge rendered a high six-figure verdict for Ms. Miller. The judge, acting as the single fact finder, stated in his ruling that he found parts of Dr. Baker's and his experts' testimony "unpersuasive" and "unreasonable." The judge concluded that Dr. Baker's actions fell below the applicable standard of care as enunciated by the plaintiff's experts and that he was negligent in his

treatment of Ms. Miller. Further, the judge opined that Ms. Miller suffered permanent injury to the function of her left kidney, pain and suffering, mental anguish, and diminished life expectancy, leading to a substantial verdict against Dr. Baker. We appealed the trial court's verdict on behalf of Dr. Baker, and the appellate court found that the trial judge had erred by taking away Dr. Baker's constitutional right to a jury trial and set the verdict aside.

Approximately two years later, the case was tried again with the same judge, the same experts, the same parties, and a local jury comprised of a mix of men and women, who ranged in age from 22 to 67, with occupations that included retail clerk, golf course maintenance worker, teacher, bank teller, nurse, sales professional, engineer, car salesman, and an unemployed individual. A defense verdict was rendered for Dr. Baker by this panel of fact finders after the case was tried before them for one week followed by two and a half hours of deliberation. After presenting proof that our physician defendant practiced good medicine, a very significant factor in the ultimate outcome of any healthcare liability trial is whether the fact finders think the defendant physician is caring and competent. If so, they find in favor of the physician most of the time. Interestingly, on the morning the jury deliberations were to begin, our defense attorney happened to see the juror who was a teacher arrive early with a blank flip chart of paper and markers. When the jury announced the verdict, she was the foreperson. We do not know what the jurors discussed or how they reached their decision, but this particular juror must have come to court that morning prepared to lead a discussion regarding different aspects of the proof and impressions of Dr. Baker as a physician and a person. It was rewarding when Dr. Baker finally had his day in Court before a full panel of fact finders and was fully vindicated. The plaintiff did not appeal the verdict, and our faith in our jury system was reinforced.

[1] The identities of parties involved have been altered.

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