

Good Medicine Deserves to Be Defended



By John T. Ryman, JD

“Do a good turn daily.” – BSA Scout slogan

The sky was filled with twinkling blue-white stars promising a fair day ahead when Dr. Able [1] climbed into his car to head for the hospital. A 70’s classics station played unnoticed in the background as Dr. Able mentally reviewed his schedule of neurosurgical cases for the day. Always meticulous, he was already preparing to do his best.

Later that morning, Dr. Able was wrapping up a scheduled surgical case when he was asked by a nurse from Dr. Baker’s OR if he could help Dr. Baker. Dr. Able told the nurse he would be glad to help and would come to Dr. Baker’s OR as soon as he finished his case.

Dr. Able arrived at Dr. Baker’s OR to find that he had the patient in the prone position and had started thoracic spine surgery. Dr. Baker is an orthopedic surgeon. Dr. Able reviewed

the MRI which showed a very large, herniated disc. Dr. Baker was having trouble removing the disc. Dr. Baker did not have a preoperative CT scan, which Dr. Able would have routinely obtained. Dr. Able scrubbed in. He quickly realized the surgery would be difficult, but he thought it could be safely completed. Dr. Baker assisted as Dr. Able worked on removing the disc. Near the end of the case, while removing bone fragments, the neuro monitoring tech noted that they had lost signal to the legs. He was using SSEP spinal cord neurologic monitoring. It was thought this change might be anesthesia-related. Dr. Able finished his part, turned the case back over to Dr. Baker to close, and moved to his next case. After finishing his next case, Dr. Able consulted with Dr. Baker about the patient. The news was not good. The patient could not move her legs. An MRI was ordered STAT which showed remaining disc material and significant stenosis. Doctors Able and Baker decided to promptly return the patient to surgery after getting consent from the patient's spouse. During the second surgery they attempted to further decompress the area. Following this second surgery, an MRI showed continued narrowing and compression. Both doctors thought they had decompressed as much as safely possible, and further surgery would be unreasonably risky for the patient. The patient remained paralyzed in her legs.

“No good deed goes unpunished.” – Oscar Wilde

The patient filed suit against both Dr. Able and Dr. Baker. She alleged that Dr. Baker deviated from the standard of care by attempting to perform surgery from a posterior approach and that Dr. Able deviated from the standard of care by continuing with the approach and failing to open a sufficiently wide exposure. She alleged that Dr. Able should have ended the surgery and referred the patient to another surgeon or returned the patient to surgery later with a different approach. These alleged failures by Dr. Baker and Dr. Able caused the injury to her spinal cord and resulting paraplegia. In short, the plaintiff alleged that the approach selected by Dr. Baker was a deviation from the standard of care, continuation of the surgery was a deviation by Dr. Able, and these deviations caused the patient to be permanently paralyzed.

The case proceeded through the typical lengthy discovery process. The plaintiff produced a neurosurgery expert who criticized Dr. Baker for attempting to perform surgery on the patient from a posterior approach. The expert was critical of Dr. Able for continuing the surgery and failing to extend the exposure. According to this expert the deviation from the standard of care caused the injury to the plaintiff's spinal cord and resulting paraplegia.

The plaintiff alleged multi-million-dollar damages and made a settlement demand commensurate with the claimed damages. The settlement demand was considered but declined by both doctors.

The healthcare provider defendant is almost always the most important witness in any case. Dr. Able was a very good witness who had the ability to effectively educate the jury. The consulting medical experts are also very important. Both doctors had qualified experts to explain to the jury that the care was appropriate and within the standard of care. The expert for Dr. Able was one of the top neurosurgeons in the nation and had worked with

Dr. Able in the past. He proved to be a very convincing expert.

Both defendants were represented by experienced defense counsel, who had taken many cases to trial. These attorneys were among the best of the best.

This case went to trial about four years after the surgery, and both Dr. Able and Dr. Baker were defendants at trial. It was undisputed that the paraplegia was permanent and occurred during the surgery. The plaintiff's experts had significantly different opinions about key issues in the case, including timing of the injury and the specific approach that should have been used. These discrepancies may have made the plaintiff's experts seem less credible. In contrast, the defense experts were more consistent. They were also more experienced in the type of surgery done on this patient. Consequently, when communicating with the jury, they seemed more confident about the surgery and their opinions.

The trial lasted eight days. After all evidence had been presented, the jury found that there was no negligence by either Dr. Able or Dr. Baker. Based on the jury findings, the Court dismissed the plaintiff's case against Dr. Able and Dr. Baker with prejudice.

Even with the best of intentions and medical care, sometimes bad things happen. It does not necessarily mean that there was any negligence by the practitioner. SVMIC brings the resources and commitment to tell your story of competence and caring. In this case, that carried the day.

[1] Names have been changed.

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