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Score is "Love-All" when dealing with lawyers and doctors

BY PETER VIETH

Deborah Love has worked closely with both lawyers and doctors over her career, and – by all accounts – has helped to bring out the best of both professions.

Love has distinguished herself in her 17 years as executive director of the Richmond Academy of Medicine, primarily for her vision and leadership in developing "Access Now," a program that enables specialty physicians to serve the working poor.

Before joining RAM, Love made herself invaluable as chief of staff at the Virginia attorney general's office under both Attorney General Mary Sue Terry and her successor, Stephen D. Rosenthal.

Neither a lawyer nor a doctor herself, Love helped bridge the gap between both professions and the people they serve.

Virginia Lawyers Media honored Love this month as "Influential Woman of the Year" based on votes of the 44 women of the "Class of 2012" in the "Influential Women of Virginia" awards program.

From a family with deep roots in the "tobacco belt" of Piedmont Virginia, Love began her career in Richmond with a B.A. from Meredith College. She taught at both the middle and high school level, and was inspired and motivated by the "fresh faces" of her students.

She traded the classroom for the human relations department of Richmond Memorial Hospital. Later, at what was then known as the Medical College of Virginia, Love expanded her health care resume with work in operational design – creating organizational systems that work.

"I absolutely fell in love with it," she said.

Her administrative work was noticed by state government officials. Successful management in the state bureaucracy led to a call to work on the transition team when Mary Sue Terry was elected as attorney general in 1985.

■ See **Love**, on PAGE 6

Roanoke OBs hit with $9M verdict

Girl's costs already exceed cap

BY PETER VIETH

A Roanoke City jury has returned verdicts totaling $9 million against two obstetricians in a birth injury case where the child's medical expenses have already exceeded the cap for the child's recovery under Virginia law.

The child – now 10 – functions at a pre-kindergarten level, according to Jeffrey H. Krasnow of Roanoke, who tried the case for the mother and child along with Patrick A. Malone of Washington. The daughter's medical care so far has cost as much as $1.8 million, with future care estimated to cost between $5 million and $7 million.

The operation of Virginia's medical malpractice cap will reduce the recovery of both mother and child to $3.2 million. The cap for an individual patient was $1.6 million at the time of the child's delivery in 2001.

The case presented unusual and complex allegations of negligence in a birth case.

The plaintiffs accused one of

■ See **Verdict**, on PAGE 7

Million-Dollar Defense Verdicts

BY SARAH RODRIGUEZ

In 2011, our sister publication, *Virginia Lawyers Weekly,* reported 20 medical malpractice defense wins in which the plaintiffs sought a recovery of $1 million or more.

The annual compendium of "Million-Dollar Med Mal Defense Verdicts" begins on page 8.

For inclusion in the survey, the final demand or amount sued for must have been at least $1 million, and defense verdict must have been handed down by a Virginia jury during 2011.

In this year's compilation, the largest amount sought by a plaintiff was $15 million, in a case involving a brachial plexus injury to an infant during delivery.

Two additional cases involved childbirth complications: a shoulder dystocia and the stillbirth of a full-term fetus.

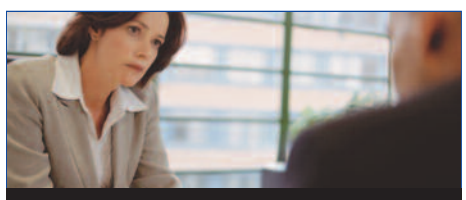
Seven cases involved the death of a patient, five cases stemmed from allegations of surgical negligence, and nine involved failure or delay in diagnosis.

Other cases ranged from a bacterial infection following wisdom teeth extraction to unauthorized disclosure of medical records to failure to disclose a drug's side-effects.

Fairfax attorney Richard L. Nagle participated in four of the reported cases. No other attorney had more than two cases listed.

Over the course of 2011, *Virginia Lawyers Weekly* reported four medical malpractice cases in which a jury awarded the plaintiffs more than $1 million, and 16 med-mal cases which settled for seven figures.

INSIDE



Doctor discipline cases can challenge lawyer ethics

BY DEBORAH ELKINS

A doctor hires a lawyer to represent the doctor on disciplinary charges before the Virginia Board of Medicine. A former patient claims the doctor had a sexual relationship with a second patient.

The doctor is a little dodgy. He indicates the board's inquiries may have some factual basis. But the board doesn't ask the right questions and the doctor walks. He may not know the case raised ethical issues that caused his lawyer some sleepless nights.

Lawyers who represent doctors on disciplinary charges may find themselves juggling ethical duties in a way that's more familiar to lawyers who do criminal defense work.

Professional rules of conduct for all lawyers prescribe both a duty to keep a client's secrets and a duty to refrain from putting on untruthful evidence. A client may be cagy about describing what actually happened, or even downright deceptive. If the lawyer discovers the deception, she may have to withdraw from the case, or even blow the whistle on the client.

Criminal defense lawyers deal daily with allegations of client misconduct – that's why they're hired in the first place. But healthcare lawyers are more used to providing advice in the civil law context. Their clients "generally want to comply" with the overall regulatory framework that governs physicians, according to Richmond lawyer Jeremy A. Ball.

Ball and other healthcare lawyers appeared on a panel that offered ethics advice at the Virginia Bar Association's "Health Law Legislative Update & Health Law Extravaganza" in Richmond on May 8. The lawyers shared hypotheticals, some drawn from their own practices, that let them dig into the ethics rules that govern client representation.

Lawyers who represent doctors on disciplinary charges may find themselves juggling ethical duties in a way that's more familiar to lawyers who do criminal defense work.

In the sexual misconduct case sketched above, the board subpoenas medical records, but the records they requested don't show anything to support the charges. The accusing patient has no proof and will not be a good witness for the board. There's no real evidence of misconduct, and the doctor and lawyer breathe a sigh of relief.

Thank goodness, the doctor tells the lawyer, the board never asked for records about three other patients.

Falls Church lawyer Julia Krebs-Markrich has faced a similar situation. When she represented a physician who allegedly had sex with multiple patients, his defense was "but I loved them all."

"I knew I would never be able to use that," she said.

"I got him off," she said, but the case "remains with me."

In such a situation, the lawyer's duty is to keep the client's confidences, not to do the job of the investigator for the Board of Medicine. The lawyer does not have an affirmative duty to share additional information that is harmful to the client.

Maintaining client confidentiality is a sacrosanct rule, said Barbara B. Saunders, assistant ethics counsel for the Virginia State Bar.

Sometimes, a client crosses the line, and the lawyer's duty of "candor toward the tribunal" – here the Board of Medicine – becomes an issue, according to Richmond lawyer Michael L. Goodman. That duty isn't necessarily triggered by a lawyer's suspicions that a client is withholding information.

"Don't ask, don't tell," can be a useful maxim for lawyers, Norfolk lawyer Guy Tower said.

But a lawyer can't "stick his head in the sand and ignore overwhelming evidence" that refutes what the client says, Ball said. "If it's patently obvious they're lying," the lawyer may not be able to stand by idly.

A lawyer may strongly suspect a client's story, but have no concrete proof the client has lied to a disciplinary board. "If it becomes so difficult for you as lawyer, if it's so repugnant that you can't continue to represent the client, you can attempt to withdraw" from the case, Saunders told the VBA audience.

If a doctor-client "told me yes," the doctor "had a relationship" with a patient, "that's problematic," Goodman said.

Saunders agreed that stronger measures may be necessary when a lawyer knows a client has lied to a tribunal.

"You have to advise the client why this was a bad thing," and why the client has to correct the fraud, Saunders said. If there's pushback from the client, the lawyer has to tell the client it's the lawyer's ethical duty to go to the tribunal.

At that point, it's almost inevitable for the lawyer to step aside from the case, because the lawyer had to take action adverse to the client, Saunders later told VMLR.

Doc hired by both sides is struck, partner can testify

BY PETER VIETH

Doctors often get called by lawyers to review patient records and offer opinions on medical issues. Sometimes, one doctor gets calls from two different sides of a case, and doesn't even realize it.

That seemed to be the case in a Fairfax County lawsuit where the plaintiff was hoping to prove back and neck injuries resulting from an automobile accident. Her lawyer hired a radiologist, Dr. Charles M. Citrin, to review records. Later, Citrin apparently was hired by the defense in the case for the same purpose.

Citrin's opinions must have favored the defense, because the defense lawyer designated Citrin as a trial witness. When the plaintiff's lawyer pointed out the conflict, the defense lawyer substituted a member of the same practice group, Dr. Elizabeth M. Hartman.

Citrin was disqualified as a witness, the trial judge ruled, because the plaintiff's lawyer had a reasonable expectation of a confidential relationship with Citrin.

The plaintiff's lawyer then asked the judge to bar Hartman from testifying, as well. The disqualification of Citrin should be imputed to his partner, the lawyer argued.

Hartman told the trial judge Citrin did not share any confidential information with her. Citrin had turned over his copy of the medical chart, including some handwritten notes, but Hartman said she did not know whose notes they were and some were indecipherable.

On appeal, the Supreme Court of Virginia approved Hartman as a witness, despite those cryptic notes. The plaintiff failed to show that any of the notes contained any confidential or privileged information, the court noted. The case is *Arnold v. Wallace*.

The Supreme Court opinion also is notable for its guidance in objecting to hearsay opinions in medical records. The plaintiff's lawyer objected to the plaintiff's medical chart coming into evidence because it contained more than factual notations – it contained doctors' opinions.

The plaintiff's lawyer played it close to the vest, however, not actually mentioning the word "opinion." The lawyer merely argued that the other side had failed to show all the elements necessary for the chart to come in under the business records exception to the hearsay rule.

Not good enough, ruled the Supreme Court. A lawyer objecting to a batch of business records has the burden of pointing out the passages that contain inadmissible opinions, the court held. The chart was properly admitted into evidence, according to the court.

Nursing home fall nets $6.5M verdict

By Peter Vieth

A Roanoke City jury returned verdicts last month totaling $6.5 million for an 84-year-old woman injured in a fall at a nursing home.

With an award of $5 million in punitive damages, the jury evidently sought to punish the owner of the home for a policy that discouraged the use of bed alarms to signal when a patient is getting out of bed.

With reduction of the punitives award to the statutory limit of $350,000, the woman could get a judgment for $1.85 million.

When she fell in her bedroom, Virginia Crouse was a resident of Stanleytown Health Care Center in Henry County, owned by the Roanoke-based Medical Facilities of America Inc. She had been receiving therapy to boost her mobility after a stroke. The fall broke her shoulder and hip and left her with permanent impairment, particularly in the use of her left arm.

Staff members testified a bed alarm was use and sounded, but the staff was unable to help Crouse before she was injured. Her lawyer, Robert W. Carter Jr. of Appomattox, presented evidence that no bed alarm was in use, even though her care plan called for one.

Carter said family members testified they never saw a bed alarm, and EMS providers reportedly saw no bed alarm when they were called because of Crouse's fall. Crouse's expert said there were no indications a bed alarm was in use.

A bed alarm is an "early warning device" that signals the staff when a patient is moving in a manner that might lead to a fall, Carter said.

Carter found training materials used by MFA that – he said – discouraged the clinical staff from using bed alarms. The "restraint reduction" training materials, Carter said, "created the fiction of characterizing bed alarms as restraints."

"MFA essentially invited its staff to discontinue the use of safety devices because it would mean less work," Carter said.

Carter said he also sought to show there was insufficient staff to respond to patients who might be in danger of a fall.

The trial, presided over by Roanoke Circuit Judge Charles N. Dorsey, was split into two sessions. In the first, the jury was asked to decide liability and compensatory damages. The second session was to consider punitive damages.

In the initial three-day session, the jury clearly accepted that there was no bed alarm in use, despite staff testimony to the contrary, Carter said. The jury considered Crouse's damages, including $72,000 in medical and special care expenses, and awarded her the $1.5 million in compensation.

In the punitive damages portion of the trial, Carter said he introduced evidence that MFA discouraged the use of bed alarms throughout its chain of 31 Virginia nursing homes. Carter said he used inspection reports from the Virginia Department of Health to show a number of cases where bed alarms were absent, contrary to the patients' care plans.

The punitive damages evidence brought the $5 million verdict. Carter noted the six-woman, one-man jury included a nurse. "I was out of strikes at that point," he said with a smile.

Carter said MFA never made an offer in the case. "When a nursing home essentially gives you the thumb to the nose and doesn't make an offer, your choices are limited," he said.

Douglas M. Coleman of Alexandria represented MFA at trial. He said his client viewed the verdict as unusual and excessive. Coleman will file post-trial motions to set aside or reduce the verdict.

Post-trial motions are set to be heard on May 30.

Office management

The do's and don'ts of firing someone

By David Baugher
Dolan Media Newswires

Few things are more unpleasant than firing someone. But if a member of the team is not up to the task or your office finances force a difficult decision, sometimes no other option exists. If you must let someone go, here are some dos and don'ts.

THE DO'S

Be brief. Don't get drawn into a debate with someone you are firing, says Marie Lefton, a Boston-based legal management consultant. Don't be rude, but say what you are going to say and be done with it. "Make it an announcement and not a discussion," she says.

Be timely. If a new infraction occurs a month after an unaddressed infraction, the tendency is to suddenly try to take

■ See **Firing**, on PAGE 7

Doctor's claim against consultant is thrown out

By Peter Vieth

An allergist who claimed his business consultant usurped his opportunity to purchase his prior practice group has seen his case against the consultant thrown out by an Alexandria federal judge.

Dr. Petr Bocek – the allergist – hired consultant Joseph P. Amato and his firm JGA Associates in an effort to start a new practice. Amato and his firm helped business owners and start ups with their strategy and financing.

Early in their relationship, Bocek realized his former allergy and immunology practice group was for sale. The owner had died and the estate was seeking a buyer. Bocek asked Amato to try to negotiate purchase of the practice, while keeping Bocek's name out of the negotiations.

Bocek and Amata worked out a plan for JGA – Amato's company – to buy the practice with the intention that Bocek would then play a major role as owner, partner or key employee.

The word "intention" was used a lot in communications, but there was never a written contract for Bocek's participation after JGA's acquisition of the practice. Amato wrote "our intention once we own the business would be to sell the business to you."

Amato's intentions about Bocek's future role in the allergy practice changed when he heard disturbing allegations about Bocek's departure. He was told Bocek had been fired and escorted from the premises by police based on allegations about sexual misconduct with staff and fraudulent prescriptions.

Amato exercised his right under his consulting agreement with Bocek to terminate their relationship. Amato then joined with two other investors to form a company that purchased the allergy practice.

Bocek cried foul.

The doctor sued Amato and JGA, alleging breach of contract and fiduciary duties and the fraudulent conveyance of JGA's rights to the practice.

U.S. District Judge Claude M. Hilton tossed Bocek's case out of court after both sides submitted written evidence.

The fraudulent conveyance count failed, the judge ruled, because JGA never owned the assets of the allergy practice. Amato had joined with others to purchase the practice.

Hilton also rejected Bocek's claim based on a fiduciary duty arising under tort law. The contract was controlling, the judge ruled. Nor did the understanding between the parties amount to a joint venture. "There is not a scintilla of evidence in this case that would support the existence of an implied agreement to share profits or losses," Hilton wrote.

Bocek asserted there was an oral contract, but Hilton found no meeting of minds on Bocek's entitlement to rights in the allergy practice, only "preliminary negotiations."

The case is *Bocek v. JGA Associates LLC*.

Guest Column

Assembly approves claim for wrongful death of a fetus

What does this mean for Virginia healthcare providers?

BY TRACIE M. DORFMAN

Gov. Bob McDonnell on April 9 signed Senate Bill 674, a measure that amends Virginia Code § 8.01-50, the current wrongful death statute, to include a cause of action for wrongful death of a fetus.

What does this mean for healthcare providers practicing in Virginia? This article explains the statute of limitations, potential damages and application of the medical malpractice cap.

Prior to SB 674, an injury to an unborn child constituted an injury to the mother only, and she was permitted to bring a personal injury action to recover for the stillbirth, a rule established in a 1986 case, *Modaber v. Kelley*, 232 Va. 60 (1986). The Supreme Court of Virginia reasoned that a wrongful death action could not be maintained on behalf of the estate of a stillborn fetus because a stillborn fetus is not a "person" within the meaning of the wrongful death statute. With the passage of SB 674, the wrongful death statute will include a cause of action for wrongful death of a fetus.

Statute of Limitations

Prior to SB 674, the statute of limitations for a mother to bring a personal injury action to recover for the stillbirth of her fetus was governed by Virginia Code § 8.01-243. The statute of limitations was two years from when the mother sustained an injury, typically when the fetus died in utero.

TRACIE DORFMAN

With the passage of SB 674, fetal death cases will be governed by the wrongful death statute of limitations set forth in Virginia Code § 8.01-244. That section states that the statute of limitations is two years from the date of death. Thus, although the statute of limitations is governed by a different Code section, it is effectively the same as before: two years from the date of fetal death in utero.

Potential Damages

Prior to SB 674, a mother could recover for her own mental suffering and physical injuries associated with the stillbirth of her fetus. The mother's monetary damages were limited to her medical expenses and her own lost wages arising from the stillbirth. No one else in the family could recover for their mental anguish caused by losing the unborn child.

With the passage of SB 674, damages in fetal death cases will be governed by Virginia Code § 8.01-52, which sets forth the damages available in a wrongful death case. These damages include:

1. Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent;
2. Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;
3. Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;
4. Reasonable funeral expenses; and
5. Punitive damages may be recovered for willful or wanton conduct, or such recklessness as evinces a conscious disregard for the safety of others.

Thus, the available damages in a stillbirth case will be expanded to potentially include loss of the unborn child's society, companionship, comfort, guidance, kindly offices and advice; loss of the unborn child's income and services; as well as funeral expenses.

In addition to expanding the type of recoverable damages, SB 674 will enlarge the class of individuals who may recover in a medical malpractice lawsuit. Prior to SB 674, only the mother could recover damages following a stillbirth. This meant that a grieving father or grieving siblings of the unborn child could not take the stand in a jury trial to discuss their mental anguish from losing the unborn child.

With the passage of SB 674, damages will be distributed pursuant to Virginia Code § 8.01-53, which means that mother *and* father, as well as brothers and sisters of the stillborn fetus, may recover for their mental anguish.

With newly expanded damages and a newly expanded class of beneficiaries, SB 674 may increase the potential value of stillbirth medical malpractice cases.

Cap Protection

While the potential value of a stillbirth medical malpractice action may increase, healthcare providers in Virginia will still be protected by the cap on damages set forth in Virginia Code § 8.01-581.15. According to that Code section, any verdict at trial returned against a healthcare provider cannot exceed a certain set value. For alleged acts of malpractice occurring between July 1, 2008, and June 30, 2012, damages are capped at $2,000,000.

The cap is applied per patient. In some cases, a medical malpractice action may involve two patients, and therefore, two caps. This is frequently seen in obstetrics cases when a baby is born alive with an injury and the mother also suffers her own injury. In such a case, the total available damages would be $4,000,000 (for alleged acts of malpractice occurring between July 1, 2008 and June 30, 2012).

Prior to SB 674, a stillbirth was considered an injury to the mother and therefore, only one cap applied to the mother's personal injury action because there was only one "patient." This was true even if the mother sustained her own injury separate and apart from the stillbirth.

With the passage of SB 674, healthcare providers will still be protected in the same way by the cap. According to SB 674, "where the wrongful act that resulted in a fetal death also resulted in the death of another fetus of the natural mother or in the death or injury of the natural mother, recovery for all damages sustained as a result of such wrongful act shall not exceed the limitations on the total amount recoverable for a single patient for any injury under § 8.01-581.15." This means that even if a mother suffers her own injury separate and apart from the stillbirth, only one cap will apply.

Tracie Dorfman is an attorney with the Fairfax office of Hancock, Daniel, Johnson & Nagle, P.C. She represents healthcare providers in medical malpractice litigation.

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THE DOLAN COMPANY

Medical Law Briefs

New OSHA program focuses on nursing home workers

The Department of Labor has launched a new program aimed at protecting employees at nursing homes and residential care facilities from occupational health and safety hazards common in such medical settings.

The three-year National Emphasis Program for Nursing and Residential Care Facilities, developed by the Occupational Safety and Health Administration, will boost inspections for specific hazards within the industry as well as provide outreach to those affected.

According to the Bureau of Labor Statistics, nursing and residential care workers experience one of the highest rates of lost workdays due to injuries and illnesses. Despite current regulations designed to address hazards, these workers miss workdays due to injuries or illnesses at a rate 2.3 times higher than that of all private industry as a whole.

The BLS data also show that the injuries were mainly attributed to overexertion as well as to slips, trips and falls, which together accounted for 62.5 percent of cases involving days away from work in that industry in 2010.

The new program will target facilities with a days-away-from-work rate of 10 or higher per 100 full-time workers.

"These are people who have dedicated their lives to caring for our loved ones when they are not well. It is not acceptable that they continue to get hurt at such high rates," said Dr. David Michaels, assistant secretary of labor for occupational safety and health, in a statement. "Our new emphasis program for inspecting these facilities will strengthen protections for society's caretakers."

Under the program, OSHA will increase inspections focused on other hazards, including: exposure to blood and other potentially infectious material; exposure to other communicable diseases such as tuberculosis; ergonomic stressors related to lifting patients; workplace violence; and exposure to hazardous chemicals and drugs.

Study: Birth control rings, patches increase clot risk

Women who use birth control patches like Ortho-Evra or contraceptive vaginal rings like NuvaRing have a heightened risk of blood clots, a new medical study has found.

"Women who use transdermal patches or vaginal rings for contraception have a 7.9 and 6.5 times increased risk of confirmed venous thrombosis compared with non-users of hormonal contraception of the same age," concluded a study released last week by the British Medical Journal.

The conclusion was based on a study of 1.6 million non-pregnant Danish women from 2001 to 2010. The participants in the study had no history of thrombotic (clotting) disease or cancer.

Both birth control patches and vaginal rings have been the target of numerous product liability suits throughout the country. In 2008, Johnson & Johnson agreed to pay more than $68.7 million to settle the earliest cases brought by women who claimed their blood clots were caused by the Ortho-Evra patch.

The patch must be worn for three consecutive weeks each month, to continuously provide hormones through the skin and into the blood stream. Thousands of lawsuits filed in both state and federal courts claim that Johnson & Johnson failed to adequately warn about the increased risk of blood clots. Stronger warnings have been added to the product's label several times since the patch was introduced in 2002.

NuvaRing is a vaginal contraceptive that releases estrogen and progestin. Its main advantage is convenience because it can be left in place for three weeks instead of taking a pill every day. The device was originally manufactured by Organon Pharmaceuticals and its affiliates. Schering-Plough Corp. acquired the Organon entities in 2007. Merck in turn acquired Schering-Plough in 2009.

Merck now faces hundreds of product liability suits in state and federal court concerning the NuvaRing device. The lawsuits allege that NuvaRing has a design defect in the dosage and type of progestin used. Plaintiffs also claim that the manufacturers failed to warn about side effects, including blood clotting, pulmonary embolism, heart attack, stroke and deep vein thrombosis.

The just-released Danish study indicates that an increased risk of blood clots may justify a change in which birth control products women choose to use.

"A risk of 10 per 10,000 woman years implies a risk of venous thrombosis of more than 1 percent over a 10-year user period," the study states. "Therefore women are generally advised to use combined oral contraceptives with levonorgestrel or norgestimate, rather than to use transdermal patches or vaginal rings."

State AGs push lawmakers for generic drug legislation

State attorneys general are urging Washington lawmakers to pass a bill that would allow generic drug makers to face the same liability as brand name drug companies for failing to include adequate warnings on drug labels.

In a letter to Senate Judiciary Committee chairman Sen. Patrick Leahy, D-Vt., 41 state attorneys general urged the passage of the Patient Safety and Generic Drug Labeling Act, S. 2295. The measure, introduced by Leahy, would require generic drug manufacturers to update their warning labels to protect patients from previously unknown side effects.

The bill would overturn the U.S. Supreme Court's ruling in *PLIVA v. Mensing,* which held that state-law failure-to-warn claims against generic drug makers were preempted by federal law, which requires generic drugs to carry the same labeling as their brand name counterparts.

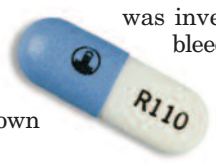
"This preemption holding produces arbitrary and unfair results, as both the majority and dissenting opinions in *PLIVA* recognized," the letter states. "Consumers whose prescriptions happen to be filled with the brand-name version of a drug are protected by state law from inadequate warnings, but consumers whose pharmacists fill their prescriptions with the generic version are now denied this protection. The adverse consequences are magnified by the fact that over 70 percent of prescriptions in the United States are filled with generic drugs."

The attorneys general join others, including the American Medical Association, AARP, Public Citizen and the Alliance for Justice in pressing for passage of the legislation.

First Pradaxa suits filed in federal court

What are believed to be the first three product liability suits over the blood thinner Pradaxa were filed in March in federal courts in Kentucky, Louisiana and Tennessee.

The Texas law firm of Watts Guerra Craft LLC is behind the lawsuits, which in many instances assert identical claims against drug maker Boehringer Ingelheim Pharmaceuticals.



The plaintiffs in each lawsuit allege that patients who use Pradaxa are at increased risk for developing life-threatening bleeds. Each lawsuit alleges that, "[d]ue to the flawed formulation of Pradaxa … its levels in the blood are difficult or impossible to assess and bleeds cannot be stopped since there is no known reversal antidote for this dangerous drug."

In October 2010, the Food and Drug Administration approved Pradaxa for the prevention of stroke and blood clots in patients with abnormal heart rhythm (atrial fibrillation).

But in a December 2011 safety announcement, the FDA revealed that it was investigating reports of "serious bleeding events" in patients taking the popular blood thinner.

The just-filed federal lawsuits state that Boehringer Ingelheim has confirmed that Pradaxa users suffered "at least 260 fatal bleeding events" worldwide between March 2008 and October 2011.

The new lawsuits were filed in U.S. District Court. In *Lege v. Boehringer Ingelheim* – filed in the Western District of Louisiana – Garland Lege alleges that he suffered gastrointestinal bleeding that required hospitalization and the removal of part of his colon after taking Pradaxa for less than a month in 2011.

Bivens v. Boehringer Ingelheim was filed in the Eastern District of Tennessee. In that lawsuit, Bertha Bivens claims that her mother, Nancy Brummett, suffered gastrointestinal bleeding and died in 2011 after taking Pradaxa for six weeks.

In *Hawkins v. Boehringer Ingelheim* – filed in the Eastern District of Kentucky – Helen Jean Hawkins claims that she was hospitalized with gastrointestinal bleeding in March 2011, a month after being prescribed Pradaxa.

The *Hawkins* complaint alleges that "as a direct and proximate result of Pradaxa use, [Hawkins] suffered severe mental and physical pain and suffering and has and will sustain permanent injuries and emotional distress, along with economic loss due to medical expenses."

The three federal lawsuits allege failure to warn, design defect, negligence, breach of warranty and fraud, among other claims. In addition to the Watts Guerra Craft lawyers representing the plaintiffs, Attorney Lee L. Coleman, of Bowling Green, Ky., appeared as local counsel in the Kentucky and Tennessee cases.

– Lawyers USA

Love

■ continued from PAGE 1

Terry was so impressed, she made Love her chief of staff.

Stephen D. Rosenthal, a high ranking lawyer in Terry's office, said Love was one of those "rare people" who could balance the legal work of the office with its effect on "real people."

"She was the voice of reason in virtually every major decision," Rosenthal said. She helped others to see the larger picture and consider the effects on ordinary citizens, he said.

"The best thing Mary Sue could have done is to have someone of Deb's background and personality as chief of staff," Rosenthal said.

A believer in Love's abilities, Rosenthal kept her as chief of staff when he was appointed attorney general. He filled the balance of Terry's second term when she resigned to run for governor. Love was in the AG chief of staff job for eight years, until 1995.

"It was an incredible, incredible experience," Love said. She worked with the "best and brightest of lawyers" with a "bird's eye view" of every aspect of state and local government.

In 1995, as party control changed at the attorney general's office, Love returned to the health care field as executive director of RAM, then a sleepy organization of some 700 Richmond-area doctors. Housed in a historic building near what's now VCU Medical Center, the Academy was primarily a vehicle for monthly meetings featuring dinner and speakers.

Love helped RAM members change the inward focus of the organization. "They had ideas and vision, and I listened," she said.

The first new service under Love's guidance was a centralized credentialing service for local hospitals. Next came a for-profit enterprise for RAM – providing organizational support for specialty physician associations.

Love said RAM welcomed the opportunity to be an "honest broker" as it opened doors to both hospital-employed doctors and those in independent, private practices.

RAM now enjoys "excellent relationships" with the two non-teaching hospital networks, according to Dr. Gigi deBlois, immediate past president of RAM.

In 2008, Love launched her signature achievement, Access Now. Doctors were already providing some free services to needy patients, but only on a haphazard basis.

"Physicians, by their very nature, are very open to helping in the community," Love said. "It was recognizing what they did and organizing a system to let them do it efficiently."

Access Now is linked to so-called "safety net" programs – free clinics and other services that help patients without health insurance. The primary care providers at those programs had no organized way to refer patients for specialized care.

Access Now provides the connection. A "safety net" doctor can request a referral through Access Now, and an appointment is made with a consulting doctor. To date, the program has served more than 5,000 people with services from more than 40 medical specialties, according to figures from a RAM spokesperson. Around 950 doctors participate.

Retired pathologist Carolyn Thomas, past chair of Access Now and a former RAM president, said Love looked at how similar networks operated in other cities. In "classic Deb form – thinking a little out of the box," Love designed a system customized to the need for specialty care in the Richmond area, Thomas said.

Love often looks over the fence at how others have handled various issues, according to current RAM president Dr. Richard Szucs. "She is always bringing back things she's seen and heard from other association directors," Szucs said.

Thomas praised Love's skills as an association director. She organizes behind the scenes and then "puts a physician out front" when it's time to take credit, Thomas said.

Szucs agrees Love is a consensus builder, "always running things by lots of people, making sure everybody is on board."

"She does her homework," agreed Dr. Hazel Konerding, current chair of Access Now.

Love also helps doctors tell their stories to government leaders, RAM officials say. She organizes "extremely valuable" meetings between physicians and politicians, deBlois said.

"She brings a wealth of knowledge about the General Assembly and the legal system," Thomas said.

Love said she's working on a couple of new projects at RAM. "We will continue to look for opportunities to serve the community, serve the patients and serve the physicians," she said.

Having worked for both lawyers and doctors, Love judiciously declines to say which group is easier to deal with. "They're very different. They approach problem solving from very different angles," she said.

"The bookends of my life have been two great professions," Love said.

Firing

■ continued from PAGE 3

action on both incidents at once. That can look retaliatory, says Rick Temple, an employment lawyer in Springfield, Mo., who represents management. "Once a decision is delayed, it then becomes suspect," he says. "It makes it look like you are only doing it in retaliation for new facts."

Be general. Lefton says some vagueness about the reasons for a firing are better than highly specific incidents that can prompt pointless "he said/she said" debates.

Be honest. Being gentle and sensitive is one thing. But don't lie. "You never want to give someone a false reason you are doing something," Lefton says. "If you tell someone they are being laid off and the employee file proves they were fired for performance, you've got a dissonance there that's not going to be attractive if it ever does come to a state employment commission or a lawsuit."

THE DON'TS

Don't say you are sorry. It could be taken as expressing fault on your part as opposed to simple sympathy, Lefton says. Also, "avoid emotional things either on your side or the employee's side like, 'This is hard for me,' or 'I know how you feel' or 'This is for the best.'"

Don't stray into suppositions. "The rules are that you discuss behaviors, not motivations," Lefton says. "'This was submitted to me a week past deadline' is fine. 'I think you were delaying on that because you were upset that you broke up with your girlfriend' is not fine."

Don't go it alone. If possible, have another person present if you have to fire someone. "You don't want it to be just one person's word against another person's word," Temple says.

Don't do it in your office. "Do it in the person you are firing's office or the conference room — so that you as the person giving the bad news can leave and the discussion is over," she says, "as opposed to being trapped in your office by the person you are trying to fire who won't get up and depart."

Don't be harsh. Potential safety issues should be taken into account in case an employee reacts badly. But Lefton says you should also be mindful of the potential effect on office morale of having a security guard loom over a departing employee. "A little bit of courtesy and kindness goes a long way," she said. "It's not just the right thing to do. It's that other employees are watching and will notice how you treat that person as they exit."

Verdict

■ continued from PAGE 1

the doctors of proceeding with a risky amniocentesis test – leading to bleeding inside the womb – after failing to fully advise the mother of the risks and alternatives of his treatment plan. The other doctor was alleged to have improperly referred the mother's case back to a family physician for a vaginal delivery, when a prompt Caesarean section was required under the circumstances.

According to Krasnow's account, the mother, Marsha Simpson, was expecting her second child and – at 33 weeks – was experiencing some degree of gestational diabetes. She was referred to obstetrician Dr. David J. Roberts with a Carilion obstetrical practice in Blacksburg.

Out of unwarranted concern the baby would be too large for a safe birth if carried to term, Roberts planned to induce labor two to three weeks early, Krasnow said. To make sure the baby would be viable, the doctor planned an amniocentesis to test for lung maturity, he said.

The plaintiffs' lawyers contended Roberts failed to fully explain the risks of his early inducement plan and possible alternatives. The alleged failure to fully advise the mother supported claims for both lack of informed consent and violation of the standard of care, Krasnow said.

The plaintiffs' lawyers also alleged negligence in the handling of the amniocentesis test. When a complication arose, the doctor went ahead with the test when it could have been postponed or cancelled altogether, Krasnow said.

Later, Roberts' partner, Dr. J. Bradley Terry, noted signs of fetal stress and directed the mother's family practitioner to induce labor. "This lady needed a C-section and she needed it then," Krasnow said.

The baby, Marissa Simpson, suffered a brain injury from lack of oxygen. She endured seizures in the days after birth and had no kidney function. She has since undergone two kidney transplants, which account for most of her past medical expenses, and suffers from cerebral palsy.

Krasnow said the defendants' standard of care experts did not dispute the propriety of the course urged by the plaintiffs' experts. They testified what the defendant doctors did was an alternate, acceptable standard of care, Krasnow said.

The jury's May 18 verdict came after 10 days of testimony and four hours of deliberations. The jurors awarded $7 million to the daughter and $2 million to the mother. Krasnow said Malone was lead trial counsel for the plaintiffs, handling two thirds of the trial duties.

An earlier settlement with the family practitioners and the hospital involved in the case reduced the amount available under the cap to $1.4 million each for the mother and child.

Krasnow said there was no offer from the obstetrician defendants, who were insured by ProAssurance. He said there was no schedule yet for post-trial motions.

Roanoke lawyer Walter H. Peake, lead counsel for the defendant doctors, did not return a call for comment.

Million-Dollar Med-Mal Defense Verdicts of 2011

Presenting the 2011 Compilation

In this issue, the *Virginia Medical Law Report* presents its sixth annual compendium of "Million Dollar Med-Mal Defense Verdicts." The results are taken from the Verdict & Settlement reports submitted to our sister newspaper, *Virginia Lawyers Weekly*.

In each of these cases, the amount the plaintiff sued for, or the final demand for settlement, was at least $1 million. The recovery in each was the same – zero, since the defendant prevailed.

To qualify for this survey, the verdict must have been returned by a jury in Virginia.

The 2011 survey features 20 defense verdicts. The cases are presented in the order in which they appeared in *Virginia Lawyers Weekly.*

$1.65 million

REED

ADAMS

FOSTER

Type of case: Complications from removal of colon
Court: Hampton Circuit Court
Defense attorneys: Rodney K. Adams, Shyrell A. Reed and Donna L. Foster, Richmond
Summary: The 72-year-old plaintiff underwent a subtotal colectomy. The risks and complications of the procedure were explained, and the plaintiff agreed to undergo surgery. Pathology of the removed colon revealed two pre-cancerous polyps.
After surgery, the plaintiff developed a recurrent fistula and incisional cellulitis, along with a second fistula. These did not resolve, and the plaintiff underwent additional surgical procedures. She developed chronic diarrhea as a result of malabsorption syndrome.
Plaintiff contended that the defendant should have performed a more limited colon resection or should not have proceeded with the surgery at all. She further claimed that the defendant's surgical technique was inappropriate.
The defendant emphasized that he performed the right procedure with the proper technique, which resulted in successful outcome in that the plaintiff never developed colon cancer.

$2 million

PERROW

Type of case: Wrongful death, failure to diagnose ruptured diaphragm
Court: Russell County Circuit Court
Defense attorney: Elizabeth Guilbert Perrow, Roanoke
Summary: The 76-year-old decedent was involved in a motor vehicle accident, and was admitted to the hospital. She subsequently developed aspiration pneumonia, and was unable to be weaned off the ventilator. Subsequent studies revealed a ruptured diaphragm and the decedent underwent surgery, but died five days later of a cardiac event.
The plaintiff alleged that a delay in diagnosis and surgery caused the death. She further alleged that the length of time decedent was on the ventilator caused cardiac stress.
Defendant claimed that the decedent's post-operative complications would have occurred despite the timing of the surgery, due to the trauma sustained in the accident, and her medical history, which included a previous heart attack.

$5 million

NAGLE

DORFMAN

Type of case: Wrongful death, delay in detecting abdominal bleeding
Court: Alexandria Circuit Court
Defense attorneys: Richard L. Nagle and Tracy M. Dorfman, Fairfax
Summary: After undergoing rotator cuff repair surgery, the decedent complained of severe abdominal pain and was noted to be hypotensive. After conservative treatment failed, decedent was transferred to the ICU, where lab work indicated the decedent's hematocrit had dropped considerably. The defendant physician suspected a slow gastrointestinal bleed, and continued to monitor the patient. The decedent eventually developed abdominal distention and rigidity, and was taken into surgery. After three hours, the surgeon could not find the source of the bleeding, and the decedent passed away after being taken back to the ICU.
Plaintiff alleged that the acute abdominal bleeding should have been diagnosed sooner.
Defendant's experts testified that the decedent's symptoms could have been caused by numerous medical conditions, and that an earlier diagnosis would not have saved his life.

$1.925 million

OAST

FAVALORO

Type of case: Wrongful death, negligence in treating pancreatitis
Court: Suffolk Circuit Court
Defense attorneys: Carolyn P. Oast and Mark J. Favaloro, Virginia Beach
Summary: After experiencing right-side abdominal pain, the decedent underwent surgery for possible acute hepatitis and gallstones. Later tests revealed abnormal bloodwork and the decedent underwent a procedure to have a bile duct stone extracted. On the evening after the procedure, the decedent experienced severe pain and went to the emergency room. He died four days later of acute pancreatitis.
Plaintiff alleged that the physician was negligent in failing to rule out the presence of stones in the context of the removal of the decedent's gallbladder.
Plaintiff also claimed the physician failed to implement stenting of the pancreatic duct during the stone removal procedure.
The defendant contended that stenting was not indicated, and that he complied with the standard of care.

Million-Dollar Med-Mal Defense Verdicts of 2011

$2 million

Type of case: Failure to diagnose injured ureter
Court: Norfolk Circuit Court
Defense attorneys: Carolyn P. Oast and Mark J. Favaloro, Virginia Beach


OAST


FAVALORO

Summary: A 54-year-old woman underwent a laparoscopic procedure to remove a potentially cancerous mass on her right ovary. During the procedure, the plaintiff suffered a thermal injury to her right ureter. After experiencing ongoing pain, the injury was discovered and the plaintiff underwent surgery, which resolved the injury.
The plaintiff, who claimed she still suffered right lower quadrant pain, alleged that the defendant violated the standard of care by placing the harmonic scalpel too close to the ureter, burning it and then failing to recognize the injury during surgery.
Defendant argued that ureteral injuries are a recognized complication of the procedure, and that 70 percent of ureteral injuries are not recognized intraoperatively.

$2 million

Type of case: Negligence during hemorrhoid surgery
Court: Chesterfield County Circuit Court
Defense attorneys: Carlyle R. Wimbish III and Margaret F. Hardy


WIMBISH


HARDY

Summary: A 39-year-old woman underwent surgery to remove Grade IV hemorrhoids. In the weeks following the surgery, the plaintiff developed significant narrowing of the anus, which required a second procedure. The plaintiff subsequently reported severe problems with elimination that alternated between constipation and fecal incontinence, which led to numerous embarrassing episodes.
She alleged that the surgeon's use of improper instrumentation and poor surgical technique cause the anal stenosis. She further claimed the surgery caused damage to nerves and other tissues in the ano-rectal area.
The surgeon defended the case on both liability and causation, contending that anal stenosis was a recognized complication of hemorrhoid surgery. He also presented evidence that the patient had not complied with postoperative instructions.

$3 million

Type of case: Paraplegia from spinal cord damage during surgery
Court: Rockingham County Circuit Court
Defense attorneys: C. J. Steuart Thomas III and James D. Mayson, Staunton


THOMAS


MASON

Summary: The 35-year-old plaintiff's MRI revealed disk herniations at C5-6 and C6-7, and when medication did not improve the condition, the defendant surgeon performed anterior cervical diskectomy and fusion.
During surgery, the defendant used a hammer to tap in a trial spacer to measure the appropriate size of the bone graft for C5-6. A 9mm bone graft was eventually placed. Moving to C6-7, the defendant tried a 7mm spacer, which was too loose. He then tried an 8mm spacer. About halfway in, the spacer stopped advancing. The surgeon continued tapping, and the spacer suddenly plunged through the disk space and into the spinal canal.
The spinal cord injury led to paraplegia and bowel and bladder deficits.
The defendant claimed that he had anticipated the spacer would get tighter as he tapped. He did not anticipate that the space would loosen and allow the trial spacer to plunge into the spinal canal.

$2 million

Type of case: Failure to diagnose infection following wisdom teeth exractions
Court: Virginia Beach Circuit Court
Defense attorneys: Rodney S. Dillman and Corey A. Stegeman, Virginia Beach


DILLMAN


STEGEMAN

Summary: The defendant surgeon extracted two of the plaintiff's wisdom teeth. Within days, the plaintiff was diagnosed with deep soft tissue cellulitis, which later developed into necrotizing fasciitis. Plaintiff spent one month in the hospital and underwent 15 surgical incisions and drainages to debride the necrotizing fasciitis. She visited the emergency room 40 times over the next three years.
Plaintiff alleged the defendant failed to appropriately prescribe antibiotics, failed to detect signs of infection, failed to timely order a CT or MRI scan to rule out an infection, and inappropriately administered a local steroid injection into a potential area of infection.
Defense experts testified there were no signs or symptoms of infection, and neither a CT, MRI or infectious disease consultation would have yielded evidence of an infection at the time.

$2 million

Type of case: Damage to aortic valve during stenting procedure
Court: Norfolk Circuit Court
Defense attorneys: Kathleen M. McCauley and Grace M. Brumagin, Glen Allen


MCCAULEY


BRUMAGIN

Summary: A 62-year-old woman who had a history of congenital coartation of her aorta was diagnosed with a re-coract of her aorta. During the procedure, the test balloon catheter was advanced, but did not come into view on the fluoroscopy screen. It was inadvertently advanced beyond the area of the lesion and through the aortic valve and into the ventricle. She suffered an injury to the aortic valve and underwent aortic valve replacement with a mechanical valve.
Plaintiff alleged that advancing the balloon catheter without visualizing it was negligent, and that the damage to the aortic valve was the result of negligence. She also claimed the has to be on Coumadin the rest of her life due to the mechanical valve.
The defendant contended the balloon catheter was advanced in accordance with the standard of care, and asserted that injury to the aortic valve was a known and accepted risk of the procedure.

$3 million

Type of case: Wrongful death, stillbirth of full-term fetus
Court: Fairfax Circuit Court
Defense attorneys: Colleen M. Gentile and Paige A. Levy, Richmond


GENTILE


LEVY

Summary: A 38-year-old woman who was 38 weeks pregnant with her fourth child was told during an appointment with the defendant physician's assistant that her baby was in breech position. She was instructed to return for evaluation in one week. Plaintiff was also instructed to report to the hospital's labor and delivery department if she believed she was in labor.
The day before the follow up appointment, the plaintiff went to the hospital with uterine contractions. She was evaluated by a labor and delivery nurse, and eventually discharged by the covering physician.
Less than an hour after her discharge, the plaintiff partially delivered a breech baby at her home. Responding EMTs noted that the baby's limbs and body were blue. She was taken to the hospital where the stillborn baby was delivered. Due to significant post-partum bleeding, the plaintiff underwent a hysterectomy, multiple surgeries and blood transfusions, and was hospitalized and in a coma for 11 days.

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$2 million


RAWLS


HOLLERAN


DONNELLY


KIMBLE

Type of case: Delay in diagnosing esophageal perforation
Court: Richmond Circuit Court
Defense attorneys: Brewster S. Rawls and Sandra M. Holleran, Richmond; Robert F. Donnelly and Susan L. Kimble, Richmond
Summary: A 66-year-old underwent an anterior cervical diskectomy and fusion surgery. The following afternoon, she developed facial and eyelid swelling. Medication changes were made to address the possibility of an allergy. The next day, the patient's condition worsened and a CT scan revealed an esophageal perforation, a known complication of the surgery. The injury was repaired after three surgical procedures, and the plaintiff had a good recovery.
The plaintiff's ENT expert opined that if the perforation had been diagnosed and repaired earlier, the plaintiff would have had a much shorter hospital stay, and would have avoided the majority of the medical treatment she underwent.
The defense claimed that the plaintiff faced a lengthy hospital course despite the timing of the diagnoses, and that all standards of care had been met.

$2.75 million


NAGLE


WALKINSHAW

Type of case: Wrongful death, bowel perforation
Court: Loudoun County Circuit Court
Defense attorneys: Richard L. Nagle and Paul T. Walkinshaw, Fairfax
Summary: Decedent underwent surgery to remedy blocked fallopian tubes and remove abdominal adhesions to improve her chances of success with in vitro fertilization therapy. After returning home, the decedent developed a bowel perforation and died from septic shock two days later.
The decedent's husband sued the physician who recommended the surgery. Plaintiff's experts testified that the defendant should not have agreed with the surgeon to discharge the patient. Plaintiff also claimed the physician should have reevaluated the decedent after she reported abdominal pain the morning after surgery.
Defense experts claimed the physician's reliance on the surgeon's judgment was appropriate, considering abdominal surgery and evaluation of bowel injures were not within the defendant's field of expertise. Defendant also claimed that abdominal pain after surgery, in and of itself, was not a reason to suspect a bowel perforation.

$2 million


REDMOND


STEGEMAN

Type of case: Breach of privacy
Court: James City County/Williamsburg Circuit Court
Defense attorneys: John R. Redmond and Corey A. Stegeman, Virginia Beach
Summary: Plaintiff sued defendant substance abuse treatment facility in a medical malpractice action for unauthorized disclosure of plaintiff's medical records. He claimed, among other injuries, loss of desired employment and mental pain and suffering.
Plaintiff contended the defendant breached certain federal laws including HIPAA, along with the Virginia Code's health records privacy regulations. The plaintiff further claimed the Health Practitioners Monitoring Program was the sole entity charged with the responsibility for communicating with credentialing committees.
The defense expert testified that the disclosure of the plaintiff's medical records was both authorized and within the standard of care.

$4.5 million


SATTERWHITE


MARCIAL

Type of case: Wrongful death, failure to administer drugs
Court: Hampton Circuit Court
Defense attorneys: Kimberly A. Satterwhite and Sharon A. Marcial, Richmond
Summary: A 64-year-old who had undergone knee surgery two weeks prior went to the emergency room with complaints of neck and back pain, shortness of breath and abdominal discomfort. Because she was a large woman with small veins, the nurses were unable to start an IV to perform a CT study, and the doctor ordered the next best available study – a Doppler ultrasound. While the patient was being transported for the study, she collapsed and later died. Cause of death was determined to be a massive pulmonary embolism.
Plaintiff claimed the decedent should have been immediately treated with heparin or a similar drug upon her admission to the hospital, along with TPA, a potentially dangerous medication, up until the time of her death.
The defendant contended that the plaintiff's embolus was weeks old, and neither medication would have successfully broken up the clot and prevented death.

$2 million


ADAMS


FOSTER

Type of case: Failure to diagnose cervical cancer
Court: Virginia Beach Circuit Court
Defense attorneys: Rodney K. Adams and Donna L. Foster, Richmond
Summary: A 27-year-old woman who had a history of abnormal Pap smears visited her OB-GYN complaining of post-coital vaginal bleeding. A subsequent Pap smear and ultrasound were negative. Three years later, the plaintiff was diagnosed with Stage IIIB squamous cell carcinoma of the cervix by a different OB-GYN. She underwent chemotherapy and radiation and has remained cancer-free since that time, but claims to have become infertile.
Plaintiff claimed the defendant should have done a cold knife cone instead of a LEEP procedure after one of her earlier abnormal Pap smears, as this would have "kept cancer at the gate."
Defense experts testified the cold knife cone procedure is outdated and has a higher risk of complications that a LEEP, and that both procedures have a similar efficacy.

$15 million


NAGLE


ZAUG

Type of case: Brachial plexus injury
Court: Richmond Circuit Court
Defense attorneys: Richard L. Nagle and Heather E. Zaug, Fairfax
Summary: During the plaintiff's delivery of her son, the defendant obstetrician encountered a shoulder dystocia. The obstetrician performed various maneuvers and successfully delivered the infant, but the infant suffered a complete, permanent brachial plexus injury, including the avulsion of the nerve root at the C8 level.
The infant underwent two surgeries but experienced little improvement.
Plaintiffs alleged the obstetrician applied excessive traction by pulling on the infant's head.
The defendant testified that she applied only gentle downward traction. The defendant's experts further testified that the maternal forces of labor caused the infant's brachial plexus injury.

Million-Dollar Med-Mal Defense Verdicts of 2011

$1.4 million

Type of case: Erectile dysfunction due to drug side-effect
Court: Montgomery County Circuit Court
Defense attorney: Paul C. Kuhnel, Roanoke
Summary: Plaintiff was prescribed Trazedone for insomnia and Celexa for depression. On follow-up, plaintiff complained of back pain associated with Trazedone, and was taken off the medication. Three months later, the plaintiff decided to take Trazedone to help him sleep and awoke the next morning with an erection that did not subside and lasted 36 hours (priapism). The plaintiff suffered permanent ischemic injury to his penis and suffers from erectile dysfunction and painful intercourse.


KUHNEL

Priapism is a known side effect of both Trazedone and Celexa. The issue on standard of care was whether the physician should have disclosed the risk of priapism, despite the risk being outlined in the prescription material from the pharmacy.
The defense claimed the risk is less than 1 percent and physicans only have an obligation to disclose the most likely side effects of any given medication.

$2 million

Type of case: Wrongful death, failure to recognize ruptured abdominal aortic aneurysm
Court: Prince William Circuit Court
Defense attorneys: Byron J. Mitchell and Lynne C. Kemp, Fredericksburg; C.J. Steuart Thomas III and Rosalie P. Fessier, Staunton
Summary: An 80-year-old with a history of hypertension went to the emergency room with complaints of severe back and right hip pain, nausea and vomiting. His lab tests were normal and vital signs were stable. Hours later, he complained of abdominal pain and a CT scan of the abdomen was ordered. While waiting for the scan, the decedent suffered a ruptured abdominal aortic aneurysm and died shortly after surgery that night.


MITCHELL


KEMP


THOMAS

Plaintiff sued the ER physician and internist for failing to timely recognize the decedent's AAA and order a "stat" CT scan. Plaintiff claimed that, had the scan been performed sooner, the decedent would have undergone successful surgery.
The defendants contended that the decedent's symptoms did not fit a ruptured AAA. Evidence at trial confirmed that the decedent and plaintiff had known of his AAA for several years.

$2.5 million

Type of case: Brachial plexus injury
Court: Henrico County Circuit Court
Defense attorneys: Richard L. Nagle and Heather E. Zaug, Fairfax
Summary: During the plaintiff mother's delivery, the defendant obstetrician encountered a shoulder dystocia. The obstetrician performed various delivery maneuvers and successfully delivered the infant, but the infant suffered a permanent brachial plexus injury at the C5 and C6 levels, including an avulsion of the nerve root at the C6 level.


NAGLE


ZAUG

Plaintiffs alleged that the defendant applied excessive traction by pulling on the infant's head. Plaintiffs' experts testified that the only way a permanent brachial plexus injury involving a nerve root avulsion can occur is if the obstetrician applied excessive traction to the infant's head.
The defendant obstetrician testified that she had only applied gentle downward traction, and that the mother's forces of labor caused the brachial plexus injury.

$3 million

Type of case: Leg amputation
Court: Norfolk Circuit Court
Defense attorneys: A. William Charters and Lindsy M. Roberts, Norfolk
Summary: A woman went to the emergency room after falling on the sidewalk. She was diagnosed with a knee sprain, placed in an immobilizer and discharged. She returned to the ER the next day with complaints of swelling and increased pain, and was diagnosed with a nerve contusion. Two days later, she returned to the ER and was diagnosed with a ruptured popliteal artery. A bypass graft was successfully performed, but the patient had tissue death and months later underwent and amputation.


CHARTERS


ROBERTS

Plaintiff's expert testified that the physician's assistant should have ordered Doppler tests and/or vascular studies to rule out injury to the popliteal artery. Orthopedic experts for the defense testified that there was no reason to order further vascular tests as the plaintiff had equal bilateral pulses, and therefore the artery could not have been transected at the time of either of the first two ER visits.