

Joycie O'Connor, as Executrix of Estate of Robert J. O'Connor and Joycie O'Connor, Individually v. The Kingston Hospital, Ellenville Regional Hospital, Willcare, Inc. and Somsak Bhitiyakul, M.D.; 2014 Jury Verdicts LEXIS 6626

1340/11

July 23, 2014

Headline: Patient's **Bedsore** a Result of Nurses' Inattention, Suit Alleged

Published Date: August 11, 2014

Topic: Medical Malpractice - Failure to Treat - Home Health Care - Abuse or Neglect - Medical Malpractice - Nurse

Injury: **Bedsore**/decubitus Ulcer/pressure Sore, Debridement

Practice Area: Healthcare Law; Torts

State: New York

Court: Ulster Supreme

Plaintiff Counsel

Norman Steiner

Firm Name: Law Offices of Norman Steiner

Address: New York, NY

Plaintiff Name: (Estate of Robert O'Connor, Estate of Robert O'Connor, Joycie O'Connor, Joycie O'Connor)

Plaintiff Name: (Estate of Robert O'Connor, Joycie O'Connor)

Joycie O'Connor, as Executrix of Estate of Robert J. O'Connor and Joycie O'Connor, Individually v. The Kingston Hospital, Ellenville Regional Hospital, Willcare....

Plaintiff Name: (Estate of Robert O'Connor, Joycie O'Connor)

Defendant Counsel

Robert Irving Miller

Firm Name: Sholes and Miller, LLP

Address: Poughkeepsie, NY

Defendant Name: (Kingston Hospital, Kingston Hospital)

Louis U. Gasparini

Firm Name: Lynch Schwab, PLLC

Address: New York, NY

Defendant Name: (Willcare Inc., Willcare Inc.)

None reported

Defendant Name: (Ellenville Regional Hospital, Somsak Bhitiyakul)

Judge: Richard L. Mott

Case Summary

On Dec. 26, 2008, plaintiff's decedent Robert O'Connor, 77, was admitted to The Kingston Hospital, in Kingston. O'Connor required treatment of a cancerous bladder. His treatment was managed by an internist, Dr. Somsak Bhitiyakul.

After having undergone two weeks of treatment, a bedridden O'Connor returned to his home. During the ensuing nine days, he was treated by visiting nurses who were employed by Willcare Inc.

O'Connor's condition worsened. On Jan. 18, 2009, he was readmitted to the Kingston Hospital. Doctors noted that O'Connor was suffering bedsores, which are alternately termed "decubitus ulcers" or "pressure sores."

After five days had passed, O'Connor was transferred to Ellenville Regional Hospital, in Ellenville. His bedsores progressed to the stage-IV classification, which is characterized by exposure of a bone, a muscle and/or a tendon. He died on Feb. 27, 2009. O'Connor's death was a result of his cancer, but his widow, Joycie O'Connor, claimed that his final weeks were marked by unnecessary pain and discomfort that were caused by his bedsores. She claimed that the sores could have been prevented.

Ms. O'Connor, acting individually and as the executor of her husband's estate, sued the Kingston Hospital, Bhitiyakul, Willcare and Ellenville Regional Hospital. The plaintiffs alleged that the Kingston Hospital's staff failed to prevent and treat Mr. O'Connor's bedsores, that Ellenville Regional Hospital's staff failed to properly treat the bedsores, that the failures constituted malpractice, and that Willcare's nurses negligently failed to properly treat the bedsores.

Joycie O'Connor, as Executrix of Estate of Robert J. O'Connor and Joycie O'Connor, Individually v. The Kingston Hospital, Ellenville Regional Hospital, Willcare....

Bhitiyakul and Ellenville Regional Hospital were dismissed via summary judgment, and the plaintiffs and Willcare negotiated a pretrial settlement. Willcare's insurer agreed to pay \$200,000. The matter proceeded to a trial against the Kingston Hospital.

Plaintiffs' counsel claimed that Mr. O'Connor's bedsores formed during the hospitalization that began on Dec. 26, 2008. They noted that a bedridden patient must undergo frequent, regular repositioning of his or her body, and they contended that O'Connor's repositioning should have been performed during each interval of two hours. They claimed that the Kingston Hospital's nurses did not render such treatment. They also claimed that O'Connor should have been provided a specialized mattress that minimized the pressure that causes bedsores.

Plaintiffs' counsel further claimed that O'Connor's bedsores were exacerbated by moist conditions that resulted from incontinence. They contended that the hospital's nurses did not adequately address O'Connor's incontinence. The estate's expert nurse opined that the Kingston Hospital's nurses did not properly treat O'Connor, and she contended that the nurses' errors constituted departures from accepted standards of medical care.

The defense's expert geriatrician opined that O'Connor's bedsores developed during the period that separated the first two hospitalizations. The expert also opined that the sores were Kennedy ulcers, which are rapidly forming wounds that develop when a dying patient's skin deteriorates. She contended that the sores were an unavoidable by-product of O'Connor's terminal condition.

The defense's expert nurse agreed that O'Connor's sores did not develop during O'Connor's hospitalization. She opined that the Kingston Hospital's nurses consistently repositioned O'Connor, that the nurses provided proper care and that O'Connor did not require a specialized mattress.

Injury Text:

On Dec. 26, 2008, O'Connor was admitted to the Kingston Hospital. Plaintiffs' counsel claimed that O'Connor quickly developed bedsores that progressed to the stage-IV classification. O'Connor underwent surgical debridement of necrotic tissue. He also underwent the application of bandages that contained wound-healing vacuums. The bandages remained until his death, which occurred on Feb. 27, 2009.

O'Connor's estate sought recovery of damages for his pain and suffering. O'Connor's widow presented a derivative claim.

Trial Length

6.0 days

Jury Deliberation

80.0 minutes

Jury Composition

1 male, 5 female

Plaintiff Expert(s)

Lorrinda Tanious, R.N.

Address: Bronx, NY

Specialty: Nursing

Affiliation: Norman Steiner

Joycie O'Connor, as Executrix of Estate of Robert J. O'Connor and Joycie O'Connor, Individually v. The Kingston Hospital, Ellenville Regional Hospital, Willcare....

Other Expert(s)

Barbara C. Tommasulo, M.D.

Address: Valley Stream, NY

Specialty: Geriatrics

Affiliation: Robert Miller

Beth Anne Maas, R.N.

Address: Newtown Square, PA

Specialty: Nursing

Affiliation: Robert Miller

Award: \$ 500,000

Award Details: The jury found that the Kingston Hospital's staff departed from an accepted standard of medical care. It determined that the plaintiffs' damages totaled \$500,000, all for Mr. O'Connor's pain and suffering. The pretrial settlement involved a payment of \$200,000, so the plaintiffs' final recovery totaled \$700,000.



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