

Defense Verdict on Behalf of Bariatric Surgeon

On January 24, 2019, Hugh McCabe [1] and Alan Graves [2] obtained a defense verdict on behalf of a San Diego bariatric surgeon. The case involved a 67-year-old female who required a lap band removal after having the lap band in place for over 10 years. During the laparoscopic procedure the initial trocar entry resulted in an injury to the patient's aorta near the common iliac junction. The procedure was converted to an open procedure where the injury was located and repaired. Unfortunately, the patient did not survive.

The patient's surviving family member filed a wrongful death lawsuit against the surgeon. The jury heard testimony for both plaintiff and defense medical experts regarding standard of care and causation. Both medical experts opined an injury to the aorta using this entry technique is a risk of the procedure which can happen absent negligence. Plaintiff's expert however felt defendant fell below the standard of care because the surgeon should have recognized the trocar was placed too deep, reaching the retroperitoneum and the surgeon delayed too long in converting the procedure to an open procedure.

Defense medical expert opined defendant met the standard of care at all times. The patient's anatomy was distorted due to previous abdominal surgeries and the margin for error in this region for the initial trocar entry was less than 2 cm. While unfortunate, defendant used an acceptable technique for the trocar entry and this type of injury was something which can happen absent negligence. Further the defense medical expert opined the surgeon exceeded the standard of care in efforts to save the patient, converting the procedure to an open procedure, getting an assistant surgeon and vascular surgeon scrubbed in and another anesthesiologist in a matter of minutes.

Following a six day trial, a San Diego jury returned defense verdict on behalf of the defendant physician – finding the surgeon was not negligent in the diagnosis and treatment provided to the patient.

Hugh A. McCabe [1] is a shareholder in our San Diego office. He concentrates his practice on employment law, business litigation, medical malpractice and trucking and transportation matters. For further information, Mr. McCabe can be reached at (619) 238-1712 or hmccabe@neildymott.com [3].

Alan B. Graves [2] is a shareholder at Neil Dymott. His areas of practice include professional liability, business and employment matters and general civil litigation. For further information, Mr. Graves may be reached at agraves@neildymott.com [4].

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