

Lawsuit: Family Claims Bowel Perforation During Surgery Killed Patient

Wayne J. Guglielmo, MA

May 19, 2021

Doctors Ignores Postsurgical Complaints and Patient Dies, Plaintiffs Say

A Georgia jury awarded \$3 million to the family of a woman who suffered a fatal intestinal injury during surgery at Northeast Georgia Medical Center, in Gainesville, according to [a story](#) in the *Daily Report*.

On May 3, 2016, Frances Mitchell went to the medical center to have a pelvic mass removed via laparoscopic abdominal surgery. Her surgeon was Andrew Green, MD, a gynecologic oncologist and member of the [Northeast Georgia Physicians Group](#).

Soon after returning home, Mitchell began experiencing pain. A family member contacted the hospital for advice and was told to feed the patient broth and keep her walking. Her pain grew worse, however, and she was taken by ambulance to the emergency department (ED).



Back in the hospital, she underwent a CT scan, which was inconclusive, and blood tests, which indicated she was septic. Her temperature was slightly elevated, up 2° from admission. Nevertheless, she was sent home.

Over the next few days, Mitchell's family called the hospital several times because her condition failed to improve. On May 7, 4 days after her surgery, she died. An autopsy performed by the Georgia Bureau of Investigations [listed the cause of death](#) as "peritonitis due to a small bowel perforation."

In 2017, Mitchell's mother and her two grown children sued the medical center, Green, his medical practice, an ED doctor, and several other defendants. (The claim was first filed in Georgia State Court and was then refiled in Georgia Superior Court.)

The plaintiffs' suit alleged that during the laparoscopic procedure on May 3, Green perforated Mitchell's small bowel but neither properly diagnosed nor repaired his mistake. The suit further alleged that Green and the other defendants were negligent in their postsurgical care. The alleged negligence included sending Mitchell home after she had returned to the hospital, despite her damaged intestine; neglecting to respond to multiple family complaints about her condition; and failing to document those complaints, as required by hospital policy. (The ED doctor was later dropped from the suit.)

Green and his fellow defendants denied each of the allegations. In addition, both the medical center and the physician group said they were "improper parties" to the suit.

At trial, the defendants' lead attorney, M. Scott Bailey, took issue with the plaintiffs' key claim: "We absolutely deny that the bowel was perforated during the surgery. We believe that the partial injury to her [Mitchell's] bowel developed into a perforation afterward. We think the pathological evidence supported that, and that the plaintiffs' theory that this injury occurred at time of surgery makes no medical or common sense." He also denied that his clients had been negligent in their postsurgical care.

The jury disagreed, taking only 5 hours to return with a \$3 million judgment in favor of the plaintiffs.

The defense is currently contemplating an appeal. Among other things, it's questioning whether Mitchell's mother had "standing"—that is, the legal right — to bring the suit in the first place, given the fact that Mitchell was married at the time of her death and that her husband is still alive.

"We believe Georgia law supports our position that he was the proper plaintiff," said defense attorney Bailey.

Artificial Intelligence: Great! But Here Are the Malpractice Risks

Artificial intelligence (AI) is opening up new imaging possibilities for radiologists and their practices, but it's also ushering in a new world of liability risks, as an article [published](#) last month in *Skeletal Radiology* and [summarized](#) in *Health Imaging* argues.

The authors of the article are H. Benjamin Harvey, MD, JD, a neuroradiologist at Massachusetts General Hospital, an assistant professor at Harvard Medical School, and a graduate of Harvard Law School, and Vrushab Gowda, a JD candidate at the law school. They outline four areas of potential liability involving AI-assisted musculoskeletal imaging, using hypothetical examples to illustrate their points. Three of the four areas directly affect physicians and their practices.

General negligence

In example 1, a radiologist employs an AI tool to interpret a pelvic radiograph in order to assess an elderly patient's condition after a fall. The program returns a negative reading, and the patient is discharged on the basis of that reading. After discharge, however, the patient develops [avascular necrosis](#) of the femoral head, which requires arthroplasty. Harvey and Gowda ask: What's the doctor's malpractice risk?

Their answer takes into account the various aspects of negligence, including causation. Because the doctor in this instance relied exclusively on AI to arrive at his diagnosis, his actions might be construed as a breach of care that led directly to his patient's injuries. (The theory of negligence requires this sort of causal link between duty and result.)

For this reason, say the authors, a physician in these circumstances who wishes to mitigate his or her malpractice risk would do well to adopt a simple precaution: First, read the hip radiograph without AI assistance and then use the AI program to either confirm or contradict the initial "manual" reading. That way, if a discrepancy does arise, doctors can rely on their "own executive judgment, consult with colleagues, and adhere to established protocols in arriving at an ultimate finding."

Informed consent

Example 2 offers the same scenario, only this time the doctor neither notes her use of AI in her formal report nor has advised her patient of it beforehand. Would this compound the doctor's liability?

The answer to that question, say Harvey and Gowda, raises two additional ones: Should the use of AI compel patient disclosure, and if so, what should that disclosure entail?

They write that, to date, courts and lawmakers haven't articulated clear standards for AI informed consent. For now at least, that's not a significant problem, because AI still largely functions as an adjunct to the practice of radiology by persons, rather than in the capacity of "autonomously functioning algorithms." If the latter becomes more the norm, though, informed consent will likewise rise in importance. At that point, radiologists will need to "be cognizant of their peers' disclosures and anticipate the sorts of information patients would find important when deploying AI."

Group liability

In example 3, a doctor who is employed and supervised by a multispecialty radiology group performs a CT-guided biopsy for spondylodiscitis, a combination of [discitis](#) and spondylitis. Relying on a faulty AI reading, however, the doctor misplaces the needle during biopsy, resulting in the patient's suffering damage to his adjacent nerve roots. Is the group practice itself at risk for a malpractice claim? Very possibly, Harvey and Gowda say, assuming the patient can demonstrate that he has been harmed. If he can, other members of the group may be liable under what is known in civil litigation as "vicarious liability," according to which one party is held partially responsible for the negligent actions of a third party. In this example, the third party is an employee of the practice. The practice principals may be held vicariously liable on the theory that "the faults of subordinates ascend the organizational ladder to attach to principals." For this reason, the authors say, it's crucial for groups to have carefully drafted practice and departmental protocols for using AI-assisted diagnostics.

Doctor Practices Although Prohibited; Patient Dies

A Florida ob/gyn who was found responsible for a woman's death during childbirth has lost his right to practice medicine, according to [a story](#) on CBS12.com, among other news sites.

In July 2017, Onystei Castillo-Lopez went to a hospital in West Palm Beach, Florida, to have her baby delivered. Her surgeon was Berto Lopez, MD, who had been practicing obstetrics and gynecology in the city for almost four decades.

During the delivery, Castillo-Lopez started bleeding as a result of what later was said to be "multiple lacerations with a scalpel on her cervix as the baby was being delivered." A full hysterectomy might likely have stanching the bleeding, but Lopez performed only a partial hysterectomy. Blood-soaked, he reportedly left the hospital to change his scrubs. He never returned, however, and Castillo-Lopez died a short time later.

Learning of the doctor's actions, Castillo-Lopez's family filed suit.

In the process, the plaintiffs discovered that at the time of Castillo-Lopez's death, her ob/gyn faced two prior malpractice suits, one of which also involved a patient's death. The physician was under restrictions that had been imposed by the Florida Department of Health. One of those restrictions required that he be prohibited from operating except in the presence of another ob/gyn. This limitation on his privileges was apparently known by the hospital but not by his patients.

Over the years, Lopez had defended himself on several grounds: Castillo-Lopez's delivery was a complicated one, the surgical lighting was inadequate, his view was obstructed by her profuse bleeding, and so on.

A court considered each of these arguments but was not persuaded. It found him negligent in Castillo-Lopez's death. The Florida Board of Medicine agreed and suspended his license after the verdict and judgment were handed down.

"This is a doctor who should not have been practicing before this happened, and the state knew it, and let it go. That's the lesson that needs to be learned," said Gary Cohen, the family's Boca Raton-based attorney.

The content contained in this article is for informational purposes only and does not constitute legal advice. Reliance on any information provided in this article is solely at your own risk.

Wayne J. Guglielmo, MA, is an independent journalist based in Mahwah, New Jersey.

For more news, follow Medscape on [Facebook](#), [Twitter](#), [Instagram](#), and [YouTube](#).

Medscape Business of Medicine © 2021

Send news tips to news@medscape.net.

Cite this: Lawsuit: Family Claims Bowel Perforation During Surgery Killed Patient - *Medscape* - May 19, 2021.