

Florida Jury Rejects Suit Against Anesthesiologist Over Response to Aspiration Event

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A jury rejected a man who claimed that he developed pneumonia because an anesthesiologist and nurse did not properly address a colonoscopy's complications.

On Jan. 30, 2018, plaintiff Jeffrey Fenuccio, 51, an electrician, underwent a colonoscopy. The procedure was performed at a Naples-based clinic, NCH Creekside. Before the procedure had begun, a certified registered nurse anesthetist administered an anesthetic. An anesthesiologist, Dr. Robert Statfeld, supervised the nurse. Statfeld departed after the anesthetic had been administered, and he did not return. While the colonoscopy was being performed, the nurse administered further doses of the anesthetic.

After the colonoscopy had been completed, Fenuccio began to vomit. He aspirated his stomach's acid and the colonoscopy's preparatory laxative. The nurse applied a device that suctioned Fenuccio's airway. Statfeld was summoned, and he continued the suctioning of Fenuccio's airway. Fenuccio claimed that the aspirated matter caused pneumonia and permanent residual damage of his lungs.

Fenuccio sued Statfeld; Statfeld's employer, Florida Gulf-to-Bay Anesthesiology Associates LLC, which also employed the nurse; and NCH Creekside's operator, NCH Healthcare System Inc. The lawsuit alleged that Statfeld and the nurse failed to properly address the colonoscopy's complications, that the failures constituted malpractice, and that Florida Gulf-to-Bay Anesthesiology Associates and NCH Healthcare System were vicariously liable for the actions of Statfeld and the nurse.

NCH Healthcare System was dismissed. The matter proceeded to a trial against the remaining defendants.

Sean M. Cleary of The Law Offices of Sean M. Cleary in Miami represented the plaintiff, while Jonathon P. Lynn and Amanda Marie Smith of La Cava Jacobson & Goodis' Fort Lauderdale and Naples offices handled the defense.

No attorneys were reported for NCH Healthcare System Inc.

Fenuccio's counsel noted that Fenuccio's aspiration occurred while Fenuccio was resting on an adjustable bed. Fenuccio's counsel further noted that the nurse did not lower the upper end of the bed. Fenuccio's expert anesthesiologist opined that Fenuccio should have been maneuvered into the Trendelenburg position, in which the feet are higher than the head. The expert contended that the maneuver would have minimized aspiration.

Fenuccio's counsel also contended that Statfeld should have immediately hospitalized Fenuccio. Fenuccio's counsel contended that the hospital's staff could have administered continuous-positive-airway-pressure therapy, and he argued that the treatment would have minimized damage of Fenuccio's

lungs. Fenuccio was ultimately transported to a hospital, but Fenuccio's expert anesthesiologist opined that irreversible damage had occurred before Fenuccio reached the hospital.

The defense's expert anesthesiologist opined that Statfeld appropriately delayed Fenuccio's hospitalization. Fenuccio had developed a severe fever, and the expert contended that the fever's treatment superceded anything that could have been accomplished at the hospital.

The defense contended that the nurse properly responded to Fenuccio's vomition. The defense claimed that 15 to 20 seconds would have elapsed while the nurse attempted to effect the Trendelenburg position, and it argued that the time was better spent by administering suction. The defense's expert anesthesiologist agreed that suction was the better course of action.

He claimed that he developed resultant pneumonia that caused permanent damage of his lungs. He further claimed that he suffered residual effects that included an immune-system disorder, chronic fatigue and dyspnea: impaired respiration. He claimed that his fatigue progressed to an extent that prevented his performance of strenuous physical activities. In January 2020, he underwent a medical evaluation in which he utilized a treadmill. He could not last more than two minutes. The evaluating doctor opined that Fenuccio suffers dysautonomia: dysfunction of nerves that regulate the heart's rate and other involuntary functions. Fenuccio claimed that the condition is a residual product of his pneumonia. Fenuccio's treating pulmonologist has recommended intravenous immunoglobulin therapy.

Fenuccio sought recovery of past medical expenses, \$3.2 million for future medical expenses, and damages for past and future pain and suffering. His wife presented a derivative claim.

The defense's expert pulmonologist opined that further tests must be performed before Jeffrey Fenuccio's dysautonomia can be confirmed. The defense noted that Fenuccio's medical records document decades of dyspnea and fatigue.

The defense also contended that Fenuccio's aspiration did not cause pneumonia. The defense claimed that the aspiration caused viral pneumonitis, and it argued that a virus cannot cause dysautonomia. The defense's expert radiologist opined that Fenuccio's pneumonitis resolved within a few months.

Fenuccio's counsel moved for a mistrial. He objected to Statfeld having suggested that Fenuccio's treatment was influenced by Fenuccio having been concerned by the possibility that insurance would not reimburse the cost of a certain type of treatment. Insurance-related references had been restricted by a pretrial decision that pertained to the collateral-source rule. Fenuccio's counsel also objected to Statfeld having claimed that Fenuccio's vomit contained undigested food. Statfeld's claim suggested that Fenuccio had not heeded instructions that pertained to pre-procedure fasting, but the defense had previously declared that it was not asserting that Fenuccio had ignored those instructions. Judge Elizabeth Krier denied the motion for a mistrial.

The jury rendered a defense verdict. Collier Circuit Judge Elizabeth Krier presided over the litigation.

Case: Jeffrey Fenuccio and Laura-Lee Fenuccio v. Robert Statfeld, M.D.; Gulf-to-Bay Anesthesiology Associates, LLC; and NCH Healthcare System, Inc, No. 11-2019-CA-000863-0001-XX

Insurer: Medical Protective Co. for Florida Gulf-to-Bay Anesthesiology Associates and Statfeld

Plaintiff Experts: Gary Anderson Ph.D., economics, Palm Beach, FL John B. Downs M.D., anesthesiology, Dunnellon, FL Susan McKenzie, life care planning, West Palm Beach, FL David M. Systrom M.D., pulmonology, Boston, MA (treating doctor)

Defense Experts: Nikolaus Gravenstein M.D., anesthesiology, Gainesville, FL (videotaped deposition presented) Joseph Kleinman M.D., radiology, Delray Beach, FL David Lichtenstein M.D., gastroenterology, Boston, MA (did not testify [precluded]) John McConville M.D., pulmonology, Chicago, IL

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