

Doctors Rejected Blame for Patient's Fatal Post-Op Aspiration

VERDICTSEARCH DECEMBER 16, 2021

Pugar v. West Penn Anesthesia Associates

Defense Verdict

Date of Verdict: Sept. 28.

Court and Case No.: C.P. Beaver No. 11721-2016.

Type of Action: Medical malpractice.

Injuries: Brain injury.

Plaintiffs Counsel: John D. Perkosky and Ben Gobel, Ogg Murphy & Perkosky.

Plaintiffs Experts: Jay Mesrobian, anesthesiology, Milwaukee, Wisconsin; Mark Berman, orthopedic surgery, Hackensack, New Jersey; Nicolaas Cornelius Anderson, neurology, Houston, Texas.

Defense Counsel: Alan S. Baum, Matis Baum O'Connor, Pittsburgh; Paula A. Koczan, Weber Gallagher Simpson Fires & Newby, Pittsburgh.

Defense Experts: Kelly T. Shannon, anesthesiology, Pittsburgh; Peter D. Donofrio, neurology, Nashville, Tennessee; Charles J. Burke III, orthopedic surgery, Pittsburgh.

On Sept. 30, 2013, plaintiff's decedent Dawn Pugar, 52, underwent hip surgery. The procedure was performed by an orthopedist, Dr. Dale Yakish, at Heritage Valley Hospital, in Beaver. Yakish was assisted by an anesthesiologist, Dr. Brett Anderson.

In the hours following Pugar's discharge from the recovery room, her diet was progressively advanced from ice chips, to gelatin to soda. While eating her dinner, Pugar choked. Nurses attempted the Heimlich maneuver but were unsuccessful, and Pugar aspirated. She resultantly suffered respiratory and cardiac arrest. She was resuscitated, but she died 16 days later.

Pugar's widower, Joseph Pugar, acting as administrator of his wife's estate, sued Yakish; Yakish's practice, Association of Specialties Physicians Inc.; Anderson; Anderson's practice, West Penn Anesthesia Associates; and Heritage Valley Hospital. The lawsuit alleged that Anderson and Yakish failed to properly treat Dawn Pugar, that the doctors' failure constituted malpractice, that West Penn Anesthesia Associates was vicariously liable for Anderson's actions, that Association of Specialties Physicians was vicariously liable for Yakish's actions, and that Heritage Valley Hospital was vicariously liable for each doctor's actions.

Heritage Valley Hospital was dismissed. The matter proceeded to a trial against the remaining defendants.

The estate's expert orthopedist faulted Yakish for not consulting a neurologist prior to Pugar's surgery, to ascertain whether Pugar's postsurgical

diet could be advanced. The estate's expert neurologist opined that, given Pugar's preexisting myotonic dystrophy—a condition that affects muscles and other organs in the body—and a 2010 aspiration incident following a surgery, a swallowing test should have been performed before Pugar's diet was advanced. Those experts and the estate's expert anesthesiologist opined that, immediately after the surgery, Yakish and Anderson should have transferred Pugar to an intensive-care unit or a telemetry unit, where her oxygen saturation would have been measured. This would have been an adequate indicator as to whether Pugar was subject to aspirating, the experts contended.

The defense' expert orthopedist opined that Yakish, prior to the surgery, needed only to consult with Pugar's primary care physician—which he did—to obtain medical clearance for the surgery. It was not necessary for Yakish to consult a neurologist, the expert contended.

Yakish's expert neurologist opined that Pugar's myotonic dystrophy had no bearing on her ability to swallow and that her aspiration event in 2010 did not mean she was vulnerable to future aspiration caused by difficulty swallowing.

Anderson's expert anesthesiologist opined that, given Pugar's stable condition in the post-anesthesia care unit, Anderson had no duty to question or change the postsurgical orders for transfer to a regular floor and for the diet to be advanced as tolerated.

Yakish's experts and Anderson's expert anesthesiologist agreed that Pugar did not need to be transferred to an intensive-care unit or telemetry unit following the surgery.

Pugar suffered aspiration that caused respiratory and cardiac arrest. She was resuscitated, but she died 16 days later. She also suffered damage of her brain.

Pugar, 52, was survived by her husband. Dawn Pugar's estate sought recovery of wrongful-death damages that included damages for Pugar's pain and suffering.

The jury rendered a defense verdict.

This report is based on information that was provided by counsel of Anderson, Association of Specialties Physicians, West Penn Anesthesia Associates and Yakish. Plaintiffs counsel did not respond to the reporter's phone calls, and Heritage Valley Hospital's counsel was not asked to contribute.

—*This report first appeared in VerdictSearch, an ALM publication*

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