

CASES of NOTE

Medical Malpractice

Staff didn't respond to non-reassuring fetal heart rate

\$12,500,000

Garcia v. Edward Hospital

Cook Co., Ill., Cir. Ct.

Plaintiff's Attorneys Barry Goldberg, Barth Goldberg and Peter Nicholson, Goldberg & Goldberg, Chicago

Defense Attorneys David Hall and Jane Stevens, Hall, Prangle & Schoonveld, Chicago; William Cunningham and Robert Larsen, Cunningham Meyer & Vedrine, Wheaton, Ill.

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Asked & Answered

What lawyer or judge, living or dead, would you like to meet, and why?

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VERDICT *of the* MONTH

MEDICAL MALPRACTICE

Childbirth — Delayed Treatment — Nurse — Hospital

Hospital staff didn't respond to non-reassuring fetal heart rate

VERDICT (P) **\$12,500,000**

CASE Randy Garcia, as next friend and special administrator of Aaron Garcia v. Edward Hospital and Dr. John Rigali, No. 99 L 13447

COURT Cook County Circuit Court, IL
JUDGE Thomas L. Hogan
DATE 6/22/2004

PLAINTIFF ATTORNEY(S) Barry D. Goldberg (lead), Goldberg & Goldberg, Chicago, IL (Aaron Garcia, Randy Garcia)
Barth H. Goldberg, Goldberg & Goldberg, Chicago, IL (Aaron Garcia, Randy Garcia)
Peter A. Nicholson, Goldberg & Goldberg, Chicago, IL (Aaron Garcia, Randy Garcia)

DEFENSE ATTORNEY(S) David C. Hall (lead), Hall, Prangle & Schoonveld, Chicago, IL (Edward Hospital)
William F. Cunningham, Cunningham Meyer & Vedrine, Wheaton, IL (Dr. John Rigali)
Robert L. Larsen, Cunningham Meyer & Vedrine, Wheaton, IL (Dr. John Rigali)
Jane A. Stevens, Hall, Prangle & Schoonveld, Chicago, IL (Edward Hospital)

FACTS & ALLEGATIONS On Nov. 28, 1991, plaintiff Aaron Garcia was born at Edward Hospital in Chicago with cerebral palsy.

His parents claimed that, while Ms. Garcia was in labor, the nursing staff was negligent for failing to respond to signs of fetal distress—specifically, a non-reassuring fetal heart tracing—between 6 a.m. and 8 a.m. At 8:15 a.m., Dr. John Rigali, the attending physician, after looking at a monitor strip, left to perform an elective tubal ligation on in the hospital's only obstetric operating room. When, at 8:25 a.m., the nurses saw the fetus' condition decline, they called Rigali. The Garcias claimed that

it took more than 20 minutes before an operating team could be assembled to perform an emergency Caesarian section. The prolonged period of reduced blood flow to Aaron's brain caused his cerebral palsy, they claimed. Had the fetal distress been reported immediately, he could have been born healthy.

Aaron, through his father, sued Edward Hospital and Rigali for medical malpractice. The plaintiffs claimed that Rigali was well aware of the fetal distress before he left to perform the tubal ligation because he had just performed a vaginal exam and reviewed the fetal heart rate readings.

Rigali argued that when he last saw the monitor strip at 8:15 a.m., he did not feel there was evidence of significant fetal distress and then was not informed by the nurses of the fetus' declining condition until 8:35 a.m., when he had already started the tubal ligation and was at the point in the procedure when he could not leave the patient.

The plaintiffs claimed that the hospital was negligent for allowing Rigali to leave to perform the tubal ligation and then for failing to timely facilitate the emergency C-section.

The hospital maintained that Aaron's signs of fetal distress were within the norm for labor, and that the nursing staff notified the doctor immediately when the baby's condition worsened at 8:25. Rigali then operated within 30 minutes, which, the defense argued, is within the standard of care. The hospital further asserted that Aaron's brain damage was caused not by a delayed C-section, but by a uterine infection and umbilical cord abnormality in the mother.

INJURIES/DAMAGES *cerebral palsy; spastic quadriplegia*

Aaron, now 12, has spastic quadriplegia. He cannot walk or talk and must communicate with gestures and sounds. An expert for the plaintiffs put the cost of his life care plan at between \$13 million and \$18.5 million. A defense expert opined that it was between \$5 million and \$6 million.

His father gave up his job as a hotel accountant to care for his son, a burden he has shouldered for the past 12 years.

RESULT Rigali settled during trial for \$1.5 million.

The jury found the hospital liable and awarded \$12.5 million. A high/low agreement of \$10,250,000/\$1,750,000 will reduce the amount paid to \$10,250,000.

AARON GARCIA \$180,000 past medical cost
\$3,750,000 future medical cost
\$1,120,000 future lost earnings
\$1,000,000 pain and suffering
\$5,000,000 loss of enjoyment of life
\$1,000,000 disfigurement
\$12,050,000

RANDY GARCIA \$450,000 reasonable care for child

DEMAND OFFER None reported
Rigali offered \$1,500,000 eight months before trial.

COOK

TRIAL DETAILS	Trial Length: 5 weeks Jury Deliberations: 10 hours Jury Poll: 12-0 Jury Composition: 6 male, 6 female; 3 black, 9 white
PLAINTIFF EXPERT(S)	Robert Eilers, M.D., life care planning, Chicago, IL Barry S. Schiffrin, M.D., perinatology, Glendale, CA Mary Becker, R.N., nursing, Louisville, KY
DEFENSE EXPERT(S)	Cathlin Vinett, R.N., life care planning, Brentwood, TN Bonnie Flood-Chez, R.N., obstetrics nursing, Tampa, FL John Gianapolous, M.D., fetal medicine, Chicago, IL Richard Silver, M.D., fetal medicine, Evanston, IL Mark Scherr, M.D., pediatric neurology, Cleveland, OH

—Dave Venino

LEGAL PROFESSION

Malpractice — Scientific Evidence — Municipalities

Wrongly convicted man blamed public defender's strategy

VERDICT	Defense
CASE	Richard R. Johnson v. Michael J. Halloran and Cook County, No. 01 L 2758
COURT	Cook County Circuit Court, IL
JUDGE	Deborah Mary Dooling
DATE	6/18/2004
PLAINTIFF ATTORNEY(S)	Bruce A. Beeman, Wolter, Beeman & Lynch, Springfield, IL
DEFENSE ATTORNEY(S)	Steven M. Puiszis (lead), Hinshaw & Culbertson LLP, Chicago, IL James Navarre, Hinshaw & Culbertson LLP, Chicago, IL Matthew Walsh, Hinshaw & Culbertson LLP, Chicago, IL

FACTS & ALLEGATIONS In 1991, after his name and photograph appeared on the TV show America's Most Wanted, plaintiff Richard Johnson, 25, was arrested in Miami for the rape and robbery 11 months earlier of a 21-year-old University of Chicago student at 5480 South Hyde Park Blvd. in Chicago.

Johnson was indicted not only for the rape and robbery, but also for the sexual assault of a 14-year-old Hyde Park girl in a separate and unrelated incident. Both cases were assigned to Judge James Schrier, and assistant public defender Mike Halloran, who was assigned to Schrier's courtroom, represented Johnson.

During discovery in the underlying criminal case, several reports from the Chicago Police Department's crime laboratory were produced by the State Attorney's Office to Halloran following testing of the victim and Johnson's bodily fluids as well as clothing recovered from the victim. Those lab reports indicated that both the victim and Johnson were "non-secretors," whereas whoever deposited the semen recovered from the victim's clothing was a "secretor."

While an enzyme found in Johnson's blood (PGM 1+) matched the enzyme found in the semen recovered from the victim's clothing, the lab reports also indicated that "H" activity was found in the semen, which indicated that it came from someone with ABO Blood type "O," and both the victim and Johnson had ABO Blood type "AB."

After speaking to his supervisor and another public defender who was knowledgeable about how to best handle the serology evidence in light of the conflicting nature of the lab reports, Halloran decided to move to exclude the serology evidence at Johnson's criminal trial and instead focus the defense on the weakness of the victim's identification, thus avoiding turning the criminal case into a battle of experts.

Halloran noted that the victim never mentioned the scar Johnson has on his forehead or his mustache in any of her descriptions of the attacker to the police. The victim also changed her description of the height and weight of her attacker within hours of the incident and changed her description of his skin tone from dark to medium brown. She also stated that the attacker had shaving bumps, which Johnson did not have.

Judge Schrier granted Halloran's motion in limine to exclude the serology evidence and Johnson waived his right to a jury trial. The case was tried and Johnson was convicted of aggravated criminal sexual assault, home invasion, aggravated kidnapping, burglary, armed robbery and aggravated unlawful restraint. He was sentenced to 36 years in prison. His conviction was affirmed on appeal.

Johnson's second criminal case for the alleged sexual assault of the 14-year-old girl was then transferred to another judge. A jury trial was held and Johnson was found not guilty. After being sent to prison, Johnson claimed that he began using cocaine on a daily basis and became addicted while in prison. About four years later, DNA testing demonstrated that Johnson did not commit the crime for which he had been convicted. He was then released from prison and subsequently pardoned by Governor Jim Edgar.