CALIFORNIA

FAILURE TO DIAGNOSE

Failure to Treat — Failure to Monitor — Survivorship Action

Surviving son claimed failure to diagnose, treat cellulitis

VERDICT	**Defense**
CASE	Rolando Abrina v. 5648 East Gotham Street, LLC, Briarcrest Nursing Center, East Los Angeles Doctor's Hospital, Martin Zapata, D.O., Peter Sim, M.D., Vijay Dhawan, M.D., No. BC359018
COURT	Superior Court of Los Angeles County, Central, CA
JUDGE	Joanne B. O'Donnell
DATE	10/22/2008
PLAINTIFF ATTORNEY(S)	**Michael F. Moran** (lead), Law Offices of Michael F. Moran, Anaheim, CA (Rolando Abrina) **Lisa Trinh Flint**, Law Offices of Michael F. Moran, Anaheim, CA (Rolando Abrina)
DEFENSE ATTORNEY(S)	**Raymond L. Blessey**, Taylor Blessey, LLP, Los Angeles, CA (Peter Sim, M.D.) **Patrick W. Mayer**, Schmid & Voiles, Los Angeles, CA (Martin Zapata, D.O., Vijay Dhawan M.D.)

FACTS & ALLEGATIONS On Feb. 16, 2006, plaintiff's decedent Federico Abrina, 86, died at the East Los Angeles Doctors Hospital.

Abrina's prior medical history consisted of multiple medical problems, including cerebral vascular accident (stroke), diabetes, arteriosclerotic heart disease, hydronephrosis, hypertension, and inability to swallow, requiring placement of a gastrostomy tube.

During the final three-to-four months of 2005, Abrina was transferred back and forth from Briarcrest Nursing Center—a skilled nursing facility—to the hospital on several occasions, for recurrent urinary tract infections.

On Jan. 3, 2006, Abrina was re-admitted to the doctors hospital for recurrent urosepsis and scrotal cellulitis. A nursing assessment note on that day documented the presence of a rash on his back and the posterior aspect of his lower extremities. Internal medicine specialist Vijay Dhawan was the attending physician for Abrina from Jan. 3 through Jan. 9. He requested and obtained an infectious disease consultation for management and treatment of Abrina's complex urinary tract infection from internal medicine and infectious disease specialist Peter Sim on Jan. 5. After reviewing the pertinent laboratory studies, Sim started Abrina on Primaxin due to the

possibility that the bacteria causing the infection involved ESBL E. coli and proteus organisms. The first dose of Primaxin was given at or about midnight on Jan. 5. The following day, Sim was contacted by the nursing staff, who informed him that Abrina had developed a new rash on his upper extremities and upper chest. Sim ordered Benadryl to be given at the time of the administration of the Primaxin. In his progress note of Jan. 6, Sim noted the presence of the rash, which he opined could be due to the Primaxin.

On Jan. 8, a request for a urology consult was made by Dhawan and renewed by internal medicine specialist Martin Zapata, on Jan. 9, when he took over the care of Abrina. (Sim continued to manage Abrina's urosepsis and scrotal abscess up to the time that he was taken to surgery on Jan. 20.) On Jan. 13, there was evidence of increased right scrotal drainage consistent with an abscess. Sim ordered that Vancomycin be added to Abrina's antibiotic regimen.

A urology consultation was obtained by another doctor on Jan. 18, at which time he recommended continuing with the current IV antibiotic therapy and proceeding with an exploratory surgery of the involved left testicle. On Jan. 19, Zapata noted for the first time the appearance of necrotic tissue on the left scrotum. The other doctor's pre-operative and post-operative diagnosis, on Jan. 20, included gangrenous scrotal tissue, and he opted to remove the right testicle. The pathology report, however, did not confirm his clinical impression that there was gangrenous tissue. The pre-operative assessment by the surgical nursing staff mentioned the presence of a rash all over Abrina's body.

Sim continued to treat Abrina with Primaxin and Vancomycin following the surgery through Jan. 28, notwithstanding the fact that a urine culture taken on Jan. 23 was sterile. On Jan. 28, Zapata noted a new "red rash," which he attributed to Vancomycin and therefore discontinued this antibiotic. He also treated the rash with steroids with improvement seen over the course of the next two days.

Abrina was transferred back to Briarcrest on Jan. 30. Upon his arrival, the skin assessment revealed dry, red rashes on his chest, back and lower extremities. On Jan. 31, Zapata discontinued the Primaxin therapy and started Levaquin. The following day, for the first time, the nursing staff noted water blisters on Abrina's left second finger and right hand. Zapata ordered wound care for the water blisters and steroids. Abrina continued to develop more extensive water blisters that were ultimately associated with sloughing of the skin.

On Feb. 6, Abrina was readmitted to the hospital. He died on Feb. 16.

Abrina's son sued the hospital, the nursing home, Zapata, Sim and Dhawan, alleging wrongful death and medical malpractice. The hospital and the nursing home settled before trial for confidential amounts.

The plaintiff alleged that Dhawan and Zapata failed to diagnose and failed to adequately monitor and treat the decedent's scrotal cellulitis, which allowed for the development of an abscess and the need for surgical intervention. He also alleged that Sim negligently continued to treat the decedent's complex urinary tract infection with Primaxin, despite evidence of an early adverse skin reaction, which progressed to Stevens Johnson Syndrome. He further alleged that the stress of the surgical intervention for the scrotal abscess and the Primaxin-induced Stevens Johnson Syndrome were substantial factors leading to the decedent's death.

The plaintiff internal medicine expert opined that Dhawan and Zapata failed to adequately monitor the decedent's scrotal cellulitis and timely consult with a urologist, that Zapata failed to timely transfer the decedent to an acute care facility, and that the failure to timely diagnose the decedent's adverse skin reaction and Stevens Johnson Syndrome was a substantial factor in causing his death. He also opined that the decedent would have lived for five-to-seven more years, had he not developed Stevens Johnson Syndrome and not been subjected to an orchiectomy.

The plaintiff infectious disease expert opined that Sim breached the standard of care by failing to recognize an adverse skin reaction to Primaxin, failed to consider an alternative antibiotic, and unnecessarily continued Primaxin after the debridement of necrotic scrotal tissue and orchiectomy, despite the findings of a subsequent negative urine culture.

Dhawan argued that his care and treatment during the decedent's first six days at the hospital were reasonable and well within the standard of care. The defense also argued that Dhawan and Zapata relied on Sim to treat and manage the decedent's complex urinary tract infection, which included scrotal cellulitis and ultimately a scrotal abscess. The defense further argued that they requested a consultation with a urologist for further assistance with the management of the scrotal abscess.

Sim argued that his care and treatment prior to, and after, the surgical intervention for the scrotal infection was reasonable and well within the standard of care.

The defense internal medicine expert opined that Dhawan and Zapata met the applicable standard of care, and that the death was caused by Stevens Johnson Syndrome, which is an unpredictable and untreatable serious adverse skin condition. He also opined that the decedent would not have survived more than six months longer than he did, if he had not developed Stevens Johnson Syndrome.

The defense infectious disease expert opined that the use of Primaxin was well within the standard of care, that the development of a rash possibly due to an antibiotic is not a contraindication to ongoing use of the medication, and that it was reasonable and within the standard of care to continue treating the decedent with Primaxin after scrotal surgery.

The defense pharmacology and anesthesiology expert opined that Primaxin did not cause Stevens Johnson Syndrome in this case, based on the presence of a rash prior to the initial dose, the lack of any evidence in the medical literature of a relationship between Primaxin and Stevens Johnson Syndrome, and the fact that the Primaxin was discontinued prior to the onset of the initial clinical signs of a serious adverse skin reaction.

CALIFORNIA

INJURIES/DAMAGES *death*

The plaintiff sought $140,000 for medical expenses, $16,000 for funeral and burial expenses, and unspecified noneconomic damages.

RESULT The jury returned a defense verdict for all defendants, finding that Sim and Dhawan were not negligent, and that Zapata was negligent, but that he did not cause injury or harm.

DEMAND None

OFFER Dismissal with prejudice in exchange for a waiver of costs (CCP 998)

INSURER(S) **Cooperative of American Physicians** for Dhawan and Zapata

The Doctors Company for Sim

TRIAL DETAILS Trial Length: 9 days
Trial Deliberations: 3 days
Jury Vote: 10-2 on Sim; 11-1 on Dhawan; 10-2 on Zapata

PLAINTIFF EXPERT(S)

Colin Haggerty, M.D., internal medicine, La Jolla, CA
Joseph Nussbaum, M.D., infectious diseases, Los Angeles, CA

DEFENSE EXPERT(S)

Irving Posalski, M.D., infectious diseases, Los Angeles, CA
Richard Ruffalo, Ph.D., M.D., pharmacology and anesthesiology, Newport Coast, CA
Alan Weinberger, M.D., internal medicine, Los Angeles, CA

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel and defense counsel.

–Joseph Falso