

CALIFORNIA

LOS ANGELES COUNTY

MEDICAL MALPRACTICE

Cardiac Care — Wrongful Death — Survivorship Action

Father died of cardiac arrest; survivors blamed cardiologist

VERDICT

Defense

CASE

Estella Cabrera, Joe Cabrera, Omar Cabrera, Nancy Cabrera and Julianne Cabrera v. Vyshali Rao, M.D., No. BC370607

COURT

Superior Court of Los Angeles County, Pasadena, CA

JUDGE

Jan A. Pluim

DATE

5/8/2009

PLAINTIFF

ATTORNEY(S)

Gary Barsegian, Law Offices of Gary Barsegian, Burbank, CA (Estella Cabrera, Joe Cabrera, Julianne Cabrera, Nancy Cabrera, Omar Cabrera)
Armond Marcarian, Marcarian Law Firm (Estella Cabrera, Joe Cabrera, Julianne Cabrera, Nancy Cabrera, Omar Cabrera)

DEFENSE

ATTORNEY(S)

Raymond L. Blessey, Taylor Blessey LLP, Los Angeles, CA

FACTS & ALLEGATIONS On May 6, 2006, plaintiffs' decedent Jesus Rivas, 36, a truck driver, sustained cardiopulmonary arrest and died while admitted at Huntington Memorial Hospital.

On April 30, Rivas was admitted to the hospital through its emergency department with congestive heart failure and shortness of breath. A CT angiogram — which was performed to rule out pulmonary embolism — revealed cardiomegaly and several enlarged mediastinal lymph nodes. His prior medical history included ongoing treatment for tuberculosis, diabetes mellitus and cigarette smoking. An echocardiogram performed soon after admission revealed diffuse hypokinesis consistent with cardiomyopathy and an ejection fraction of approximately 30-to-35 percent.

On May 2, the internist, infectious disease specialist and pulmonologist opined that the differential diagnosis for the enlarged lymph nodes included disseminated tuberculosis, infection, including possible HIV and neoplasm. Therefore, they recommended a lymph node biopsy by way of a mediastinoscopy.

On May 3, while still hospitalized, Rivas was seen by a cardiothoracic surgeon, who agreed with the assessment that the possible causes of the enlarged lymph nodes included infection and cancer. He, too, recommended a mediastinoscopy, and in fact, consented the patient for the procedure on this date. His plan was to perform the biopsy the following day.

Also on May 3, an Adenosine Cardiolute Stress Test was performed, which was negative for ischemia and chest pain; the imaging portion of the study, however, suggested that there were several areas of prior infarctions and an ejection fraction of 20 percent.

On May 4, cardiologist Vyshali Rao saw Rivas. Her consultation took place about five hours prior to the mediastinoscopy. She added two cardiac medications to Rivas's medical regimen. In addition, Rao opined that the possible causes of his recently diagnosed cardiomyopathy were infectious, ischemic or idiopathic in nature. Finally, Rao's plan at this time was to await the results of the lymph node biopsy and to continue to follow the patient with the team.

Several hours later, Rivas underwent the mediastinoscopy (lymph node biopsy). There were no complications during the procedure. Immediately after Rivas was extubated, however, he sustained cardiopulmonary arrest. He was resuscitated, but did not regain consciousness.

On May 6, he sustained another cardiopulmonary arrest, which was fatal. The Los Angeles County Coroner performed an autopsy, which revealed triple vessel coronary artery disease and a hemorrhagic septal infarction. The coroner listed the

causes of death as congestive heart failure, ischemia and arteriosclerotic heart disease.

The decedent's widow and children sued Rao, alleging wrongful death and medical malpractice. (The plaintiffs sued several other defendants, including the treating cardiothoracic surgeon, but they were dismissed prior to trial.)

The plaintiffs argued that, given Rivas's coronary artery risk factors, his presentation to the hospital with a primary cardiac problem and the evidence of prior infarctions in his stress test, the standard of care required Rao to not clear the patient for the mediastinoscopy until he underwent a coronary angiogram. They also alleged that, had an angiogram been performed, he would have undergone bypass surgery and the death would not have occurred.

The plaintiff cardiology expert opined that Rao was negligent when she failed to recommend and perform a cardiac catheterization prior to the patient undergoing a mediastinoscopy (lymph node biopsy). The standard of care required that an angiogram be performed prior to the biopsy because Rivas presented with a primary cardiac problem. Rao was negligent when she cleared Rivas for the proposed surgery despite not establishing the underlying cause of his cardiomyopathy. The standard of care, under the circumstances, was that the cardiologist should have presumed that he had coronary artery disease until proven otherwise, it was alleged. The other medical physicians involved with his care and treatment prior to the mediastinoscopy were, in essence, relying on Rao's recommendation whether or not to proceed with the procedure. If Rivas had undergone a coronary angiogram, it would have revealed triple vessel coronary disease and he would have undergone bypass surgery prior to the mediastinoscopy, thereby preventing the post procedure cardiopulmonary arrest and death, reportedly. This opinion was based in part on the autopsy results, which revealed three vessel coronary artery disease.

Treating internist Jeffrey Shapiro was a non-retained expert. He testified that Rivas's primary medical problem when he was admitted was cardiac in nature and included congestive heart failure and an apparent cardiomyopathy.

Rao argued that her care and treatment under the circumstances was within the applicable standard of care at all times. She also argued that nothing she did or failed to do caused the death.

The defense cardiovascular expert testified that the standard of care did not require a pre-surgery cardiac catheterization under the circumstances. Rao was not consulted to clear Rivas for the pending mediastinoscopy. The unexpected cardiopulmonary arrest immediately after the mediastinoscopy was caused by Rivas's adverse reaction to epinephrine and

the administration of 1700 ccs of intravenous fluid, it was argued.

INJURIES/DAMAGES *death; loss of society*

Rivas lost his life.

His survivors — Estella, 41; Joe, 20; Nancy, 18; Omar, 16; and Julianne, 6; all with the last name Cabrera — sought \$104,495 for past lost wages, household services and funeral and burial expenses, \$800,730 for future lost wages and household services and \$250,000 for general damages.

The plaintiff economics expert testified that the present value of the plaintiffs' past lost earnings and household services was \$90,495, based on the assumption that, had Rivas survived the subject hospitalization, he would have returned to work as a truck driver by September 2006. Based on a 30-year life expectancy, the present value of the future lost earnings and household services was allegedly \$800,730.

RESULT The jury returned a defense verdict, finding that the defendant was not negligent.

DEMAND None reported

OFFER Waiver of costs (CCP 998)

TRIAL DETAILS Trial Length: 5 days

Trial Deliberations: 55 minutes

Jury Vote: 9-3

PLAINTIFF

EXPERT(S) Phillip H. Allman, Ph.D., economics, San Francisco, CA (specialty in forensic economics)

Stuart Fischer, M.D., cardiology, Los Alamitos, CA

Jeffrey Shapiro, M.D., internal medicine, Pasadena, CA (treating doctor; non-retained expert)

DEFENSE

EXPERT(S) Michael Chaikin, M.D., cardiology, Los Angeles, CA

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to the reporter's phone calls.

—Joseph Falso