THE ROBINS JUSTICE REPORT

SUMMER 2013
VOLUME 7
ISSUE 2

A PUBLICATION OF THE MEDICAL MALPRACTICE, PERSONAL INJURY & MASS TORT GROUPS

SELECT CASES & RESULTS

KATHLEEN FLYNN PETERSON AND BRANDON THOMPSON


Kathleen Flynn Peterson


Brandon Thompson

Kathleen Flynn Peterson and Brandon Thompson recently represented a 39-year-old woman who became pregnant following a failed tubal ligation. Her child was born with severe disabilities, ultimately dying shortly after her third birthday. During discovery it became evident that the woman's doctor knew of test results that indicated the tubal ligation may have failed, but chose not to inform the patient of the risk of pregnancy. We successfully argued that the doctor's disregard of the woman's right to make informed decisions about her own health care warranted punitive damages. The case settled shortly before trial for $3 million.

Kathleen and Brandon are representing a 3-year-old boy from North Dakota who suffered a severe neurological injury when his skull was fractured during delivery. The child's mother was in labor for several days, and the hospital's nursing staff failed to keep the obstetrician and nurse midwife informed of dangerous changes in the baby's heart rate during the final hours of labor. This delay led to a crisis and emergency cesarean section, during which the fracture occurred. The case involves complex claims against the obstetrician, the nurse midwife, and the nursing staff of the hospital. We successfully settled the claims against the obstetrician and nurse midwife for the limits of their insurance, $3 million. The claims against the hospital staff are set to be tried in August.

Kathleen and Brandon are also currently handling a number of operating room fire cases, including one involving a man who suffered burns to his face and chest after his health care providers failed to follow appropriate procedures to minimize oxygen flow and the presence of flammable prep solution. An explosion occurred while the man's surgeon was performing a routine procedure with an electrocautery tool. We have negotiated settlements with a number of the health care providers; the amount recovered for the man to date is $1 million, and the case against the nurse anesthetist, who managed the oxygen, is continuing.

CHRIS MESSERLY AND MELISSA WENDLAND


Chris Messerly


Melissa Wendland

Chris Messerly and Melissa Wendland recently obtained a confidential settlement on behalf of a 20-year-old man in Minnesota. Their then 15-year-old client was sickened by Salmonella after eating the defendant's frozen breaded chicken product. He developed septic arthritis, which damaged the articular surfaces in both knees. After a number of surgeries, the client suffered through his first knee replacement at only 19-years-old. The case settled in mediation before discovery for a confidential amount.

PETER SCHMIT AND PATRICK STONEKING


Peter Schmit


Patrick Stoneking

Peter Schmidt and Pat Stoneking recently handled a matter involving the wrongful death of a 67-year-old woman who is survived by adult children and grandchildren. Patient had a history of COPD of long term duration and other comorbidities. On Christmas Day, the woman experienced increased shortness of breath and went to the local emergency room where her respiratory status declined. There was a delay in recognizing the need for intubation and hospital staff struggled to intubate once they realized it was a necessity. Eventually, another care provider was able to intubate but it was too late. Major issues included causation and life expectancy. The case settled shortly before trial for $275,000.

OPERATING ROOM FIRES

Most people are aware of some of the common risks of surgery, and hospital informed consent forms routinely warn of the danger of infection, pain, blood clots and the like. With the increase in the use of technology like electrocautery and lasers, however, a new danger is beginning to garner attention: operating room fires.

A recent study determined that surgical fires rank third among the most common types of technology hazards in the OR, and occur between 550 and 650 times each year in the United States. These fires regularly have catastrophic consequences because the most common sites of fires are the head, face, neck, and upper chest areas. Some patients recover with scarring and emotional damage. Others are not so lucky. Every year, 20 to 30 patients suffer serious, disfiguring burns. One or two patients a year die from operating room fires. Despite these numbers, many surgeons and anesthesiologists remain unaware of this potentially devastating surgical complication.

The reason that surgical technology like electrocautery can be so dangerous is that it is an ignition source, and forms one part of the "fire triangle." As discussed below, the other parts of the triangle – oxygen and fuel – are routinely present during most surgeries. When all three elements combine, disaster can result.

The Fire Triangle

An oxidizer-enriched environment occurs when there is an increase in oxygen concentration above room level, and/or with the presence of a concentration of nitrous oxide. Because oxygen is heavier than air, it can accumulate under a drape and serve as an oxidizing source. Doctors are therefore encouraged to use the least amount of oxygen possible.

When it comes to fuel, the OR is full of options. Drapes, antiseptic skin agents, endotracheal tubes, unshaved hair, masks, and a host of other supplies can easily ignite. Drapes are implicated most often as fuels in OR fires because they are extremely combustible.

In addition to an oxidizer and a fuel source, for an OR fire to start there must also be an ignition source. Electrocautery devices are the most common ignition source as the temperature at the tip of a cautery instrument can reach several hundred degrees. Other ignition sources include lasers, overhead and fiberoptic light sources, drills, and burrs. About seventy percent of OR fires are ignited by electrocautery devices, twenty percent are ignited by hot wires, light sources, burrs or defibrillators, and about ten percent are ignited by lasers.

Preventing Operating Room Fires

There is little doubt that OR fires can easily be prevented. To minimize the risk of these potentially catastrophic fires, hospitals must establish OR fire protocols which educate healthcare professionals regarding the potential of OR fires, require OR fire drills, train healthcare providers to recognize high risk procedures and what must be done to prevent fires during these procedures, and instruct healthcare providers on what must be done to manage an OR fire once one ignites. To be sure, careful coordination and continuous training for all healthcare professionals is required to minimize the possibility of OR fires.

To improve fire safety awareness, anesthesiologists and surgeons must be trained to understand the concepts of fire potential and use techniques to minimize oxidizer-enriched atmospheres, safely manage ignition sources, and safely manage fuel sources. Good communication between surgeons and anesthesiologists regarding the timing and use of the electrocautery or other ignition sources is crucial to allow adequate time for excess oxygen to be eliminated from the surgical field.

The modern OR has a dizzying array of technology that can make surgery more efficient and effective. Without proper precautions, however, that technology can lead to disaster. Fortunately, if all of the members of the health care team work together, operating room fires can be prevented.

Robins, Kaplan, Miller & Ciresi L.L.P. is pleased to announce that **Brian Aleinikoff** and **Colin Peterson** have joined the firm's Personal Injury/Medical Malpractice group as associates. Brian and Colin are involved in a number of cases involving operating room fires and explosions that have resulted in devastating injuries. If you know someone who has been harmed in one of these incidents, our team is ready to help.


Brian Aleinikoff


Colin Peterson

OPENING THE COURTROOM DOORS FOR CHILDHOOD SEX ABUSE VICTIMS: 2013 MINNESOTA CHILD VICTIMS ACT By Melissa Wendland and Megan J. McKenzie


Melissa Wendland


Megan McKenzie

Governor Dayton signed the Minnesota Child Victims Act into law on May 24, 2013. This landmark legislation dramatically changed the civil statute of limitations for child sexual abuse cases. Previously, these victims had only until the age of 24 to file claims.[1] Just last year, the Minnesota Supreme Court further restricted the ability of victims of sex abuse to sue by flatly rejecting the "repressed memory" theory as a method of tolling the statute of limitation.[2]

The new law gives victims of child sex abuse the time they need to come to terms with the abuse and explore their legal options. The Act eliminates the civil statute of limitations for child sexual abuse going forward in cases directly against the abuser and a person or entity that was negligent in causing/allowing the abuse.[3] The law even provides a three-year commencement window to revive otherwise time-barred child sex abuse cases.[4] The Act specifies that cases based on vicarious liability or respondeat superior must still be commenced before the victim is 24 years of age. Likewise, cases where the abuser was under fourteen years old at the time of the abuse must still be commenced before the childhood sex abuse victim is 24 years old. The first lawsuit under the Act was filed on May 29, 2013 against the Archdiocese of St. Paul-Minneapolis and the Diocese of Winona.[5] Similar suits advocating for child sex abuse victims are likely to follow.

The Act received bipartisan support, passing 123-3 in the House and unanimously in the Senate.[6] For childhood sex abuse victims, this widely-supported law rightfully opens the courthouse doors for a chance to obtain full justice.

1. Minn. Stat. § 541.073 (2012); *D.M.S. v. Barber*, 645 N.W.2d 383, 389 (Minn. 2002).
2. *Doe v. Archdiocese of St. Paul & Minneapolis*, 817 N.W.2d 150, 170 (Minn. 2012).
3. Child Victims Act, 2013 Minn. Laws *at* https://www.revisor.mn.gov/laws/?id=89&doctype=Chapter&year=2013&type=0.
4. *Id.* This revival language does not apply to any expired cases based on vicarious liability or respondeat superior.
5. *Ex-Priest Named in 1st Lawsuit Under New Minn. Law*, ABC 5 Eyewitness News, May 29, 2013 *at* http://kstp.com/article/stories/s3048812.shtml.
6. Legislative History for HF 681 *at* https://www.revisor.mn.gov/bills/bill.php?f=HF681&y=2013&ssn=0&b=house.

TYPE 2 DIABETES TREATMENTS - CURRENT INVESTIGATIONS By Megan J. McKenzie

Robins Kaplan Miller & Ciresi L.L.P. is investigating six widely used Type 2 diabetes treatments related to an increased risk of pancreatic and thyroid cancer. These treatments are: Byetta (exenatide), Victoza (liraglutide), Januvia (sitagliptin), Janumet (sitagliptin and metformin), Onglyza (saxagliptin), and Tradjenta (lingagliptin). Byetta and Victoza are injectable agents whereas Januvia, Janumet, Onglyza, and Tradjenta are administered orally.

All of these drugs are incretin-based therapies.[1] Incretins are gastrointestinal hormones that increase rapidly after eating and signal the production of insulin.[2] These drugs either mimic the effects of the incretin GLP-1 or inhibit the enzyme that breaks down naturally occurring GLP-1.[3]

In March of this year the FDA announced it was evaluating these drugs for an increased risk of pre-cancerous cellular changes.[4] This announcement came after researchers examined pancreas cells from organ donors treated with exenatide and sitagliptin and compared them with cells from non-diabetics and diabetics on other therapies.[5] The researchers found that those on exenatide and sitagliptin for a year or more had abnormal cell growth.[6]

Another recent study reported a 2.9-fold increase of pancreatic cancer among those taking Byetta compared to those receiving similar treatment.[7] The same study found a 2.7-fold increase in those taking Januvia.[8]

Our team of experienced mass tort trial attorneys, legal nurse consultants and other professionals have earned a national reputation for tirelessly fighting for justice for our clients. We welcome calls from referring attorneys or potential clients diagnosed with pancreatic or thyroid cancer after taking Byetta, Victoza, Januvia, Janumet, Onglyza, or Tradjenta.

1. Drucker et al., *Incretin-Based Therapies for the Treatment of Type 2 Diabetes: Evaluation of the Risks and Benefits*, Diabetes Care, Vol. 33, No. 2 (Feb. 2010).
2. *Id.*
3. *Id.;* see also Tradjenta (lingagliptin) Prescribing Information.
4. *FDA Drug Safety Communication: FDA investigating reports of possible increased risk of pancreatitis and pre-cancerous findings of the pancreas from incretin mimetic drugs for type 2 diabetes* (March 14, 2013).
5. Butler et al., *Marked Expansion of Exocrine and Endocrine Pancreas with Incretin Therapy in Humans with increased Exocrine Pancreas Dysplasia and the potential for Glucagon-producing Neuroendocrine Tumors,* Published online before print March 22, 2013, doi: 10.2337/db12-1686; Diabetes (March 22, 2013).
6. *Id.*
7. Elashoff et al., *Pancreatitis, Pancreatic Cancer, and Thyroid Cancer with Glucagon-Like Peptide-1-Based Therapies,* Gastroenterology, 2011; 141:150-156.
8. *Id.*

THE ROBINS JUSTICE REPORT

THIS ISSUE'S SPOTLIGHTS

In each issue of The Robins Justice Report we highlight our people—both an attorney and another professional—so that you can learn more about our skill sets and backgrounds. More than 25 attorneys are in the Personal Injury, Medical Malpractice and Mass Tort practice groups at Robins, Kaplan, Miller & Ciresi L.L.P. We hope you enjoy getting to know us better.

PAT STONEKING, ASSOCIATE

Pat always seemed destined to do this type of work. The son of a personal injury lawyer, Pat grew up with the privilege of meeting and getting to know many folks who suddenly found their lives turned upside down from decisions made by others. Stories around the dinner table often focused on the challenges facing these people who Pat knew personally. Pat's favorite stories, however, focused on what could be done to help these folks beat the odds in their time of need and the good that can come from a just result. In many ways, this sort of work has always been in Pat's blood.

For college, Pat went to the University of Wisconsin where he majored in – of all things – mathematics. He graduated in three years and went straight home to the University of Minnesota Law School, where he graduated with honors. It was a foregone conclusion that Pat would focus his efforts on helping injured people and that's exactly what he has done. Pat spent six years as a partner in a small injury practice before seizing the opportunity to join the team at Robins, Kaplan, Miller & Ciresi L.L.P. where Pat represents those who have been injured by medical malpractice and personal injury accidents.

Pat and his wife, Sophie, were law school classmates. Together they have three amazing kids.

SARAH KNOX, LEGAL NURSE CONSULTANT

Sarah earned a bachelor degree in both Exercise Science and Nursing from Creighton University. She started her nursing career in San Diego caring for patients recovering from orthopedic surgery and trauma. When Sarah moved back home to the Twin Cities, she focused her expertise on those patients suffering from cardiac and respiratory disease, thriving in emergent situations as well as when training in new nurses.

While Sarah enjoyed providing bedside care for nine years, she yearned to make a bigger impact on the quality of patient care. She joined this firm in July 2012 as a legal nurse. In this position, Sarah assists attorneys in medical malpractice cases by triaging phone calls, organizing and analyzing medical records, and educating clients and attorneys. She strives to advocate for the best possible patient care, the adherence to evidence-based policy and procedure to prevent injury, and medical professional accountability. She is also a member of the firm's First Responders.

Though born in Wisconsin and an avid Green Bay Packers fan, Sarah grew up in Plymouth, Minnesota and currently resides in St. Paul. She loves the outdoors, spending time with friends, and playing with her 9-year-old Siberian Husky. Sarah has always been very athletic; she played hockey in high school, has completed a couple of triathlons and continues to run ½ marathons and take modern dance and yoga classes.

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