

Missed pediatric tumor leads to \$28.5M settlement, policy changes

By Heath Hamacher

A teenager who discovered that he was suffering from brain cancer nearly two and a half years after a radiologist failed to diagnose a tumor there has settled his medical malpractice and negligence case for \$28.5 million, his attorneys report.

William Applegate and Perry Buckner of Yarborough Applegate in Charleston report that their client was 14 years old in 2015 when he experienced shooting pain headaches, balance issues, fatigue, and dizziness. At the time, he was a student and basketball player at the Governor's School for Science and Mathematics.

The client's doctor ordered a brain MRI, which was performed at Florence MRI & Imaging, a Medquest Associates, Inc. imaging center, in December 2015. The results were read and interpreted by Dr. Zachary Kilpatrick, who acted as a radiologist for several Medquest centers.

The attorneys said that Kilpatrick's radiology report indicated no abnormalities, critical findings, or cause for concern. As such, the client went on about his day-to-day activities until his on-again, off-again symptoms became unbearable in 2018. He underwent another MRI, and this time, Kilpatrick identified the tumor, which had nearly tripled in size since the time of the original scan.

The client immediately underwent a tumor resection surgery for what was determined to be medulloblastoma, a tumor of the cerebellum, but the tumor couldn't be removed without likely affecting blood vessels. The attorneys said the client suffered a debilitating stroke and that he continues to suffer from severe nausea, vision and speech deficits, and difficulty walking independently years after completing radiation and chemotherapy.

The attorneys said that the initial diagnosis was a "clear miss" by Kilpatrick, who also failed to identify an abdominal tumor on another patient around the same time as the teen's missed diagnosis. Further, Kilpatrick spent less than a minute reviewing the 251 images that made up their client's MRI study, they said.

"This was a very serious turning point in the case and changed the focus of the lawsuit," the attorneys wrote in an email to Lawyers Weekly.

The client brought claims for both medical malpractice against Kilpatrick and also direct corporate negligence against Medquest and its affiliated companies for failing to properly manage, operate, and oversee the delivery of diagnostic imaging and radiological services.

"The Defendants had a monitoring system for ensuring that their team of radiologists would turnaround/read all images in a mandatory time frame, but they had no system at all that would make sure that a sufficient amount of time would be spent on the actual review of the images, making the quality control focused on profits as opposed to quality care," the attorneys wrote.

The attorneys said that they felt confident that a jury would have held the imaging company to a higher standard and would have found that their doctors were responsible for thoroughly reviewing all imaging, not simply "churning volume."

Before Kilpatrick's deposition the defendants offered \$1 million to settle the case, the attorneys said. But the plaintiffs, through several motions to compel and court orders, discovered significant insurance coverage applicable to the case that hadn't been disclosed by the defendants, who made no significant offers until after mediation and as trial became imminent.

The defendants were represented by Gary Lovell and Christie Perrin of Copeland Stair in Charleston (for Kilpatrick) and Mitch Brown and Blake Williams of Nelson Mullins in Columbia (for Medquest Associates and affiliated companies).

Neither Brown nor Williams responded to a request for comment. Lovell declined to comment on the details of the settlement but wrote in an email that the defendants "believe the resolution of the case was in the best interests of all of the parties involved in light of the plaintiff's tragic circumstances."

Tom Wills of Charleston mediated the settlement.

The attorneys wrote that in addition to the settlement's financial terms, the corporate defendants—with imaging centers across the country—agreed to implement significant, sweeping changes including second readings of all pediatric MRIs and CT scans; of all head, neck, and spine MRIs for all patients; and of several other high-risk patient scans.

"They have also increased their quality control policies to enhance patient safety and reduce reading errors at all levels," the attorneys wrote. "We, as the attorneys, and the family are very happy to have been able to find a silver lining to this otherwise horrific incident."



Applegate



Buckner

SETTLEMENT REPORT – MEDICAL MALPRACTICE/ CORPORATE NEGLIGENCE

Amount: \$28.5 million

Injuries alleged: Stroke, posterior fossa syndrome, resulting medical problems including impacted speech, walking, vision, and coordination

Case name: Pritchett v. Kilpatrick, Medquest Associates, Inc., et al.

Court: Richland County Circuit Court

Case No.: 2019-CP-40-06306

Mediator: Tom Wills of Charleston

Date of settlement: December 2021

Insurance carriers: The Doctor's Company, Sompco International, and Novant Health Captive Insurers

Attorneys for plaintiff: William Applegate and Perry Buckner of Yarborough Applegate in Charleston

Attorneys for defendants: Gary Lovell and Christie Perrin of Copeland Stair in Charleston for Dr. Zachary Kilpatrick and Mitch Brown and Blake Williams of Nelson Mullins in Columbia and John Hall Jr. and Douglas Ammerman of Hall Booth Smith in Atlanta for corporate defendants