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## Over-sedation leads to \$851,000 settlement

By Phillip Bantz  
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Yarborough

A young woman who was unnecessarily sedated by health care workers at a South Carolina surgery center has collected \$851,000 to settle a medical-malpractice lawsuit, according to her attorneys.

David B. Yarborough Jr. of Yarborough Applegate in Mount Pleasant and John D. Clark of the Clark Law Firm in Sumter say their client suffered brain damage as a result of the botched procedure in 2007. The woman, who was 20 at the time of her injury, sued the center along with the gynecologist and certified registered nurse anesthetist, or CRNA, who treated her.

Her gynecologist sent her to a local ambulatory surgery center to have abnormal cells removed from her cervix — a simple procedure that could have been done at the doctor's office using local anesthesia. Instead, a nurse anesthetist who contracted with the surgery center chose to deeply sedate the woman during the procedure and the gynecologist signed off on the anesthesia plan.

The nurse and gynecologist did this despite the fact that the woman had sickle-cell anemia, a disease that increases the dangers of anesthesia. They apparently underestimated the severity of the woman's condition, Yarborough said. He also alleged that the defendants were motivated by profit.



"They had just built this new surgery center and were routinely booking patients in it," Yarborough said. "They were using IV sedation and hiring a CRNA on this simple procedure because it generated revenue for them. Everyone got to charge more if this young woman was put under anesthesia."

The woman's heart stopped beating toward the conclusion of the procedure and she went into cardiac and respiratory arrest. She was transferred to a regional hospital and diagnosed with a brain injury triggered by oxygen deprivation.

As a result of the brain injury, the woman's driver's

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Clark license was revoked and she was unable to continue working in the food service industry and as a cashier at a Goodwill store. Her IQ also dropped by an estimated 11 points.

"It had a devastating effect on this young lady," Clark said. "It took a person who had a chance to be a mature, productive person and basically eliminated that."

The woman's lawsuit led to finger-pointing among the gynecologist, nurse and surgery center, Clark and Yarborough said. The gynecologist blamed the CRNA, alleging that the nurse had allowed a kink to form in the IV line delivering the anesthesia. When the line was cleared, the sedatives flooded into the woman's body and caused her heart to stop beating.

Meanwhile, the CRNA vehemently denied the gynecologist's accusation. The nurse argued that if anyone was at fault it was the surgery center and gynecologist because the woman's sedation plan followed their standard operating procedure.

The nurse's attorney, Barbara Chesley of Richardson Plowden & Robinson in Columbia, declined comment. Robert H. Hood Jr. of the Hood Law Firm in Charleston, who represented the gynecologist, did not respond to a request for comment, nor did Brian A. Comer of Collins & Lacy in Columbia, who represented the surgery center, and Cherie W. Blackburn of Nexsen Pruet in Charleston, who represented the anesthesia group.

The defendants admitted that they never discussed local anesthesia as an option with the plaintiff, according to Clark and Yarborough. And the gynecologist testified in a deposition that the entire anesthesia team had deviated from the standard of care. He also agreed that it was unnecessary to use general anesthesia on the plaintiff and that local anesthesia was a safer alternative.

Because the gynecologist essentially served as the quarterback of the medical team, his testimony became a significant turning point in the plaintiff's case, Yarborough said: "The defendant doctor was our best witness."

The suit settled for \$851,000 on Oct. 18, 2011. All of the defendants were insured. The settlement includes \$29,000 in damages for past medical costs and \$31,000 for past lost wages, but does not meet the plaintiff's initial claims for \$900,000 in future medical care and another \$200,000 for future loss of income.

The settlement money has been placed into a special needs trust for the plaintiff.

### **Settlement Report**

**Type of action:** Medical malpractice

**Injuries alleged:** Brain injury

**Case name:** Withheld under confidentiality agreement

**Case number:** Confidential

**Court:** Charleston County Circuit Court

**Judge:** Mediation

**Verdict or settlement:** Settlement

**Date:** Oct. 18, 2011

**Amount:** \$851,000

**Insurance carrier:** Confidential

**Were liability and/or damages contested?** Yes

**Special damages:** \$29,000 for past medical costs; \$31,000 past lost wages

**Most helpful experts:** Dr. Alan Lisbon, anesthesiologist (Harvard Medical School); Sarah Lustig, life care planner (Charleston); Marshall White, neurologist (Sumter)

**Plaintiff's attorney:** John D. Clark (Sumter) and David B. Yarborough Jr. (Mt. Pleasant)

**Defendant's attorneys:** Cherie W. Blackburn (Charleston); Barbara Chesley (Columbia); Brian A. Comer (Columbia); and Robert H. Hood Jr. (Charleston)

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