

Decisions...Decisions...Decisions...

**REPORTED
"DECISIONS"
OMITTING CLIENTS'
AND/OR
DEFENDANTS' NAMES
ARE AS A RESULT OF
REQUESTS FOR
ANONYMITY.**

BETANCOURT v. CASTANEDA

In April 1992, Will and Annie Betancourt welcomed their third son, Logan Daniel Betancourt, into the world. The Betancourts were active, involved parents who devoted almost all of their free time to their children's activities. Mrs. Betancourt worked at the Ocean Grand Hotel in Palm Beach in the evening so that she would be able to spend as much time as possible with her boys.

About a month after Logan's birth, Mrs. Betancourt had a routine pap smear which indicated abnormal findings. Her gynecologist, Jose Castaneda, M.D., told Mrs. Betancourt she needed to have a colposcopy, a procedure involving a cervical biopsy taken in the physician's office. The procedure was performed on June 4 and the results showed severe cervical dysplasia. Since cervical dysplasia sometimes precedes endocervical cancer, Dr. Castaneda then performed a cone biopsy. A cone biopsy is a surgical procedure performed in the hospital and yields a definitive diagnosis if cancer is present.

Mrs. Betancourt's cone biopsy was performed on June 24 at Bethesda Memorial Hospital. The biopsy was read by Matthew DiBiase, M.D., of Bethesda Pathology Associates, the hospital's base pathology group. Dr. DiBiase examined the specimen and diagnosed mild dysplasia. Dr. Castan-

eda reported the good news to Mrs. Betancourt, recommending that she return for pap smears every three months for the next year. Dr. Castaneda performed the first two pap smears, which came back normal.

When it was time for the third pap smear, Mrs. Betancourt was told that she needed another referral from her HMO gatekeeper doctor. The gatekeeper refused to refer her back to the gynecologist, insisting that he could perform the pap smears. Mrs. Betancourt did not feel comfortable having her gatekeeper perform the pap smears, so she decided to wait until it was time for her yearly examination with her gynecologist.

Mrs. Betancourt returned to Dr. Castaneda's office in August 1994 for another pap smear. It was returned with a diagnosis of adenocarcinoma of the cervix. Mrs. Betancourt was scheduled immediately for exploratory surgery and the results were devastating: The cancer had spread throughout Mrs. Betancourt's abdomen. She began radiation and chemotherapy treatments.

Over the next two years, Mrs. Betancourt had several surgeries and an excruciating course of radiation and chemotherapy treatments, which continued from the date of the diagnosis until her death in August 1996.

When Mr. and Mrs. Betancourt originally came to this firm through their personal attorney, there was no clear theory of liability. However, after a diligent investigation by attorney William A. Norton which involved a re-examination of Mrs. Betancourt's surgical pathology, it was determined that the cone biopsy performed on June 24, 1992 was misread. The specimen was riddled with adenocarcinoma in situ, which extended beyond the margins of the biopsy. In-

explicitly, Dr. DiBiase had interpreted the specimen as being basically benign. Had the diagnosis been made correctly, Mrs. Betancourt — who had a tubal ligation after her final pregnancy — could have had a hysterectomy, giving her an almost 100 percent chance of survival.

In addition to experiencing the devastation that such an illness and death can wreak on a family, the Betancourts were faced with one of the true inequities of Florida law. The defendants, Matthew DiBiase, M.D., Bethesda Pathology Associates, and Bethesda Memorial Hospital, admitted liability. Florida Medical Malpractice Statutes provide for defendants to admit liability and cap the plaintiffs' noneconomic (pain and suffering) damages at \$250,000. This statute has the effect of giving the most egregious malpractice offenders economic protection. However, testimony was developed that Mrs. Betancourt — employed as a Banquet Captain at the hotel — would have progressed to a management position within six years. This testimony, along with a unique theory that the defendants were operating as a partnership and not subject to the cap, enabled attorney William A. Norton to settle the case far in excess of the statutory caps. Matthew DiBiase, M.D. paid his policy limits of \$2,000,000, Bethesda Pathology Associates paid \$750,000 and Bethesda Memorial Hospital paid \$250,000. The case is ongoing against Dr. Castaneda and is scheduled for a 1998 trial.

Mrs. Betancourt waged a brave and valiant fight against a terrible disease. The tragedy is that her suffering could have been avoided if she had received even marginally-competent medical care. This case is an example of how the most serious malpractice

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offenders can avoid responsibility for their mistreatment of patients.

Searcy Denney Scarola Barnhart & Shipley, P.A. has worked diligently with the Academy of Florida Trial Lawyers in an effort to change this law, which benefits only physicians to the detriment of Florida's families and children. You can help by contacting your State Representative and supporting our effort for medical malpractice statutes that are fair to the physicians and patients alike. ■