

OSBORNE vs.

TAMPA GENERAL HOSPITAL

"Just under the wire" was the theme in a recent case which settled for \$1,000,000.

Cal Warriner received a call one year ago from a referral attorney in Bradenton, Florida who represented a widow and two minor sons. Kenny Osborne, their husband and father, had been ejected from his work truck in a single car accident. Tampa General Hospital's air ambulance responded. Triage revealed the patient to have a possible head injury and decreased breath sounds bilaterally. The patient began experiencing respiratory distress and signs of hypoxia. The paramedics correctly determined intubation (through rapid sequence induction) was

necessary. Interestingly, the flight team had only recently implemented the use of paralytic medication to aid in difficult intubation. Kenny Osborne was intentionally and temporarily paralyzed utilizing a drug called succinylcholine chloride. According to the flight record, the patient was successfully intubated on the second attempt. He was placed in the helicopter and during the fifteen minute flight his vital signs deteriorated and he coded. Upon arrival at Tampa General only minimal attempts at resuscitation were attempted and the patient was pronounced dead.

The anesthesiology record indicated that the endotracheal tube had been incorrectly placed in the esophagus. The defendants claimed the patient had been correctly intubated, however, the tube had become dislodged during patient transfer from the chopper to the ER. In support they pointed to pulse oxygenation values during flight which, if correct, would indicate normal blood oxygenation readings, hence proper intubation. Further, one paramedic testified he observed a resident pull on the endotracheal tube while transferring the patient to the ER stretcher.

Discovery revealed several interesting facts. The record upon which the paramedics relied was created after the fact from notes made on adhesive tape stuck to one paramedic's arm. Further, written policy had been violated when the paramedics allowed a friend from Hillsborough EMS to ride along and participate in the original intubation attempt. His participation was the subject of debate since the record was entirely silent as to his presence. **Decisions...Continued on Page Ten.**

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ence and participation. The ride-along paramedic denied any participation other than observation. Fortunately, one of the flight team members had a specific recollection that the "buddy rider" had attempted the first intubation without success and was bagging the patient during the flight.

A nationally renowned trauma surgeon from the University of Chicago testified that the hand-recorded pulse oxygenation values were physiologically impossible in light of the other machine-recorded vital signs. Stopping short of calling the values fraudulent, he did say the level of suspicion regarding their validity caused him grave concern. To his credit, the attending anesthesiologist who participated in the emergency room code effort specifically recalled no one touching the endotracheal tube while the patient was moved.

As a public hospital, Tampa General enjoys sovereign immunity, which limits its damage exposure in most cases. To make things worse, the plaintiff learned at mediation that Tampa General was becoming private, so there would no longer be any legal entity left to pay any judgment or claims bill obtained by the plaintiff. Investigation revealed a pool of funds had been set aside to satisfy contingent liabilities, however, when those funds were exhausted there would be no more.

Cal Warriner was able to negotiate a \$1,000,000 settlement for Kenny Osborne's wife and two sons. ■