

Disregard of Physical Therapy Evaluation Results in Neurological Impairment

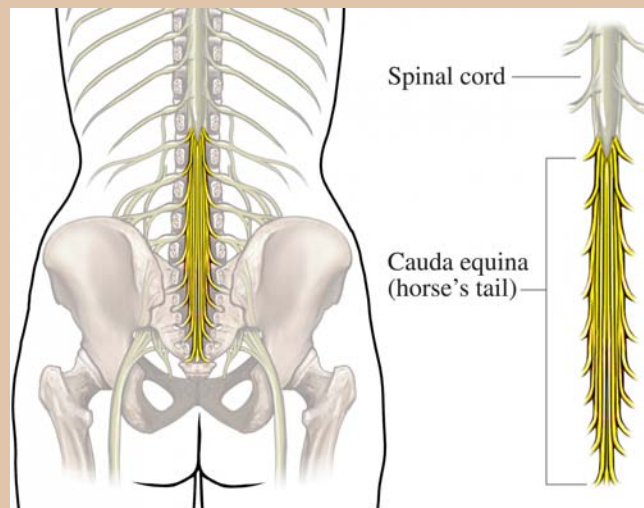
A 70-year-old man weighing 250 pounds was admitted to a south Florida hospital for hip replacement surgery. Imaging studies depicted severe arthritis and all medical evaluations concluded that the hip surgery was indicated. The patient had a past history of back problems and told the nurses, on admission to the hospital, that he had a "disc" in his back. The operating surgeon requested his medical records from another state. Those records indicated that the patient had suffered intermittent back problems. He was medically cleared for surgery, and the hip replacement was performed.

On the first postoperative day, he had the usual complaints of pain in his hip due to the surgery. Medication was administered for pain relief. On the second postoperative day, he had some numbness in the foot of the operated leg. A covering orthopedic surgeon examined him and found that he had a

peroneal nerve palsy. This can be a complication of hip surgery. That same day, in the morning, a physical therapist saw the patient. She tried to get him out of bed, and he was unable to stand. On evaluation of his lower extremities, she found that the patient's feet had neither reflexes nor muscular control. This was entered into the patient's physical therapy record as four zeros in the area of each of the reflex areas on each foot. He had a classical "drop foot". This meant he could not dorsiflex his toes towards his knees. The therapist did not verbally report her findings to anyone. No other nurse or physician read the written physical therapy report.

The patient's lower extremity symptoms began to worsen, and the physicians requested a neurological evaluation. The order was noted by a nurse, indicating that the consultant was called. The neurological consultant testified that he was never called. On the third postoperative day, the patient was examined again, and at that time, the physicians felt that he

had severe neurological sequela which probably represented cauda equina syndrome. They could not get him into an MRI because he was too large. When they finally were able to do a study, it revealed that he had incurred a large herniated disc that was encroaching on an area of his spine called cauda equina. As noted in the picture, it is a bundle of filaments or nerves that form at the first lumbar vertebra and distribute downward like a horse's tail. Cauda equina in Latin means "horse's tail".



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Medical literature has conflicting information regarding whether or not early surgical intervention can resolve the symptoms of a cauda equina impingement. Some authorities indicate that surgery will not alleviate cauda equina symptoms once the symptoms become evident. Other studies indicate that the earlier the surgery is done, the better the outcome.

Obviously, the defense took the former position, and plaintiff the latter. By the time he was operated on, he had bowel and bladder incontinence and bilateral drop feet. Post-operatively, he underwent an extensive course of recovery complicated by severe pressure sores that eventually healed.

After his total rehabilitation, he was able to walk with a walker, but still had bowel and bladder incontinence. A significant issue in the case is whether or not he would have ended up with some degree of neurological impairment, even with earlier operative intervention.

The case was resolved for an amount of compensation in seven figures. As a result of the concerns raised in this case, the hospital now requires physical therapists to report patient findings to nurses and that the findings be reviewed by one of the treating physicians. The Plaintiff contends it's a very responsible action on the part of the hospital, and will help to prevent such findings from being ignored in the future.

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Boca Aviation v. Proskauer Rose

Boca Aviation was a fixed-base operator providing a broad range of aeronautical services at the Boca Raton Airport in Florida. A fixed-base operator is the primary provider of services to aircraft and other operators located at an airport. There are currently over 3,000 fixed-base operators in the United States. Boca Aviation is highly regarded within its industry, having recently been selected as the 13th best fixed-base operation in the United States. It was also named the fourth best fixed-base chain operation by the 2010 Professional Pilot Survey.

In 1997, Boca Aviation engaged the law firm of Proskauer Rose to represent them in the drafting and negotiation of a lease intended to expand the company's fixed-base operation at the airport. The head of Proskauer Rose's real estate department in Boca Raton was Christopher Wheeler. Unfortunately, serious errors in the legal services provided to Boca Aviation by Mr. Wheeler and Proskauer Rose resulted in the loss of Boca Aviation's lease rights to one of its competitors. The legal errors resulted in the loss of future profits for the 28 years that remained on Boca Aviation's original lease.

Boca Aviation sought representation by Steven Katzman and Craig Rubinstein of Katzman, Wasserman, Bennardini and Rubinstein, Boca Raton, Florida, who were joined by SDSBS attorney **Jack Scarola**. Together, they filed a legal malpractice lawsuit against Mr. Wheeler and Proskauer Rose. Mr. Wheeler resigned his position with Proskauer Rose shortly before trial began in May 2010.

Following a six-week trial, the six-person jury was unable to reach a unanimous decision after three days of deliberations. On June 11, 2010, the judge declared a mistrial. The judge then queried the jurors for their individual advisory verdicts (non-binding decisions), and four of the six jurors reported that they would have found defendant Proskauer Rose liable for the negligent advice given in the commercial real estate transaction, and for breach of the fiduciary duty owed to their client, Boca Aviation. In closing arguments, plaintiff's attorneys had revised their claim for lost profits to \$60.1 million to reflect the year 2000 values, and added \$3.6 million in legal fees and other costs. According to the four jurors' advisory verdicts, they would have found damages due Boca Aviation at just under \$64 million, every penny of damages claimed by the plaintiff's attorneys in closing argument.

The jury's inability to reach a unanimous verdict means that the case will now be retried, probably early next year. ♦

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This is the second case at SDSBS where the examination evaluations of physical therapists were significant with regard to alerting medical personnel about severe complications in a hospitalized patient. Physical therapists are an important part of a medical treatment team, and their evaluations are a significant part of patient care.

Many medical malpractice cases involve the issue of timing. The physical therapy notes were not reported, they were not reviewed, and appropriate timely action was not taken.

The patient and his family sought representation by SDSBS attorneys **Earl Denney** and **Chris Searcy** in a civil action filed against the hospital and medical personnel for medical malpractice. Many medical malpractice cases involve the issue of timing. In this instance, the window of time would be between the earliest possible time that surgery could be performed on the patient, and the last hour beyond which there would have been no difference in the patient's outcome. The earliest possible time for emergency surgery would have occurred when the physical therapist's notes on the critical condition of the patient were reported by the physical therapist to nurses and physicians, who would have reviewed the condition and taken appropriate and emergent action. The physical therapy notes were not reported, they were not reviewed, and appropriate timely action was not taken. ♦