

# Chicago Daily Law Bulletin

Anesthetic death leads to settlement for \$3.6M

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The estate of a man who died after receiving a dose of an anesthetic to prepare him for surgery has settled its medical-malpractice suit for \$3.6 million.

Alberto Mendez's estate sued Mount Sinai Hospital and several physicians who treated him during his emergency room visit in 2013, alleging their failure to properly monitor his condition led the anesthesiologist to administer the wrong kind of anesthetic, causing his death.

Mendez visited Mount Sinai Hospital in June 2012 complaining of severe pain in his thighs and lower back. Physicians conducted tests that revealed he was suffering from rhabdomyolysis — a condition that occurs when a person's muscle becomes injured and breaks down.

When that happens, certain toxins get released and filtered through a person's kidneys, said Margaret P. Battersby Black, a partner at Levin & Perconti who represented Mendez's estate. One example is myoglobin, she said, which can prevent the kidneys' ability to pass other toxins through them.

"You have to keep up the [patient's] hydration to flush [the toxins] out of the body," she said. "If they're not, you become worried that the kidneys start to fail."

A person's muscle can also become so injured that it releases potassium into the blood stream. And if a person's potassium levels get too high, Battersby Black said, "it can interfere with the cardiac wiring in the heart and it can literally stop the heart from beating."

Mendez was producing enough urine when he arrived at the hospital that doctor's could "clearly" see he was suffering from the disease, she said.

"It becomes ... cola-colored because the myoglobin is coming out," she said. But while the hospital's physicians made a timely diagnosis, Mendez's estate alleged, they failed to properly monitor his condition, monitor his urine production and test his potassium levels to watch for his condition's potentially fatal symptoms.

"They were giving him fluids, but he was just not clearing them," Battersby Black said. "The problem was no one was really noticing that."

She called it "a little bit of a perfect storm" because Mendez was admitted into the hospital and

“passed from shift to shift” with the different physicians discussing his condition but not sufficiently conducting tests to track it in his medical record. “It was this crazy game of telephone,” she said.

Severe cases of rhabdomyolysis can lead to patients suffering from compartment syndrome — a condition in which a muscle swells so much it puts excessive pressure on its enclosed space in the body and can require surgical intervention. Pressure can become so tight in the muscle space that blood flow can decrease and the muscle can die, Battersby Black said.

Surgical resident physicians who evaluated Mendez about two hours after doctors determined he needed a consultation suspected he was suffering from the condition, she said, but the “gold standard” pressure-needle test administered to detect pressure levels wasn’t conducted for another three hours.

Once performed, she said, pressures in his thighs measured at 80 millimeters of mercury. A person’s normal pressures are around 5 millimeters of mercury, she said, and the condition becomes a surgical emergency at 30 millimeters of mercury.

By the time physicians decided to perform surgery on Mendez to relieve the pressure, physicians were referencing a potassium-level test that was 12 hours old.

Anesthesiologist Constanta Alexandreanu used succinylcholine, an anesthetic that should not be administered to patients with elevated potassium because it triggers a relaxation process called muscle depolarization — which also releases potassium into a person’s blood.

Mendez went into cardiac arrest when Alexandreanu administered the drug and died about 30 minutes later — about 28 hours after he had arrived to the emergency room.

“Those that were involved earlier, had they been monitoring him and doing what they had to do, he never would have been in that emergency situation. But once he got in, you still have to think about the different ways to put someone to sleep,” Battersby Black said. “You don’t assume that just because 12 hours ago, in the face of obviously worsening conditions, that it’s still normal.”

In denying the allegations from Mendez’s estate, Battersby Black said, Alexandreanu contended she chose the anesthetic because it would work quickly in the emergency situation. Alexandreanu also contended she neither was told nor had any reason to suspect Mendez had high levels of potassium before administering the drug.

“That’s not really the best defense because no one really has to tell you in these conditions that someone has high potassium,” she said.

The other physicians who were named in the lawsuit contended they were not liable for Mendez’s death because the fatal dose of anesthetic came from Alexandreanu, Battersby Black said.

She said the lack of a current potassium test on Mendez was a tough challenge to overcome

because there was no physical evidence to support the estate's contention that his levels had risen.

"But we had experts who said, based on the lab 12 hours before and what happened to him clinically, there's no way his condition hadn't elevated," she said.

The parties mediated the case before former Cook County judge Dennis Burke of ADR Systems of America LLC in October.

Although they didn't reach an agreement then, Battersby Black said, Burke was able to bring them close enough that Alexandreanu agreed in December to settle for \$2 million from both her insurance and her medical group's insurance.

Mount Sinai Hospital as well as Rosalind Franklin University of Medicine and Science and its health system — which provided some of the residents who initially tended to Mendez — also contributed a total \$1 million to settle in December.

Battersby Black said the estate continued to proceed against the remaining defendants, including surgeon Hasmukh Patel, toward a trial she acknowledged could have been hard to overcome having partially settled some defendants out of the case.

"We were working with a \$3 million setoff, and they were probably highly culpable but less than the anesthesiologist and she wouldn't be there," she said.

But once Patel offered \$600,000 to settle his portion of the case, Battersby Black said, her clients became satisfied with closing the case.

The parties were about five days away from their scheduled trial date. Cook County Circuit Judge James P. Flannery Jr., who presides over the Law Division, entered an order dismissing the case Wednesday.

"Given the totality of the settlement at that point, and the risk of going to trial and not getting more than that, that was the right thing to do for everyone," she said.

Robert W. Smyth Jr. and Laura M. Testa, partners at Donohue Brown Mathewson & Smyth LLC, represented Alexandreanu. Testa deferred comment to Smyth, who could not be reached.

Patel was represented by Clausen Miller P.C. partner Robert L. Reifenberg and associate Kathleen M. Klein as well as Brennan Burtker LLC partners Robert S. Burtker and Rachel S. Stern. Patel's attorneys could not be reached for comment.

Anderson Rasor & Partners LLP partner R. Dennis Rasor, who represented the hospital, also could not be reached.

Johnson & Bell Ltd. shareholders Gregory E. Schiller and Genevieve M. LeFevour, who represented Rosalind Franklin University, also could not be reached.

Levin & Perconti partner Steven M. Levin and associate Jaime A. Koziol also represented the estate.