

Law firm cleared in malpractice case

Plaintiff sought \$950,000 in his last pretrial demand

A St. Louis County jury has cleared Sandberg Phoenix & von Gontard and one of its attorneys, Rodney Sharp, of all wrongdoing in a legal malpractice suit against them.

Physician Hamid Hosseini had filed suit against Sharp, alleging that the attorney had negligently represented him because Sharp had failed to ask about all relevant insurance carriers in Hosseini's medical malpractice suit.

The jury deliberated for about two hours after the six-day trial before issuing a verdict.

In 2003, Catherine Brown and Raphael Fowler sued Hosseini for medical malpractice in the death of their son, Chaz Fowler. Hosseini is a board-certified doctor in obstetrics and gynecology. He oversaw Chaz Fowler's prenatal care at the John C. Murphy Health Center and delivery at Christian Hospital. Chaz Fowler died a few weeks after his birth.

The health center was operated by the St. Louis County Health Department, which contracted with Healthline Management to staff the clinic. Healthline had hired Hosseini and was also named in Brown and Fowler's lawsuit.

On Jan. 29, 2003, Sharp and Sandberg Phoenix & von Gontard were employed by Healthline's insurance company, The Reciprocal Alliance, to represent Healthline and Hosseini in the suit. Ultimately, Brown and Fowler were awarded \$770,605 in December 2005. Hosseini was solely responsible for the verdict because Healthline went

■ Defense verdict

LEGAL MALPRACTICE

- **Court:** St. Louis County Circuit Court
- **Case Number/Date:** 2106CC-02866/ March 16, 2009
- **Judge:** Carolyn Whittington
- **Special Damages:** \$770,605 judgment entered against Hosseini
- **Last Pretrial Demand:** \$950,000
- **Plaintiff's Experts:** Dante Filetti, Goodman Allen & Filetti, Norfolk, Va. (attorney); Robert Seibel, Missouri (attorney)
- **Defendants' Experts:** Anthony Behr, Behr, McCarter & Potter, Clayton (attorney); Garth Allen, University of Northern Colorado (risk management and insurance)
- **Caption:** Hamid Hosseini v. Sandberg Phoenix & von Gontard and Rodney Sharp



Noce



Hendrickson

■ **Plaintiff's Attorney:** Todd Hendrickson, St. Louis

■ **Defendants' Attorneys:** Gerard Noce and Justin Assouad, HeplerBroom, St. Louis

out of business and The Reciprocal Alliance went into liquidation.

A few days after Sharp was retained in the case, The Reciprocal Alliance went into a receivership.

Hosseini had another insurance carrier, Chicago Interstate Insurance, for his private practice, and that might have covered the lawsuit. Hosseini's attorney in the malpractice suit, Todd Hendrickson, contended it was Sharp's duty to ask Hosseini if he had his own

insurance that might pay for the lawsuit.

Hosseini alleged because Sharp didn't ask, a claim was not reported during the insurance policy's coverage period and Chicago Interstate Insurance later refused to cover Hosseini in the lawsuit. Hosseini's medical malpractice insurance covered claims made only during the insurance period.

But Sharp's attorney, Gerard Noce, of HeplerBroom, said it was Hosseini's duty to report the claim.

"Rodney did nothing wrong in this case," he said. "It was Dr. Hosseini's insurance. It's very unusual for a defense counsel to ask their clients about additional insurance. It was Dr. Hosseini's fault that [the lawsuit] was not reported to the insurance company, and there were some questions on whether [the insurance] would have covered it anyway. The entire loss rested on what the doctor did and failed to do in this case."

Sharp withdrew as an attorney in the medical malpractice case in July 2003. A default judgment was entered in the case against Hosseini in April 2004. This judgment was set aside, and the original case was dismissed. Brown and Fowler later filed another lawsuit, and a judgment of \$770,605 was entered against Hosseini in December 2005.

At trial, Hendrickson had asked the jury for Hosseini's economic damages — the amount of the judgment entered against him, post-trial interest of \$225,000 and attorneys fees. The entire amount was a little more than \$1 million.

Hendrickson said he is considering an appeal because the jury was instructed to find the case on contributory negligence, instead of comparative fault. No final decision on an appeal has been made.

Although Missouri has adopted a comparative fault standard in most cases, contributory negligence is still used in cases with only economic damages, such as a legal malpractice case or a lawsuit alleging an accountant's negligence. Under contributory negligence, if the jury finds Hosseini even 1 percent at fault, he is barred from recovery.

— Angela Riley