



Doctor's docket

# Judgment notwithstanding the verdict: the anesthesiologist's duty to monitor head position in the perioperative period

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Received 23 December 2008; revised 11 February 2009; accepted 18 February 2009

## 1. Facts

In early 2000, Dr F, a neurosurgeon, was treating patient SB, an obese woman, for pain from cervical disc protrusions. Dr F suggested that a cervical hemilaminotomy and foraminotomy at C3-4 and C4-5 would be an effective strategy to address SB's pain. SB agreed to the surgery, and SB was admitted to Hospital at 8 am. The surgery began at 10:15 am, with Dr L as the anesthesiologist and nurse anesthetist JS assisting. Dr L, with the assistance of JS, attached several monitors. After these monitors were attached, JS placed an oxygen mask on SB's face and began administering oxygen. General anesthesia was induced and an endotracheal tube was inserted and fixed into place.

After Dr L and JS completed this initial work, Dr F and his surgical nurse placed SB on the operating room (OR) table in a seated position, with SB's head flexed toward her chest. They then taped her head to a horseshoe-shaped headrest to prevent movement during surgery. After positioning SB and taping her head in place, Dr F left the OR to prepare for surgery. During Dr F's absence, the anesthesia team padded various pressure points to prevent

nerve injury, including elbows, ankles, and other areas, and "anything that looks like it would be compromised ...." No areas near the head or neck were padded. Dr F then returned and began the surgery.

During the surgery and until SB was transferred to the recovery room at 1:05 pm, all monitors recorded vital signs within normal ranges. However, approximately 20 minutes after SB arrived in the Post-Anesthesia Care Unit (PACU), SB lapsed into a coma. When she emerged from the coma she was only able to move one finger and slightly move her right foot. On radiological assessment at Hospital, it was concluded that SB had suffered bilateral strokes from carotid artery obstruction, resulting in permanent quadriplegia. SB then sued Dr L and JS, an employee of Dr L, for medical malpractice.

At trial, the reason for the carotid arteries becoming obstructed was not disputed. All physicians agreed that the obstruction resulted from SB's chin coming to rest too low on the sternum, either during the positioning process or sometime during the surgery.

Dr BL, a neurologist, testified that magnetic resonance imaging (MRI) and other radiographic studies of the blood vessels of the brain demonstrated intact brain stem function, but both the cortices of SB's brain had been damaged. Dr BL concluded that SB had suffered simultaneous bilateral strokes caused by pressure on the carotid arteries on both sides of the neck during surgery.

Dr L and JS, although agreeing that the obstruction resulted from positioning, indicated that the sole responsibility for the

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positioning rested with neurosurgeon Dr F. However, on cross examination, both acknowledged that the anesthesiologist and the assistant have an obligation to inspect the patient to satisfy themselves that the head is not in a position that will create clinical problems. They also agreed that this obligation begins with the initial placement by the surgeon, and extends through the surgery. However, if at any time the anesthesia team's inspections reveal improper positioning, their obligation is to inform the surgeon so that the issue may be addressed.

Plaintiff's expert anesthesiologist Dr W was more explicit. Dr W noted that it was essential for the anesthesiologist to monitor positioning because carotid artery flow is not registered by any of the standard monitors. Dr W indicated that the anesthesiologist's obligations to monitor were heightened to prevent arterial as well as venous compression in this kind of case.

After a 5-day trial, the jury found for Dr L, and concluded that Dr L did not violate the standard of care. However, SB then filed a motion with the trial court seeking a judgment notwithstanding the verdict (JNOV) or, in the alternative, a new trial. The trial court granted SB's motion, and ruled that the jury verdict be disregarded and judgment awarded to SB, including \$500,000 for general damages and lost wages and \$700,000 for medical expenses. The trial court noted that "it is undisputed that the cause of the injury to [SB] was a mechanical obstruction of blood flow to the carotid artery to the brain ... [and that] the carotid artery is a pressure point that should [have been] monitored [by the anesthesiologist] ... [and that initial head placement] was subject to the approval of [Dr L]... [Failure by Dr L to monitor that pressure point before and during surgery] amount[ed] to negligence that cause[d] the injury suffered by [SB]."

Defendant Dr L appealed the JNOV of the trial court. Dr L urged the appellate court to reverse the JNOV decision and reinstate the jury verdict.

Plaintiff SB claimed that the trial court was correct in granting its motion for JNOV, and asked the appellate court to affirm the trial court's decision.

## 2. Legal analysis

The appellate court affirmed the trial court's JNOV decision for the plaintiff (*Boxie v. Lemoine*, 988 So.2d 309 (La.App. 2008)).

The appellate court first outlined the standards to be used in evaluating the trial court's decision. It noted that in a medical malpractice case, the plaintiff must show by a preponderance of the evidence the standard of care was violated, i.e., the degree of knowledge or skill possessed by or

the degree of care ordinarily exercised by physicians was not used; and that as a result, the plaintiff suffered injuries that otherwise would not have been incurred.

The appellate court stated that a JNOV is warranted only when the facts and inferences point so strongly and overwhelmingly in favor of one party that the trial court believes that reasonable persons could not arrive at a contrary verdict. In making this determination, the trial court should not evaluate the credibility of the witnesses, and all reasonable inferences or factual questions should be resolved in favor of the non-moving party. The appellate court must assess whether the trial court fulfilled this standard when granting the JNOV motion.

On analysis, the appellate court noted that given all the uniform and undisputed medical testimony, no reasonable person exercising impartial judgment could conclude anything other than the standard of care applicable to the anesthesiologist includes the duty to monitor the positioning of a patient's head both before and during the surgery. The court then noted that the evidence in the case demonstrated conclusively that sometime after the beginning of the surgery, SB's head moved a sufficient distance to cause the mechanical obstruction of both carotid arteries resulting in her injury. It also found that it was undisputed that this movement was missed by the anesthesia team.

The appeals court also observed that the only way to be assured that the patient's head remains in the correct position is through visual inspection. Despite the fact that Dr L and JS agreed that the attached monitors would give no warning of carotid artery difficulties, they still did not lift the drapes to check the physical position of SB's head and thus "did not know what was going on".

It concluded that the standard of care required Dr L as the anesthesiologist to monitor the position of SB's head by visual inspection and that he did not do so. Further, Dr L himself nor did he direct JS to do so, hence failing to exhibit that degree of knowledge or skill required of him. Finally, this failure resulted in the injuries suffered by SB. All of these issues were conclusively shown by uniform and undisputed testimony during the trial.

Thus, according to the appellate court, "Even resolving all reasonable inferences or factual questions in favor of the non-moving parties, on the basis of the evidence presented at trial, reasonable persons could only conclude that [SB's] head moved into an improper position during surgery; that this improper positioning caused a mechanical blockage of the carotid arteries during surgery, resulting in her stroke; and that [Dr L and JS] shared ... a responsibility to ensure that [SB's] head was properly positioned during surgery[, which they did not]." The appellate court then affirmed the trial court's grant of JNOV to the plaintiff.