

A story of change essay sample

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In this paper we will review the medical malpractice case filed with the Brooklyn Supreme Court, *Weber v. New York Columbia Presbyterian Hospital*. I will discuss how this case is more than a medical malpractice case, that it is a case about change and how one father vows to change the way health care is carried out. I will also discuss the possible outcomes in this emotional case, as well as predicting the likely verdict in favor of the plaintiffs.

Damon Weber was an energetic, likable young man whose life ended at the young age of sixteen as a result of what his father, Mr. Weber, believes was a deviation from the expected standard of care at the hand of physicians at the New York Columbia Presbyterian Hospital (Weichselbaum, 2012). As a result, Mr. Weber filed a medical malpractice suit on behalf of Damon against New York Columbia Presbyterian Hospital and the medical director of pediatric heart transplants, Dr. Mason. The case is currently being heard in the Brooklyn Supreme Court. We will take a look at the issues and parties affected in this case as well as the stakeholders involved. When the case is reviewed we will see how this is not just another medical malpractice case of wrongful death. This is a story of change and how one father takes on the “fiefdom” (Weber, 2012) of a world-renowned metropolitan hospital to vindicate the death of his eldest son. Damon was born with a congenital heart defect where only one ventricle of the heart was formed and doctors at the New York Columbia Presbyterian Hospital performed a life-saving “radical operation known as a Fontan procedure” (Brown, 2012).

The procedure was performed in an effort to improve oxygenated blood flow to Damon’s heart. As a result of this procedure, Damon developed a common secondary illness called protein-losing enteropathy (PLE) which ultimately led

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to a heart transplant (Brown, 2012). The deviation from the expected standard of care in this case occurred in the days and weeks leading up to, and following the heart transplant. The most significant element in this case is negligence based on the claim that Damon's physicians failed to diagnose a post-transfusion infection, and rather diagnosed a post-transfusion rejection which delayed treatment of the fatal infection (Weichselbaum, 2012). Another key element in Mr. Weber's claim is related to the proposed greed of physicians and soliciting of heart transplant patients at New York Columbia Presbyterian Hospital.

Brown reminds us that " heart transplants represent big money for hospitals: at half a million dollars each, twenty pediatric transplant operations a year make a significant contribution to the finances of the New York Presbyterian Hospital/Columbia University Medical Center," (Brown, 2012). As Damon's father, Mr. Weber, points out in an interview with Weichselbaum (2012), " The health care system is no longer about patients. It's about the bottom line...They didn't provide my son the standard of care. And now he is dead". The atrocities in this case do not end with greed, however. Mr. Weber will now have to prove that gross medical negligence resulted in the mismanagement of Damon's health care. Some of these atrocities include Mr. Weber's accusations of Damon being " casually " listed" as a potential heart recipient — meaning he has to be ready to receive a new heart at a moment's notice — without his father's knowledge" (Brown, 2012). Adding insult to injury, after the casual placement on the transplant list, several of the doctors involved in Damon's care disappeared for weeks.

This certainly caused a significant delay in obtaining a transplant for which Damon should have been at the top of the list. Other points that Mr. Weber will try to prove are attempts by the medical director to cover up medical documentation by claiming that Damon's medical records were lost.

Ultimately, Mr. Weber's lawsuit is an effort to invoke change in the health care world by holding physicians accountable for the timely and accurate diagnosis of critical illnesses or conditions and changing the way physicians collaborate and carry out care in complicated cases such as Damon's.

Finally, Mr. Weber wants this case to serve as a statement to the medical powers-that-be who conduct business in lucrative procedures such as heart transplants, so that they do not lose sight of the importance of total, quality patient care. Identification and Evaluation of all Main Possible Solutions Since this case is still being heard in the Brooklyn Supreme Court, I was unable to locate any summaries of the actual court proceedings.

Thus, I will be using a similar medical malpractice case, Sheila Corley, et al., Plaintiffs-Appellees v. State of Louisiana, Department of Health & Hospitals, et al., Defendants-Appellants (hereinafter, " Corley case"), (Corley, et al. v. State of Louisiana, Department of Health & Hospitals, et al.) as a comparison. In the Corley case, a medical malpractice claim was filed on the basis of the plaintiff's claim that the physicians in charge of the patient's care failed to diagnose a life-threatening cancerous mass on his mediastinum. The following are the theories used in the plaintiff's claim of malpractice; and I assume similar claims were used in the Weber case (Corley, et al. v. State of Louisiana, Department of Health & Hospitals, et al.):

* Respondeat superior, in that the plaintiffs claim that the physicians named

in the case are employees of Louisiana Department of Health & Hospitals, and thus their negligence imputes liability to the hospital. * Failure to detect a dreaded disease with tragic consequences in that the patient (Corley) died as a result of the large cancerous mass on his mediastinum.

“ When, in treating a patient, a diagnosis cannot be made, at that time a differential diagnosis should be made, which includes all reasonable, plausible and foreseeable causes for the signs and symptoms noted in the patient. After forming a differential diagnosis, it is the physician’s duty to rule out all imminent, serious and life-threatening causes for the signs and symptoms. Physicians are obligated to rule out these imminent, serious and life-threatening causes first. Failure to eliminate these causes can subject a patient to a foreseeable risk of harm and would further constitute a breach of the applicable standard(s) of care.” (Corley, et al. v. State of Louisiana, Department of Health & Hospitals, et al.). * Appellate review of the trial court’s findings in a medical malpractice action is limited. The applicable standard of care is determined from the particular facts of a case, including evaluation of the expert testimony. * The fact finder is to evaluate conflicting expert opinions in relation to all the circumstances of the case. Credibility determinations, including the evaluation and resolution of conflicts in expert testimony, are factual issues to be resolved by the trier of fact, which will not be disturbed on appeal in the absence of manifest error.

In comparison to the Corley case, the Weber case would likely utilize the same theories in proving medical malpractice against New York Columbia Presbyterian Hospital and the medical director of pediatric transplants. If the court utilizes the same principals in deciding the Weber case, the verdict will

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likely be in favor of the plaintiff on the basis that the physician and hospital's treatment fell below the standard of acceptable care. Another issue that will likely be a factor in the Weber case is the hospital "losing" all of the medical records pertaining to Weber's care. Reading in our text book reminds us that the medical record is "the property of the healthcare provider and is maintained for the benefit of the patient" (Pozgar, 2012). The hospital must ensure that patients have access to their records for review and/or copying unless "the information could reasonably be expected to cause substantial harm to the patient" (Pozgar, 2012).

The actual retention of medical records varies from state to state, but should be retained long enough to meet "patient needs, statutory requirements, future need for such records, and the legal consideration of having the records available in the event of a lawsuit. If the hospital "loses" a medical record that is involved in a legal proceeding, it can severely affect the plaintiff's ability to prove his/her case. As our textbook points out in the *Rodgers v. St. Mary's Hosp. of Decatur* case, the court upheld their original verdict against the hospital for failing to retain the x-rays of the plaintiff's wife for a period of 5 years (Pozgar, 2012). At the very least, I would think it could be found highly suspicious that a hospital would lose the medical records of a patient who files a lawsuit. | Decision Statement and Defense Against Weaknesses

My research thus far indicates that all elements of a claim of medical malpractice have been met in the Weber case and thus a finding by the court in favor of the plaintiff is likely to occur in this case. The physicians and hospital in the Weber case certainly had a duty to care as a patient-physician

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relationship was clearly established. A breach of duty is going to be the biggest factor in proving the medical malpractice claim, as it will rely on expert testimony as to the critical condition of Damon just prior to the transplant and the immediate need for the heart transplant to take place. The physicians and hospital named in this case will be required to provide testimony and expert evidence to satisfy the court that they acted within acceptable standards of care in treating Damon Weber and that delaying treatment of the post-transfusion infection was not the cause of his demise. This will likely be a difficult task as medical evidence seems to point to the fact that indeed, Damon should have received the heart transplant urgently and that a reasonable standard of care would have been met if the physicians were to have ruled out post-transfusion rejection versus post-transfusion infection since the infection was the most likely cause of Damon's death.

The hospital may make a claim that because the physicians acted within a reasonable standard of care, liability may not be imputed upon them in this case. However, the hospital will still have to answer for the loss of the patient's medical record. I would think that most courts would find it highly suspicious that the medical records were lost in this case. While the court may find that the two issues are unrelated, it certainly casts a shadow of doubt on the part of the physicians.

Summary

Ultimately, this case is about far more than medical malpractice. It is a case about invoking change in our health care system. It is about bringing to light the personal travesties committed in this case, such as misdiagnosis and
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failing to treat Damon in a timely manner. Mr. Weber hopes to gain the legal community's support in holding these physicians accountable for their negligence in providing timely medical care to Damon. Mr. Weber also hopes to expose the greed associated with marketing for high-profile transplantation cases such as this. If Mr. Weber and his legal team succeed, the verdict will be in favor of the plaintiff and damages will be awarded in accordance with similar case law. More importantly, Damon's death will be vindicated and with any luck, the physicians and hospital involved will change the way they practice, so no other family has to endure the pain that the Weber family experienced. After all, isn't that the purpose of medical malpractice lawsuits: to seek compensation for the injured patient and to provide a civil means of preventing further malpractice by the same medical professionals?

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