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Surgeon loses malpractice case

By Jennifer Brookens — Sentinel Staff Writer

FAIRMONT — A doctor who practiced at Fairmont Orthopedics and Sports Medicine has been found negligent in a malpractice suit.

A two-week trial against Dr. James Schwartz concluded Wednesday when a jury took less than four hours to find Schwartz negligent, with the negligence being the direct cause of harm to a patient.

The patient, William Nelson of Fairmont, was awarded \$8,217 to cover medical bills and \$625,000 for past and future pain and suffering.

While Fairmont Orthopedics was named in an original lawsuit, there were no claims of any wrongdoing against the clinic in the case that went to court.

Nelson suffered a neck and back disc injury while working as a truck driver in the fall of 2002. Under the care of Schwartz, Nelson underwent an anterior cervical fusion to fuse three vertebrae to correct the problem in February 2003.

“The process of the surgery is that (Schwartz) had to proceed through the front of the neck to get to the back of the neck,” explained William M. Fishman, one of Nelson’s attorneys. “But while doing that, there are cranial nerves that need to be moved to the side.”

Retractors need to be used but, according to the plaintiffs, Schwartz overstretched the nerves, causing permanent damage.

“With overstretching, the nerves become damaged, and nerves don’t regenerate, so once there’s a nerve injury, it doesn’t come back,” Fishman explained.

Fishman, along with attorney Mike Van Berkom, argued that Nelson suffered cranial nerve damage that has caused Nelson to have trouble with swallowing, moving parts of his mouth and tongue and his ability to speak.

“He cannot drink liquids without having some sort of thickener,” Fishman said. “He can’t eat solid foods, only foods like Jell-O or pudding. No more steak or corn on the cob. He also communicates now by writing ... This has dramatically changed his life.”

Schwartz's attorney, Jim Roegge of Minneapolis, had argued that some of the damaged cranial nerves were on the other side of Nelson's neck — away from where the retraction was taking place.

"With surgery on the right side of the neck, there's no way you could retract one side, and cause injury to the other," Roegge said.

He added that Schwartz, along with two experts from Sioux Falls, also testified to how the scenario was nearly impossible.

Roegge also argued that because anterior cervical fusions were so routine to Schwartz, in his diction he failed to mention the retractors.

"It's so routine, you don't bother with every minute detail like when you put on gloves, or use the microscopes," Roegge said.

He said that omission, along with what Roegge described as "less than artful questioning" of Nelson, led to the contention that Schwartz failed to retract in the muscle when the lawsuit was filed.

Along with awarding Nelson past medical expenses, jurors gave him \$100,000 for his past pain and suffering and \$525,000 for future losses.

"We're disappointed," Roegge said of the verdict. "But that's (the jury's) prerogative."

"We didn't include lost wages in the suit, because with the original neck and back injury, (Nelson) would have no longer been able to work," Fishman said.

He added that Nelson hasn't held a job since the injury.

According to his testimony during the trial, Schwartz left Fairmont Orthopedics and Sports Medicine in 2004 and is now practicing in Virginia, although no longer performing surgeries.

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