

VERDICTS & SETTLEMENTS

'Repair' Surgery Results In Shoulder Deformity

Surgeon Had History Of Offenses, Had To Relinquish License

\$350,000 Settlement

Immediately following an allegedly negligently performed Bankart repair surgery, the plaintiff experienced extreme weakness and loss of motion in his left shoulder, which hung lower than his right shoulder.

Subsequent X-rays ordered by the defendant surgeon's nurse practitioner on Aug. 18, 2003, revealed that the defendant had completely resected the acromion bone in the patient's left shoulder, which was unwarranted in a Bankart repair surgery. The defendant surgeon reportedly withheld this information during two follow-up visits. Instead, he told the plaintiff that part of his deltoid was torn, referred him to physical therapy and prescribed a brace.

The plaintiff became frustrated with the defendant surgeon's follow-up and obtained an appointment with another orthopedic surgeon on Sept. 19, 2003. That surgeon informed the plaintiff that the defendant surgeon performed a complete lateral acromionectomy. The orthopedic surgeon told the plaintiff that physical therapy would do nothing because the deltoid had retracted with nothing to which it could attach. He told the plaintiff that he required immediate repair of the deltoid with bone graft restoration of the acromion.

When the plaintiff returned to the defendant surgeon on Oct. 1, 2003, to ask why he had done an acromionectomy, the defendant allegedly denied

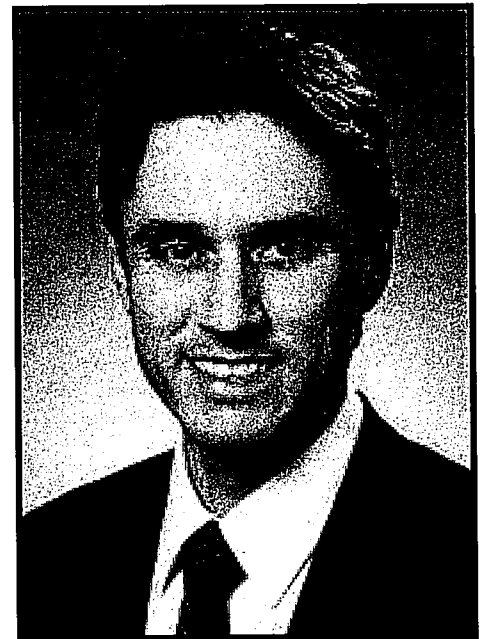
it. When the plaintiff said another doctor told him that his acromion was missing, the defendant then admitted to taking "some" of the acromion off. He told the plaintiff that he could regain full motion with physical therapy — a medical impossibility.

The plaintiff rejected the defendant's advice and decided to undergo reconstructive surgery by the subsequent surgeon to rebuild the acromion. The surgery was performed on Dec. 23, 2003, using bone extracted from the plaintiff's hip. The surgeon later provided a report for settlement purposes confirming that the acromionectomy was inexplicable and in deviation of the standard of care.

The surgery and subsequent physical therapy improved the plaintiff's condition, however the plaintiff suffered some remaining limitations in the range of motion of his left arm and a deformity of his left shoulder.

Pre-suit investigation revealed that the defendant had a history of alcohol-related offenses, which were used to achieve the settlement. On March 29, 2004, the defendant relinquished his license to practice medicine following reports that he had to be stopped by colleagues from performing surgery because he allegedly appeared to be under the influence of alcohol.

The plaintiff's attorney asserted that the surgeon's history of licensing fraud and conviction would be admis-



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sible as evidence of his character for truthfulness and for impeachment at trial.

Type of action: Medical Malpractice
Injuries alleged: Limitations and deformity of shoulder
Name of case: Withheld
Court/case #: Withheld
Tried before judge or jury: N/A (settled)
Amount of settlement: \$350,000
Date: Feb. 8, 2005
Attorney: Jeffrey N. Catalano, Todd & Weld, Boston (for the plaintiff)