

AUGUST 2013

KITSAP COUNTY

KEVIN ANDERSON v. DR. C.H. (GENERAL PRACTITIONER)

**Number:** 10-2-00112-5

**Trial Date:** 11/5/12 (13-day trial)

**Plff Atty:** William Waechter, Law Offices of William H. Waechter;  
Raymond Dearie, Dearie Law Group (both Seattle)

**Def. Atty:** Craig McIvor, Deborah Severson & David Norman of Lee  
Smart (Seattle)

**Plff Med.:** Howard Miller MD (General Practice) Renton; Richard  
Wohns MD (Neurosurgeon) Seattle; Terence Davidson MD  
(Otolaryngologist) San Diego CA; Francis Riedo MD  
(Infectious Disease) Kirkland, all experts

**Def. Med.:** Peter McGough MD (Family Practice) Mercer Island;  
Michael Kovar MD (Family Practice) Seattle; William  
Ethni MD (Infectious Disease) Edmonds; Steven Klein MD  
(Neurosurgeon) Seattle

**Plff Exp.:** Cloie Johnson (Vocational Rehabilitation/Life Care  
Planner) Bothell; Robert Patton Ph.D. (Economist)  
Bellingham

**Def. Exp.:** Barbara Brandt (Vocational Rehabilitation) Tacoma;  
Sally Stuart Ph.D. (Life Care Planner) Bellevue

**Trial Judge:** Hon. Sally F. Olsen

**MEDICAL MALPRACTICE (STANDARD OF CARE)**

**BRAIN INJURY; COGNITIVE LOSS**

5/11/06 - Plff, male age 27, part-time waiter. In March of 2006, Plff sought treatment for a headache and nasal symptoms while living in Hawaii, first at an urgent care clinic, then in an emergency department. He was diagnosed with a sinus infection by CT scan, and given antibiotics and pain medication. Despite treatment, his symptoms persisted. Contrary to instructions, he did not seek follow-up treatment. Instead, he traveled first to Arizona, then to the Seattle area with his then-girlfriend. His symptoms became worse during this trip. Plff saw Dr. H., a general practitioner, on one occasion on 5/11/06. According to his dictated chart note, Plff described his earlier diagnosis and treatment and the recent worsening of his symptoms. According to the note, in addition to headache, his symptoms now included fever, chills, malaise, anorexia and nausea. He denied visual or neurological symptoms. Dr. H. recalled that although he was quiet, Plff was able to respond to questions. Dr. H.'s examination, including a neurologic examination, was confirmatory. This included a notation that the optical fundi were benign, with sharp

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**Facts Cont'd** disc margins, indicating normal intracranial pressure. Dr. H. diagnosed an acute sinus infection that was becoming chronic. He prescribed antibiotics, a decongestant and pain medication, and instructed Plff to follow up on his return to Hawaii if he did not improve. Plff's condition deteriorated soon after this visit. According to his ex-girlfriend, after filling the prescriptions, Plff needed help getting into the house because he "could not see very well." He immediately went to bed, and his ex-girlfriend did not see him out of bed until the next morning. At that time, she found urine on the bathroom floor, and Plff's pajama bottoms on the bedroom floor, wet with urine. Plff was unaware of this. Nonetheless, according to the ex-girlfriend, he was able to speak, and eat some toast. She claimed to have interacted with Plff for "maybe 30 minutes." The ex-girlfriend then left, and had no further contact with Plff until approximately 6:30 p.m. that evening. At that time, he was asleep and "snoring." She did not try to wake him. At approximately 7:30 p.m., she tried to wake him, and he would not wake up. He had also urinated in the bed. The ex-girlfriend thought Plff had taken too many Percocet, and so she tried unsuccessfully to wake him. Sometime after 8:00 p.m. 911 was called. Responders found Plff unresponsive with several signs of brain injury, including decerebrate posturing and abnormal pupil response. He was intubated and airlifted to Harborview Medical Center. He arrived just before 10:00 p.m. A head CT scan revealed a large frontal mass causing significant midline shift and brain herniation. He was taken to surgery just after midnight, where after a craniotomy they inserted a catheter and drained about 40 ccs of foul smelling pus "under great pressure." After this, his brain "began pulsating again." The surgery was then closed without further exploration, and he was placed on IV antibiotics. Plff remained in acute care at Harborview Medical Center until 6/9/06, when he was transferred to inpatient rehabilitation. Plff initially showed improvement, becoming somewhat more responsive. On 5/26/06, he underwent a sinus procedure, after which he was less responsive. Two days later, he underwent a second craniotomy, again for drainage of the persistent frontal fluid collection. He was later discharged to his family's home in Georgia on 7/7/06. Plff later brought suit against Dr. H., alleging one claim for medical negligence. Plff alleged that, based on his alleged symptomology at the time, the standard of care required Dr. H. to obtain a CT scan or emergently refer Plff to a specialist who would have presumably diagnosed the brain abscess prior to the herniation on 5/12/06. Plff alleged that the delay in diagnosis caused additional damage that would otherwise not have happened. Trial began before Judge Sally F. Olsen in Kitsap County Superior Court on 11/5/12. The Def.

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**Facts Cont'd:** presented expert testimony opining that Dr. H.'s evaluation met the standard of care and that ordering imaging studies for Plff was not clinically indicated. Specifically, Dr. H. performed a complete neurologic exam, including examination of the optic fundi, and there was not evidence of increased intracranial pressure. Further, the experts opined that Plff's symptoms were consistent with an incompletely treated sinus infection, and that his symptoms were essentially the same as they had been in Hawaii in March 2006, where the CT scan was positive for a sinus infection. The Def.'s experts also opined that there is no way to determine to a reasonable degree of medical certainty what deficits experienced by Plff would not have occurred but for the delay in surgical intervention caused by Dr. H.'s alleged negligence.

**Injuries:** Brain injury; attendant neurological and cognitive limitations. Permanency claimed.

**Specials:** Med. \$400,000 past (claimed, then waived prior to trial) \$1,100,000 claimed for future medical care; Lost Wages \$220,000 past, \$1,000,000 to \$1,400,000 futures/lost earning capacity; Days in Hosp. - 56 days.

**Settlement:** Demand: \$1,000,000. Plff asked the jury for \$5,000,000. The Def. asked the jury for a defense verdict.

**Result:** DEFENSE VERDICT. (On 11/26/13, the jury concluded that Dr. H. met the standard of care in his treatment of Plff and returned a defense verdict. Plff filed a notice of appeal of the judgment approximately 30 days later.)