

Family contended improper intubation led to woman's death

September 26, 2017

Amount: \$6,008,404 **Type:** Verdict-Plaintiff

Actual Award: \$5,107,543

Court: Mercer County Superior Court, NJ

Case Name: Larry Howlen, as administrator ad prosequendum of the Estate of Toniquea Rivers, deceased, and Larry Howlen, as parent and guardian of Zion Mikel Howlen Rivers v. Ronald Burbella, M.D., Ronald Burbella, M.D. P.C., Capital Health Systems Inc., Keith Elmer, and Edward Wheat, No. MER-L-0214-14

Plaintiff Attorney(s):

- Joshua R. Van Naarden; Ross Feller Casey, LLP; Philadelphia PA for Larry Howlen, Estate of Toniquea Rivers, Zion Mikel Howlen Rivers

Defense Attorney(s):

- Carolyn M. Bohmueller; O'Brien & Ryan, LLP; Plymouth Meeting, PA for Capital Health Systems Inc., Edward Wheat, Keith Elmer
- Caitlin E. McCauley; O'Brien & Ryan, LLP; Plymouth Meeting, PA for Capital Health Systems Inc., Edward Wheat, Keith Elmer
- Dominic A. DeLaurentis; Stahl & DeLaurentis; Runnemede, NJ for Ronald Burbella, Ronald Burbella, M.D. P.C.

Insurers:

- Capital Region Insurance Agency

Facts: On Feb. 3, 2012, plaintiff's decedent, Toniquea Rivers, 20, a fast-food restaurant worker, experienced shortness of breath at her parents' home, in Trenton.

Rivers had prematurely delivered a child a week earlier, and her mother called her obstetrician-gynecologist, Ronald Burbella. Allegedly, Burbella told her that Rivers' condition was not worrisome, and he did not instruct her to take Rivers to an emergency room. Nevertheless, Rivers' parents called 911, and paramedics Keith Elmer and Edward Wheat arrived. By this time, Rivers had gone into cardiac arrest. The paramedics performed CPR, administered epinephrine, and placed an endotracheal tube in her windpipe. But upon arrival at the emergency room, Rivers was pronounced dead. Her family believed her death was caused by the paramedics incorrectly placing the endotracheal tube.

Rivers' estate and her son sued the paramedics and their employer, Capital Health Systems Inc., and Burbella and his practice.

The estate alleged Burbella was negligent and that the paramedics and Capital Health Systems failed to act in good faith in their treatment of Rivers. Life-support providers such as paramedics have full immunity against alleged acts of negligence, so a plaintiff must prove that the life-support provider failed to act in good faith.

Counsel for the plaintiff argued that Capital Health Systems permitted inexperienced student to perform the intubation procedure and did not have any policy regarding whether a student was permitted to conduct the procedure.

According to the estate's expert in paramedics, Elmer and Wheat, upon placing the endotracheal tube, did not check both clinically and via the breathing machine if the tube was correctly placed in her airway.

Upon placing a tube, the medical provider is to put a stethoscope over the abdomen to listen for the absence of sound, which indicates the tube has been properly placed and the patient is receiving sufficient oxygen. If there is sound, it means that the tube is somewhere other than the trachea, and in turn is depriving the lungs of oxygen. This is what happened to Rivers, the expert testified. Additionally, the medical provider is to consult the breathing machine to make sure the carbon dioxide output is at an appropriate level. Elmer and Wheat also failed in that regard, the expert concluded.

The estate's expert in pulmonology maintained that, had the tube been properly placed, Rivers would have been properly oxygenated and survived. The expert concluded that her death was caused by dislodgement of the tube, and was not the result of her pre-existing condition of cardiac arrest.

The estate faulted Burbella for not instructing Rivers' mother to immediately take her to an emergency room. Rivers' mother testified that Burbella did not do so when she spoke to him by phone, and instead he merely reassured her that Rivers' shortness of breath would subside.

Burbella disputed Rivers' mother's account of the phone conversation, and maintained that he had instructed her to take Rivers to an emergency room immediately.

Elmer and Wheat testified that they had no memory of treating Rivers, and they did not document whether they assessed her clinical signs to make sure the tube was placed in her trachea.

The defense's expert in paramedics maintained that the endotracheal tube was properly placed, and that Rivers died from her pre-existing condition of cardiac arrest. One piece of evidence that was preserved was the breathing machine's capnometer. It had a positive finding, which indicated that Rivers had gotten proper ventilation, according to the expert.

The estate's counsel maintained that the capnometer was insufficient to determine the intubation, and the breathing machine's carbon dioxide reading, which had not been preserved, was the only credible evidence.

Injury: Rivers is survived by her 5-year-old son, plaintiff Zion Mikel Howlen Rivers, and the boy's father, plaintiff Larry Howlen.

Rivers estate sought to recover \$873,193 in future lost earnings and \$332,645 of fringe benefits. The estate further sought loss of household services.

Zion sought to recover damages for past and future loss of Rivers' services, society, companionship, guidance and advice.

Result: The jury determined that Capital Health Systems failed to act in good faith, which increased the risk of harm posed by Rivers' pre-existing condition and was a substantial factor in causing her death. Capital Health Systems was found to be 85 percent liable. The jury assigned 15 percent of the cause of Rivers' death to her pre-existing condition.

The jury determined that Rivers' estate and her son would receive \$6,008,404, which was reduced to \$5,107,543.40, as a result of the deduction of 15 percent of liability against Capital Health Systems.

The jury found that Burbella did not deviate from accepted standards of medical practice.

Elmer and Wheat were found not liable.

Judge: Douglas H. Hurd

Trial Length: 2 weeks