

Lawsuit filed after surgeon allegedly operates on wrong side of patient's brain

April 30 2013, by Jim Doyle

A medical malpractice lawsuit was filed Friday against SSM Health Care-St. Louis and a neurosurgeon for allegedly operating on the wrong side of a woman's skull and brain.

The 53-year-old patient, Regina Turner of St. Ann, Mo., was scheduled on April 4 for a "left-sided craniotomy bypass" at St. Clare Health Center in Fenton, Mo., according to a complaint filed in the Circuit Court of St. Louis County in Clayton.

Instead, she received a "right-sided craniotomy surgical procedure," the suit alleges.

Turner now is unable to speak intelligibly, according to her Clayton-based lawyer, Alvin Wolff Jr. Once the operating team realized it had made an error, a second surgery was performed six days later on the correct side of Turner's skull.

The suit accuses SSM and the neurosurgeon - who is identified by the initials "A.L." - with negligence and carelessness that led to a wrong-site surgery.

"Before the incorrect surgery, plaintiff was mobile, cognizant and able to care for herself," the suit alleges. "After the incorrect surgery, (Turner) requires around the clock care for her basic needs. ... (She) will also continue to suffer from [emotional distress](#), anxiety, disfigurement and depression."

SSM officials declined to comment specifically about the pending litigation.

Bill Hoefer, president of St. Clare Health Center, said the hospital is "committed to [patient safety](#) and the highest quality health care. If a [medical error](#) does occur, we take it very seriously. We investigate thoroughly to see what processes can be changed to prevent it from ever happening again, and then we make those changes immediately."

When asked about the incident, Wolff confirmed that Dr. Armond Levy was the [neurosurgeon](#) who operated on his client.

Kristen Johnson, an SSM spokeswoman, would only confirm that Levy is an employee of SSM Health Care. She also said that Levy has staff privileges at SSM St. Mary's Health Center and SSM DePaul Health Center.

She said that federal patient privacy law prevents Levy from discussing the case.

According to St. Clare's website, Levy is one of seven board-certified neurosurgeons affiliated with SSM Neurosciences Institute. He received a medical degree from Washington University School of Medicine in St. Louis. He completed a surgical internship at Brown University and a neurosurgical residency at St. Louis University School of Medicine. He has also received fellowship training at hospitals in Cleveland and New York.

Levy, 46, was licensed to practice medicine in Missouri beginning in 1996.

"I wasn't trying to single out the doctor. He's going to be held accountable for what he did," Wolff said. "He didn't try to hide what

happened. I'm sure he feels terrible about it. That's why I didn't want to name him in the case."

According to Wolff, his client worked as a supervisor for an Internet service provider and later as a paralegal in Oklahoma City, Okla. before joining her sister in the St. Louis area. About five years ago, her health began being eroded by a series of mini-strokes. Her speaking ability became affected last December. But prior to the recent surgeries, Wolff said, her speech was understood by family members.

He said the aim of Levy's craniotomy bypass surgery was to prevent future strokes.

Hospital safety experts characterize wrong-site surgeries, wrong-person surgeries and other serious errors as "never events" - meaning that, with proper vigilance by medical staff and surgeons - they should never occur.

But mistakes happen.

In 2010, the *Journal of Neurosurgery* identified 35 documented cases of wrong-side craniotomies that had occurred from 1966 to 2009 in the United States. It also concluded that additional cases were probably settled and never brought to the attention of state medical licensing boards, courts and news organizations.

Charles Kenney, the Boston-based author of "Transforming Health Care," said that 'never events' are tragedies.

"Wrong-site surgery is such an egregious system failure," Kenney said. "It's so devastating, not only to the patient and the patient's family, but also to the care-giving team because they have made about the worst mistake that they can make."

But he cautioned that, when such errors occur, most the time it is because of a lack of quality control and safety protocols.

"The typical reaction in these cases is to assign blame," he said. "When that leads down the path to an individual, that's wrong. These events are systems or process breakdowns."

More and more organizations have adopted so-called "mistake-proofing" protocols and checklists to prevent such errors.

"If the organization does not have in place 'mistake-proofing' processes for things like brain surgery, then it's clearly not where it needs to be," Kenney said. "If they have all those processes in place, then what was missing? You can't just make rules. You need sustained training, reminders, and work. ... If you don't have a culture where everyone buys into that, then you have a flawed process."

Generally, such checklists include the surgeon's indelible marking of the operative site, and for members of the operating team to verify that site with medical records. The protocols also call for a "timeout" to be held in which the surgeon explains the details of the operation and permits all members of his team to ask questions as well as raise any concerns, doubts or objections.

According to Turner's lawsuit, SSM's employees set up the operating room incorrectly and "stood by and watched A.L. operate on the wrong side of plaintiff's skull and brain when they could have prevented the error."

All the defendants "failed to participate in a time out," the suit alleges.

The lawsuit, which calls the error "a surgical mishap," asks for punitive damages "sufficient to punish" SSM and Levy for what it characterizes

as their "complete indifference to or conscious disregard for the safety of Regina Turner."

The Missouri State Senate currently is considering a bill that would place a cap on non-economic damages in future medical malpractice cases. Non-economic damages are generally defined as any damages not associated with a person's lost wages or medical care. A cap would deprive victims the opportunity to receive any jury award for pain and suffering, lost mobility, loss of enjoyment of life, loss of sight, loss of hearing and loss of consortium.

Missouri currently has no comprehensive cap on medical malpractice awards because the Missouri Supreme Court last year struck down such limits as unconstitutional. However, the court has upheld a cap of \$350,000 for non-economic damages in wrongful death cases.

Such limits on non-economic damages in [medical malpractice](#) cases have been used successfully in Texas and California to hold down jury verdicts.

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