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Philadelphia Attorney Wins \$2 Million Lackawanna Verdict

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Of the Legal Staff

A Philadelphia attorney has secured a \$2 million verdict in Lackawanna County on behalf of an asthma patient who claimed that two of his doctors overprescribed oral steroids, resulting in severe damage to his hip joints.

In *Sweder v. Wright*, 46-year-old Jermyn, Pa., resident Joseph Sweder filed suit against internist Donald Wright, and pulmonologist Sander Levinson.

According to Sweder's attorney, James Colleran Jr. of The Colleran Firm in Philadelphia, the 12-member jury apportioned the negligence at 65 percent for Wright, 30 percent for Levinson and 5 percent for Sweder.

From January 2000 through December 2004, according to statistics published by the Pennsylvania Supreme Court, no med mal jury verdicts for more than \$1 million were returned by Lackawanna County juries.

According to court papers, Wright treated Sweder for his asthma between 1994 and 1998, while Levinson did so between 1996 and 1997. Sweder alleged that both physicians prescribed to him substantial amounts of oral corticosteroids, the use of which, he claimed, caused a number of his joints to experience avascular necrosis, a collapsing of the bone that has been linked to overuse of steroids.

Specifically, Sweder said in court papers, he has had three hip operations, including two replacement procedures, and may need bilateral hip replacements as many as two times in the future.

According to court papers, Levinson contended that his treatment fell within the standard of care, and that other doctors Sweder had been treated by had prescribed him higher dosages of steroids. He called attention to

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other possible causes of Sweder's hip problems, such as the fact that he has been a life-long smoker. He also noted that Sweder had missed as many as 30 scheduled appointments.

Wright also claimed that his treatment of Sweder had been appropriate, and argued that he prescribed Sweder steroids on those occasions when his asthma would flare, according to Colleran.

Sweder initially demanded \$1.5 million to settle the case, according to court papers.

Colleran said there were never any offers made by either defendant.

The case proceeded to trial with Lackawanna Common Pleas Judge Patricia Corbett presiding. The trial began May 23 and ended June 1, Colleran said, with the jury returning its unanimous verdict after roughly three hours' deliberations.

A key issue in the case against Levinson, according to Colleran, was whether the pulmonologist had given Sweder a prescription that provided for six refills of 150 five-milligram tablets of prednisone, a corticosteroid.

At trial, Levinson denied that he had done so, Colleran said, but an expert for Sweder analyzed the ink on the prescription tablet and testified that it could be linked to Levinson.

The forensic expert who analyzed the prescription tablet was Erich Speckin of Speckin Forensic Laboratories in Okemos, Mich.

Other plaintiff's experts included David Lang, an allergist from the Cleveland Clinic Foundation in Ohio;

Allan Freedman, a pulmonologist from Huntingdon Valley; and Robert Dunn, an orthopedic surgeon from the Princeton Medical Center in New Jersey.

Wright was represented by Eugene Feeney of Weber Gallagher Simpson Stapleton Fires & Newby in Scranton. Feeney said his client will appeal the verdict.

Levinson's attorney, James Doherty Jr. of Scanlon Howley & Doherty in Scranton, did not immediately respond to a call seeking comment.

Colleran said he expects to file for delay damages totaling roughly \$350,000.

His client has for many years worked in plumbing and heating maintenance, but has since incurring his injuries had to take on more of a supervisory role.

Of the med mal actions that have gone before Lackawanna County juries in recent years, the number of defense verdicts has far outweighed that of awards in favor of plaintiffs.

According to data compiled by the Pennsylvania Supreme Court, out of 35 med mal cases tried before a jury in Lackawanna common pleas from the beginning of 2000

through the end of 2004, two resulted in awards for \$500,000 or less, and two resulted in awards for between \$500,000 and \$1 million. The remaining 31 cases — roughly 88.5 percent of the total number — resulted in defense verdicts.

There were no med mal verdicts for more than \$1 million reported out of Lackawanna during that time period.

In contrast, in Philadelphia common pleas over the same time period, 364 of the 587 med mal cases tried before a jury — approximately 62 percent — resulted in defense verdicts.

The Supreme Court has not yet released its data on Pennsylvania med mal jury verdicts from 2005.

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