

Houston Chronicle

Vol. 99 No. 178

Saturday, April 8, 2000

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\$40.6 million for botched surgery

By **RON NISSIMOV**
Houston Chronicle

A jury Friday ordered Columbia Kingwood Medical Center and two doctors to pay \$40.6 million for botching a relatively simple back surgery and causing a 42-year-old man severe brain damage.

According to attorneys involved in the case, this is the first time that a Texas jury has concluded a hospital acted with malice by knowingly hiring a doctor who posed a danger to patients.

Dr. Merrimon Baker was accused of having an addiction to prescription sedatives and previously committing gross malpractice, such as

Finding of malice against hospital a first for Texas

operating on a wrong leg two different times. The hospital's chief of staff testified that the hospital knew Baker may have posed a risk to patients but still hired him.

While Richard Mithoff, lawyer for patient Ricardo Romero, acknowledged there was no direct evidence that Baker was under the influence of drugs when he performed the back surgery, he argued that it might be a reasonable assumption, given the doctor's history and lack of judgment during the surgery. Also, the hospital said Baker was no longer a staff physician as of November 1998, four months

after the disastrous operation.

The state district court jury found Baker and the hospital were each 40 percent responsible for the actual damages of \$28.6 million for the brain injury to Romero, who underwent surgery on July 15, 1998, for a herniated disk. The anesthesiologist, William Huie, was found to be 20 percent responsible. The hospital is solely responsible for paying \$12 million in punitive damages.

The two doctors had previously settled the case for a total of \$2.2 million, so the maximum award from the hospital will be \$25.6 million, which could be reduced further according to state laws limiting punitive damages.

The jury deliberated two days after a two-

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Hospital

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week trial in state District Judge Tracy Christopher's court. Several jurors declined to be interviewed.

The hospital and physicians denied any wrongdoing, saying the surgery was performed correctly and the large amount of bleeding was a rare but known complication of the procedure.

"I'm happy to know that hopefully something will change and other people will not have to go through this," said Romero's wife, Dolores, after the verdict.

Dolores Romero said her husband of 20 years worked as a shipdock foreman and was very active before the surgery. He now has very lim-



Ricardo Romero

ited mobility and needs help with basic lifestyle functions. He recognizes family members but has little short-term memory and no longer processes information well.

"I would absolutely give back all the money to have my husband back the way he was and have our marriage the way we planned," she said tearfully.

The family's attorney, Mithoff, a specialist in medical malpractice, called the verdict "important."

"This is the first case I'm aware of that a hospital has been found to have committed malice for retaining a physician on its staff with the knowledge that his ability was impaired," Mithoff said.

He said Baker underwent counseling for his drug problem in 1995, and open packages of the drugs were found in his office. Mithoff said he has realized through this case the problem of alcohol and drug addiction among doctors is much more prevalent than he expected, and hospitals need to be more diligent.

The attorney said that the finding of malice was crucial to the case because the Texas Supreme

Court declared in the mid-1990s that a hospital cannot be held liable for negligence of its doctors unless the hospital acted with malice.

In a prepared statement, Chuck Schuetz, chief executive officer of Columbia Kingwood, said, "Our deepest sympathies are with the Romero family."

"We firmly believe our hospital did nothing wrong, and we stand behind our history of providing quality care to the community," the statement continued. "Furthermore, (Baker) is no longer a member of the hospital's medical staff, effective November 1998."

Baker's lawyer, Deanna Dean Smith, said her client did not testify before the jury because of the settlement. She said the jury would have exonerated him had he done so.

"Dr. Baker is an extremely well-trained physician and is regarded as having a very good surgical technique," Smith said.

She said Baker was falsely accused of using prescription sedatives by "ex-wives and ex-girlfriends," but there was no credible evidence that he did so.



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**Dolores Romero,
plaintiff in lawsuit against hospital**

She said that state medical regulators examined the drug use allegations but took no action. She said many respected physicians get sued, and this is no indication of their abilities.

Smith said she could not comment on the alleged botched operations because of confidential settlements. She also said the chief of staff's testimony was tainted because he had a previous business dispute with Baker.

She said doctors during the surgery had no way of realizing Romero lost as much blood as he did.

Mithoff said Baker is currently practicing in the Liberty County area.

According to Mithoff, Romero had 6,200 cubic centimeters of blood in his body but lost 6,800 cubic centimeters of blood and fluids during the surgery. The anesthesiologist called for more blood, but the hospital's blood bank inexplicably delayed the delivery for 45 minutes, Mithoff said.

Attorneys for the anesthesiologist, Huie, did not return a Chronicle call.

Romero's eldest child, Jennifer Romero, 20, tearfully said she has recently become engaged and her future children "will never have the grandfather they would have had."

Dolores Romero said her husband is aware of his new limitations.

"He's afraid of losing me, I need to show him I love him and I would never leave him," Dolores Romero said. "He was a hard worker and loved us so much. Everything he did was for me and the kids."