

## CALIFORNIA

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### FEATURED VERDICT

#### Medical Malpractice

Wound infection  
known risk of excision,  
defense argued

#### Defense Verdict

*Goldburg v. Contour  
Dermatology and Cosmetic  
Center*

Riverside County Superior Court,  
Corona

**Plaintiff's Attorney** Barry M. Regar, Law Offices  
of Barry Regar, Indian Wells, Calif.

**Defense Attorney** Raymond L. Blessey, Taylor  
Blessey, L.L.P., Los Angeles

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Defense counsel contended that clean and sterile precautions were maintained throughout the surgery. Counsel also contended that post-surgery wound infections are a known risk of the procedure and that 80 percent of time, when a wound infection occurs, the patient has been shown to have been contaminated with staph aureus prior to the surgery.

Both the medical assistant and the nurse practitioner denied the medical assistant leaving the procedure room during plaintiff's excision surgery. They also contended they took proper sanitary procedures.

The defense's dermatology expert testified that the standard of care for an outpatient skin cancer excision is to use both clean and sterile techniques in order to minimize the risk of infection. The expert also testified that there is a known risk of post-excision wound infection of 1 percent to 3 percent in such a setting, despite the appropriate clean and sterile precautions.

The defense's infectious diseases expert testified that approximately 80 percent of post-surgery wound infections occur as a result of the patient being contaminated with staph aureus or a derivative of staph bacteria at the time of the procedure. The expert opined that Goldburg's post-excision surgery nasal swap that was positive for MRSA was consistent with colonization prior to the time of the procedure. According to the expert, Goldburg's leg excision site was contaminated with MRSA prior to the excision and there would not have been any way to know it. Thus, the infectious diseases expert opined that, at the time of the excision surgery, MRSA was unknowingly inoculated into the deeper tissues and soon thereafter, Goldburg began to manifest clinical signs and symptoms of a wound infection.

**INJURIES/DAMAGES** *MRSA infection; scar and/or disfigurement, leg*

Goldburg presented to a local emergency room on May 8, 2010, with redness and inflammation of the right arm and leg at the excision sites. She was subsequently admitted to the hospital and determined to have a right leg abscess and cellulitis. She was also found to be positive for Methicillin-resistant Staphylococcus aureus after a nasal swap was taken. On May 9, 2010, Goldburg underwent an incision, drainage and debridement of the right leg wound infection. A wound culture of the area in question was ultimately found to be positive for MRSA. As a result, Goldburg was given a PICC line, through which intravenous antibiotics were administered and she was discharged from the hospital on May 15, 2010.

The PICC line remained in place for approximately one month and the wound vacuum was not removed until June 2010. Goldburg claimed that she was left with a lengthy scar to her right leg. She also claimed that she still suffers numbness and pain in her legs. She alleged that as a result, she suffers from emotional distress.

Goldburg sought recovery of damages for her past and future pain and suffering.

**RESULT** The jury returned a defense verdict.

**DEMAND OFFER** None reported  
\$15,000

**TRIAL DETAILS** Trial Length: 6 days  
Trial Deliberations: 1.5 hours

**PLAINTIFF EXPERT(S)** Bernard T. McNamara, M.D., emergency medicine, Tustin, CA

**DEFENSE EXPERT(S)** Ted W. Gay, M.D., infectious diseases, Vista, CA  
Gary P. Lask, M.D., dermatology, Encino, CA

**EDITOR'S NOTE** This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

—Stephen DiPerte

## SAN DIEGO COUNTY

### MEDICAL MALPRACTICE

Failure to Treat — Failure to Consult — Delayed Treatment

## Patient: Immediate fasciotomy should have been performed

**MIXED VERDICT \$300,000**

**CASE** Eric Ikonne v. Kenneth Roth, M.D.; Kenneth Roth M.D. Inc.; Dr. Kenneth Roth M.D. Inc.; Sharp Healthcare DBA Sharp Memorial Hospital; Sharp Healthcare; Sharp Healthcare, Inc.,  
No. 37-2010-00096678-CU-MM-CTL  
Superior Court of San Diego County, San Diego

**COURT**

**JUDGE** Randa M. Trapp  
**DATE** 3/23/2012

**PLAINTIFF ATTORNEY(S)** Norman M. Finkelstein, Law Offices of Norman M. Finkelstein, San Diego, CA

**DEFENSE ATTORNEY(S)** Scott D. Buchholz, Dummit, Buchholz & Trapp, San Diego, CA (Sharp Healthcare)  
Andrew R. Chivinski, Neil, Dymott, Frank, McFall & Trexler, APLC, San Diego, CA (Kenneth Roth M.D. Inc., Kenneth Roth, M.D.)

**FACTS & ALLEGATIONS** On April 7, 2009, plaintiff Eric Ikonne, 21, a defensive lineman for San Diego State, collapsed on the field during a team workout and was admitted to Sharp Memorial Hospital in San Diego, where he was placed under the care of Dr. Kenneth Roth. Ikonne was treated for rhabdomyolysis, which is the breakdown of muscle fibers that can be caused by any condition that damages skeletal muscle, especially injury. The condition leads to the release of muscle fiber contents into the bloodstream, which is harmful to the kidney and often causes kidney damage. As a result, Ikonne was treated for kidney problems by a nephrologist, who treated him with an increased amount of hydration to the kidneys to wash out the toxic enzymes, until April 14. Ikonne then returned to school on April 22, but he could not lift his legs to ambulate. The school subsequently referred him to an orthopedic surgeon, who diagnosed him with bilateral compartment syndrome.

Ikonne sued Roth, his medical office and the hospital's operator, Sharp Healthcare. He alleged that the defendants failed to appropriately treat his condition and that this failure constituted medical malpractice.

Plaintiff's counsel noted that Ikonne had the sickle cell trait, which the coaching staff was not aware of, and that those with this sickle cell trait are believed to be at increased risk for developing rhabdomyolysis and compartment syndrome, which can lead to permanent muscle damage. Thus, plaintiff's counsel contended that though Roth appropriately treated Ikonne for the kidney problems, he did not treat Ikonne properly for the complications of the condition, including compartment syndrome. Counsel argued that Roth should have performed tests on Ikonne's legs and consulted with an orthopedic surgeon. Counsel further argued that a fasciotomy could have then been immediately performed, which would have released pressure on the legs and would have relieved the nerve injury completely. In addition, plaintiff's counsel contended that the hospital failed to notify Roth about Ikonne's difficulty walking.

The plaintiff's orthopedic surgeon testified that the standard of care required an immediate fasciotomy within 24 to 48 hours. Thus, the expert opined that had an orthopedic surgeon been brought in, Ikonne would not have suffered any residuals. The plaintiff's expert hospitalist testified that the failures of Roth and the nurses to diagnose, treat and refer Ikonne to an orthopedic surgeon were below the standard of care.

Roth claimed that compartment syndrome is a very rare occurrence, and that he treated Ikonne properly and within the standard of care. Roth's expert in orthopedic surgery opined that Ikonne had an excellent recovery and that a fasciotomy would not have made a difference.

Sharp Healthcare claimed that it treated Ikonne well and that its nurses did everything they were told to do. Thus, it claimed that the hospital's staff acted within the standard of care. The hospital's expert in emergency room medicine

opined that the hospital did everything proper and that there were no standard of care issues.

**INJURIES/DAMAGES** *compartment syndrome; decreased range of motion; footdrop*

Ikonne spent a week in the hospital, but had trouble walking upon his release as a result of bilateral compartment syndrome. He claimed he now suffers from nerve damage and foot drop in both legs as a result of his treatment at the hospital. After being referred to an orthopedic surgeon, Ikonne wore orthotics for five months and started rehabilitation, which included one year of physical therapy.

Ikonne previously started played in 10 football games in 2008 and started in two of them. However, after developing compartment syndrome, he never played football again. Ikonne, now 24, is pursuing a master's degree at the University of Texas, but he claimed he still cannot lift the big toe on his right foot and continues to have residual pain as a result of the compartment syndrome.

**RESULT** The jury did not find Sharp Healthcare negligent, but it did find that Roth fell below the standard of care. The jury subsequently awarded Ikonne \$300,000 for his pain and suffering.

<b>ERIC IKONNE</b>	\$100,000 past pain and suffering <u>\$200,000 future pain and suffering</u> \$300,000
<b>DEMAND OFFER</b>	None reported \$10,000 (C.C.P. § 998) by Sharp Healthcare
<b>TRIAL DETAILS</b>	Trial Length: 9 days Trial Deliberations: 1 day
<b>PLAINTIFF EXPERT(S)</b>	Raymond A. Sachs, M.D., orthopedic surgery, San Diego, CA Andrew S. Wachtel, M.D., hospitalist medicine, Los Angeles, CA
<b>DEFENSE EXPERT(S)</b>	Richard F. Clark, Jr., emergency medicine, San Diego, CA Timothy Corbin, M.D., hospitalist medicine, San Diego, CA Raymond M. Vance, M.D., orthopedic surgery, San Diego, CA

**POST-TRIAL** The award will be reduced to \$250,000 pursuant to a cap on non-economic damages.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's and defense counsel.

—Priya Idiculla