

Judge rules malpractice suit against Danbury Hospital can go to trial

By John Pirro, Staff Writer

Wednesday, February 25, 2010

News-Times (Danbury, CT)

A defense bid based on statutes of limitation to short-circuit a medical malpractice lawsuit against [Danbury Hospital](#) and one of its physicians has been thrown out of court.

The decision by state [Superior Court](#) Judge [Barry Stevens](#) means a jury could eventually decide the case brought by the widow of the late Dr. [Stanley Saperstein](#), a former doctor at the hospital who died in August 2007, eight years after his throat cancer was allegedly misdiagnosed by a colleague.

"I feel that Judge Stevens did a very thoughtful and thorough analysis of the issues," said Carey Reilly of Bridgeport, the lawyer for Eleanor Saperstein. "It's very clear he understood the egregious nature of the malpractice in this case."

Attorneys for the hospital and Dr. [Beatrice Cuello](#), the hospital pathologist who allegedly missed the indicators of throat cancer in lab samples, couldn't be reached for comment. Calls seeking comment from a hospital spokesman weren't returned.

Saperstein, an internist who spent more than three decades working at the hospital, first complained of throat problems in 1999, and Cuello signed a report diagnosing him with reflux esophagitis, a common inflammation condition.

In 2005, after Saperstein experienced additional problems, it was determined he had throat cancer.

Saperstein filed the suit in March 2007, five months before he died. The lawsuit was later amended to reflect that Eleanor Saperstein was bringing it on behalf of her husband's estate.

Lawyer [Neil Danaher](#) of Hartford, who represents the hospital and Cuello, sought to have the case dismissed.

He contended Saperstein missed the three-year statutory deadline for filing a lawsuit for malpractice that results in injury and the five-year deadline for malpractice resulting in death.

Over the past several years, however, the [Connecticut Supreme Court](#) has carved out certain exceptions to the rule, Reilly said, and Stevens' decision is a reflection of that trend.

An expert witness testified for the plaintiff that the pre-cancerous growths on tissue samples taken from Saperstein's throat in 1999 were so pronounced that Cuello had to have seen them if she reviewed the slides, Reilly said.

According to testimony and court documents, the slides were actually examined by a resident assigned to work with Cuello. But Cuello claimed to have reviewed the slides and signed off on the report containing the diagnosis.

"We got an expert to say that, based on her level of expertise, a physician like Dr. Cuello ... must have known she was looking at abnormal tissue," Reilly said. "It's now up to a jury to say she must have known it and didn't report it."

The case is on the complex litigation docket in state Superior Court in Waterbury, where more complicated civil cases are heard.

The two sides are due back in court Monday, when Stevens is expected to set up a schedule of hearings and depositions that could eventually lead to a jury trial, unless a settlement is reached.

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