

NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY
COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

March 22, 2010

Gross Medical Negligence Leads to Death of Child in MRI Chamber

When you Google MRI Risk, MRI Dangers, and so on, the results for the most part indicate that there are no risks. Yet despite the apparent absence of risks of an MRI, a 6 year old boy was killed during an MRI procedure. How could this happen in a presumably risk free procedure? Gross medical negligence?

The child, Michael Colombini, was killed in an MRI chamber when an oxygen tank, drawn by the MRI's 10 ton electromagnet, flew into the chamber striking the child in the head. A staffer at the Westchester Medical Center left the oxygen tank in the MRI room despite the universal ban of such metal objects from MRI rooms.

The case settled for \$2.9 million while the case was pending in New York state court. The hospital accepted liability within days of the tragic incident. However, the hospital's offer of \$1 million to settle quietly was refused by the child's family. The child's family subsequently filed a wrongful death action against the hospital and nine other defendants, including the supervising doctors, technicians, the MRI administration company, the MRI manufacturer and a nurse. The suit included medical malpractice, products liability, and wrongful death claims. The suit demanded compensatory damages, damages for pain and suffering, emotional distress to the father who was present during the accident and punitive damages.

After 9 years of litigation, the medical malpractice and wrongful death suit was settled for \$2.9 million on the eve of trial. The settlement surprised many in the New York legal community for a couple of reasons. Unlike New Mexico, New York prohibits recovery for the parents' loss of love and affection of their child (loss of consortium in New Mexico). Instead, recovery in New York wrongful death cases typically is entirely dependent upon economic losses or lost wages. As such, a child's life in New York has very little value in the courts since a child has unproven income potential. Certainly, tort reformers can come up with a strong argument for such an atrocious and callous valuation of a child's life.

What would cause the hospital in this case to settle for \$2.9 million under such defense favorable circumstances? Though the New York appellate courts will often greatly reduce punitive damage awards, potential punitive damages in this case may have swayed the hospital. In addition, there was the possibility of a large emotional distress award

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>

for the father who was at the scene when his child was killed. Finally, the attorneys for the family, Matthew Gaier and Tom Moore, were relentless in the pursuit of justice in this case.

No parent could ever place a value on their child's life. The court's in New York place little value on a child's life. Moreover, the New York appellate courts apparently do not lend the same deference to a jury's award of punitive damages as the Courts of New Mexico.

Fortunately, there are trial lawyers like Matthew Gaier and Tom Moore that will step up and fight for families who have lost children. Thankfully for patients and families in New Mexico, the Appellate Courts here protect the individual against corporate interests earning them the designation of "judicial hellhole" by tort reformers.

Who could argue that the hospital and the staffer were not grossly negligent? There was clearly a lack of procedure and oversight to protect against such gross incompetence. There was likely also insufficient training and supervision of the staffer. How could a metal oxygen tank be placed in a room with a 10 ton electromagnet in the absence of gross negligence at each and every level of the MRI facility? It couldn't. Yet tort reformers will continue to press for medical malpractice limits even in the face of rampant medical negligence in hospitals across the country that leads to incidents such as these placing each of us, and our children at risk every time we must visit a hospital. And without punitive damages, there is no real deterrent to this kind of behavior.

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>