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Judge Says State Was Negligent, Must Pay \$5M for Woman in Coma

ALBANY—The state must pay \$5.35 million to cover the ongoing medical expenses of a 21-year-old Albany woman who slipped into a diabetic coma while a patient at the Capital District Psychiatric Center in 1986, a state Court of Claims judge has ruled.

The state was guilty of medical malpractice in the lapse of care that caused Tara Cole, formerly of Elm Street, to fall into a state of unconsciousness known as a "persistent vegetative state," Judge Condon A. Lyons ruled.

Cole suffered from "myriad debilitating diseases" when she was admitted

to CDPC and required close, continuous medical monitoring, Lyons wrote in a four-page decision in the case.

"I find that the state was medically professionally negligent in that such care was not rendered," Lyons wrote.

The problem apparently rested with a lack of communication between doctors treating the woman. Though Cole's attending psychiatrist, who also was her attending medical physician, assumed that her metabolic state was being monitored by a staff endocrinologist, the endocrinologist actually was not performing a close monitoring and review of her condi-

tion, Lyons wrote.

As a result, her condition deteriorated until she suffered a seizure on Nov. 20, 1986, and fell into a coma. She remains in that state, according to the decision.

However, the judge declined to award any damages due to loss of future wages. Because of various physical and psychological problems, Lyons said, "any determination that she would become gainfully employed would be speculative."

He also did not award any money for pain and suffering, saying lawyers had not shown that she has any level

of awareness in her current unconscious state.

Lyons said he based his determination of \$5.35 million for medical expenses on \$559,060 in costs already incurred and future estimate costs of \$4,790,940. He said she has a life expectancy of about 32 years.

In a prepared statement, Cole's lawyers, Michael W. Kessler of Troy and Sanford Roseblum of Albany, said they are "gratified the court found liability in this case and that the claimant will now be provided for in a medically appropriate manner for the rest of her life."

Malpractice Award

ALBANY — Court of Claims Judge Condon A. Lyons awarded a \$5.35 million judgement to a 21-year-old Albany woman who lapsed into a permanent coma when physicians at the state-owned Capital District Psychiatric Center failed to monitor her diabetes. It was the largest medical malpractice judgment ever awarded against the state in the Court of Claims, state officials said.

In the malpractice case—*Matter of Cole v. New York*, Claim No. 76385—Judge Lyons found the state negligent in failing to adequately monitor the metabolic condition of 21-year-old Tara Cole who was admitted to the state psychiatric facility in Albany for treatment of emotional disorders in September, 1986. Ten weeks later she suffered a diabetic seizure and

fell into a permanent coma.

The \$5.35 million judgment he awarded Ms. Cole was solely for the cost of past and future medical care. Judge Lyons made no award for lost earnings and no award for pain and suffering, finding that Ms. Cole does not meet “the minimal standard for cognitive awareness set by the Court of Appeals” for non-pecuniary damages.

The Cole family was represented by Troy attorney Michael W. Kessler of Wager, Taylor, Howd, Brearton & Kessler, and by Albany attorney Sanford Rosenblum of Rosenblum, Sarachan & Ronan. The state was defended by Assistant Attorney General James P. King.

No lawsuit was filed against the physicians involved.

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Albany, N.Y.


THE TIMES UNION

FINAL

State must pay \$5.35M

By John Caher

Staff writer

ALBANY — A 21-year-old Albany woman who lapsed into a coma more than three years ago because doctors at the Capital District Psychiatric Center failed to monitor her diabetes has been awarded **\$5.35 million** in a medical malpractice lawsuit against the state.

Court of Claims Judge Condon A. Lyons, in a decision released Tuesday, found that the state was "medical professionally negligent" in its care of Tara Cole, who has been in a persistent vegetative state since suffering a diabetic seizure on Nov. 20, 1986. Cole, formerly of 193 Elm St., Albany,

has been hospitalized since the incident. Her attorney would not say where.

Lyons found that Cole's attending psychiatrist and physician wrongly assumed that she was being monitored by a staff endocrinologist, who was "not providing that degree of personal observation and review of tests and chart entries which claimant's condition required."

None of the medical professionals were sued individually or named in court records. It was unclear whether they had faced any disciplinary action.

Cole was a patient at the state-owned psychiatric facility in October and November of 1986. During the even-

ing of Nov. 20, 1986, she became severely dehydrated and went into ketoacidotic coma, resulting in catastrophic brain damage, according to court records. She is not expected to come out of the coma.

Attorneys Sanford Rosenblum of Albany, who represented the Cole family, and **Michael W. Kessler** of Troy, who argued the case, contended that officials were negligent in failing to properly monitor the patient. However, state Assistant Attorney General James P. King alleged that Cole's "manipulative and oppositional behavior" thwarted efforts to scrutinize her diet.

"Consistently and throughout the course of her stay at the Capital District Psychiatric Center, (Cole) was non-compliant with her diet by 'sneaking' forbidden foods that caused her metabolic problems to be exacerbated." King said in court papers.

Court records show that Cole had been hospitalized at the CDPC for "emotional stress, suicidal tendencies and consistent feelings of hopelessness and despair."

Lyons declined to award damages to Cole's mother, Dolores, or adjust the amount awarded Cole for pain and suffering. He cited a recent decision from the state's highest court, the Court of Appeals, which said that such awards are appropriate only when the patient has "some level of awareness" and found that Cole did not exhibit the

"minimal standard for cognitive awareness" that would entitle her to an award for pain and suffering.

Cole had incurred \$559,060 in medical expenses as of Feb. 6 and will require intensive care, costing \$966 daily, for the next nine months, according to Lyons' decision. She will then need constant, but less intensive, treatment expected to cost about \$400 a day for the remainder of her life, Lyons said. He awarded a total of \$5,350,000.

"Mr. Rosenblum and I are gratified the court found liability in this case and that the claimant will now be provided for in a medically appropriate manner for the rest of her life," **Kessler** said in a prepared statement. "The size of the verdict is simply reflective of the enormous costs associated with the care of a seriously brain-damaged patient."

Malpractice award in CDPC case

□ **Decision:** The state is "medically professionally negligent" in its care of an Albany woman, who has been in a persistent vegetative state since suffering a diabetic seizure in 1986.