

# BONEZZI SWITZER POLITO & PERRY CO. LPA

BSPP congratulates Bret C. Perry and Christopher F. Mars on obtaining a unanimous defense verdict in favor of their clients, a nurse staffing agency, and licensed practical nurse, in a recent medical malpractice and wrongful death trial held in Athens County, Ohio. The decedent, a 84-year-old, a retired Professor of Medicine, Chair of the Department of Family Medicine, and beloved local family medicine practitioner, was admitted to a long-term care facility for rehabilitation after being diagnosed with a skin infection related to vascular ulcers. The decedent was noted to be at risk for falls due to decreased strength and gait imbalance. The decedent suffered a fall soon after admission. Plaintiff alleged that the Defendants were negligent in failing to contact the decedent's attending physician, and his personal friend, of the fall. Plaintiff argued that if the attending physician had been contacted, the decedent would have been transferred to the Emergency Department for assessment, testing and likely admission. Plaintiff argued that because the attending physician was not contacted, the decedent suffered another fall a few hours later which resulted in devastating injuries including a broken neck and at least two subarachnoid hemorrhages. At trial, the attending physician testified that she was never notified of the fall, and that if she was contacted, she would have transferred the decedent for further assessment at the hospital. Plaintiff requested that the jury return a verdict in favor of the Estate and to award \$20,000,000 - \$50,000,000 for the injuries and death of the decedent.

On behalf of their clients, Messrs. Perry and Mars argued that an objective review of the facts confirmed that the Defendants notified the attending physician of the fall at issue. The attending physician was forced to concede on cross examination that her office was notified of varying issues related to the decedent via phone, facsimile and text message. While the attending physician testified at trial that she was never notified of the fall, she admitted that she never raised the failure to contact her as to the fall as an issue at any time after the events. Rather, this was an issue raised only after a lawsuit had been filed. Further, Defendants argued that even if the attending had been contacted, the fall would not have warranted transfer to the Emergency Department for assessment and testing considering that there were no injuries noted, and the decedent remained alert and oriented until suffering the subsequent fall. In closing, Defendants asserted that the attending physician likely felt guilt given that her patient, and close friend, suffered a devastating fall under her care and treatment. Due to this guilt, the attending physician had an incentive to shift her testimony and become an advocate rather than an objective witness. Defendants asserted that if the jury believed that the attending physician was not being truthful, then their verdict must be in favor of Defendants.

The jury deliberated for less than 2 hours before returning a unanimous verdict in favor of Defendants finding that the standard of care was met and that the evidence confirms that the attending physician, and friend of the decedent, was not being forthright.

Procedurally, Messrs. Perry and Mars were engaged as counsel until approximately 45 days prior to trial. They assumed the defense of this case from former counsel and after all discovery had been conducted. Messrs. Perry and Mars did not have the benefit of being involved in the selection of expert witnesses, having the opportunity to be involved in witness preparation, personally conducting the depositions of the fact and expert witnesses, or investigating the viability of available defenses during the 2.5 years this action had been pending. Despite these impediments, the team was able to distill the available evidence and prepare a defense at trial to the serious allegations levied by Plaintiff, and for the purpose of overcoming the damaging testimony offered by the non-party attending physician, and close friend, of the decedent.



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