

Medical Negligence - The plaintiff's urethra was perforated during a procedure to relieve vaginal pressure and occasional incontinence – because of the injury, the plaintiff developed a permanent fistula (it cannot be repaired) between her vagina and urethra – a massive injury, she is now totally incontinent and because of scar tissue, intercourse is impossible – in this lawsuit, the plaintiff blamed her Ob-Gyn for even attempting the Sur-X procedure in the first place

Mills v. Patel, 05-2315

Plaintiff: Steven J. Franzen, Newport

Defense: Mark G. Arnzen and Mary K.

Molloy, *Arnzen Molloy & Storm*, Covington

Verdict: \$1,005,000 for plaintiff

Circuit: **Boone**, J. Frohlich, 1-13-10

Melissa Mills, then age 38, was treated by her Ob-Gyn, Dr. Parag Patel, for vaginal pressure and occasional urinary incontinence. Through 2004, Patel had relied on conservative therapies. That didn't work and on 12-29-04, Patel attempted a Sur-X procedure to relieve Mills's problems. It was supposed to be a minimally invasive procedure.

The surgery appeared to be without incident, but Mills was back the next day with urinary retention. She was told that was normal. The symptoms persisted and Mills continued to self-catheterize to void. Nearly two months later, Patel identified a urethral injury and referred her to a urologist.

At this time, a urethral injury and a fistula were identified. The urethra had been badly damaged and there was no surgical repair available – the doctors were also unable to close the fistula. Mills is now permanently incontinent and wears pads 24/7. She smells of urine and because of scar tissue in her vagina, she is unable to have intercourse. Without question, Mills had suffered a massive injury.

In this lawsuit, Mills alleged negligence by Patel in injuring her urethra during the Sur-X procedure. Her expert, Dr. Bruce Rosenzweig, Urogynecology, Chicago, IL, blamed Patel for the injury and for even attempting the procedure in the first place. That is, a Sur-X procedure was simply not indicated and should never have been attempted on this patient – essentially, Patel had created a sustained burned hole (3rd degree) in her urethra.

If Mills prevailed, she sought medicals of \$65,169. In uncapped sums, the jury could award future care, impairment and suffering. Her husband too presented a derivative consortium claim.

Patel defended the case that the surgery was indicated (it followed a course of conservative care) and that a risk of injury was noted on the consent form. An expert, Dr. Mickey Karram, Urogynecology, Cincinnati, OH explained that Mills had a pre-existing diverticulum of the urethra that "pouched out" during the procedure. Karram explained this occurring did not represent negligence.

Patel also focused that initially Mills was doing well – he thought it was more likely than not that the initial urethra problem was made worse by Mills's repeated efforts to self-catheterize. This theory was advanced by Dr. George Ho, Urology, Columbus, OH.

The best proof of this was that Mills had contacted her urologist (upon referral by Patel) and asked him if she could insert the catheter into her urethra rather than her vagina – this seemed to imply she was causing the injury. Mills replied that it was true, that it did feel like she was poking through her vagina because Patel himself had created that condition in the initial surgery.

While the jury was deliberating, it asked a question for the court: We would like to break the award down to include a dollar amount for the daughter seeing as the case was *Mills v. Patel*? If the court answered, it did not become part of the record.

Back to the deliberations, the jury found Patel had violated the "healthcare provider" standard of care by an 11-1 count. Then to damages, Mills took \$55,000 of her medicals plus \$50,000 more for future care. While impairment was rejected, her pain and suffering was valued at \$900,000. Her husband's consortium claim was rejected. A judgment for \$1,005,000 was entered for her.

Patel sought JNOV relief and argued two errors, (1) there was no instruction that suggested possible other causes for the injury (notably self-catheterization), and (2) pain and suffering was excessive. The motion was denied and Mills has appealed.