UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MELLON BANK, N.A., Administrator of the Estate of BRENDA REED TESTA, Deceased,	: CIVIL ACTION NO. 3:01-CV-1503
Plaintiff,	: (JUDGE CONABOY)
v.	:
UNITED STATES OF AMERICA, BARNES-KASSON COUNTY HOSPITAL, PROFESSIONAL NEUROLOGICAL ASSOCIATES, P.C., VITHALBHAI D. DHADUK, M.D., JAMES DELLAVALLE, M.D.,	:
Defendants.	:

MEMORANDUM AND ORDER

This action is currently before the Court following an advisory jury verdict regarding Defendant United States of America's liability in th above-captioned matter. The action arises out of the death of Brenda Testa who died on July 22, 2000, eighteen months after undergoing surgery for a ruptured cerebral aneurysm on January 3, 1999. Plaintiff's Complaint, filed on June 20, 2001, sets forth counts for Wrongful Death, Survival Action and Punitive Damages, and alleges that Defendants were negligent and showed recklessness and carelessness in the care and treatment of Brenda Testa. (Doc. 1, Compl.)

The United States of America is a Defendant in this action under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680

because Dr. Pravinchandra Patel, the emergency room physician at Barnes-Kasson Hospital who treated Brenda Testa, is considered an employee of the United States.

Beginning on April 9, 2003, a trial was held before the Court and a jury, the jury being advisory as to Defendant United States because Plaintiff was not entitled to a jury trial under the FTCA. See 28 U.S.C. § 2402. The Court employed the jury as advisory pursuant to Federal Rule of Civil Procedure 39(c). All Defendants other than the United States settled with Plaintiff on Tuesday, April 15, 2003, the fifth day of trial. On April 17, 2003, the jury returned an advisory verdict for the United States, answering "No" to a Special Verdict Question whether the jury found Dr. Pravinchandra Patel negligent. (See Doc. 200.)

Following trial, the Court requested Plaintiff and Defendant United States to submit additional findings of fact and conclusions of law and brief the legal arguments the parties wished the Court to consider in rendering judgment. (Doc. 201.) The parties have now filed all post-trial submissions, (Docs. 204-208), and the matter is ripe for disposition.

For the reasons set forth below, the Court will enter a verdict in favor of Plaintiff and against Defendant United States.

I. BACKGROUND

The facts in this case are basically undisputed. If not otherwise noted, the recitation which follows is derived

essentially from Defendant United State's Second Pretrial Memorandum. (Doc. 148.)

On December l6, 1998, Brenda Testa arrived at the Barnes-Kasson County Hospital's emergency room by ambulance service at 12:54 p.m. Barnes-Kasson is located in Susquehanna, Pennsylvania. She was taken from her workplace to the hospital by ambulance because reportedly she had passed out at work and had a severe headache with multiple other symptoms. Upon arrival Brenda Testa was treated by Dr. Pravinchandra Patel, an employee of the Barnes-Kasson Health Center who, for the purposes of this lawsuit, has been deemed an employee of the United States of America.[1]

Dr. Patel conducted a history and physical examination of Brenda Testa including a battery of blood tests. Dr. Patel also ordered a chest x-ray and CT Scan of the head, without contrast. Emergency room records indicate that Brenda Testa went for the x-ray and CT Scan at 1:20 p.m. Dr. Patel testified that subarachnoid hemorrhage (SAH) was within his differential diagnosis. (See, e.g., Patel Testimony, Doc. 181 at 36.) He further testified that, if a physician suspects SAH and the CT Scan is negative, further

[1] Pursuant to the provisions of the Federally Supported Health Centers Assistance Act of 1992 (FSHCA), 42 U.S.C. § 233(g)-(n), the United States Department of Health and Human Services has deemed Barnes-Kasson Health Center an employee of the United States for purposes of the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680. (Doc. 1, Notice of Removal ¶ 3.) The FSHCA extends FTCA coverage to the grantees that have been deemed covered under § 233(h) and certain of its officers, employees, and contractors. (Id. ¶ 4.) Therefore, in this action Defendant United States stands in the shoes of Dr. Pravinchandra Patel.

testing is necessary to rule out SAH - some physicians doing an MRI then lumbar puncture, others do the lumbar puncture first. (Doc. 181 at 30-31.) After examination and history, the following signs and symptoms were recorded in Brenda Testa's medical records: severe headache, neck pain, nausea, vomiting, dizziness, confusion, sleepiness and lethargy. When asked to rate her headache on a scale of one to ten, ten being the worst, Brenda Testa rated her headache a ten. (Doc. 182 at 28.)

Shortly after 1:20 p.m., Dr. Patel called Dr. James DellaValle who was Brenda Testa's family physician. Dr. Patel informed Dr. DellaValle that his patient was in the emergency room and that Dr. Patel was going to admit the patient for further evaluation. Dr. DellaValle instructed Dr. Patel not to admit the patient and stated that he would come to the emergency room to examine his patient.

Sometime after this conversation and before the results of the x-ray or CT Scan were available, Dr. Patel returned to his office with instructions to nurse Debra Wood to call him if there were any change in the patient's condition. Dr. Patel did not perform any further tests on Brenda Testa. He did not communicate to Dr. DellaValle that he suspected SAH or what further testing he thought may be indicated after the results of the CT Scan were known. (See, e.g., Doc. 181 at 46.)

Thereafter, Brenda Testa's care was transferred to Dr. DellaValle. At 2:00 p.m., Dr. DellaValle was contacted by Debra Wood, R.N., and he prescribed an IV of dilaudid for Brenda Testa.

Nurse Armetta's notes indicate that Dr. DellaValle was in to see the patient at 3:22 p.m. and that she was resting comfortably. Sometime after 3:30 p.m., Nurse Armetta received a report of the CT Scan as negative from Dr. Shapiro at Marian Community Hospital in Carbondale, Pennsylvania. Nurse Armetta relayed the negative results of the CT Scan to Dr. DellaValle.

Dr. DellaValle admitted Brenda Testa to the hospital on December 16, 1998. (Doc. 1, Compl. ¶ 36.) He did not perform a lumbar puncture after he received the report that the CT Scan was negative. (See DellaValle Testimony, Docs. 181, 182.) Dr. DellaValle examined her on December 17, 1998, and diagnosed Status Migrainosis, secondary diagnosis being hypertension and a skin irritation on her left arm. (Doc. 1, Compl. ¶ 37.) Dr. DellaValle discharged Brenda Testa on December 17, 1998, with a diagnosis of migraine headaches. (Id. ¶ 38.)

Five days later, on December 21, 1998, Brenda Testa returned to the emergency room at 9:25 a.m. Dr. Patel was staffing the ER and was contacted by Nurse Debra Wood. Her symptoms were severe headache, neck pain, and nausea. She had no vomiting and no vision or speech problems.

Dr. Patel ordered a battery of blood tests and conducted a physical examination. He found her to be alert and stable, in moderate distress. Dr. Patel ordered a CT Scan of the head and neck, without contrast. Both tests were reported as negative per Dr. Nathan Feldman. In spite of Brenda Testa’s symptoms and his

serious concerns about her condition, Dr. Patel did not do a lumbar puncture. (Doc. 181 at 63-64.)

Upon receipt of confirmation of negative CT Scan results, Dr. Patel contacted a Neurologist, Dr. Vithalbai Dhaduk. Dr. Patel arranged for Brenda Testa to have an immediate consultation with Dr. Dhaduk in his office in Dunmore, Pennsylvania. Dr. Patel did not discuss his differential diagnosis with Dr. Dhaduk, nor did he tell him that he felt a lumbar puncture was indicated because the CT Scan was negative. (Doc. 181 at 57-60.)

At 12:45 p.m. Brenda Testa was discharged to go to Dr. Dhaduk's office for a neurological consultation. Dr. Patel's treatment plan states: "Referred to Dr. Dhaduk in his office now. Case discussed with Dr. Dhaduk. Follow up with family MD as soon as possible. The patient is stable." Dr. Patel had no further contact with Brenda Testa after he referred her to Dr. Dhaduk.

Brenda Testa's husband, Randy, drove her to Dr. Dhaduk's office in Dunmore. Dr. Dhaduk eventually examined Brenda Testa after her arrival at his office and diagnosed her as suffering from severe status migrainosis, hypertenstion and secondary frustration. (Doc. 1, Compl. ¶¶ 43, 44.) Dr. Dhaduk noted no CT Scan evidence of subarachnoid bleed. (Id. ¶ 45.) Dr. Dhaduk's recommendations included "MRA and MRI of the head at some point of time." (Id. ¶ 46.) He did not perform a lumbar puncture nor recommend that she have the procedure done by anyone else. (See Dhaduk Testimony,

Doc.191.)

Twelve days later, on January 2, 1999, Brenda Testa was rushed to the Emergency Room at Barnes-Kasson. (Doc. 1, Compl. ¶ 48.) She was diagnosed with acute intracranial hemorrhage and transferred to Wilson Memorial Hospital in Binghamton, New York. (Id. ¶¶ 48, 49.) At Wilson, she was treated for a Grade IV rupture of a cerebral aneurysm and underwent surgery on January 3, 1999. (Id. ¶¶ 49, 50.) Brenda Testa underwent several more surgeries at Wilson and remained as an inpatient there until February 24, 1999. (Id. ¶ 50.) She was transferred from Wilson to Moss Rehabilitation, the Drucker Traumatic Brain Injury Unit in Philadelphia, Pennsylvania, where she remained an inpatient until her transfer to Allied Services in Scranton, Pennsylvania on April 16, 1999. (Id. ¶ 51, 52.) She remained a resident at Allied Services until her death on July 22, 2000, at the age of 26. (Id. ¶ 53.)

From January 3, 1999 - the date of the surgery to repair the ruptured aneurysm - to her death on July 22, 2000, Brenda Testa suffered from quadriplegia and brain damage. (Doc. 114 Ex. A, Statement of Undisputed Facts ¶ 69.) During that time Brenda Testa had numerous complications, including the following: swelling of the brain which required a craniectomy; multiple infections, some of which required her to be kept in isolation; periodic insertion of a breathing tube placed in her windpipe to allow her to breathe; periodic insertion of a left ventricular peritoneal

shunt to relieve excess fluid pressure on the brain; and periodic insertion of PICC lines and porta caths to administer antibiotics and blood products. (Id. ¶¶ 60-67; Doc. 204 at 3.)

At all relevant times, Brenda Testa was the wife of Randy Testa and the mother of Randy Testa, Jr., who was four years old when his mother died on July 22, 2000. (Doc. 1, Compl. ¶¶ 31, 54.)

II. DISCUSSION

The parties agree on the law applicable to this case regarding both physicians' negligence and the role of an advisory jury.

A. Role of Advisory Jury

As noted previously, the jury was advisory as to Defendant United States because Plaintiff was not entitled to a jury trial under the FTCA.[2] See supra p. 1 (citing 28 U.S.C. § 2402). The Court has jurisdiction of this case against the United States pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671-2680. In an FTCA action, the law of the place where the alleged act or omission occurred, i.e., Pennsylvania, is to be applied. 28 U.S.C. § 1346(b); Rodriguez v. United States, 823 F.2d 735, 739 (3d Cir. l987). The FTCA is a limited waiver of sovereign immunity making the federal government liable for certain torts of federal employees acting within the scope of their employment to

[2] At the start of trial, the case was being tried to the jury as to all Defendants except United States and to the Court as to Defendant United States. However, when all Defendants except United States settled mid-trial, the jury was retained in an advisory capacity only. See supra p.1.

the same extent as a private party would be liable under analogous circumstances. United States v. Orleans, 425 U.S. 807, 814 (1976).

As a statute waiving the immunity of the United States, the Act must be construed in a manner that gives effect to Congressional intent. Smith v. United States, 507 U.S. 197, 203 (1993); United States v. Kubrick, 444 U.S. 111, 117-118 (l979). The intent of Congress is unequivocally expressed in the mandate that tort actions against the United States "shall be tried by the court without a jury." 28 U.S.C. § 2402. To prevail, an FTCA plaintiff must show: (1) the existence of a duty owed to him by a defendant employee of the United States; (2) a negligent breach of said duty; and (3) proximate causation between the breach and plaintiff's injury/loss. See Mahler v. United States, 196 F. Supp. 362, 364 (W.D. Pa. 1961), aff'd, 306 F.2d 713 (3d Cir. 1962).

The Court employed the jury as advisory pursuant to Federal Rule of Civil Procedure 39(c). Findings by an advisory jury are not binding on the Court, as the ultimate responsibility for finding the facts remains with the court. Fed. R. Civ. P. 39(c). “A trial court has full discretion to accept or reject the findings of an advisory jury.” Hayes v. Community General Osteopathic Hosp., 940 F.2d 54, 57. (3d Cir. 1991)(citing Marvel v. United States, 719 F.2d 1507, 1515 n.12 (10th Cir. 1983).

As this is a case brought under the FTCA, the Court has the obligation to render a judgment, and at that time, set forth its

findings of fact and conclusions of law. See Fed R. Civ. P. 52(a). The court is entitled to believe testimony elicited by a plaintiff from an adverse witness and disbelieve testimony elicited by the defense from that witness in just the same was as a factfinder may believe testimony elicited on cross-examination to the exclusion of testimony elicited on direct examination.

After carefully considering all the testimony and evidence presented, for the reasons elaborated below, the Court declines to follow the advisory jury verdict and concludes that Dr. Patel was negligent. Therefore, Defendant United States is liable for Dr. Patel's negligence and judgment will be entered in favor of Plaintiff.

B. Negligence

B1. Applicable Law

To establish an FTCA claim in this case, the law governing medical malpractice in Pennsylvania is applicable. In order to state a prima facie case of medical malpractice in Pennsylvania, a plaintiff must show: (1) the physician owed a duty to the patient, (2) the physician breached that duty; (3) the breach of duty was the proximate cause of, or a substantial factor in, bringing about the harm suffered by the patient, and (4) the damages suffered by the patient were a direct result of that harm. Mitzelfelt v. Kamrin, 584 A.2d 888, 891 (Pa. 1990); Flanagan v. Labe, 666 A.2d 333, 335 (Pa. Super. 1995).

To make out a prima facie case, Pennsylvania requires that a

plaintiff have "an *expert* witness testify to a 'reasonable degree of *medical* certainty, that the acts of the physician deviated from good and acceptable medical standards, and that such deviation was the *proximate* cause of the harm suffered.'" Flanagan, 666 A.2d at 335 (emphasis in original) (quoting Mitzelfelt, 584 A.2d at 892); see also Joyce v. Boulevard Physical Therapy & Rehabilitation Center, P.C., 694 A.2d 648, 654 & n.3 (Pa. Super. l997); Maurer v. Trustees of the University of Pennsylvania, 614 A.2d 754, 757-58 (Pa. Super. 1992) (en banc) (citing cases).

As to the standard of care, the Pennsylvania courts have said that a physician or surgeon is neither a warrantor of a cure nor a guarantor of the result of his treatment. Maurer, 614 A.2d at 758. A physician or surgeon is not bound to employ any particular mode of treatment of a patient, and, where among physicians or surgeons of ordinary skill and learning more than one method of treatment is recognized as proper, it is not negligence for the physician or the surgeon to adopt either of such methods. Donaldson, 156 A.2d at 838; Maurer, 614 A.2d at 758.

The burden of proof in a malpractice action is upon the plaintiff to prove either (1) that the physician or surgeon did not possess and employ the required skill and knowledge, or (2) that he did not exercise the care and judgement of a reasonable man in like circumstances. Additionally, the applicable standard

of care may encompass more than one method of treatment. Maurer, 614 A.2d at 758 (citing Brannan v. Lankenau Hospital, 417 A.2d 196, 200 (Pa. 1980) (jury may not decide which of two respected methods was the better)).

The parties did not raise or present to the jury the issue of contributory negligence.

B2. Synopsis of Parties' Arguments

Plaintiff contends that Dr. Patel's treatment of Brenda Testa deviated from the acceptable standard of care.[3] Specifically, Plaintiff alleges that when Brenda Testa visited the emergency room on December 16 and 21, 1998, she was experiencing signs of a subarachnoid hemorrhage (SAH) and that Dr. Patel included SAH in his differential diagnosis. Plaintiff maintains that the proper protocol for treatment of a suspected subarachnoid hemorrhage is to immediately follow up a negative CT Scan with a lumbar puncture. Plaintiff further contends that the standard of care for an emergency room physician required that Dr. Patel either perform a lumbar puncture on Brenda Testa on December 16 and/or 21, 1998, in order to make the appropriate diagnosis, or communicate the immediate need for the procedure to be performed to the physician to whom he was transferring care. Because Dr. Patel did not do the procedure himself or tell Dr. DellaValle or Dr. Dhaduk that he

[3] The synopsis of Plaintiff's argument is taken essentially from Plaintiff's Post-Trial Brief and Reply Brief. (Doc. 204 at 10-12; Doc. 207 at 8-17.)

suspected SAH and a lumbar puncture should be done on Brenda Testa, Plaintiff argues that Dr. Patel deviated from the standard of care. Plaintiff argues that this deviation was a substantial factor in causing the harm to Brenda Testa which eventually led to her death.

Defendant United States argues that Dr. Patel effectively communicated the nature of Brenda Testa's complaints and symptoms, his course of treatment and his opinions that she needed additional specialized medical care and treatment.[4] As an example, Defendant cites the fact that Dr. Patel was asking Dr. Dhaduk, a neurologist, to see Brenda Testa as soon as possible would sufficiently communicate to Dr. Dhaduk that Dr. Patel was considering a serious neurological problem. Defendant maintains that, on either December 16 or 21, 1998, any reasonable physician reviewing Dr. Patel's medical documentation and listening to his comments on the telephone would have understood that Dr. Patel was concerned that Brenda Testa had a potential neurological condition that required further emergent care and treatment. Defendant further contends that the fact that Dr. DellaValle included SAH within his differential diagnosis after speaking with Dr. Patel on December 16, 1998, and that Dr. Dhaduk testified that he also considered SAH to be within his differential diagnosis when he saw Brenda Testa on December 21, 1998, makes this conclusion obvious.

[4] The synopsis of Defendant's argument is taken essentially from Defendant's Response to Plaintiff's Post-Trial Brief, (Doc. 208 at 3-5.)

Regarding causation, Defendant asserts that the alleged failure of Dr. Patel to tell Drs. Dhaduk and DellaValle what they already knew could not have caused Brenda Testa's death or have increased the risk of her death. Defendant also maintains that Plaintiff totally ignores two important facts: Dr. DellaValle testified that even if Dr. Patel had spoken to him about SAH or a lumbar puncture, it would not have changed the manner in which he treated Brenda Testa; and Dr. Dhaduk testified that he does not want to hear a referring physician's conclusions about a patient when he, as a neurologist, is asked to examine that patient. Finally, Defendant concludes that Plaintiff ignores this uncontroverted testimony because it makes it clear that even if Dr. Patel had used the terms "SAH" or "lumbar puncture" when he spoke to Dr. Dhaduk and Dr. DellaValle, this "communication" would not have changed the manner in which these subsequent treating physicians treated Brenda Testa.

B3. Synopsis of Experts' and Physicians' Testimony

Three Defendant physicians testified as on cross-examination: Doctor Pravinchandra Patel, the Barnes-Kasson emergency room physician; James A. DellaValle, M.D., the family physician to whom Dr. Patel transferred Brenda Testa's care on December 16, 1998; and Vithalbhai D. Dhaduk, M.D., the neurologist to whom Dr. Patel referred Brenda Testa on December 21, 1998.

Plaintiff called three experts who testified as to the appropriate standard of care for an emergency room physician given

the circumstances of this case: Jonathan Edlow, M.D., Christopher S. Ogilvy, M.D., and James J. Corbett, M.D. All three experts concluded that Dr. Patel deviated from the accepted standard of care on both December 16 and December 21, 1998, and that the deviation increased the risk of harm to Brenda Testa. Doctors Ogilvy and Edlow also concluded that Doctors DellaValle and Dhaduk deviated from the accepted standard of care, thereby increasing the risk of harm to Brenda Testa. In his testimony, Dr. Corbett did not give an expert opinion as to Doctors DellaValle and Dhaduk because both had settled with Plaintiff before Dr. Corbett testified.

Defendant called one expert witness, Dean Dobkin, M.D. Dr. Dobkin concluded that Dr. Patel's care and treatment of Brenda Testa were within the acceptable standard of care on both December 16 and December 21, 1998.

Dr. Patel testified that he was strongly suspicious of SAH and that it was within his differential diagnosis after examining Brenda Testa on both December 16 and December 21, 1998. Dr. Patel agreed that, if he suspected SAH, he treated it as a life-threatening condition until he could rule it out. He further testified that, because of his suspicion of SAH, he considered that a lumbar puncture would be appropriate to rule it out in the event of a negative CT Scan and that, by not doing a lumbar puncture, there is an increased risk that the diagnosis would be missed. Dr. Patel testified that, on December 16, 1998, Dr. DellaValle had

assumed Brenda Testa's care before the CT Scan results became available. Dr. Patel explained that, because Brenda Testa was no longer in his care, he did not receive the CT Scan results and did not order a lumbar puncture. He testified that he did speak once with Dr. DellaValle - telling Dr. DellaValle that he had a patient of his in the ER with severe headache and syncope and that he had ordered a CT Scan. Dr. Patel also acknowledged that he did not tell Dr. DellaValle that he was suspicious of SAH or that he thought a lumbar puncture should be done in the event of a negative CT Scan.

Dr. Patel stated that he was even more concerned about Brenda Testa's condition on December 21, 1998 - agreeing that he thought her life could be in jeopardy. He testified that his concern led him to call Dr. Dhaduk and arrange for an immediate consultation after he got the negative results of the CT Scan. Dr. Patel acknowledged that he did not tell Dr. Dhaduk that he suspected SAH, that he thought a lumbar puncture should be done immediately or that he was concerned for Brenda Testa's life. He testified that he told Dr. Dhaduk what was going on generally and that he needed more help. Dr. Patel also acknowledged that he only sent Brenda Testa's records from December 21, 1998, with her when she went to Dr. Dhaduk's - he did not send Brenda Testa's records from December 16 and December 17, 1998. When asked why he did not communicate his differential diagnosis of SAH or the fact that he thought a lumbar puncture should be performed, Dr. Patel testified that he

did not think he had to - it was up to the physician to whom he transferred care to decide what was wrong and what further steps should be taken. (Doc. 181 at 25-138.)

Dr. DellaValle testified that he assumed Brenda Testa's care on December 16, 1998, and informed Dr. Patel that he would come to see her in the emergency room. He testified that SAH was within his differential diagnosis when he heard that the patient had a severe headache, but after performing his own evaluation of Brenda Testa in the emergency room, he believed she was suffering from severe migraine headache. Dr. DellaValle testified that he was aware that all of the symptoms were present which had made Dr. Patel strongly suspicious of SAH, although he found a conflict in that the patient reported that she had not passed out and the medical records indicated that she had, and he also had conflicting information about the onset of the headache. In spite of his concern, he acknowledged that he did not ask Dr. Patel about these discrepancies, and in fact he had no contact with Dr. Patel regarding Brenda Testa after Dr. Patel's initial referring phone call. He also acknowledged that the medical records available to him in the hospital on December 16, 1998, contained the information that, on a scale of one to ten, ten being the worst, Brenda Testa identified her headache as a ten. Dr. DellaValle further testified that SAH was no longer within his differential diagnosis after his evaluation and he found no need to do a lumbar puncture even though he learned that the CT Scan results were negative. Dr. DellaValle

admitted Brenda Testa with the migraine diagnosis and testified that he saw nothing between her admission and discharge which would change his mind. He testified that there were three principal reasons for not further considering SAH. First, Brenda Testa did not have neck rigidity. However, after testifying that a supple neck can be an important factor in ruling out SAH, Dr. DellaValle admitted that a supple neck does not completely rule out SAH. Dr. DellaValle also acknowledged that he documented that the patient had continually complained of a stiff neck. Second, the medicine he prescribed had worked and she was feeling better. Third, the CT Scan was negative. He was very evasive about the need for a lumbar puncture when a CT Scan is negative, even though he acknowledged that SAH can be missed by a CT Scan.

Regarding his communication with Dr. Patel, Dr. DellaValle testified that the only thing he recollected Dr. Patel telling him about the patient was that she had a severe headache - Dr. Patel did not tell Dr. DellaValle that he would still suspect SAH even if the CT Scan were negative. Although Dr. DellaValle testified that he would have treated Brenda Testa the same way if Dr. Patel had shared this information with him, his reasoning was hard to follow: he earlier testified that the information would have been important because, had he heard the specific words, he may have been more inclined to think there was something he was not seeing or would lead him on a different path. Dr. DellaValle also stated that he would not feel he was doing his job properly if he did not share

something important about a patient with another caregiver. (Doc. 194 at 7-68; Doc. 182 at 10-83.)

Dr. Dhaduk testified that he received a call from Dr. Patel on December 21, 1998, asking if he could see Brenda Testa as soon as possible. Dr. Dhaduk recalled that Dr. Patel told him the patient was in the emergency room at Barnes-Kasson with a very severe headache and gave him some other general information. Dr. Dhaduk stated that he told Dr. Patel he would see Brenda Testa that day - to have her come to his office in Dunmore with whatever records he had and the CT Scan pictures.

Dr. Dhaduk stated that SAH was within his differential diagnosis after hearing Brenda Testa's symptoms (including the facts that she felt like a knife was going through her right eye and that her vision had been cloudy and neck stiff since December 16, 1998), but that he diagnosed her as having status migrainosis, a condition which can have symptoms similar to those for SAH. He testified that, among other things, he based his diagnosis on the facts that her symptoms were consistent with severe migraine and she had a history of headaches (which she had treated by taking aspirin or tylenol and lying down). He also testified that, even after his diagnosis, he was sufficiently concerned that she may have a bleed or something else going on in her brain that he wanted her to have additional testing. Dr. Dhaduk stated that he told Brenda Testa and her husband that he wanted Brenda to go to a Scranton hospital immediately and have an MRI and, if the MRI were

negative, recognizing that a CT Scan cannot rule out SAH, he wanted her to have a lumbar puncture. He admitted that his written records indicate only that he told her to have an MRI at some point in time. Dr. Dhaduk testified that Brenda and Randy Testa told him they did not want to go to a Scranton hospital, that they wanted to go home and have the MRI done at Barnes-Kasson. Dr. Dhaduk stated that, although he did not write "stat" or "ASAP" on the MRI prescription, he told the Testas to have the MRI as soon as possible. (Doc. 196 at 87-199.)

Regarding his communication with Dr. Patel, Dr. Dhaduk testified that Dr. Patel did not tell him that he suspected SAH or that he felt a lumbar puncture should be done to rule it out. Dr. Dhaduk testified that he did not need this information from Dr. Patel because he makes his own diagnosis and treatment recommendations based on his own evaluation of the patient, which includes a review of the patient's records. However, this reasoning is confusing because Dr. Dhaduk acknowledged that Brenda Testa did not report all the symptoms she had on December 16 and December 17, 1998, and that he did not review the records from those dates because she had not been given them at Barnes-Kasson. He further admitted that his evaluation took place after Brenda Testa had been given both Advil and Maxall for her headache at Barnes-Kasson.

Plaintiff's expert Dr. Ogilvy - a neurosurgeon who practices at Massachusetts General Hospital and is an associate professor at

Harvard Medical School and Massachusetts General Hospital - testified that Brenda Testa's symptoms on both December 16 and December 21, 1998, were such that SAH should be included in the examining physician's differential diagnosis and that a negative CT Scan should have been followed immediately by a lumbar puncture. Dr. Ogilvy further testified that, given the patient's symptoms, either Dr. Patel or the physician to whom he transferred care needed to do a lumbar puncture once it was known that the CT Scan results were negative. Dr. Ogilvy acknowledged that Brenda Testa's symptoms could be consistent with problems other than SAH, but he stated that once SAH is within the differential diagnosis, a CT Scan and lumbar puncture must be done to rule it out.

Dr. Ogilvy also opined that Dr. Patel should have communicated to Dr. DellaValle and Dr. Dhaduk that he suspected SAH and that a lumbar puncture should be done if the CT Scan results were negative. (See Doc. 193 at 46-170.)

Dr. Ogilvy concluded that Dr. Patel's failure to do the lumbar puncture or have someone else do it, and his failure to communicate suspicions about SAH and the need for a lumbar puncture constituted deviations from the standard of care. He further testified these deviations greatly increased the risk of harm to Brenda Testa because, if a lumbar puncture had been done it likely would have led to a diagnosis of SAH and, if SAH had been diagnosed, the aneurysm could have been clipped before it ruptured, thereby preventing the catastrophic rupture which occurred on January 2,

1999.

Dr. Ogilvy also concluded that the failure of Doctors DellaValle and Dhaduk to do a lumbar puncture deviated from the standard of care and increased the risk of harm to Brenda Testa. As with Dr. Patel, Dr. Ogilvy opined that Doctors DellaValle and Dhaduk had sufficient information to include SAH in their differential diagnoses, and therefore a lumbar puncture needed to be done to rule it out. Dr. Ogilvy testified that Dr. Dhaduk's reliance on the fact that Brenda Testa had a history of headaches was not warranted because these headaches were significantly different and were accompanied by symptoms she had not previously experienced. (See Doc. 193 at 46-170.)

Plaintiff's expert Dr. Edlow - an emergency room doctor at Beth Israel Deaconess Medical Center in Boston, Massachusetts, and an Assistant Professor of Emergency Medicine at Harvard Medical School - similarly testified that, given Brenda Testa's symptoms, upon learning that the CT Scan was negative, a lumbar puncture should have been done and, in this case, lumbar puncture was an emergency procedure. He stated that the sooner SAH is diagnosed and treated, the better the outcome. Dr. Edlow opined that the failure to do a lumbar puncture on Brenda Testa increased the risk of harm to her because it likely would have shown evidence of SAH.

Dr. Edlow also stressed the importance of appropriate communication when one physician is signing off a patient's care to another physician, particularly from the clinician who first sees

the patient. Dr. Edlow testified that, in this case, the sign-out to Dr. DellaValle should have included direct communication that Dr. Patel was concerned about an intracranial hemorrhage, that a CT Scan had been ordered and that, if it was negative, a lumbar puncture needed to be done. Regarding Dr. Patel's care of Brenda Testa on December 21, 1998, Dr. Edlow testified that the average emergency room physician would have done a lumbar puncture before calling another doctor. Dr. Edlow found it hard to believe that an emergency room physician would not do a lumbar puncture, but assuming that Dr. Patel would not, he should have called someone to the emergency room at Barnes-Kasson to do the procedure. Dr. Edlow also found Dr. Patel's communication with Dr. Dhaduk lacking because he did not express that he suspected SAH or that he thought a lumbar puncture should be done. (See Doc. 182 at 108-235.)

Dr. Edlow's overall conclusion was that Dr. Patel's failure to do the lumbar puncture or have someone else do it, and his failure to communicate suspicions about SAH and the need for a lumbar puncture constituted deviations from the standard of care. He further testified these deviations increased the risk of harm to Brenda Testa: the fact that a lumbar puncture was not done increased the likelihood of missing the subarachnoid hemorrhage; and missing the SAH diagnosis increased the risk that Brenda Testa would become a brain-damaged quadriplegic because diagnosis which occurs before the patient has had significant neurologic damage generally leads to a very good outcome.

Dr. Edlow further concluded that Doctors DellaValle and Dhaduk deviated from the standard of care, thereby increasing the risk of harm to Brenda Testa. Dr. Edlow testifed that Dr. DellaValle had all of the same information at his disposal as Dr. Patel had and, given this information, it deviated from the standard of care to rule out SAH. Dr. Edlow also noted that Dr. DellaValle's reliance on the fact that Brenda Testa was feeling better was unreasonable - it was dangerous to assume a benign cause of a headache because she likely would have responded to the medication he had administered even if she had SAH. Regarding Dr. Dhaduk, Dr. Edlow stated that when you are concerned about SAH, as Dr. Dhaduk was, the diagnosis needs to be made right away - the next day or next week is not acceptable. He further testied that, upon encountering resistance from the Testas about having further testing done on December 21, 1998, Dr. Dhaduk should have clearly told them that the tests needed to be done that day and that there could be serious consequences if they were not done right away. (See Doc. 182 at 108-235.)

Plaintiff's expert Dr. Corbett - a practicing neurologist and a Professor of Neurology at the University of Mississippi - agreed with the other experts that Brenda Testa's symptoms were strongly suggestive of SAH and that a lumbar puncture needed to be done immediately after learning that the CT Scan was negative. Dr. Corbett stated that an emergency room physician's unwillingness to perform a lumbar puncture when he suspected SAH constituted a

deviation from the standard of care. He further testified that the performance of a lumbar puncture was an emergency procedure when a patient appears with Brenda Testa's signs and symptoms. He opined that, in this case, Brenda Testa should have had a lumbar puncture done in the emergency room - the doctor who got the negative CT Scan results should have either done it himself, had someone else come to the emergency room to do it, or have the procedure done somewhere nearby and shortly after the negative CT Scan results were known.

Dr. Corbett concluded that, at the very least, Dr. Patel, when transferring care on December 16, 1998, should have communicated to Dr. DellaValle what his major concerns were and that a lumbar puncture needed to be done if the CT Scan was negative. Similarly, Dr. Corbett testified that the standard of care required Dr. Patel to tell Dr. Dhaduk that he suspected SAH and that he thought a lumbar puncture should be done. (See Doc. 198 at 24-56.)

Along with his conclusion that Dr. Patel's unwillingness to do a lumbar puncture deviated from the standard of care, Dr. Corbett concluded that Dr. Patel's failure to do the lumbar puncture or have someone else do it, and his failure to communicate suspicions about SAH and the need for a lumbar puncture constituted deviations from the standard of care. He further testified that these deviations were substantial factors in bringing about the harm to Brenda Testa because the fact that she did not have a lumbar puncture increased the risk that SAH would not be diagnosed and the

failure to diagnose and treat the aneurysm seriously affected her prognosis.

Defendant's expert Dr. Dobkin - an emergency room physician practicing at Community Medical Center in Toms River, New Jersey - agreed with Plaintiff's experts that Brenda Testa's symptoms were strongly suggestive of SAH. He further agreed that a lumbar puncture needed to be done the same day the CT scan results came back negative. Although Dr. Dobkin concluded that Dr. Patel had "rusty skills" regarding lumbar puncture, he testified that he believed Dr. Patel did not deviate from the standard of care either by not performing the lumbar puncture himself or by not having someone else do it. Dr. Dobkin testified that, because Dr. Patel transferred Brenda Testa's care to another physician on both December 16 and December 21, 1999, Dr. Patel had met his obligation to his patient. Dr. Dobkin agreed that good communication between members of a patient's health care team were important. However, he further testified that the standard of care did not require Dr. Patel to communicate his specific concern of SAH or the need for Brenda Testa to have a lumbar puncture because it is up to the physician to whom the patient is referred to examine the patient and decide what further treatment is necessary. (See Doc. 186 at 16-115.)

B.4 The Court's Evaluation of Relevant Evidence

a. Dr. Patel's Negligence

I conclude that there is compelling evidence in this case that

Dr. Patel did not give the decedent the care she was entitled to receive when he saw her as a patient in the emergency room (ER) at Barnes-Kasson on December 16 and December 21, 1998. The expert testimony shows that on those days the decedent had classic or near classic symptoms of SAH.[5] While some argument might be made that it was not the only possibility in the full array of her symptoms – the constellation of her symptoms showed SAH as a distinct possibility.[6] Further, all experts agreed that a Lumbar Puncture is necessary to rule out SAH when a CT Scan is negative and that it is important to do this procedure as soon as possible.[7]

Under the circumstances of this case, Dr. Patel, as the ER physician who first saw the decedent (and saw her at her most acute stage), should have either done the lumbar puncture or had it done immediately.[8] When he handed her care over to Dr. DellaValle and

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[5] See, e.g., Testimony of Plaintiff's Expert Jonathan Edlow, M.D., Doc. 182 at 105-06, 128; Testimony of Plaintiff's Expert Christopher S. Ogilvy, M.D., Doc. 193 at 46; Testimony of Plaintiff's Expert James J. Corbett, M.D., Doc. 198 at 17; Testimony of Defendant's Expert Dean Dobkin, M.D., Doc. 186 at 44. 60-61.

[6] See, e.g., Testimony of Plaintiff's Expert Christopher S. Ogilvy, M.D., Doc. 193 at 63-64; Testimony of Plaintiff's Expert James J. Corbett, M.D., Doc. 198 at 17; supra n.3.

[7] See, e.g., Testimony of Plaintiff's Expert Jonathan Edlow, M.D., Doc. 182 at 119, 123; Testimony of Plaintiff's Expert Christopher S. Ogilvy, M.D., Doc. 193 at 47, 69, 107; Testimony of Plaintiff's Expert James J. Corbett, M.D., Doc. 198 at 17, 22; Testimony of Defendant's Expert Dean Dobkin, M.D., Doc. 186 at 31, 89-92, 96.

[8] See, e.g., Testimony of Plaintiff's Expert Jonathan Edlow, M.D., Doc. 182 at 112, 119, 121, 174; Testimony of Plaintiff's

Dr. Dhaduk he should have communicated to them that he was suspicious of SAH, so they would have done the lumbar puncture immediately.[9] The very least he should have done was to clearly and directly tell the physician to whom he referred Brenda Testa that, because of the constellation of her symptoms, he was concerned about serious brain involvement and felt a lumbar puncture should be done to address the most dangerous of his concerns.[10] By his own admission, Dr. Patel did none of these things.[11]

Several experts further opined that Dr. Patel's failure to do an LP or adequately communicate his differential diagnosis and what further testing would be appropriate greatly increased the risk of harm to Brenda Testa.[12]

Expert Christopher S. Ogilvy, M.D., Doc. 193 at 69, 76-77, 99-100, 106; Testimony of Plaintiff's Expert James J. Corbett, M.D., Doc. 198 at 23-24, 28, 29-30, 39, 55.

[9] See, e.g., Testimony of Plaintiff's Expert Jonathan Edlow, M.D., Doc. 182 at 112, 123-24; Testimony of Plaintiff's Expert Christopher S. Ogilvy, M.D., Doc. 193 at 69-70, 76-77, 99-100; Testimony of Plaintiff's Expert James J. Corbett, M.D., Doc. 198 at 24-25, 34, 36, 41, 47-48.

[10] See, e.g., Testimony of Plaintiff's Expert Jonathan Edlow, M.D., Doc. 182 at 110-111, 123-24; Testimony of Plaintiff's Expert Christopher S. Ogilvy, M.D., Doc. 193 at 69-70, 76-77.

[11] Testimony of Dr. Pravinchandra Patel, Doc. 181 at 45, 57-60, 63-64.

[12] See, e.g., Testimony of Plaintiff's Expert Jonathan Edlow, M.D., Doc. 182 at 103, 108, 119-20, 139-41; Testimony of Plaintiff's Expert Christopher S. Ogilvy, M.D., Doc. 193 at 48-49, 73, 80-81, 90-93; Testimony of Plaintiff's Expert James J. Corbett, M.D., Doc. 198 at 25-26, 30-32, 34-35.

We do not ignore the fact that one expert medical witness testified that he did not feel that Dr. Patel deviated from the standard of care or that anything Dr. Patel did, or failed to do, increased the risk of harm to Brenda Testa.[13] But, the overall weight of the evidence requires us to reject that opinion, especially when we consider it in the context of this case.

All experts agreed a lumbar puncture should have been done immediately in this case.[14] However, Dr. Patel testified that he would not do a lumbar puncture himself if he suspected SAH.[15] Rather, he "would prefer [a] neurologist or some more experienced doctor" perform the procedure. (Doc. 181 at 30-31.) Dr. Patel had, at his request, received privileges from his superiors to do lumbar punctures.[16] However, he did not use them in this case. We conclude that, if Dr. Patel did not want to do the LP himself, at the very least he should have clearly communicated his concerns to the other physicians and should have seen that a lumbar puncture was done immediately.

One expert opined that he could not even imagine an ER

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[13] See, e.g., Testimony of Defendant's Expert Dean Dobkin, M.D., Doc. 186 at 42-44, 48-50, 115-16.

[14] See supra nn.7&8.

[15] Testimony of Dr. Pravinchandra Patel, Doc. 181 at 31-32, 64, 90-97.

[16] Testimony of Dr. Pravinchandra Patel, Doc. 181 at 65-66.

physician who would not have done a lumbar puncture.[17] But more importantly, all the experts agreed a lumbar puncture should have been done in this case, and, all but Defendant's expert testified that the physician who first saw the decedent and first saw the classic symptoms of SAH, should have done it or should have seen that it was done immediately.[18] Dr. Patel's failure to do the procedure, have someone else do it immediately, or communicate his differential diagnosis of SAH and the need for further testing was a deviation from the standard of care that is expected of an emergency room physician under the circumstances of this case.[19] This deviation from the standard of care contributed to the decedent's subsequent injuries and death.[20] Therefore, we conclude that Dr. Patel was negligent in his care of Brenda Testa and is liable for the harm which ultimately led to her death.

The testimony also proved that Drs. DellaValle and Dhaduk were negligent and their negligence contributed to the decedent's injuries and death.[21] Because these doctors settled with Plaintiff, here we consider their negligence only in the context of the need

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[17] Testimony of Plaintiff's Expert Jonathan Edlow, M.D., Doc. 182 at 123.

[18] See supra nn.7-10.

[19] See supra nn.5-10, 14-15.

[20] See supra n.12.

[21] See, e.g., Testimony of Plaintiff's Expert Jonathan Edlow, M.D., Doc. 182 at 129-33; Testimony of Plaintiff's Expert Christopher S. Ogilvy, M.D., Doc. 193 at 73.

to apportion Dr. Patel's negligence. We note that it is uncontradicted that Brenda Testa's care was transferred to Dr. DellaValle on December 16, 1998, and to Dr. Dhaduk on December 21, 1998, and that both doctors were presented with a patient who showed classic, or near classic, symptoms of SAH. It is also uncontradicted that neither doctor performed a lumbar puncture on Brenda Testa, nor did either have anyone else perform the procedure. As with our findings as to Dr. Patel, this failure greatly increased the risk of harm to Brenda Testa and was a substantial factor in causing the harm which ultimately led to her death.

b. Apportionment of Negligence

Having concluded that Dr. Patel was negligent, and that his negligence was a substantial factor in bringing about the harm to Brenda Testa, it is necessary to determine if other Defendants were negligent, and if so, to apportion that negligence among offending Defendants. I find that the percentage of causal negligence to be attributed to Dr. Patel as twenty percent and the percentage of causal negligence to be attributed to Dr. DellaValle and Dr. Dhaduk to be forty percent each.

I reached the conclusion on the apportionment of negligence based on the following analysis.

Dr. Patel did not do a lumbar puncture and he did not properly communicate with Dr. DellaValle and Dhaduk to assure that it was done quickly and timely, thus his conduct was negligent and

it contributed to the injuries suffered by the Plaintiff Testa, or at the very least, significantly enhanced the possibilities of her injury and death.

Dr. DellaValle accepted the transfer of the Plaintiff Testa and did not do a lumbar puncture, even though he had access to the records; knew that SAH was in the possible diagnosis; knew of Testa's constellation of symptoms; and knew or should have known that Dr. Patel transferred the Plaintiff Testa to him because of his serious concern about possible brain involvement. As the treating physician, he did not offer the decedent Testa a lumbar puncture or the general care that she was due from him. Thus, he was negligent and his negligence contributed to or significantly enhanced the potential for injury to the decedent Testa.

Likewise, Dr. Dhaduk accepted the decedent Testa as a specialist in neurology. He, too, had access to the records, and knew or should have known that SAH was in the possible diagnosis; he knew of Testa's constellation of symptoms; and knew or should have known that Dr. Patel referred Testa to him because of his serious concerns about brain involvement. As a specialist in neurology, he failed to perform a lumbar puncture and, generally, did not provide Testa with the care due to her from such a specialist. Thus, he was negligent and his negligence contributed to or substantially enhanced the potential for injury to the Plaintiff Testa.

C. Damages

Dr. Andrew G. Verzilli testified as an economic expert on behalf of the Plaintiff. He was not cross examined and there was no economic testimony offered by any of the Defendants.

Dr. Verzilli testified that Brenda Testa was born in March of 1973; that she was married in 1995; and that her son, Randy, Jr., was born in 1996; and that she died in July of 2000.

By using a variety of tables and other information, he testified that persons in a group similar to that of the Decedent, would have a life expectancy of 54 years. He went on to give estimates on Decedent Testa's potential earning capacity, minus her cost of personal maintenance, as well as estimates of the value of her household services, that she would have given to her surviving son had she lived. He stated that his estimates were based on consideration of the person's age, education, particular skills and talents, employment history, intentions of the person, and the general circumstances surrounding the Decedent's life history and personal background. He also stated that in making his estimates he considered the potential of increased productivity during the course of a person's work life experience. He emphasized that all of his figures are estimates, and that when an expert, such as himself, is making such estimates, that he is "talking about a long period of time in the future" and thus no figures are static and are purely estimates based on his own experience in the field of economic prognostication.

While he used a variety of figures, Dr. Verzilli finally

stated, with regard to Decedent Testa's lifetime earning capacity, his range of potential estimates would run from a low of $469,000.00 to a high of $1,312,000.00. With respect to the loss of the value of household services she would have afforded to her minor child, Dr. Verzilli estimated a range that went from a low of $138,000.00 to a high of $231,000.00 estimated over the projected life span of the Decedent and the present age of the minor.

In making an award of damages to the Plaintiff's estate in this case this Court has taken into consideration not only the figures used by Dr. Verzilli, but also a review of the Decedent's lifestyle and family living conditions. That review leads the Court to conclude, in awarding damages in the areas testified to by Dr. Verzilli, the appropriate amount should be in the lower range indicated by the expert witness.

III. CONCLUSION

Based on all of the evidence and testimony presented in this case, and summarized herein, I find the Plaintiff has proved by the fair weight and preponderance of the evidence, that the Dr. Pravinchandra Patel (and, therefore, the United States) was negligent in that he failed to provide the Decedent, Brenda Testa, with the proper medical care she was entitled to, and that his negligence was a substantial factor in bringing about the Decedent, Brenda Testa's, injuries and death, and that the Plaintiff is entitled to appropriate damages. I find, further, that the total appropriate damages in this case has proven to be $1,469,502.89,

and that amount will be awarded to the Plaintiff.

In assessing the overall liability in this case, we have considered the conduct of all Defendants. However, the Verdict, under the law, applies only to Dr. Pravinchandra Patel(and, therefore, the United States), and I find the proportion that is properly attributed to Dr. Pravinchandra Patel is twenty (20) percent. Thus, the attached Verdict will be entered in favor of the Plaintiff. The Court's Findings of Fact, Conclusions of Law and an appropriate Order follow.

S/Richard P. Conaboy

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RICHARD P. CONABOY
United States District Judge

Dated: June 16, 2003

FINDINGS OF FACT

1. Plaintiff Mellon Bank, N.A., is a corporation organized and existing under the laws of Pennsyvania with a place of business located at 8 West Market Street, Wilkes-Barre, Pennsylvania.
2. Plaintiff Mellon Bank, N.A., was duly appointed Administrator of the Estate of Brenda Reed Testa by the Register of Wills of Lackawanna County on August 16, 2000, File No. 35-00-00959.
3. Brenda Testa's date of birth was November 27, 1973. Brenda Testa died on July 22, 2000, at the age of twenty-six.
4. Brenda Testa was married to Randy Testa and had one son, Randy Testa, Jr., whose date of birth was April 26, 1973. Defendant United States stands in the shoes of Dr. Pravinchandra Patel for the purpose of this lawsuit.
5. At all relevant times Dr. Pravinchandra Patel, an employee of the United States of America, was a physician licensed to practice medicine in the Commonwealth of Pennsylvania.
6. On December 16, l998, Brenda Testa was taken via ambulance service to the emergency room of the Barnes-Kasson Hospital.
7. Upon arrival at the hospital, Brenda Testa came under the care and treatment of emergency room physician, Dr. Patel, in the hospital emergency room.
8. Upon assuming care of Brenda Testa, Dr. Patel conducted a history and physical examination.
9. Dr. Patel's examination included a neurological examination.

10. After examination and history, the following signs and symptoms were recorded in Brenda Testa's medical records: severe headache, neck pain, nausea, vomiting, dizziness, confusion, sleepiness and lethargy.
11. On December 16, 1998, Dr. Patel's differential diagnosis included: subarachnoid hemorrhage ("SAH"), other intracranial hemorrhage, tumor, stroke, and migraine.
12. Dr. Patel ordered several tests, including a CT Scan of the head to rule out an intracranial pathology such as tumor, bleeding, stroke and abscess.
13. Dr. Patel recognized that a CT Scan can be negative and yet a person can have SAH.
14. Dr. Patel recognized that if a physician suspects SAH and the CT Scan is negative, either an MRI or a lumbar puncture must then be done.
15. Dr. Patel recognized that a lumbar puncture is an important diagnostic procedure to be used when SAH is suspected.
16. Brenda and Randy Testa told Dr. Patel that Dr.DellaValle was Brenda's primary care physician.
17. Dr. Patel has known and worked with Dr. DellaValle for fourteen years.
18. Dr. Patel contacted Dr. James DellaValle and informed Dr. DellaValle that Brenda Testa was in the Barnes-Kasson emergency room with a severe headache and syncope (loss of consciousness).

19. When he heard that Brenda Testa was in the emergency room with a headache, Dr. DellaValle also included SAH in his differential diagnoses of Testa's condition.

20. Dr. Patel also told Dr. DellaValle that a CT scan of the brain was ordered and that they would see what the report shows.

21. Dr. Patel did not tell Dr. DellaValle that SAH was within his differential diagnosis.

22. Dr. Patel did not tell Dr. DellaValle that, if the CT Scan were negative, he would still suspect SAH.

23. Dr. Patel did not tell Dr. DellaValle that, if the CT Scan were negative, a lumbar puncture or further testing should be done to rule out SAH.

24. Dr. Patel left the emergency room before the results of the CT Scan were back.

25. Dr. DellaValle told Dr. Patel that the nurses should call Dr. DellaValle when the test results were in and he, Dr. DellaValle, would come to the hospital and decide whether to admit Brenda.

26. Brenda Testa's medical care was transferred from Dr. Patel to Dr. DellaValle at the time of the phone conversation between the two physicians.

27. On December 16, 1998, Dr. DellaValle had access to the medical records, Dr. Patel, and the hospital nurses involved with Testa's care.

28. Dr. DellaValle accepted the transfer of Brenda Testa's medical care and treatment.
29. Dr. DellaValle took a history from Brenda Testa and performed a physical on her.
30. After he took Brenda Testa's history and conducted the physical, Dr. DellaValle admitted her.
31. Dr. DellaValle did not perform a lumbar puncture when he learned that the CT Scan was negative.
32. Dr. Patel acknowledged that, by not doing a lumbar puncture, the patient was at an increased risk that SAH would be missed.
33. Dr. DellaValle diagnosed Brenda Testa as having a migraine with a secondary diagnoses being hypertension and a skin irritation on her left arm.
34. Dr. DellaValle discharged Brenda Testa from the hospital on December 17, 1998.
35. On December 21, 1998, Brenda Testa returned to the Barnes-Kasson Hospital Emergency Room complaining of headache, posterior neck pain, nausea, dizziness and near syncope.
36. On December 21, 1998, Dr. Patel conducted a history and physical, reviewed the chart of Brenda Testa from December 16, 1998, and ordered a CT Scan of her neck and head.
37. Dr. Patel still included intracranial hemorrhage, abscess, stroke and tumor, within his differential diagnoses.
38. On December 21, 1998, Dr. Patel was more alarmed and more concerned about Brenda Testa’s condition than he had been on

December 16, 1998.

39. The CT Scan results were negative on December 21, 1998.

40. Dr. Patel did not do a lumbar puncture on Brenda Testa after he learned of the negative CT Scan results.

41. Dr. Patel has received medical training on how to perform lumbar punctures and knows how to perform the procedure.

42. Dr. Patel has privileges at Barnes-Kasson to perform lumbar punctures.

43. Dr. Patel performs lumbar punctures in emergent cases such as in suspected cases of meningitis; he does not perform a lumbar puncture if he suspects SAH and instead refers the patient to another doctor.

44. Dr. Patel has performed approximately five to six lumbar punctures since 1985; Dr. Patel performed approximately one hundred lumbar punctures during his internship.

45. Dr. Patel did not attempt to have anyone else come to the Barnes-Kasson emergency room to do a lumbar puncture on December 21, 1998.

46. Upon learning of the CT Scan results, Dr. Patel called a nuerologist, Vhithalbhai Dhaduk, M.D., requesting that Dr. Dhaduk see Brenda Testa as soon as possible.

47. Dr. Patel told Dr. Dhaduk about Brenda Testa’s symptoms in general terms.

48. Dr. Patel did not tell Dr. Dhaduk that SAH was within his differential diagnosis.

49. Dr. Patel did not tell Dr. Dhaduk that he thought Brenda Testa needed to have a lumbar puncture as soon as possible.
50. Dr. Dhaduk agreed to see Brenda Testa in his office in Dunmore, Pennsylvania, on December 21, 1998, requesting that she bring all available records and the CT Scan pictures with her.
51. Brenda Testa was not given her records from December 16 and December 17, 1998, to take with her to Dr. Dhaduk's office.
52. SAH was within Dr. Dhaduk's differential diagnosis.
53. Dr. Dhaduk diagnosed Brenda Testa with status migrainosis, hypertenseion and secondary frustration.
54. Following this diagnosis, Dr. Dhaduk was still suspicious of a bleed or some other serious condition in Brenda Testa's brain.
55. Because of Dr. Dhaduk's concern, he considered that an MRI and (if that did not show anything) a lumbar puncture should be done as soon as possible.
56. Dr. Dhaduk's notes reflect that an MRI should be done at some point in time.
57. Dr. Dhaduk did not do a lumbar puncture on Brenda Testa on December 21, 1998.
58. Dr. Dhaduk gave Brenda Testa a prescription for an MRI on December 21, 1998, without notation that it was to be done as soon as possible.
59. Defendant's expert, Dr. Dobkin, testified that a lumbar puncture was not contraindicated on December 16 or December

21, 1998.

60. On January 2, 1999, Brenda Testa was again rushed to the emergency room at Barnes-Kasson at which time she was diagnosed as having suffered an acute intracranial hemorrhage.

61. Brenda Testa was transferred to Wilson Memorial Hospital and was treated for a Grade IV rupture of a cerbral aneurysm of the right opthalmic artery.

62. Brenda Testa underwent surgery on January 3, 1999, and she remained an inpatient until February 24, 1999.

63. The Decedent, Brenda Testa, remained hospitalized at various hospitals, including Moss Rehabilitation, the Drucker Traumatic Brain Injury Unit in Philadelphia, Pennsylvania, Community Medical Center in Scranton, Pennsylvania, and Allied Medical Services in Scranton, Pennsylvania, until the date of her death on July 22, 2000.

64. During the course of her treatment at these various hospitals, the Decedent, Brenda Testa, remained totally disabled and bedridden, and suffered from many complications and medical conditions, all of which flowed from her original cerebral aneurism.

65. During her course of treatment in these various hospitals, Brenda Testa underwent significant and extensive treatment, all of which caused her considerable pain and suffering. She was quadriplegic and could not communicate, except by nodding or moving her head.

66. The Decendant, Brenda Testa, left surviving her husband, Randy Testa, Sr., whom she married on November 25, 1995, and a son, Randy Testa, Jr., who was born on April 24, 1996.

67. The amount of medical bills incurred for the care and treatment of the Decedent, Brenda Testa, amounted to $338,348.89.

68. The funeral expenses incurred and paid regarding the Decedent, Brenda Testa, amounted to $6,154.00.

69. Expert testimony estimated the Decedent, Brenda Testa's, potential loss of earning capacity between $469,000.00 and $1,312,000.00, based on an estimate of the value of the Decedent's work life capacity and work life experience.

70. The economic expert also provided a value on the estimated loss of household services that would have been rendered to the Decedent's son, Randy Testa, Jr., over the course of her normal life expectancy at a low figure of $138,000.00 and a high estimate of $231,000.00.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of this case against the United States pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680.

2. Under the FTCA, the law governing medical malpractice in Pennsylvania, is applicable in this case.

3. The conduct or acts of the physician/defendants in this case

deviated from good and acceptable medical standards and that deviation from those standards was the proximate cause of the harm suffered by the Decedent, Brenda Testa.

4. The Decedent, Brenda Testa, at relevant times, was the patient of Dr. Patel, Dr. DellaValle, and Dr. Dhaduk, and was entitled to receive from those physicians the kind of care represented by good and accepted medical standards, as testified to by the experts in this case.

5. At all times relevant, Dr. Patel was an agent, servant, workman and employee of the Health Center acting within the course and scope of his agency and/or employment.

6. Any liability on the part of Dr. Patel and the Health Center is the responsibility of the United States of America pursuant to the Federal Tort Claims Act.

7. The standard of care for patients who present to a doctor with a reasonable suspicion of SAH, is to perform a CT Scan and, if negative, perform a lumbar puncture.

8. The signs and symptoms of SAH include severe headache, neck pain, nausea, vomiting, dizziness, brief loss of consciousness, confusion, sleepiness and lethargy, and Brenda exhibited all of these signs and symptoms on December 16, 1998 and December 21, 1998.

9. Dr. Patel was negligent in that he failed to take proper cognizance of Brenda’s signs, symptoms and history.

10. Dr. Patel was negligent in that he failed to properly and/or

timely diagnose and/or treat Brenda.

11. Dr. Patel, on December 16, 1998, was negligent in that he failed to order, recommend, perform or arrange for the performance of a lumbar puncture during Brenda’s visit to the Emergency Room on that day.

12. Dr. Patel, on December 21, 1998, was negligent in that he failed to order, recommend, perform or arrange for the performance of a lumbar puncture during Brenda’s visit to the Emergency Room on that day.

13. Dr. Patel was negligent for not communicating with Dr. DellaValle on December 16, 1998 that if the CT was negative, that he, Dr. Patel, would still be suspecting that Brenda has a subarachnoid hemorrhage, and therefore advising Dr. DellaValle that a lumbar puncture was in order.

14. Dr. Patel was negligent for not communicating with Dr. Dhaduk on December 21, 1998, that he, Dr. Patel, was more alarmed, and more concerned, in view of the fact that Brenda was back in the hospital a second time, and that even though the CT scans of the brain were negative, that Dr. Patel had not ruled out a subarachnoid hemorrhage, and therefore, a lumbar puncture was required.

15. The negligence of Dr. Patel was a substantial factor in causing harm to Brenda Testa and increased the risk of harm to Brenda Testa.

16. The negligence of Drs. DellaValle and Dhaduk was also a

substantial factor in causing the harm to Brenda Testa and increased the risk of harm to Brenda Testa and brought about her injuries and death.

17. Dr. Patel’s proportionate share of the causal negligence is 20%.

18. The amount of medical bills that were paid for the care and treatment of Brenda Testa is $338,348.89.

19. The amount set forth in the preceding paragraph is fair and reasonable and said expenses were due to the negligence of the federal government through its agent, Dr. Patel.

20. Damages to Brenda Testa’s estate include funeral expenses incurred which were $6,154.00.

21. Damages to Brenda Testa’s estate for lost earnings and impairment of earning capacity is $400,000.00.

22. Damages to Brenda Testa’s estate for the loss of the value of the household services for Randy Testa, Jr., up until the time he would be eighteen years of age is $125,000.00.

23. Compensation awarded for Brenda Testa’s physical pain and suffering is $200,000.00.

24. Compensation awarded for Brenda Testa’s emotional pain and medical anguish is $125,000.00.

25. Compensation awarded for Brenda Testa’s loss of enjoyment of life is $125,000.00.

26. Compensation awarded for Brenda Testa’s embarrassment and humiliation is $50,000.00.

27. Compensation awarded for Brenda Testa’s disfigurement is $50,000.00.

28. Compensation awarded for Randy Testa, Jr., loss of guidance, tutelage and moral upbringing which his mother, Brenda Testa, would have provided to him had she lived is $50,000.00.

29. The total damages awarded to the Plaintiff is $1,469,502.89.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MELLON BANK, N.A., Administrator of the Estate of BRENDA REED TESTA, Deceased,	CIVIL ACTION NO. 3:01-CV-1503
Plaintiff,	(JUDGE CONABOY)
v.	
UNITED STATES OF AMERICA, BARNES-KASSON COUNTY HOSPITAL, PROFESSIONAL NEUROLOGICAL ASSOCIATES, P.C., VITHALBHAI D. DHADUK, M.D., JAMES DELLAVALLE, M.D.,	
Defendants.	

ORDER

NOW, THIS 16TH DAY OF JUNE, 2003, IT IS HEREBY ORDERED that Judgment is entered in favor of the Plaintiff and against the Defendant, Dr. Pravinchandra Patel, and the United States of American, in conformity with the Court Verdict slip attached hereto and made a part hereof, in the amount of $293,390.57

The Clerk is directed to close this case.

S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MELLON BANK, N.A. Administrator of the Estate of BRENDA REED TESTA, deceased	:	
Plaintiff	:	
vs.	:	CIVIL ACTION NO. 3:01-CV-1503
UNITED STATES OF AMERICA BARNES-KASSON COUNTY HOSPITAL AND SKILLED NURSING FACILITY PROFESSIONAL NEUROLOGICAL ASSOCIATES, P.C., VITHALBHAI D. DHADUK, M..D., JAMES DELLAVALLE, M.D., AND BARNES-KASSON COUNTY HOSPITAL	:	(JUDGE CONABOY)
Defendants	:	

COURT VERDICT

1. Do you find that any of the following Doctors were negligent?

Pravinchandra Patel, M.D. _____X___Yes _____No

James DellaValle, M.D. _____X____Yes _____No

Vithalbhai Dhaduk, M.D. _____X____Yes _____No

If you answered Question 1 “yes” as to any one or more of the Doctors, proceed to Question 2.

If you answered Question 1 “no” as to all Doctors, the Plaintiff cannot recover and you should return to the Courtroom.

2. Was the negligence of those Doctors you have found to be negligent a substantial factor in bringing about the harm to Brenda Testa?

Pravinchandra Patel, M.D. _____X___Yes _____No

James DellaValle, M.D. _____X____Yes _____No

Vithalbhai Dhaduk, M.D. _____X____Yes _____No

If you answered Question 2 "yes" as to any one or more of the Doctors, proceed to Question 3.

If you have answered 2 "no" as to all Doctors you have found to be negligent, the Plaintiff cannot recover and you should return to the Courtroom.

3. Taking the combined negligence that was a substantial factor in bringing about the harm to Brenda Testa , as 100%, what percentage of that causal negligence is attributable to each of the Doctors you have found causally negligent?

Percentage of causal negligence attributable:
to Dr. Pravinchandra Patel (Answer only if you have answered
"Yes" to Question 1 and 2 for Dr. Pravinchandra Patel) _____20___%

Percentage of causal negligence attributable:
to Dr. James DellaValle (Answer only if you have answered
"Yes" to Questions 1 and 2 for Dr. James DellaValle). _____40___%

Percentage of causal negligence attributable:
to Dr. Vithalbhai Dhaduk (Answer only if you have answered
"Yes" to Questions and 2 for Dr. Vithalbhai Dhaduk) _____40___%

Total 100 %

4. State the amount of damages sustained by the Estate of Brenda Testa for the following categories:

Wrongful Death:

A.	Medical expenses	$338,348.89
B.	Funeral expenses	$ 6,154.00
C.	Lost household services	$125,000.00
D.	Loss of the guidance, tutelage and	$ 50,000.00
TOTAL WRONGFUL DEATH DAMAGES		$519,502.89

Survival Action:

A.	Loss of earnings/impairment of earning capacity	$400,000.00
B.	Physical pain and suffering	$200,000.00
C.	Emotional suffering and mental anguish	$125,000.00
D.	Disfigurement	$ 50,000.00
E.	Embarrassment and humiliation	$ 50,000.00
F.	Loss of pleasures and enjoyment of life	$125,000.00
TOTAL SURVIVAL ACTION DAMAGES		$950,000.00
	TOTAL DAMAGES	$1,469,502.89

BY__S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge

DATE: June 16, 2003