

## Malpractice Suit Settles after Judge Refuses to Dismiss Punitive Damages Claim in Tragic Case Alleging Multiple Hospital Errors

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New York firefighter Kevin Deane was skiing in lovely Vail, Colorado on April 1, 2007 when he fell and suffered a **spinal cord injury** requiring cervical **discectomy and fusion surgery** that was performed there without complication. When he flew back to New York City to undergo rehabilitation at Mount Sinai Hospital on April 6th, tragedy ensued. **Kevin was admitted to the hospital that afternoon (a Friday) and he died about 60 hours later** at 2:30 a.m. on April 9th (a Monday). He was 39 years old.

The cause of death was hemorrhage and aspiration of blood caused by the erosion of the surgically implanted hardware into the esophagus.

**Here is what the hardware in the neck looks like after fusion surgery:**



Claiming that this was a preventable death, a wrongful death lawsuit was filed against the hospital seeking not only damages for negligence but also punitive damages. **It's extremely rare that a punitive damages claim (in which plaintiffs must prove reckless indifference) is even allowed to be considered by a jury in a medical malpractice case.** And that's what the hospital argued here in making a motion to dismiss that part of the suit; however, the judge disagreed - strongly - and issued a decision released this week in **Deane v. Mount Sinai Hospital**. **The punitive damages claim was allowed to proceed and be considered by the jury.**

**The judge stated that the hospital appeared to have made the following tragic mistakes:**

- after his admission, no attending physician ever saw Mr. Deane during the 2 1/2 days at the hospital
- the weekend on call attending physician never showed up because he didn't get a hospital email advising him he was on call and no one followed up to tell him
- the other on call attending was unaware that her colleague had failed to show up for work and unaware that half of the 100 rehab patients (including Kevin Deane) were not under the care of an attending

**It angered the judge that Mr. Deane was, as she described it, effectively abandoned for over two days prior to his death** and that no one ever even tried to tell hospital administration that the on call attending was missing. This appeared to constitute gross negligence, recklessness and gross indifference to patient care as did the hospital's lack of a system in place that would alert

an administrator when an on call attending failed to arrive. **Although this was merely a pre-trial decision on a motion to have the punitive damage claim dismissed, the judge's strong language all but held as a matter of law that the hospital was reckless.**

The decision was rendered two weeks before the trial date. Not surprisingly, **the case settled (for an undisclosed amount) before the jury was picked.**

#### **Inside Information:**

- Mr. Deane was unmarried and without children and therefore the damages that could have been awarded in this case were pretty much limited to those for his pre-death conscious pain and suffering during his 2 1/2 days at the hospital [the length of time a decedent suffers before death will greatly affect this element of damages, as we discussed, [here](#) and [here](#)]
- punitive damages against an employer (here, the hospital) for acts of its employees (here, the medical staff) are imposed **only where management has authorized or participated** in the reckless conduct - in this case plaintiff would have claimed that management's inaction regarding the faulty email notification system warranted a punitive sanction

Even though the judge felt there was recklessness in this case, it would have been up to the jury to make that finding, or not. And because punitive damages are so rarely awarded in New York medical malpractice cases, and the standard of proof is so high and strict, there may have been a successful defense appeal of such an award had it been made.

One thing is perfectly clear, though: this was a tragic death and no amount of money can ever rectify the loss to the family of this young man.