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Surgery patient sues doctor, hospital, claiming wrong kidney removed

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By LORA HINES
The Press-Enterprise

A retired assembly line worker is suing a Riverside hospital and doctor, claiming that they removed his healthy kidney instead of the diseased one. He has to endure dialysis every three days to stay alive.

On July 14, Dr. H. Erik Wahlstrom, who was performing surgery at Parkview Community Hospital Medical Center, was to remove Francisco Torres' left kidney, Torres' lawsuit states. Instead, Wahlstrom removed Torres' healthy right kidney before realizing the mistake, said Shirley Watkins, Torres' Los Angeles attorney.

Shortly after surgery, Wahlstrom told Torres' daughter what he had done, Watkins said. Torres said through an interpreter that Wahlstrom apologized to him. But Torres, who does not speak or read English, said he was still groggy from the surgery and has little recollection of what was said.

Story continues below



"I am very upset because now I am not going to have a normal life," Torres said Wednesday. "Hospitals need to be very careful in following procedures and instructions. A simple apology doesn't work."

Doctors discovered what they believed to be a cancerous mass on Torres' left kidney, Watkins said. It was removed about a month after Torres' right kidney was mistakenly removed.

Kidneys work as the body's filtration system, removing waste from the blood. People typically have two kidneys but can live with one.

Hospital officials have denied responsibility. Neither Wahlstrom nor representatives from Parkview Community Hospital returned telephone calls made Tuesday and Wednesday.

On Wednesday, state regulators confirmed they are investigating a complaint about a surgery performed on a patient's wrong body part at Parkview Community Hospital, but they declined to release details. They would not say who made the complaint about the incident, which medical experts call wrong-site surgeries.

Previous lawsuit

In February, Wahlstrom settled a previous malpractice lawsuit, a result of an arbitration agreement, for almost \$2 million, according to records from the Medical Board of California and San Bernardino County Superior Court.

In 2005, a kidney transplant he performed became infected, causing the patient to reject the organ and require its removal, court documents state.

Torres' lawsuit, filed Friday in Riverside County Superior Court, accuses the hospital and Wahlstrom of malpractice, battery and failure to disclose Wahlstrom's record with the Medical Board of California. It does not indicate how much money Watkins is seeking for Torres, who she said is not able to live alone.

Before surgery, Torres, 72, said he lived independently in his own apartment and enjoyed walking and working out at a health club. He expected a full recovery after surgery.

Torres has been in a Riverside rehabilitation center since he was discharged from the hospital last month. It's unclear if he can return home.

The state Medical Board lists Wahlstrom as having a Redlands address and a valid medical license. He still is on Parkview Community Hospital's medical staff, according to the hospital's Web site.

Wahlstrom founded the Southern California Transplantation Institute at Riverside Community Hospital, where he practices.

Hospital spokeswoman Marlene Burnett, contacted in July after Torres' surgery, repeatedly declined to answer questions about what happened.

Ralph Montano, spokesman for the California Department of Public Health, said Wednesday that this is the first wrong-site surgery complaint to be filed against Parkview Community Hospital.

The department started documenting such incidents on July 1, 2007, when the state enacted a law to prevent them.

Jack Cheevers, spokesman for the Center for Medicare & Medicaid Services' San Francisco office, said his agency also received the complaint about the hospital and authorized an inspection. Hospitals rely heavily on Medicare & Medicaid because the agency pays for a significant portion of patient care.

'Never Events'

Story continues below



David Bauman / The Press-Enterprise Attorney Shirley Watkins, above, with Francisco Torres, says the doctor told Torres' daughter after surgery that the wrong kidney was removed and also apologized to Torres.

Health care officials and evaluators call wrong-site, wrong-procedure and wrong-patient surgeries "never events" because they never are supposed to happen. As of June, 837 wrong-site surgeries had been reported to The Joint Commission, the nation's leading health care facility evaluator.

Parkview Community Hospital is among the 16,000 health care organizations and programs accredited and certified by The Joint Commission.

Dr. Robert Wise, vice president of the commission's standards division, said Wednesday he didn't know details about Torres' complaint or whether it had been reported to the commission.

"We would view this as a pretty serious event," he said, adding that a medical staff "should never be taking out the wrong kidney.

"I'm sure everyone is feeling very badly about this," Wise said.

Accredited hospitals, including Parkview Community Hospital, are supposed to follow commission standards to prevent wrong-site surgeries, he said, including a pre-operation verification process.

The surgical area is supposed to be marked, and everyone involved in the surgery must "huddle" and unanimously agree with what is going to happen, Wise said.

"If taken seriously, it should be quite effective," he said.

Despite protocol, the commission receives about 50 reports per month about "never events," Wise said.

It is not always visibly obvious that an organ is diseased, Wise said. Once a suspected diseased kidney is removed, it cannot not be put back into a patient, he said. Typically, a removed kidney immediately would be taken to a pathology department for analysis, Wise said.

Torres said an ambulance took him to Parkview on June 27 after he started having trouble breathing, he said. He spoke Wednesday through interpreter Martha Garcia, a paralegal working on Torres' lawsuit.

Torres had been at the hospital several days when doctors told him they found a cancerous mass on one of his kidneys and that it needed to be removed. They repeatedly noted in his medical chart that it was his left kidney.

Watkins said she has not yet determined that the cancer was confirmed.

'Chart was Clear'

"The chart was absolutely clear," Watkins said. "This was his left kidney."

Then, one day before surgery, a hospital nurse and Wahlstrom both wrote notes in Torres' chart, indicating that his right kidney was to be removed, according to medical records supplied by Watkins.

"The 'L' turned into an 'R,' " Watkins said. "Everything before that says 'left.' I cannot accept that the hospital is not responsible. What kind of safeguards are in place to make sure that doesn't happen?"

It's unclear whether the hospital practices a pre-surgery protocol and whether the medical staff followed it before Torres' surgery, Watkins said.

Torres and his son, Jorge Torres, said they did not know which kidney was to be removed and did not select Wahlstrom to perform the surgery. Torres said he would not have allowed Wahlstrom to operate if he had known about Wahlstrom's 2005 malpractice complaint.

"I trusted the hospital," Francisco Torres said. "I thought they were presenting the best doctors possible."

Reach Lora Hines at 951-368-9444 or lhines@PE.com
