

[Harper](#)

Intubation Cases : Jan. '98 thru Dec. '98

B.S. Number C:98:05556

Court Nucoaco County District Court 319th

Issue # S02:17

Cause # 97:183:G

Week of 07/27/1998

Judge Max Bennett

Style Stan Harper, Individually and as representative of the Estate of Nikki Harper, deceased and Judy Johnson, Individually and Brian Harper, Individually and Leroy Haught, Intervenor vs. Debra D. Tabor, M.D.; Gulfshore Anesthesiology

Attorneys

P-J. Thomas Rhodes, III & Robert E. Bzezinski of Lyons & Rhodes, San Antonio;

IP - David T. Marks and Henry P. Giessel of The Marks Firm, Houston;

D - Rosemary Holland & Laura Cavaretta of Russell & Holland, San Antonio; Donna M. Aversano, Houston (Dr. Tabor's personal attorney);

D - Steven M. Gonzalez of Marshall & Gonzalez, McAllen.

Type of Claim Medical Malpractice/Wrongful Death -- Nikki Harper, a 44-year-old housewife, had a hysterectomy in August. The hysterectomy went fine, but she kept throwing blood clots, not an uncommon occurrence. The blood clots were treated for several months with medication. She subsequently developed a large clot in her right lung. She elected to have it surgically removed because it was beginning to impact her ability to exercise and do other similar activities. She had the surgery in November. Dr. Tabor had placed the endotracheal tube in the patient's esophagus. Right after the intubation, something happened and she "crashed". Dr. Sergio Tavares, the surgeon, placed her on a bypass machine. She "pinked up", but they couldn't get her off the bypass and the surgeon allegedly became angry, threw down his instrument and requested that the patient be reintubated. Dr. Tabor reintubated Mrs. Harper and she started breathing, but by then she had gone about 30 minutes without oxygen and was severely brain damaged. She died four days later after the family removed her from life support. The body was cremated without an autopsy. Plaintiffs (Stan Harper, husband; Judy Johnson and Brian Harper, children; and Leroy Haught, decedent's father) alleged improper intubation. Defendants contended the tube was placed properly - maintained there were signs and symptoms that assured Dr. Tabor that she placed it properly, e.g., she could see the chest moving, there was mist in the tube and she had CO² on the monitor. Plaintiffs argued that all these signs and symptoms were unreliable. There were approx. \$22,000 in medical specials.

Expert Witnesses Plaintiff - Robert Kirby, M.D. Professor of Anesthesiology, University of Florida, Emilion Laboto, M.D., Cardiac Anesthesiology, University of Florida (deposition); Sergio Tavares, M.D., Cardiovascular Surgery, Corpus Christi, treater; Herbert Madallin, M.D., Cardiovascular Surgery, treater, (assistant surgeon); Susan Hoelsher, R.N., Operatin Room Nurse, Corpus Christi; Robert Bux, M.D., Pathology, deputy medical examiner, San Antonio (deposition); Defendant - Noel Lawson, M.D., Chairman of Anesthesiology and Critical Care, University of Missouri and Stephen Cohen, M.D., Hematology, Oncology, University of Texas at San Antonio.

Verdict Jury found that Dr. Tabor was negligent, his negligence was the proximate cause of Mrs. Harper's death and he was in the course and scope of his employment at the time. Awarded: \$6,000,00 to Standard Harper; \$1,500,000 to Judy Johnson; \$1,500,000 to Brian Harper; \$3,000,000 to Leroy Haught; \$100,000 to Estate for medical expenses; \$10,000 to Estate for funeral expenses — \$12,110,000 Total Award. 10:2 (7 day trial) Pre-trial demand; \$2,000,000 (\$1,000,000 policy limit from each carrier) Asked of jury: \$1,000,000 for each party; Pre-trial offer: None; Dr. Tabor's carrier; Preferred Physicians Gulfshore carrier: The Doctor's Company.