



Cosmetic surgeon loses \$1.6 million judgment

The family of a woman who died after liposuction sued Dr. Barry Miller

By Rod Ohira
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A commercial arbitration panel has awarded a \$1.6 million malpractice judgment to the family of a woman who died last year from a liposuction procedure performed by Dr. Barry Miller.

"It will provide a better education and better life for our sons (Michael, 15, and Nicholas, 6), but no amount of money is ever going to bring my wife and their mother back," retired Air Force Lt. Col. Joseph Sousaris said yesterday in a telephone interview from his Ohio home.

"This didn't have to happen," he added. "It was pure negligence, and there's no doubt in my mind where the fault lies."

Rosemary Sousaris, 48, died Jan. 30, 1996, 25 days after Miller liposuctioned about seven pounds of fat from her body at a cost of \$12,341.

During the procedure, however, Miller penetrated Sousaris' abdominal wall with the liposuction instrument, says Richard Fried Jr., her family's attorney.

Dr. Paul Cordts, a staff surgeon at Tripler Army Medical Center, testified in a prehearing brief that the suction caused Sousaris' small intestine to follow and stick to the instrument as it was withdrawn through the abdominal incision.

Miller and one of his Center for Cosmetic Surgery employees, Marty Reed, did a fourth-day checkup on Sousaris in her Hale Koa Hotel room on Jan. 9.

In his medical notes on Sousaris for that date, Miller states: "xxx apparently had loose stool

or diarrhea in her sleep. Told Marty this had happened before with prior surgery. Doing fairly well but not able to care for herself well."

"... Incision shows a bit of purulence (puss)."

Three days later, assistant Hale Koa Hotel manager Warren Kundis reported that there was a foul odor in Sousaris' room and told Miller she was not doing well.

Sousaris took a cab to Miller's office that day and was later admitted to Tripler Hospital, where she informed doctors that stool was leaking from her abdominal incision "for the past five days."

On successive days, doctors performed an exploratory laparotomy, excision of the perforated small bowel, and an appendectomy and plastic-bag closure of the abdomen.

On Jan. 17, Sousaris was transferred to Brooke Medical Center in San Antonio, Texas, where she died 13 days later.

"There's no question, in the opinion of our experts, as well as Rosemary's treating physicians at Tripler and Brooke Army Medical Centers, that the perforation of the bowel, which occurred during the liposuction procedure, and which was compounded by the failure of Dr. Miller to identify and treat it in a timely manner, is the proximate cause of the death of Rosemary Sousaris," Fried said in his prehearing brief.

Reflecting on Miller's Jan. 9 checkup of Sousaris, Fried said yesterday, "Had he caught it then, she was salvageable. By (Jan. 12), she was too far gone."

In a written statement, Miller's attorney Richard Quinn said: "This was a complicated case. The patient never reported any problems to the doctor or her family.... The patient did not die from the liposuction surgery, which is a safe procedure. The patient died in January 1996, almost a month after the liposuction surgery.

"Our experts and the plaintiffs' experts agreed that Dr. Miller did not penetrate the patient's colon. They all agreed that what Mr. Fried alleged was impossible.

"The patient received medical treatment at Tripler Medical Center a week after the liposuction procedure.

"Our experts said that she died because of treatment she received at Tripler, which was described as extraordinarily negligent."

Quinn added that Miller has been practicing in Hawaii nearly 30 years and has performed about 7,000 liposuction procedures with "thousands of happy patients." Miller has never had a malpractice claim before, he added.

Fried said Miller had no malpractice insurance.

Miller also began transferring his assets, including a Ward Avenue condominium and his eighth-floor office in the Bank of America Building at 677 Ala Moana, to a Colorado partnership and Cook Island trust, in which Reed is a trustee, during the arbitration

proceedings last fall, said Fried.

An American Arbitration Association panel was given the case because of a "patient-physician arbitration agreement" that Sousaris signed before Miller performed liposuction.

The panel also agreed that Tripler was not at fault, Fried said.

Sousaris' husband said he regrets not checking out Miller's credentials more thoroughly: "If I knew he didn't have malpractice insurance or that he was not able to perform surgeries at hospitals, I wouldn't have let her go."

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