

# Verdicts & Settlements

## Boy Dies From Stepping On Nail

### Doctors Held Liable For Failing To Address Signs Of Kidney Failure

By Natalie White

**N**athan Swilley was hiding eggs the day before Easter three years ago when the 10-year-old stepped on a nail.

By Mother's Day he was dead.

A Florida jury recently found his doctors negligent for the young boy's death and awarded his mother \$30 million, one of the state's largest wrongful death, medical malpractice verdicts. Christina Marie Wallace sued two pediatricians, claiming they did not follow her son's case closely enough and allowed the antibiotics they prescribed to cause kidney complications that led to his death.

"This was a horrible case that never should have happened," said Wallace's attorney, Anthony Caggiano. "It was a case about basic antibiotic treatment that turned into one of the most egregious cases of malpractice I have ever seen. It's even more frightening because I could see this happening to any mom or dad."

Jurors awarded Wallace \$4 million for past pain and suffering and \$26 million for future pain and suffering.

Drs. Vivek Desai and Ayodeji Otegbeye, who worked with Central Florida Pediatric Intensive Care Specialists in Orlando, prescribed antibiotics to treat Nathan's foot infection. But the doctors failed to warn of potential damage to the child's kidneys, according to Caggiano. Nor did they order blood tests to monitor antibiotic levels and kidney function—and they ignored several warning signs that Nathan was becoming dangerously ill.

Attorneys for the doctors did not return requests for comment on the verdict.

Caggiano said the plaintiff's medical experts explained to the jurors that antibiotics are not always safe.

"I think people are surprised by that, but some of these antibiotics need to be closely monitored or they can cause a lot of harm," Caggiano said.

The most challenging part of the case, he said, was deflecting the defendants' suggestions that the mother herself was at fault in the child's death because she did not make a follow-up appointment for Nathan to see them a week after he was discharged from the hospital and because she took too long to have him readmitted to the hospital.

Caggiano said he handled both defenses by pointing out that the doctors never told Wallace the dangers of the treatment, the warning signs of problems, the need for blood work and close monitoring or of the urgency in readmitting him. In the end, he thinks the jurors experienced greater empathy for the mother than the doctors.

"The defendants tried to blame everyone else but themselves. They tried to blame the mother, the nurses, other doctors," Caggiano said.



**Ten-year-old Nathan Swilley (above) died from stepping on a nail because his doctors failed to warn his parents about the side effects of antibiotics. "It was one of the most egregious cases of malpractice I have ever seen," said Anthony Caggiano (right).**

He said the jurors found no fault on the part of Wallace.

#### A Routine Accident

The day before Easter in 2001 Nathan was hiding eggs in his backyard with his sister when a nail went through his sneaker and into his foot, Caggiano said. His mother cleaned the wound with peroxide but his foot continued to hurt the next day, so Wallace took him to Florida Hospital in Apopka. Medical staff cleaned the wound and sent the boy home, but the foot kept bothering Nathan.

Wallace took her son back to the hospital again. Suspecting an infection, an orthopedic doctor cleaned the wound again and called in Drs. Desai and Otegbeye.

Nathan was admitted to the hospital on April 18 and stayed until April 25. He was released with prescriptions for the antibiotics Gentamicin and Zosyn and the anti-inflammatory drug Motrin.

Medical experts testified that the two antibiotics can be toxic to the kidneys and should be carefully monitored, especially when given together, according to Caggiano.



Motrin can also contribute to toxicity. He said three medical specialists testified that it is the standard of care to obtain blood levels every five to seven days when taking Gentamicin, yet Nathan was released without any orders for blood work.

Wallace gave Nathan the antibiotics at home, using daily intravenous treatments and his condition was being checked every few days by a visiting nurse. However, Wallace testified that she was never told that the drugs could be dangerous.

Eleven days after being released from the hospital, Wallace called the doctors saying Nathan was sick with fever, diarrhea and vomiting. She said Dr. Desai said he probably had the flu and if he wasn't feel-

ing better by the next day for her to call his office.

"It's true she didn't make a follow-up visit appointment within a week, but the doctors never told her it was that important, and ... she was on the phone with them 10 or 11 days after he was discharged, saying he was sick, and they never said they wanted to see him," Caggiano said.

Medical experts testified that Nathan's symptoms should have been a red flag for doctors to immediately test him, since vomiting, fever and diarrhea all contribute to dehydration—and dehydration can contribute to an unsafe level of the antibiotics in a person's bloodstream.

When Nathan wasn't better the next day, Wallace called the office again. She waited all day but no one called her back.

A visiting nurse told Wallace that Nathan needed medical attention. Wallace took him to the Apopka Family Clinic at noon the day after the doctor did not return her call. A clinic doctor called the pediatric specialists, who told the clinic doctor to tell Nathan's mother that the boy should be checked into the hospital that day.

Wallace explained to the healthcare providers at the clinic that she would bring Nathan to be admitted as soon as she could get someone to take care of her other children. When her boyfriend arrived that evening she brought Nathan to the hospital. By then it was 9 p.m.

"Dr. Otegbeye didn't say he should be taken immediately to the hospital, that it was urgent. He didn't bother to talk to the mom to tell her that it was urgent. He didn't tell the clinic that it was urgent," Caggiano said.

When Nathan arrived at the hospital, blood work was ordered on a "stat" basis. The results should have been back within an hour, yet Dr. Otegbeye didn't bother to check them. After four hours a nurse called him at home to say that the results showed Nathan was in acute kidney failure.

Nathan developed dialysis disequilibrium syndrome, which caused his brain to swell and was put on life support.

On Mother's Day, May 13, 2001, Nathan's mother agreed to allow the hospital to remove her son from life support. He died later that day.

**Plaintiff's Attorney:** Anthony J. Caggiano of Ward & Caggiano in Orlando, Fla.

**Defense Attorneys:** Vance Dawson and Juan Ruiz of Rissman, Weisberg, Barrett, Hurt, Donahue & McLain in Orlando, Fla.

**The Case:** *Wallace v. Desai*; August 9, 2004; Circuit Court, Orange County, Fla.; Judge Donald Grincewicz.

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