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## Sample Case Report

### Medical Malpractice

#### Ignored infection traveled to pituitary gland, patient claimed

<b>Verdict:</b>	(P) \$8,600,000.00
<b>Case Type:</b>	Misdiagnosis, Medical Malpractice - Failure to Treat, Medical Malpractice - Failure to Refer, Medical Malpractice - Infection Control, Medical Malpractice - Ear, Nose & Throat
<b>Case Name:</b>	Lori Mandel v. Kenneth Brookler, M.D., No. 110504/09
<b>Venue:</b>	New York Supreme, NY
<b>Judge:</b>	Eileen A. Rakower
<b>Date:</b>	05-31-2012

#### Plaintiff(s):

##### Attorney(s):

Howard G. Frederick; Silbowitz Garafola Silbowitz Schatz & Frederick, L.L.P.; New York, NY, for Lori Mandel

##### Expert(s):

Gerard Gianoli M.D.; Neurology; Baton Rouge, LA called by: Howard Frederick  
 Sujana Chandrasekhar M.D.; Neurology; New York, NY called by: Howard Frederick  
 Dennis Gage M.D.; Endocrinology; New York, NY called by: Howard Frederick  
 Steven Schaefer M.D.; Otolaryngology; New York, NY called by: Howard Frederick

#### Defendant(s):

##### Attorney(s):

Alfred P. Vigorito; Bartlett, McDonough & Monaghan, LLP; White Plains, NY, for Kenneth Brookler

##### Expert(s):

Michael Setzen M.D.; Otolaryngology; Great Neck, NY called by: Alfred Vigorito  
 Irwin Klein M.D.; Endocrinology; New Hyde Park, NY called by: Alfred Vigorito

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#### Insurers:

Medical Liability Mutual Insurance Co.

#### Facts:

On June 13, 2006, plaintiff Lori Mandel, an office's manager in her mid-50s, was examined by an otolaryngologist, Dr. Kenneth Brookler. Mandel reported worsening of long-standing symptoms that included headaches and vertigo. A test revealed that Mandel was experiencing impairment of her audition, and Brookler opined that Mandel's symptoms were a result of otosclerosis: abnormal growth of bone of the middle region of an ear.

During the ensuing two years, Brookler rendered conservative treatment that was intended to relieve the effects of otosclerosis. The treatment concluded in October 2008. Another doctor subsequently determined that Mandel was suffering an infection of her pituitary gland. The infection had originated in Mandel's sphenoidal sinuses, which are located beneath the pituitary gland. Mandel claimed that the infection was a chronic condition that Brookler had ignored, and she contended that its proliferation caused diabetes insipidus.

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Mandel sued Brookler. She alleged that Brookler failed to treat her infection. She further alleged that his failure constituted malpractice.

Mandel's counsel claimed that Brookler knew that Mandel suffered chronic sinusitis, which is inflammation that is caused by an infection of a sinus, but that Brookler erroneously believed that Mandel's sinusitis was not the cause of her headaches and vertigo. He contended that the symptoms persisted throughout Brookler's treatment of Mandel, but that Brookler did not reconsider the infection's involvement. He claimed that Brookler should have administered antibiotics. He contended that a promptly administered antibiotic could have resolved the infection. Alternatively, he suggested that Mandel should have been referred to a specialist.

Mandel's counsel further claimed that Brookler misdiagnosed otosclerosis. Mandel's expert neurologist noted that otosclerosis can impair a person's audition, but she opined that the impairment typically involves lower frequencies of sound. She contended that tests did not reveal that Mandel experienced impairment of her reception of low frequencies of sound.

The defense's expert otolaryngologist opined that Brookler properly addressed Mandel's condition. He acknowledged that a test revealed that Mandel was experiencing impairment of her reception of high frequencies of sound, but he contended that such impairment is a result of advanced otosclerosis.

### Injury:

Mandel claimed that her untreated sinusitis eroded her ethmoid bone, which separates the brain and the nasal cavity. She contended that the infection spread to her pituitary gland, and she claimed that a resultant hormonal effect caused diabetes insipidus, which impairs the functionality of the kidneys. Mandel experienced excessive urination, but the condition is controlled via the administration of a hormone. She requires lifelong administration of the hormone.

In August 2010, Mandel experienced a seizure. She fell, and she sustained a herniation of an intervertebral disc of her spine's lumbar region. A doctor determined that Mandel's seizure was a product of the infection of Mandel's pituitary gland. Mandel undergoes the administration of medication that is intended to prevent further seizures, but Mandel claimed that the treatment's success is not certain.

Mandel also claimed that her herniated disc causes ongoing pain that may necessitate surgery. She contended that her pain and other residual effects frequently prevent her performance of her job's duties. She is employed by her brother, but she claimed that future employers may not tolerate the many absences that her condition necessitates.

Mandel sought recovery of \$35,000 for her past medical expenses, an unspecified amount for her future medical expenses, \$950,000 for her past pain and suffering, and an unspecified amount for her future pain and suffering.

Defense counsel contended that Mandel does not suffer diabetes insipidus. He noted that Mandel had undergone treatment of extreme anxiety, and he suggested that she suffers psychogenic polydipsia: a psychological condition that causes extreme ingestion of liquids. He contended that the condition's effect could have been the cause of her excessive urination. The defense's expert endocrinologist opined that diabetes insipidus was not indicated by tests that Mandel underwent during periods in which she had not ingested excessive amounts of liquid.

### Verdict Information:

The jury found that Brookler departed from an accepted standard of medical care. It determined that Mandel's damages totaled \$8.6 million.

#### Lori Mandel

\$35,000 Personal Injury: Past Medical Cost

\$2,400,000 Personal Injury: Future Medical Cost

\$965,000 Personal Injury: Past Pain And Suffering

\$5,200,000 Personal Injury: Future Pain And Suffering

### Post Trial:

Defense counsel contended that the verdict contradicted the weight of the evidence. He also contended that the damages were excessive. He moved to set aside the verdict and the damages. During pendency of the motions, the parties negotiated a settlement. Terms were not disclosed.

### Editor's Comments:

This report is based on court documents and information that was provided by plaintiffs counsel. Defense counsel did not

respond to the reporter's phone calls.

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