

## Should Practicing Surgeons and Academia Tolerate this Judicial Sentence?

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### Letter to Editor

Puerto Rico belongs to, but is not part of, the United States. We are American citizens in a non-incorporated territory. Our country is at the brink of default on a \$73 billion debt, not payable according to our governor. The public is beset with poor services in health, education, security, mass transportation, and others.

Nevertheless, the Supreme Court of Puerto Rico, in a five to four vote, sentenced -on June 11, 2015 and after two reconsideration petitions, the last one solved on December 18, 2015 - that hypocalcemia is responsible for dementia in humans. The case in point involves an operation I performed on a patient on June 26, 2000, at age 53 with depression, high calcium levels (hyperparathyroidism) of 15-year duration, a left thyroid nodule, and a right adrenal non-functioning tumor. MEN II was a possibility but the Aldosterone, renin and the catecholamines were normal. A parathyroid adenoma and the left thyroid lobe were removed in the year 2000. The patient developed hypocalcemia, an inherent complication of this type of surgery, seen in 3 to 5% of cases. She was readmitted in July 5, 2000 because of hypocalcemia and administered IV calcium and Vitamin D. On follow-up in August 30, 2000, her calcium was 7.6 mg/ml, phosphorus 4.5 mgs/dl, and PTH 109 pg/ml. When last seen before the lawsuit on October 27, 2000, her calcium was 7.7 mgs/dl and phosphorus 4.6 mgs/dl.

On June 21, 2001, the patient filed a lawsuit on the grounds of having developed hypocalcemia as a result of my surgery. Ten years passed from the filing date to the beginning of the trial - in 2011 - at the Lower Court. This fact is initial evidence of an ineffective judicial system. Five years after the operation, in 2005, the patient developed Alzheimer's disease. Neurologists are clear on the fact that by the time the first symptoms of this disease are detected, the disease has been present for 5, 10, 15, 20, or even 30 years. Based on this medical knowledge, anyone must conclude that at the time of the operation the patient was already afflicted by Alzheimer's disease. The surgeon - in this case, myself - could not possibly have produced Alzheimer's disease or any other of the dementias on this woman.

An American otorhinolaryngologist from Connecticut was allowed by the court to testify on the indications for surgery and the surgical technique. The patient's husband testified in court that she was unable to remember the names of her children, did not remember her church hymns, and once almost burned down the house; their sexual relations were down to less than once a month, and they could no longer go dancing or to the casino. In 2005, he took her to a local Private Community Health Center, she was diagnosed with Alzheimer's disease, and was started on Aricept and Namenda.

Surprisingly, this American expert witness was able to gauge the state of her mental health based on an interview with the patient at the lobby of his hotel, with her lawyer as interpreter. Inexplicably, the

following day he testified that the hypocalcemia that resulted from my operation was the cause of a chronic, permanent and irreversible dementia on this patient. This unscientific statement violates the Daubert motion of the American Anglo-Saxon legal system (which excludes the presentation of unqualified evidence to a judge or jury), as well as Rule 702 of our Napoleonic system.

The discovery of evidence was also at fault: the suit was not amended from the initial reason of hypocalcemia to dementia. The lawyers concealed the chart evidencing that she was being treated for Alzheimer's disease, not at a local Public Health Center but at a private Community Health Center. This is a clear violation of the rules of discovery of evidence prior to a trial. Similar to a surgeon who is not willing to tolerate surprises in the operating room for the well-being of the patient, courts - as a matter of legal principle - do not tolerate surprises in court proceedings. This act also violates the Attorneys' Code of Ethics.

We went to trial unaware that the patient had developed Alzheimer in 2005, and for this reason did not call in a neurologist to testify on my behalf as a true expert in this field. In a crude act of dehumanization, the plaintiffs' lawyer went as far as to allow the patient to testify. As would be expected of a person afflicted with this illness, her answers were incoherent. I did not permit my lawyer to cross-examine her owing to the fact that her Alzheimer's disease was evident.

I have a deep personal knowledge of Alzheimer's: my wife, died in June 15, 2006, after suffering the disease for eleven years. I wrote a book titled *Who Are You?* - in Spanish and English - that chronicles our experiences in dealing with the disease at home as a family of six children and a father and spouse (myself). In May 2016, we start filming a movie of the same title, based on the book.

The Lower Court Judge entirely rejected the opinion of my expert endocrinologist - Yale alumni, NIH grants recipient, and author of multiple publications - who illustrated on the blackboard the electric gradient between the brain cells and the interstitial space. He testified that a sudden drop in calcium could cause transient disorientation or temporary loss of memory, which is corrected permanently with the administration of calcium and vitamin D, and has never been known to cause Alzheimer's or any other type of dementia. The American Alzheimer's Research Foundation certifies that there is no causal nexus between hypocalcemia and Alzheimer's disease.

I was sentenced and am obligated to pay a large amount of money in addition to the \$100,000 paid by my insurance, to compensate the patient, the husband, and the lawyer for damages, including the cost of all the medications used by this patient from 2005 to the present. Among these medications are the ones prescribed for her pre-existing diseases, as well as the Alzheimer medications that are extremely expensive and ineffective, all for a disease I did not cause.

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The Court has issued an arbitrary decision based on unsubstantial scientific arguments made by a witness belonging to the American College of Surgeons, who did not follow the guidelines that apply to an Expert Surgical Witness of the American College of Surgeons. This surgeon should be sanctioned by the Ethics Committee of the ACS.

Justice erred in this case. This absurd decision by the Supreme Court of Puerto Rico has no application in any other country, much less the United States, of whom we have been a colony for the last 117 years. But injustice is injustice regardless of where it is perpetrated.

Incidentally, I am the most experienced surgeon in thyroid and parathyroid surgery in Puerto Rico. I retired from private practice on June 12, 2013, at age 75. As a result of this decision, I am forced to carry the false burden of having someone believe that my surgery was the cause of dementia in one of my patients. I find myself powerless,

caught in an indefensible situation, and prohibited from any further appeals. Is this the price I have to pay for my 45 years of surgical practice, and two years of service in the US Army, including a tour in Vietnam?

At least in Puerto Rico, this decision should place the judiciary against the academia. It should not be tolerated by the academicians; however, the Supreme Court of Puerto Rico is believed by many to be infallible. This is the same Highest Court that transformed a scientific lie into a judiciary truth by virtue of a crass judicial error, and by failing to behave in a prudent and reasonable manner.

I cannot underscore this enough: this ruling is intolerable. It cannot and should not be tolerated by the academicians, not only in Puerto Rico but all over the world, for the undisputable fact that the causes for dementia are yet unknown.