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Kevin T. Hunt, Attorney  
Sugarman Law Firm, LLP  
360 S. Warren Street, 5<sup>th</sup> Floor  
Syracuse, New York 13202  
Direct Dial: (315) 362-8924  
Fax: (315) 474-0235  
[khunt@sugarmanlaw.com](mailto:khunt@sugarmanlaw.com)



## **Guidelines for Defense of Malpractice Claims**

In October of 1996, Marie Hinlicky, a minister's wife, underwent an endarterectomy to remove plaque in her left carotid artery. Though the surgery was completed successfully, the patient suffered a myocardial infarction a few hours after and died 25 days later of multi-system failure. Her family brought suit against the treating internist, surgeon and anesthesiology group.

A nine-day jury trial ensued in Binghamton during which 16 witnesses were called, including seven medical experts. The case revolved essentially around one question: *Were the defendants negligent in not obtaining a preoperative cardiac evaluation?*

The decedent's cardiac history had been relatively benign. She reported shortness of breath, exhaustion and chest pain after shoveling heavy snow a few years earlier. An EKG showed ventricular hypertrophy which was attributed to her longstanding hypertension that had been well-controlled by medication. The shoveling incident was chalked up to fatigue and the physical exertion that such an activity can cause in a person of any age or condition. Repeat EKGs in 1995 and 1996 were identical to the earlier one. During the time leading up to the surgery, a relative of the decedent had undergone carotid endarterectomy to avoid a stroke. Mrs. Hinlicky commenced her own evaluation for this condition. She was referred to the defendant surgeon. An angiogram showed 70-75% blockage in the left carotid leading to the recommendation for surgery.

The anesthesiologist who ultimately cleared Mrs. Hinlicky for the endarterectomy - and thus was painted by the plaintiff's lawyer as the "gatekeeper" and last person who could have made a difference - reviewed her chart, labs, EKGs and interviewed the patient probing for signs of coronary ischemia. He ultimately sent her for surgery without the pre-op cardiac evaluation based on the type of surgery involved, her medical history and functional capacity. In doing so, he relied upon a set of clinical guidelines published in 1996 (which were subsequently updated in 2002) by the American Heart Association (AHA) and American College of Cardiology (ACC). The guidelines had been reduced to an algorithm that the anesthesiologist incorporated into his practice to assist him in determining which patients go for cardiac work-up and which ones go directly to the OR. The algorithm had been enlarged and admitted as an exhibit into evidence to demonstrate the state of mind of the physician in electing to send Mrs. Hinlicky to surgery. Throughout the remainder of the trial, the algorithm took on a life of its own receiving scrutiny from all seven of the medical expert witnesses. The jury was no doubt taken with the

algorithm having returned a verdict completely absolving all three medical defendants after deliberating less than an hour.

The case then wound its way through the appellate system eventually reaching New York's top court, the Court of Appeals. The high court sustained the verdict ruling that the algorithm had been properly admitted as an exception to the hearsay rule to show the state of mind of the anesthesiologist. Hinlicky v Dreyfuss, 6 NY3d 636 (2006). The exhibit took on greater evidentiary value when the defense medical experts all agreed that the algorithm not only represented the standard of care but was "state of the art" medicine. The fact that the guidelines had the imprimatur of the AHA and ACC only clinched its reliability. The 2002 AHA/ACC guidelines and a complete copy of the reported case can be found at [www.sugarmanlaw.com](http://www.sugarmanlaw.com).

And, how do I know so much about this issue? I happened to offer the controversial exhibit in the first place as the attorney for the anesthesiology group in question.

Speaking from my experience, well-founded guidelines like these can no doubt be of general use to physicians in their daily practices. The outcome in Hinlicky, moreover, strongly suggests the efficacy of this material in medico-legal matters. Therefore, if at all possible doctors and lawyers should look for ways to admit into evidence reputable and reliable practice guidelines in the defense of malpractice claims.

*Kevin Hunt, a partner at Sugarman Law Firm, is a trial attorney with extensive experience defending medical, dental, legal malpractice and catastrophic personal injury claims. To contact him, call 474-2943; email [khunt@sugarmanlaw.com](mailto:khunt@sugarmanlaw.com); or visit [www.sugarmanlaw.com](http://www.sugarmanlaw.com).*