

Daily Business REVIEW

LAW • REAL ESTATE • FINANCE

MIAMI • FRIDAY, JUNE 17, 2005 — \$2.00

VOL. 80, NO. 6

ALM

LIABILITY

UM plagued by med mal cases

With one trial under way and another set for next month, questions again arise over its deep-pocket status

by **Jessica M. Walker**

In the wake of failed legislation to shield the University of Miami medical school and its faculty from malpractice lawsuits, UM currently is fighting two malpractice cases involving patients who suffered catastrophic injuries with tens of millions in potential damages.

One of those cases centers on the same faculty doctor who was involved in a \$5.2 million UM settlement last year.

On Monday, opening statements began in Miami-Dade Circuit Court in the case of Boris Larrave, a 5-year-old boy who suffered massive brain damage after he underwent elective heart surgery as an infant at Jackson



Lawyer Stuart Ratzan represents a man who became a quadriplegic after undergoing surgery at Jackson Memorial Hospital.

Memorial Hospital in Miami. The UM medical school operates and staffs the public hospital.

Boris' parents, Maria Ibanez Larrave and Luis Larrave, allege that attending physician Alvaro Galindo, a

pediatric cardiologist, did not have blood ready in time for a transfusion, causing a damaging delay when bleeding occurred during the surgery. The Larraves allege that the delay caused Boris to suffer permanent brain damage.

Next month the university faces another scheduled malpractice trial involving a privately insured patient who became a quadriplegic after undergoing surgery at Jackson. In 2002, Berto Valdes, a blue-collar worker in his 50s, was put under anesthesia for an operation to remove a benign tumor on his brain. When he woke up he was paralyzed. He's now a quadriplegic and requires a ventilator to breathe.

His suit alleges that the doctors attending him, including UM faculty anes-

See UM, Page A12

thesiologist Stephen Klump and co-chairman of the department of neurological surgery Roberto Heros, either failed to monitor his vital signs during surgery or inadequately monitored them. His attorneys allege that failure led to an infarction in his spinal cord. They say his care alone will cost \$20 million to \$25 million for the rest of his life.

The two cases, along with other recent and pending malpractice claims, have revived allegations by the plaintiff bar that the UM medical school, its faculty physicians, and its teaching program at Jackson Memorial Hospital suffer from systemic quality of care problems.

"I am afraid that while the outward appearance is that this is a world-class medical center, it also has some world-class liability problems," said Stuart Grossman, a prominent malpractice attorney and partner at Grossman & Roth in Miami, which recently settled a wrongful death case against UM.

On the other hand, these lawsuits could give the politically powerful university new ammunition in its lobbying campaign to erect a shield against such claims. The university contends that when something goes wrong in care at Jackson Memorial, which enjoys sovereign immunity protection as a public hospital, plaintiff attorneys inevitably — and unfairly — target the private university, which does not have sovereign immunity.

"The university medical school finds itself in a situation where they're the deep pocket," said Henry Burnett, a partner at Fowler White Burnett in Miami and longtime attorney for the university. "You get lawsuits that come with very sympathetic situations, and juries have a hard time distinguishing who is what."

In this year's legislation session Republicans sponsored a bill pushed by UM that would have barred malpractice lawsuits against the university's medical school, its faculty and staff, and other medical educators operating at public and private teaching hospitals around the state.

Under the bill, plaintiffs who sue teaching hospitals that have agreed to a set of patient-safety standards would be limited to recovering \$150,000 in total damages from the hospital only — even if there were evidence that the medical providers violated the patient safety



Plaintiff lawyer Stuart Grossman says lawmakers won't grant UM sovereign immunity until it addresses problems with medical care.

standards.

The university has made efforts recently to bolster safety, most notably the establishment of the Center for Patient Safety, which opened its doors in 2005. The center was awarded \$4 million in federal, state and private money, and aims to increase patient safety through training, such as medical emergency simulations.

Circuit Judge Ronald Dresnick is presiding over the jury trial in the Boris Larrave case. The boy's parents are represented by Edward Deutsch and Edward Blumberg of Deutsch & Blumberg in Miami. The attorneys declined to comment on the case. Stephen Stieglitz and Robert Bouchard of Fowler White Burnett in Fort Lauderdale are representing the university. University of Miami general counsel Robert Blake did not return calls for comment.

In the case scheduled for trial in July, Berto Valdes is represented by Stuart Ratzan of Ratzan & Alters in Miami. Ratzan was out of the country and could not be reached for comment.

These two cases are hardly the only recent, big-dollar malpractice cases against the University of Miami, which has complained in recent years of great strain on its budget due to malpractice settlements and verdicts. Last year, UM President Donna Shalala told the South Florida Sun-Sentinel that the school paid out \$60 million on malpractice lawsuits that year, \$49 million in 2003 and \$32 mil-

lion in 2002.

In 2004, the family of Nancy de la Cruz, a young woman with lupus who died after her lupus was misdiagnosed, settled out of court with the University and Jackson hospital for an undisclosed amount. A jury later found David Glabman, the primary care physician who misdiagnosed her, 70 percent liable for \$8.25 million in damages. De la Cruz was uninsured but not indigent. Her parents covered her medical expenses out of pocket.

Linda Broder, a woman in her 20s who suffered brain damage and loss of movement in her left hand after a routine heart operation at Jackson Memorial in 2001, settled her case against the university for \$5.2 million. The university physician in her case was Galindo, the same doctor at the center of Boris Larrave's malpractice case.

In a 2002 case, former Jackson Memorial Hospital secretary Hyacinth Vassell won an \$8 million verdict, after university physician Mark Multach failed to notify her of an abnormality in her mammogram. One year later, Vassell discovered a breast tumor that metastasized to her liver.

Supporters of malpractice relief for UM argue that the university deserves protection because it's serving a public purpose in providing medical and staffing services at Jackson Memorial, Miami-Dade's largest provider of indigent care. As a public institution, Jackson Memorial and its employees, including UM interns, are protected by sovereign immunity, which limits liability to \$200,000. But UM and its faculty attending physicians are not similarly protected.

Jackson Memorial dropped its malpractice insurance in 1970 and relied solely on its sovereign immunity protection, paying any statutorily limited judgments and settlements out of its operating budget. Around the same time, the university switched to self-insurance. That's

when the problems started, said UM attorney Henry Burnett.

"The university became a defendant in 99 percent of actions filed against the hospital," Burnett said. "At the outset, verdict exposure was a lot less. But exposure has gotten more extreme. At some point the university realized it could not afford to keep it up, and that's when the legislation started."

Plaintiff attorneys argue that malpractice verdicts and settlements have grown larger because the cost of providing medical and custodial care to injured patients has skyrocketed.

UM came close to winning malpractice immunity this year. In April, as the legislative session drew to a close, Senate President Tom Lee, R-Brandon,

demanding that the UM-backed bill providing sovereign immunity to medical educators come up for a vote. It was approved 8-1 by the Senate Health Care Committee.

Not surprisingly, it was fiercely opposed by the plaintiff bar, which argued, among other

things, that \$150,000 in total damages was far too little, particularly in catastrophic cases involving millions in future care costs.

Brett Panter, a partner at Panter & Panter in Miami who has filed a number of medical malpractice claims against UM, said, "It's very aggravating when they try to use the political process. When you can't get what you want in the courts, you go to the Legislature."

Grossman argues that UM has serious problems with its quality of care that need to be addressed before any limits are placed on its malpractice liability. "Until it faces up to them, the university will continue to leak," he said. "No sane, honest Legislature will give them immunity because of their failure to address their liability problem." ♦

Jessica M. Walker can be reached at jwalker@floridabiz.com or at (305) 347-6649.

UM contends that when something goes wrong in care at Jackson Memorial, which enjoys sovereign immunity protection as a public hospital, plaintiff attorneys unfairly target the private university, whose physicians practice there.