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Family sues after negligence settlement against MD goes unpaid

A family is suing the Saskatchewan government and College of Physicians and Surgeons of Saskatchewan after it was unable to collect a \$2.2-million negligence award because the physician involved had no malpractice insurance.

Alana Marble suffered permanent brain damage in 1992 at the Kindersley Union Hospital in southwestern Saskatchewan. Her parents, John and Maureen Marble, initially sued the hospital and several physicians and nurses and were awarded a total of \$2.7 million. The hospital settled out of court for \$425 000, but there was no money to cover the rest of the award because the physician who was eventually found negligent, Dr. Simon Krige, had neglected to obtain malpractice insurance.

The girl's parents responded with a lawsuit alleging that the provincial government and College of Physicians and Surgeons of Saskatchewan should have made sure that all doctors licensed to practise in the province are insured. John Marble says the couple needs the money to improve their daughter's quality of life now and in the future.

The college and province both deny that they have legal responsibility and have asked a judge to dismiss the lawsuit. They are awaiting a ruling.

The college's position is that it did not create the risk and was not involved in making Alana Marble's condition worse. "Until this case came to light, there was never a reason for us to imagine a doctor would ever practise without insurance," says Dr. Dennis Kendel, the registrar.

The case began in December 1992 in Alana Marble's hometown of Eston. The young woman, 21 at the time, spent an evening studying at her recently deceased grandmother's house; the next morning, she could not be roused from bed. She was taken to the Eston hospital in a semicomatose condition; hospital personnel determined that she must have taken her grandmother's ox-

azepam. Before being transferred to the larger hospital at Kindersley, her family physician detected low blood sugar and administered glucose.

At the Kindersley Union Hospital she was soon conscious, walking around the hospital and complaining of hunger. As a precaution, she was kept overnight. While at the hospital she lapsed into a coma, and by the time she emerged from it 3 days later, there had been permanent brain damage.



Alana Marble at her Grade 12 graduation in 1991, with her parents John and Maureen and older brother Evan.

The lawsuit alleged that the young woman was experiencing acute hypoglycemia, and it was also speculated that she had taken her grandmother's sulfonylurea. The blood tests that would have detected low glucose levels were not done in Kindersley and that became the basis of the negligence suit. "It was a perfectly preventable outcome," says Robert Kennedy, the family's lawyer.

The Marbles filed suit against the

hospital and named several nurses and physicians. After the hospital, admitting no liability, agreed to settle for \$425 000, only a single lawsuit continued. It named Krige, who had since returned to his native South Africa. He did not attend the court hearing.

Assessing Alana's lifelong needs, the judge awarded the Marbles \$2.7-million, the bulk of which (deducting the hospital's payment) was to be paid by the uninsured Krige.

"Ultimately, it's an individual responsibility to carry adequate insurance," says Dr. Briane Scharfstein, executive director of the Saskatchewan Medical Association.

The provincial college subsequently became aware of another practising physician who had no malpractice coverage. In light of those 2 cases, provincial law was amended in September 2000 to make malpractice insurance a requirement of licensure in Saskatchewan. The Canadian Medical Protective Association says the insurance is also mandatory in Newfoundland, Quebec and Manitoba.

"Anyone would be empathetic with a family that faces this type of dilemma," says Kendel. "Fortunately, we have a very comprehensive health care and social-support system, and the family isn't left totally without resources."

But the Marbles say this is not enough. They believe the seniors' home in Eston where their daughter now lives does not have the resources needed to maximize her quality of life. Alana Marble requires total assistance and still experiences seizures, is visually impaired and has reduced mobility. Her parents visit daily, but John Marble says his daughter is often "in a chair, restrained."

"One of the things that we're really worried about is if something should happen to John and me," says Maureen Marble. "Who looks after the cost, and will she be looked after sufficiently?" — *Amy Jo Ebman, Saskatoon*