

## Alabama jury awards \$15M for death from propofol

By Correy E. Stephenson  
Staff writer

**O**n the morning of Nov. 7, 2008, Theresa Oden walked into Springhill Memorial Hospital in Mobile, Ala. for diagnostic work. Just before 8 p.m. that evening, she was pronounced dead.

A 12-person jury awarded Oden's family \$15 million for wrongful death based on the actions of a nurse at the hospital who was "at best, a novice," in the words of Joseph M. "Buddy" Brown, a partner at Cunningham Bounds in Mobile, who represented the Oden family.

Not only did the nurse lack documentation of her training and ability to work on the Cardiac Recovery Unit, but she waited more than 20 minutes after administering a deadly dose of the anesthetic propofol to Oden before summoning help, Brown said. The nurse then attempted to cover up her mistakes by disposing of evidence, including the propofol vial (so that the dosage administered to Oden was uncertain), and waiting until almost four hours after

Oden's death to record entries in her chart.

The \$15 million verdict – more than the amount requested by the plaintiff – came as a result of the jury seeing "not only the incompetent care given to [Oden] but the defense trying to justify the care she received while in the hospital," Brown said.

Philip H. Partridge of Partridge, Smith in Mobile, who represented the hospital, did not respond to a request for comment on the case.

Marian Faulk, a spokesperson for Springhill Memorial, said the hospital plans to appeal the verdict.

### 'Is this for real?'

Theresa Oden was 45 years old when she began to develop symptoms of blockages in her heart, Brown said, including short-windedness and a "smothering, blanketed" feeling in her chest. Despite a lack of acute symptoms, her local physician recommended she get a full check-up of her heart.

Oden's visit to the diagnostic unit of Springhill



Brian Duncan, Jr.



revealed that bypass surgery was needed in three of her heart vessels. She agreed to undergo the procedure the same day, and by 1 p.m., she was out of surgery and doing well, Brown said.

The cardiothoracic surgeon who operated on Oden testified at trial that she presented as low a risk factor for complications as anyone he ever performed surgery on – just 3 percent.

For the next six hours, Oden's recovery was "excellent," Brown said. At 7 p.m.,

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— Joseph M. Brown

after a visit from family and friends, a nursing shift took place. Oden's new nurse had worked in the Cardiac Recovery Unit for less than two months, Brown said.

A few minutes later, the nurse administered propofol – the medication associated with the death of Michael Jackson – to Oden. Her anesthesiologist had prescribed the drug only for the purpose of light sedation in case her breathing tube caused her difficulty overnight.

But if administered in an anesthetic amount, propofol can immediately render a patient comatose and not responsive, Brown explained, as well as respiratorily and cardiovascularly depressed.

“All of this happened to [Oden] within seconds of the nurse administering the drug,” Brown said. By the time the nurse summoned help, more than 20 minutes later, Oden was unresponsive.

The nurse who answered the call for help testified that she asked “Is this for real?” when she arrived, Brown said. “Our contention was that [Oden] had probably been without a heart rate for some period of time before the nurse even called for help.”

Oden suffered a cardiac arrest and died 18 minutes later.

The nurse never should have cared for Oden, or worked in the cardiology unit, Brown told the jury.

She lacked the requisite paperwork to validate that she had been tested, trained and rendered competent according to the hospital’s own standards and policies, he said. He deposed eight senior nurses on the unit who testified that they never mentored or taught the nurse anything.

### AT-A-GLANCE

◆ The nurse who gave the drug lacked the requisite paperwork to validate that she had been tested, trained and found competent according to the hospital’s standards.

◆ If administered in an anesthetic amount, propofol can immediately render a patient comatose and not responsive.

Brown said the jury had “a real problem” with the hospital’s records.

First, the hospital produced two different sets of records for Oden. Well before he contacted Brown for legal representation, Oden’s husband requested and received a copy of his wife’s records. After the suit was filed, the hospital provided Brown with a second, completely different set of

records during discovery.

Further, Brown was able to document for jurors “dozens and dozens” of false entries in Oden’s medical record. For example, although the nurse wrote that she called for help to Oden’s cardiologist within minutes of administering the propofol, an examination of the doctor’s paging and answering service found no calls made from the hospital until 12 or 13 minutes after Oden’s cardiac arrest.

Instead of updating the records contemporaneously, the nurse recorded her entries four hours after Oden passed away, Brown said.

The nurse also violated hospital policy in the event of an adverse drug reaction and disposed not just of the bottle of propofol but all of Oden’s IV tubing, as well as the computer memory of the pump itself. Two of Oden’s three cardiac rhythm strips were also destroyed, Brown said.

“If you’ve got nothing to hide, why not keep everything?” he asked.

### ‘Punishment-worthy behavior’

After a two-week trial, jurors deliberated just one hour before awarding Oden’s family \$15 million, Brown said.

During closing, Brown’s co-counsel, J. Brian Duncan,

Jr., also of Cunningham Bounds, asked the jury for between \$5 million and \$10 million.

In Alabama, the wrongful death statute does not focus on the economic value of a person’s life, Brown said. Instead, the damages should attempt to approximate the enormity of the defendant’s wrongdoing.

The \$5-to-\$10 million range was selected in an attempt not to offend the jury, he explained, given the conservative nature of the jurisdiction.

“The jury’s response – to return a verdict for \$15 million – is the best evidence we have of just how punishment-worthy they found [the hospital’s] behavior,” Brown said.

**Plaintiff’s attorneys:** Joseph M. “Buddy” Brown, Jr. and J. Brian Duncan, Jr. of Cunningham Bounds LLC in Mobile, Ala.

**Defense attorneys:** Philip H. Partridge, Winston R. Grow and Bryan D. Smith of Partridge, Smith in Mobile, Ala.

**The case:** *Oden v. Springhill Memorial Hospital*; June 25, 2012; Mobile County Circuit Court; Judge Roderick P. Stout.

Questions or comments can be directed to the writer at: [correy.stephenson@lawyersusaonline.com](mailto:correy.stephenson@lawyersusaonline.com)