



Ex-Marine's Estate Collects \$3M After Faulty Diagnosis

Lawyer says VA hospital's doctors didn't run necessary tests

By CHRISTIAN NOLAN

The estate of a 30-year-old former Marine veteran who died from a stroke that may have been caused by birth control pills has recovered \$3 million to settle allegations that doctors could have prevented the woman's death.

Heather Deters Bivona, of Stamford, went to West Haven Veterans Administration Hospital in September 2007 complaining of shortness of breath, according to one of the lawyers for the woman's estate, **Richard Silver**, of **Silver Golub & Teitell LLP** in Stamford.

Silver said physicians at the hospital performed an electrocardiogram (EKG) that showed "significant abnormalities" in Bivona's heart. Doctors were also made aware that she was taking oral contraceptives.

Nevertheless, Silver said the emergency room doctors released Bivona from the hospital an hour after her arrival, having diagnosed her with an upper respiratory infection. At the time, Bivona worked as a personal trainer and was a marathon runner, said the lawyer.

The very next day, Bivona's husband, Greg, also a veteran, discovered her unconscious body in their apartment. She was rushed to Stamford Hospital, where it was determined she had suffered a massive stroke. Silver explained that Bivona had developed large blood clots, a known side effect of birth control medication. Silver said many of the clots were lodged in her lungs, causing the shortness of breath.

Because she had an undiagnosed opening in her heart between her right and left atria (a congenital condition known as patent foramen ovale), some of the blood clots traveled to her brain, causing the massive strokes.

Shortly after Bivona arrived at the hospi-



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Attorneys Richard Silver and Kathleen Brandt settled the case after negotiating with the U.S. Attorney's Office and before filing a formal lawsuit.

tal, doctors diagnosed her as brain dead as a result of the strokes. She passed away and her organs were soon donated.

Silver, and another lawyer at the firm, **Kathleen Brandt**, alleged that emergency department physicians at West Haven VA hospital should have recognized that the electrocardiogram, coupled with Bivona's history of oral contraceptive use and her shortness of breath, indicated that further studies were required to rule out abnormal clotting. Had she been diagnosed promptly, they argued, anti-coagulant medication would have prevented her untimely death.

Silver said he was prepared to file a civil lawsuit in a Connecticut U.S. District Court under the Federal Tort Claims Act. Because

the lawsuit would have had to have been filed against the United States government, rather than the VA hospital and its employees, settlement discussions were handled by the U.S. Attorney's Office and U.S. Department of Veterans Affairs in Washington, D.C.

After lengthy negotiations, the two sides were able to reach a \$3 million settlement without going to court.

"The negotiations were very extensive in this case," said Silver. "We were required to submit a very, very detailed account of the negligence, also of [Heather Bivona's] background, earning capability, medical history. It goes through a number of levels of evaluation with the federal government before they agree to resolve any matter."

The lawyer who worked on the case for the Department of Veterans Affairs in Washington D.C., Susan Ptacek, could not be reached for comment last week.

Bivona served in the U.S. Marine Corp for roughly nine years, and spent time in Puerto Rico (where she worked with U.S. Customs drug interdiction teams) and at Guantanamo Bay in Cuba. She also was stationed in Kuwait in support of Operations Enduring Freedom and Iraqi Freedom.

Upon her return to the U.S., she moved

to Stamford with her husband, and earned a degree magna cum laude in exercise science from Norwalk Community College in the spring of 2007. Before her death, she had been working for The New York Sports Club in Stamford as a personal trainer.

"It's devastating," Silver said of Bivona's death. "When we finally resolved [the case] her husband said to me. 'It doesn't bring back my wife.'"

Silver hopes in tragedy a lesson can be learned.

"This is really an example of patients going to the ER and being discharged without adequate evaluation," said Silver, "which is a constant problem, not only with the VA but all hospitals.

"Here's a healthy woman...I don't know why they didn't do a proper analysis. They just sent her home," continued Silver. "It's a continuing issue we have and I'd say it's a significant amount of the medical malpractice cases we have- inadequate care in the emergency room." ■