

## **JURY ORDERS CLINIC TO PAY \$14.5 MILLION**

**Woman left in vegetative state after undergoing nose surgery**

A former Cleveland man and his brain-damaged wife were awarded \$14.5 million yesterday when a Cuyahoga County Jury found that the Cleveland Clinic deceived the woman about who would perform her routine nose surgery.

Birdie Watkins is in a persistent vegetative state because she was denied oxygen in 1995 when a Clinic nurse removed her breathing tube too soon after she underwent minor surgery to repair cartilage in her nose.

The eight-person Common Pleas jury awarded her \$9.6 million in compensatory damages, and gave her husband, Thomas, \$1.3 million. The same panel awarded another \$3.5 million in punitive damages.

Charles Kampinski, the Watkins' lawyer, said one of the issues that swayed the jury was that of so-called ghost surgery. He said Dr. Isaac Eliachar, an ear, nose and throat specialist, was supposed to perform the operation and even assured Birdie Watkins that he would do it.

But Kampinski said Eliachar sent in a resident. "It was not for teaching, because the resident was close to graduating," Kampinski said. "It was for money, because Eliachar had scheduled four operations that morning."

Kampinski said ghost surgery is a common practice at the Clinic, but is discouraged by the American Medical Association, which characterizes it as deceit. According to Eliachar's deposition, he specifically assured Birdie Watkins that he would do the operation, or at least be there with the resident.

He told Kampinski during the trial that he did not think the patient had a right to know that he was not going to be present.

All eight jurors found that the Clinic committed a fraud by misinforming Birdie Watkins about the identity of her surgeon, and that this contributed to her injury. Seven of eight jurors found that the Clinic committed battery, which the law defines as the unauthorized touching of another person.

Kampinski said Judge Thomas J. Pokorny has the authority to award an additional \$2 million in what is called prejudgment interest. If the judge finds that the Clinic did not act in good faith to reach a pretrial settlement with the Watkins family, he can assess interest dating back to the time of Birdie Watkins' injury.

John V. Jackson II, a lawyer representing the Clinic in the Watkins case, declined to comment.

The Clinic issued the following statement after the verdicts yesterday: "Our sympathy is extended to Mrs. Watkins and her family, as it has been since this unfortunate event has happened. The award was clearly excessive and we believe that we have grounds for an appeal. We will make a final determination about this in the near future."

Thomas Watkins, who now works at a General Motors Corp. plant in the St. Louis area, said he and Birdie have been married for 30 years.

"I feel OK for what happened," Watkins said yesterday. "I wish this does not have to happen to anyone else."

Birdie Watkins, 59, remains in a managed-care facility in the Cleveland area.