



RICHMOND COUNTY

MEDICAL MALPRACTICE

Delayed Diagnosis — Negligent Treatment — Failure to Treat

Patient Said Doctors Made Tardy Diagnosis of Abscess

VERDICT

DEFENSE

CASE

George Permahan and Marta Permahan v. David Drucker, M.D., Mark Jarrett, M.D., Frank Loh, M.D., Shelley Wertheim, M.D., Sue Ann Grosso, M.D., Eileen Spatz, M.D., and Staten Island University Hospital, No. 12336/97

COURT

Richmond Supreme

JUDGE

Philip G. Minardo

DATE

3/6/2003

PLAINTIFF

ATTORNEY(S)

John Anthony Bonina, Bonina & Bonina, P.C., Brooklyn, NY

DEFENSE

ATTORNEY(S)

Sean F.X. Dugan, Martin, Clearwater & Bell, New York, NY (Frank Loh)
Carl M. Erman, Amabile & Erman, P.C., Staten Island, NY (Mark Jarrett, Staten Island University Hospital)
Thomas J. Gerspach, Garson, Gerspach, DeCorato & Cohen, L.L.P., New York, NY (David Drucker)
Bill Vaslas, Vaslas, Lepowsky, Hauss & Danke, Staten Island, NY (Eileen Spatz, Shelley Wertheim, Sue Ann Grosso)

FACTS On Nov. 7, 1994, plaintiff George Permahan, 38, underwent a total replacement of his right knee. The procedure was performed by orthopedic surgeon David Drucker at Staten Island University Hospital in New York.

On Nov. 19, 1994, a surgical incision reopened on the

proximal portion of Permahan's knee. The wound began draining. Drucker treated the wound conservatively with immobilization and dressing changes. He performed a debridement procedure on Nov. 30, 1994.

Permahan was readmitted to the hospital on Jan. 9, 1995, after he experienced a seizure. He was near death on admission, and exhibited decerebrate posture. He remained comatose until a thoracic-spine abscess was diagnosed and drained in early February 1995. During his hospitalization, he was treated by Dr. Mark Jarrett, who was an internist and a rheumatologist, Dr. Frank Loh, who was a neurologist, and radiologists Sue Ann Grosso, Eileen Spatz and Shelley Wertheim.

Permahan sued Drucker, Grosso, Jarrett, Loh, Spatz, Wertheim and Staten Island University Hospital. He claimed that Drucker was negligent in his management of the post-surgical wound. He contended that bacteria were introduced into his system during the knee-replacement procedure, and that Drucker failed to culture the wound and administer appropriate antibiotic therapy. Thus, he claimed that the bacteria seeded his bloodstream and led to the spinal abscess. He added that Drucker was negligent for not culturing the wound during the debridement procedure, or during three subsequent office visits in December 1994.

Permahan also claimed that Jarrett and Loh failed to timely diagnose the abscess, and that the delayed diagnosis led to spinal-cord compression. He contended that Jarrett's delayed diagnosis stemmed from his failure to timely obtain radiological studies, including a lateral chest X-ray film, a chest CAT scan and a gallium scan. Permahan's radiologist testified that film showed that the abscess was present when Permahan was readmitted to the hospital on Jan. 9, 1995.

Permahan contended that Loh failed to perform adequate neurological examinations, and that he failed to adequately document his findings.

Permahos further claimed that Grosso, Spatz and Wertheim failed to diagnose a spinal abscess on the serial chest films, and that they failed to recommend further studies. He did not pursue these claims during the trial, and at the close of his case, the court dismissed Grosso, Spatz, Wertheim and Staten Island University Hospital.

Drucker contended that the wound drainage consisted of serosanguineous fluid. However, records of other hospital personnel described the wound as purulent. A nurse deemed it to be infected.

Drucker maintained that the wound did not contain pus, that it did not appear to be infected, and thus, that there was no reason for him to perform a culture. In his handwritten, post-operative notes, he described the removal of a "sterile suture abscess," which he contended was an inflammatory response to a suture. In his dictated operative report, which he completed several weeks after the debridement, Drucker described the presence of "obvious ... superficial infections." He admitted he was aware that Permahos was immune-depressed.

Drucker contended that his handwritten operative notes accurately described his findings, and that his dictated report was erroneous. He added that the wound was allowed to close by secondary intention, and that it had healed completely by the time of Permahos' readmission on Jan. 9, 1995.

Jarrett alleged that the abscess was timely diagnosed, and that he was not negligent for failing to obtain prior radiological studies.

Loh argued that his examinations were proper, and that he diagnosed spinal-cord compression when it occurred.

The defendants contended that Permahos was suffering from viral encephalitis when he was readmitted to the hospital on Jan. 9, 1995. However, the diagnosis was never definitively proven. They claimed that the spinal abscess was the result of a nosocomial infection that developed subsequent to Permahos' readmission in January 1995.

INJURIES *paraparesis*

Permahos remained at Staten Island University Hospital until his discharge in May 1995. He was confined to a nursing home for the following year.

Permahos claimed that the spinal-cord compression caused significant paraparesis of his lower extremities, and that he is confined to a wheelchair. He asked the jury to award \$10 million.

Permahos' wife, who cares for him, claimed loss of services.

RESULT The jury found that Drucker did not depart from the standard of care by not performing a wound culture. It also found that Jarrett did not depart from the standard of care by failing to timely obtain the lateral chest X-ray, CAT scan and gallium scan. It further found that Loh did not depart from the standard of neurologic care.

DEMAND \$5,000,000

OFFER none

TRIAL DETAILS Trial Length: 7 weeks
Jury Deliberations: 4 days
Jury Poll: 6-0 (liability, David Drucker),
5-1 (liability, Mark Jarrett and Frank Loh)
Jury Composition: 4 male, 2 female

PLAINTIFF

EXPERT(S)

Richard L. Ruth, Ph.D., economics,
Warren, NJ

Paul Ross, M.D., internal medicine,
East Meadow, NY

Barry D. Jordan, M.D., neurology,
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DEFENSE

EXPERT(S)

Peter Welsh, M.D., internal medicine,
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INSURER(S)

Medical Liability Mutual Insurance Co. for
all defendants

Nancy DeLuca