

PERSONAL INJURY

MEDICAL MALPRACTICE

Lack of Informed Consent

VERDICT: Defense.

CASE/NUMBER: Leticia Garibaldi, Raul Garibaldi v. Beverly Hospital, Beverly Community Hospital Association, Beverly Emergency Medical Group, Hillary Ittner, Karen S. Johnson, M.D., and Does 1 through 100 / BC444992.

COURT/DATE: Los Angeles Superior Central / Dec. 5, 2012.

JUDGE: Hon. Victor E. Chavez.

ATTORNEYS: Plaintiff - Howard A. Kapp (Law Offices of Howard A. Kapp, Los Angeles).

Defendant - Yuk K. Law (Law, Brandmeyer + Packer, LLP, Pasadena) for Hillary Ittner, N.P. and Beverly Emergency Medical Group.

MEDICAL EXPERTS: Plaintiff - Bruce Fishman, M.D., F.I.C.S., orthopedic surgeon, Lancaster.

Defendant - Stanley Kalter, M.D., emergency medicine, Pasadena; Michael A. Lupo, M.D., physical medicine and rehabilitation, Burbank; Howard E. Pitchon, M.D., infectious diseases, Beverly Hills.

FACTS: On the morning of June 15, 2009, plaintiff Leticia Garibaldi presented to the emergency department of Beverly Hospital with the history that she slept on two chairs pushed together in her mother's hospital room the night prior and woke with severe right ankle pain and swelling. She was evaluated and treated by nurse practitioner Hillary Ittner, who was employed by Beverly Emergency Medical Group. Ittner ordered an x-ray of the right foot, ice to the ankle and a Toradol injection. The diagnosis was sprained ankle, and a splint was placed on the right leg and foot, with discharge instructions for Plaintiff to see her private medical doctor in one to two days to check on the splint or return to the emergency

department. Plaintiff did not seek any medical care following the emergency department visit until the morning of June 19, 2009, when she presented to her private medical doctor with a 103-degree fever and in severe leg pain. Her private physician opened the splint and found severe cellulites throughout the right leg and foot. She was sent to the emergency department of Beverly Hospital, where Ittner initially treated her. Plaintiff was hospitalized for surgical debridement and intravenous antibiotic therapy.

PLAINTIFF'S CONTENTIONS: In addition to alleging medical malpractice by Ittner on June 15, 2009 for failing to diagnose the early stage of an infection, plaintiffs contended that Ittner exceeded her scope of practice as a nurse practitioner in rendering emergency medical care as a negligence per se claim, and failed to obtain Plaintiff's informed consent to be treated by a nurse practitioner. Beverly Emergency Medical Group was alleged to have vicarious liability for Ittner's negligence.

DEFENDANT'S CONTENTIONS: Nurse Ittner contended that she acted within the standard of care in diagnosing a sprained ankle, and that the cellulites developed after plaintiff left the emergency department on June 15, 2009. Had Plaintiff followed the aftercare instructions to see her private physician in one to two days, the injuries caused by the cellulites could have been averted.

INJURIES: Plaintiff had extensive scarring from the severe cellulites on her right leg, and she required four separate surgeries that included skin grafting. She claimed limited range of motion of her right leg and constant severe pain. She had not returned to work as a customer representative for an entertainment industry drapery and textile business due to the pain and her limited mobility.

DAMAGES: At least \$500,000 (\$250,000 MICRA cap on non-economic damages per Plaintiff).

Plaintiff's husband had a loss of consortium claim.

SPECIALS IN EVIDENCE: LOE: \$134,750 Future LOE: \$616,000.

JURY TRIAL: Length, six days; Poll, 11-1; Deliberation, three hours.

SETTLEMENT DISCUSSIONS: Defendant offered waiver of costs.

RESULT: Defense.

OTHER INFORMATION: At the end of Plaintiffs' case-in-chief, Defendants moved for and received non-suits as to the causes of action for medical battery, misrepresentation, and intentional infliction of emotion distress.

Defendant will file a bill of costs.

Plaintiffs settled with Beverly Hospital prior to trial.