

# VERDICTS & SETTLEMENTS

## PERSONAL INJURY

### MEDICAL MALPRACTICE Medical Battery

VERDICT: Defense.

CASE/NUMBER: Carmen Jones v. Vijay Trisal, M.D., Yih-Dar Nien, M.D., and City of Hope Medical Group Inc. / MC023870.

COURT/DATE: Los Angeles Superior Torrance / April 21, 2015.

JUDGE: Hon. Cary H. Nishimoto.

ATTORNEYS: Plaintiff - Steve C. Glickman (Glickman & Glickman, Beverly Hills).

Defendant - Kent T. Brandmeyer (Law, Brandmeyer & Packer LLP, Pasadena).

MEDICAL EXPERTS: Plaintiff - Oliver Dorigo, M.D., gynecologic oncology, Palo Alto; Lauren Waxman, M.D., psychiatry, Lancaster.

Defendant - Michael J. Stamos, M.D., general surgery/colon and rectal surgery, Orange.

FACTS: Plaintiff Carmen Jones, 47, became a patient of the defendants Dr. Vijay Trisal and Dr. Yih-Dar Nien in April 2010. At that time, plaintiff had a diagnosis of stage IV rectal cancer with metastasis to her liver. She sought the care of defendants, both surgical oncologists affiliated with City of Hope. Plaintiff's cancer was determined to be inoperable. The plan was for plaintiff to receive chemotherapy and radiation. If the cancer responded, then she would undergo surgical removal of a portion of her liver and her rectum.

In the ensuing year, plaintiff's cancer did respond to the chemotherapy and radiation. Her inoperable cancer became operable. Defendant cancer surgeons therefore performed a partial liver resection in June 2011. The final surgery would involve removal of her rectum, which occurred on Sept. 30, 2011. Prior to this surgery, the patient was consented for removal of her rectum but was not consented for the possible removal of her uterus. Intraoperatively, the surgeons determined that plaintiff's uterus was significantly damaged by her chemotherapy and radiation and could not be moved out of the way so the rectum could be accessed and removed. Defendants therefore performed a hysterectomy on plaintiff. Thereafter, plaintiff recovered unremarkably from her surgery.

PLAINTIFF'S CONTENTIONS: Plaintiff contended that, pursuant to Health & Safety Code section 1690, defendants were required to get plaintiff's consent prior to performance of hysterectomy. Plaintiff contended that, during the laparoscopic portion of the rectal removal surgery, defendants determined that the uterus was immobile and would have blocked their surgical access to the rectum. Defendants therefore should have stopped, emerged plaintiff from anesthesia and obtained her consent. The fact that they did not was negligence per se because it was a statutory violation. This also constituted medical battery.

DEFENDANT'S CONTENTIONS: Defendants contended that, typically, the uterus can be mobilized out of the way and does not require removal during this type of surgery. For this reason,

the patient was not consented for hysterectomy. To defendants' surprise, during surgery, the uterus was significantly damaged and could not be moved. Therefore, the hysterectomy was necessary because of unforeseen events intraoperatively. Defendants claimed that from a medical standpoint, it made no sense to emerge the patient from anesthesia just to obtain her consent to a hysterectomy procedure that any reasonable person would consent to because it would mean the successful completion of rectal cancer removal surgery. Additionally, defendants contended that Health & Safety Code section 1690 did not apply to this unique situation, but rather was intended to apply to a planned hysterectomy on a fertile patient. This plaintiff was sterile from all of her cancer treatment. Additionally, any violation of this statute was excused under the law.

INJURIES: Plaintiff claimed emotional distress and psychiatric injuries including depression from the unconsented removal of her uterus.

DAMAGES: Plaintiff claimed \$500,000 in general damages.

JURY TRIAL: Length, nine days; Poll, 12-0 (medical negligence), 10-2 (medical battery); Deliberation, three hours.

SETTLEMENT DISCUSSIONS: According to plaintiff, \$29,999 statutory offers to settle were made to each defendant.

Defendants made no offer.

RESULT: The jury found in favor of the defense.