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## Ophthalmologist alleges oral surgeon botched surgery

### MEDICAL MALPRACTICE-PHYSICIANS & HEALTH PROFESSIONALS

Oral Surgeon

MEDICAL MALPRACTICE-PROCEDURES & TREATMENT  
Biopsy/Cancer/Dental/Informed Consent

### LOS ANGELES COUNTY SUPERIOR COURT

*Handwerker v. Kaufman*, Docket number: SC082924, Santa Monica. Judge: Richard P. Neidorf. Trial type: Jury: 10 days. Verdict/Judgment date: 4/18/2007.

### VERDICT: DEFENSE

The jury voted 10 to 2 on informed consent and 11 to 1 on negligence. Vote: Mixed poll. Deliberations: 2 hours.

### COUNSEL

Plaintiff: Scott Bernstein, Law Office of Scott D. Bernstein, Beverly Hills.

Defendant: N. Denise Taylor, Taylor Blessey, Los Angeles.

### FACTS/CONTENTIONS

According to defendant: Plaintiff Richard Handwerker, a 61-year-old ophthalmologist, claimed lack of informed consent and negligence in the performance of a wide excision of buccal mucosa for severe dysplasia, which healed by secondary intention, resulting in trismus. Plaintiff, who had a history of lichen planus on his scalp and in his mouth, presented to defendant's office on May 29, 2003 for an incisional biopsy of a suspicious lesion. The pathology came back as severe dysplasia, and defendant recommended a wide excision of the area to rule out cancer. Plaintiff alleged he was never given the alternatives to the procedure and was never told that the area would heal by secondary intention. He was never given the option of grafting. He was never told that he could develop trismus. Plaintiff argued defendant excised a very large area of tissue in the buccal mucosa, in an area that was different from the original biopsy site. He claimed the excisional biopsy should have been done in a hospital setting where frozen sections were available so that less tissue could have been removed and still ensure clear margins, and defendant was negligent in still failing to get one clear margin. He contended that, as a result, he developed pain and trismus, and, despite two corrective surgeries, cannot open his mouth normally and the condition is permanent.

Defendant contended plaintiff, as a well-informed physician, was advised thoroughly about all of the risks, benefits, and alternatives of surgery. Plaintiff was concerned that he had oral cancer and elected to proceed with the wide excision. Plaintiff failed to comply with the post-operative instructions, including the use of Therabite to stretch

the area of surgery to prevent trismus. Defendant also contended the nature and extent of the trismus was, in part, the result of further corrective procedures done by other providers that were not indicated. Defendant contended that it is not the standard of care to perform wide excisions of severe dysplasia with frozen sections, and he removed buccal mucosa in the approximate size of 2.5x3 cm, not 5x6.5 cm. Defendant contended the graft was not indicated and plaintiff knew the area removed would heal by secondary intention.

### CLAIMED INJURIES

According to defendant: Trismus; surgery; pain.

### CLAIMED DAMAGES

Not reported.

### SETTLEMENT DISCUSSIONS

According to defendant: Demand: \$150,000. Offer: None, no consent.

### EXPERTS

Plaintiff: David M. Alessi, M.D., otolaryngologist, Cedars-Sinai Medical Center, Los Angeles (310) 657-2233. Keith Blackwell, M.D., head and neck surgeon, UCLA School of Medicine, Division of Head and Neck Surgery, Los Angeles (310) 268-3405. William C. Ardary, D.D.S., oral surgeon, Arcadia (626) 441-0728. Charles J. Schuler, D.M.D., Ph.D., oral pathologist, San Francisco. Steven Graff-Radford, D.D.S., pain management.

Defendant: John J. Lytle, M.D., D.D.S., oral and maxillofacial surgeon, La Canada (818) 952-8183. Raymond Melrose, D.D.S., oral pathologist, Oral Path. Associates Inc., Los Angeles (310) 235-1164.

### EXPERT TESTIMONY

According to defendant: Plaintiff's expert William C. Ardary, D.D.S., M.D., testified that the standard of care was breached by defendant's failure to document all of the material risks and alternatives in the informed consent form. He testified that, since defendant performed a procedure that is generally performed on patients with oral cancer, and because his history was complicated by the clinical findings of lichen planus, that the standard of care required that the procedure be performed using frozen sections. He testified that too much tissue was removed, based on a billing record that documented a 5x6.5 cm biopsy. He testified that plaintiff should have been given the option of a graft because of the location of the biopsy and the amount of skin that was removed.

Plaintiff's expert Charles Schuler, D.M.D., Ph.D., testified concerning the pathology of lichen planus and severe dysplasia. He testified plaintiff did not have field cancerization.

Plaintiff's expert David Alessi, M.D., plaintiff's prior and subsequent treating physician, testified plaintiff did have pre-existing evidence of lichen planus. He testified plain-

tiff, following defendant's procedure, has had numerous complications due to pain and trismus, and has had one attempted corrective procedure without success.

Plaintiff's expert Steven Graff-Radford, D.D.S., plaintiff's prior and subsequent treating dentist, testified as to the nature and extent of plaintiff's pain, both before and after the surgery in question.

Plaintiff's expert Keith Blackwell, M.D., plaintiff's prior and subsequent treating physician, performed two corrective procedures on plaintiff, an allograft, and a z-plasty, both of which were ultimately unsuccessful.

Defendant's expert John L. Lytle, M.D., D.D.S., testified defendant met the standard of care in the informed consent and also in the performance of the wide excision performed on June 20, 2003. Dr. Lytle testified that frozen sections were not required by the standard of care, and the standard of care did not require a graft. He testified that trismus is a known complication of the surgery, which was necessary due to plaintiff's condition of severe dysplasia, which, left untreated, could become cancer.

Defendant's expert Raymond Melrose, D.D.S., a non-retained expert, testified plaintiff had field cancerization and severe dysplasia has a high risk of turning into cancer if untreated. He testified as to the size of the pathology specimen removed by defendant on June 20, 2003. He also testified plaintiff never had pathological evidence of a lichen planus, either on May 29 or June 20 of 2003.

#### COMMENTS

According to defendant: The complaint was filed on Sept. 17, 2004.