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MEDICAL MALPRACTICE -- MISDIAGNOSIS OF PROSTATE CANCER -- PSYCHOLOGICAL INJURIES  
RESULTING FROM 24 HOURS OF CANCERPHOBIA

Silber v. New York University Hospital and Dr. Tessler 22759/86 8-day trial Verdict 6/1/90 Judge Herman Cahn, New York Supreme

VERDICT:

\$75,000 for past pain and suffering v. Dr. Tessler. Defense verdict for New York University Hospital. The Hospital settled for \$9,000 during trial. Post-trial motions were denied. Jury: 2 mal, 4 female.

Pltf. Atty:

Harry I. Katz, Fresh Meadows

Def. Atty:

Peter E. Berman of Bower & Gardner, Manhattan, for Hospital

A. Anthony Bianchi of Evans, Orr, Pacelli, Norton & Laffan, Manhattan, for Tessler

Facts:

On 3/6/84, Pltf., age 70 at the time, presented to Def. Hospital for a prostatectomy. A blood test was performed which showed elevated acid phosphatase, which is indicative of prostate cancer. Pltf. claimed that Def. then told him that he had prostate cancer. A needle biopsy and two more blood tests were performed, which were negative for cancer. Pltf. claimed that 12 hours after Def. informed him that he had cancer, he told him that he actually did not. Def. denied that he told Pltf. that he had cancer; he contended that he told him only that he showed indications of the disease. Injuries: emotional distress. Pltf. claimed that he had nightmares as a result of cancerphobia. He did not produce any psychiatric testimony. Pltf. called a blood laboratory specialist who testified that the first test showed such an elevated acid phosphatase level that it was obvious that an error was made. He also testified that Def. should have performed more tests before ordering a biopsy. Def. called a urologist who testified that further tests, including a biopsy, are proper when acid phosphatase tests are positive. Pltf. Expert: Dr. Edward Burns, hematologist. Def. Expert: Dr. Barry Rubin, urologist, Brooklyn (for Tessler).