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## Verdicts & Settlements

### Failure To Diagnose Melanoma

**Brief statement of claim:** The plaintiff Terrence Forrest is a 46-year-old business consultant, single with no children. His malpractice suit claimed the defendants failed to inform him that the biopsy of his mole suggested there was regression of a melanocytic lesion, contiguous with a melanocytic nevus — and that even though there was no active melanoma found, the worst case scenario was that there could have been regression of the melanoma with spread to the lymph nodes.

Approximately a year-and-a-half after the biopsy, the plaintiff was diagnosed with metastatic melanoma.

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**Other useful info:** The plaintiff's suit alleged this timeline of events:

\* On December 12, 1997, plaintiff went to the offices of the defendants in Charlotte, Mecklenburg County, North Carolina for diagnosis and treatment of an irregular mole on his right forearm approximately 1 cm circumscribed and raised with irregular color. Plaintiff was seen by Dr. Waldman, who agreed to attend to plaintiff's medical condition. A

physician-patient relationship was established between the plaintiff and Dr. Waldman.

\* A health care provider-patient relationship was established between plaintiff and Waldman P .A. During the December 12, 1997, office visit, Dr. Waldman performed a surgical procedure in the area of the irregular mole on plaintiff's right forearm. Prior to this procedure, Dr. Waldman told plaintiff

he was going to remove the mole and have it biopsied. After the procedure, he told plaintiff to call his office in a week or ten days to get the results of the biopsy.

\* A week or so later, plaintiff called the office of the defendants and told the answering employee or agent of the defendants that he was calling pursuant to Dr. Waldman's instructions to obtain the biopsy results. Plaintiff was placed on hold and thereafter an employee or agent of the defendants came on the line and told plaintiff that everything was okay and that he was fine.

According to the plaintiff, at no time after the office visit and plaintiff's call to obtain the biopsy results, did the defendants:

a. Advise the plaintiff of any abnormal findings in the biopsy;

- b. Send plaintiff a copy of the biopsy report;
- c. Suggest any follow-up medical visits to discuss the biopsy and his medical condition;
- d. Suggest any monitoring of his medical condition as a result of the biopsy; or
- e. Otherwise communicate with the plaintiff.

\* On about July 1999, plaintiff discovered a mass under his right armpit and, while out of state on business, arranged to have a physician examine this condition. This physician, suspecting malignancy in the lymph nodes under his right arm, contacted plaintiff's primary care physician to make arrangements to have plaintiff seen by a general surgeon as soon as he returned to North Carolina.

\* On or about July 26, 1999, on referral from his primary care physician, plaintiff was examined and treated by Dr. Robert Vaughn, Jr., who thereafter performed surgery to remove the mass, submitted the mass for pathology review, diagnosed that plaintiff was suffering from metastatic malignant melanoma, and thereafter referred plaintiff to an oncologist who informed the plaintiff of the likely consequences of this disease. Since that time, plaintiff has been under the care and management of numerous cancer specialists in an attempt to manage and cope with this disease.

\* On or about November 1, 1999, Dr. David G. Draughn, one of plaintiff's treating physicians requested a copy of the written report of plaintiff's biopsy performed by the defendants. On or about November 5, 1999, the defendants sent Dr. Draughn a copy of their written report of plaintiff's biopsy.

\* On or about November 23, 1999, Dr. Draughn met with the plaintiff and advised him that he was quite astonished at the findings on the defendants' biopsy report, since the description of the mole on plaintiff's right arm had four out of five ominous characteristics present, the deep margins were involved, there were considerable atypia and dysplasia, and that re-excision or extremely close follow-up would have been appropriate.

\* In a letter mailed to the defendants on February 10, 2000, counsel for the plaintiff requested of the defendants a copy of any and all notes, correspondence, records, photographs, x-rays, reports, opinions and other medical information in your possession relating to our client, including his medical history, hospitalization, examination, treatment, diagnosis and prognosis.

\* On or about February 21, 2000, the defendants published and delivered a single biopsy report to counsel for the plaintiff that was different from the one sent to Dr. Draughn.

Thereafter, an investigator for counsel for the plaintiff was allowed to review plaintiff's medical file at the offices of Dr. Berman, who had referred plaintiff to the defendants, and discovered a third different biopsy report from the defendants. Each of these three (3) reports purports to be the original report of the biopsy performed upon plaintiff on December 12, 1997.

The plaintiff alleged that the defendants altered and adulterated plaintiff's medical records and in doing attempted to conceal the facts and circumstances of their conduct.

\* On or about August 31, 2000, counsel for plaintiff requested and obtained an independent medical review of the glass slides containing plaintiff's tissue which defendants represented were used by them to render their biopsy reports. This medical review allegedly concluded that these slides showed a compound nevus with some atypicality that is in continuity with a zone of well-developed fibroplasia in the papillary dermis. The latter changes were nonspecific but are consistent with the phenomenon of histological regression, according to the plaintiff. The association of these changes of regression with a melanocytic nevus suggests regression of a melanocytic lesion, either benign or malignant, he claimed.

Because of the abnormal findings in the biopsy, plaintiff claimed that on or about December 12, 1997, the standard of care for the proper management of his medical condition should have included:

- a. Advising the plaintiff of the abnormal findings in the biopsy and the risks involved;

- b. Advising plaintiff of the tests and procedures available to diagnose and treat plaintiff's medical condition;
- c. Advising plaintiff that re-excision of the lesion would be ideal management of this lesion; and
- d. Advising plaintiff that self-examination and regular periodic follow-up were warranted.

In providing health care to plaintiff, the plaintiff alleged that Dr. Waldman either failed to possess the degree of professional learning, skill, and ability ordinarily possessed by physicians engaged in the practice of medicine in Mecklenburg County, North Carolina, or similar localities, or he failed to use reasonable care and diligence in the application of his skill and ability and did not use his best judgment in the treatment and care of plaintiff.

Dr. Waldman allegedly failed to exercise that degree of care for plaintiff that was in accordance with the standards of care established by North Carolina law and was negligent in one or more of the following respects:

- a. In failing to obtain and record a complete and accurate history at the time plaintiff presented himself for diagnosis and treatment;
- b. In failing to record, keep and maintain true, accurate, and complete medical records of plaintiff's medical condition, results of tests, diagnosis, and care;
- c. In failing to properly read and interpret the results of the biopsy when Dr. Waldman knew or should have known that the biopsy showed abnormalities and that the standard of care for the proper management of plaintiff's medical condition should have included:
  - 1. Advising the plaintiff of the abnormal findings in the biopsy and the risks involved;
  - 2. Advising plaintiff of the tests and procedures available to diagnose and treat plaintiff's medical condition;
  - 3. Advising plaintiff that re-excision of the lesion would be ideal management of this lesion; and
  - 4. Advising plaintiff that self-examination and regular periodic follow-up were warranted;
- d. In failing to record and maintain an accurate and complete record of the findings of the biopsy and to communicate such record to plaintiff and his other medical care providers;
- e. In failing to diagnose plaintiff's medical condition and render care and treatment as indicated;
- f. In failing to advise the plaintiff and his other medical care providers of the abnormal findings in the biopsy;
- g. In failing to inform plaintiff that plaintiff's condition could be potentially fatal if not monitored and treated in a timely and appropriate manner;
- h. In failing to inform plaintiff that re-excision of the lesion would be ideal management of the lesion;
- i. In failing to otherwise inform plaintiff of the tests and procedures available to diagnose and treat plaintiff's medical condition;
- j. In failing to properly monitor plaintiff's condition and render care and treatment as indicated;
- k. In failing to secure another analysis of plaintiff's tissue specimen;
- l. In failing to formulate a plan for the care and treatment of plaintiff's medical condition or to refer plaintiff to other medical providers for care and treatment as indicated;

- m. In abandoning the plaintiff as a patient;
- n. In otherwise failing to act in accordance with the appropriate standard of care.

The plaintiff's expert, Dr. Barnhill, was prepared to testify that this case involved a punch biopsy that presented a compound nevus that shows abnormality. Of particular importance is that this nevus was contiguous with an area associated with particular changes including the absence of the nevus, a type of reparative change or fibrosis associated with melanin in the dermis, and prominent blood vessels, according to plaintiff's counsel. Those findings are consistent with regression or destruction of the nevus or some melanocytic lesion that was present at this site. It could have been both benign and malignant, but the zone of fibrosis is extensive and dense in its character, and this is a finding that you see associated with melanoma.

According to the plaintiff, Dr. Waldman should have told Mr. Forrest that he had found regression of a melanocytic lesion contiguous with a melanocytic nevus, and that the worst case scenario would have been that there could have been regression of melanoma. When you are not able to rule out melanoma, you treat the patient as if he might have melanoma and it might have spread, the plaintiff argued. Dr. Waldman should have communicated these findings to Mr. Forrest so he could research, seek out advice, and choose what treatment to follow, according to the plaintiff.

Ideal management would have been to re-excise this site to take more tissue around it because the lesion clearly went to the margins, both to look and see if there was something else there, but also for treatment, the plaintiff said. Then, after being made fully aware of the risks, his treatment options, and what to look for on his own, Mr. Forrest should have been told to be seen by a doctor familiar with his condition, at least every 3 to 6 months, the plaintiff alleged.

Because of Dr. Waldman's negligence, neither Mr. Forrest nor any doctors were allegedly on alert to look for the spread of melanoma to his lymph nodes. No examination or tests were considered that may have resulted in early detection of the spread of the melanoma. As a result, Mr. Forrest went undiagnosed and untreated for over 18 months, and the melanoma spread to dozens of his lymph nodes, significantly impairing his chances for survival, plaintiff claimed.

According to plaintiff's counsel, it appeared from the beginning that the defense was going to argue the "so what defense": that even if the defendants were negligent, the patient was going to die anyway. However, plaintiff's counsel believed they would have to show that the 18-month period without medical surveillance, testing or treatment made a difference.

In August of 2001, The Journal of Clinical Oncology supplied that proof by publishing an article that showed the AJCC suggested staging and survival rates for melanoma patients depending on the number of metastatic nodes involved.

Even if the melanoma was in transit to the lymph nodes when Dr. Waldman performed the biopsy, the research in this article showed that it could have been dealt with before it reached the lymph nodes or when it reached the first nodes, according to plaintiff's counsel. Early detection before melanoma spreads to multiple nodes results in a five-fold difference in survival rates (69 percent rather than 13 percent), he said.

**Principal injuries (in order of severity): Lower survival rate because of delayed diagnosis**

**Special damages: n/a**

**Tried or settled: Settled**

**County where tried or settled: Mecklenburg**

**Case name and number: *Terrence C. Forrest v. Gary D. Waldman and Gary D. Waldman, M.D., P.A.* (Mecklenburg County Superior Court; 00 CvS 19190)**

**Date concluded: Feb. 4, 2002**

**Name of judge: n/a**

**Amount: \$1.5 million**

**Insurance carrier: Confidential**

**Expert witnesses and areas of expertise: Raymond L. Barnhill, M.D., chair, Department of Dermatology, Professor of Dermatology and Pathology, George Washington University Medical Center, Washington, D.C.**

**Attorney for plaintiff: Joe Dozier of Dozier, Miller, Pollard & Murphy, Charlotte**

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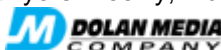


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