

CASE INFORMATION SHEET
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COUNTY AND COURT: Lee County - Circuit Civil

NAME OF CASE: Marilyn Hare v. David H. Turkel, M.D.
and Radiology Regional Center, P.A.

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

William M. Powell, Esquire
Powell Law Offices, P.A.
3515 Del Prado Boulevard
Suite 101
Cape Coral, FL 33904

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

Richard B. Mangan, Jr., Esquire
R. Clifton Acord II, Esquire
Rissman, Barrett, Hurt, Donahue & McLain, P.A.
1 North Dale Mabry Highway
11th Floor
Tampa, FL 33609
Attorneys for David H. Turkel, M.D. and Radiology
Regional Center, P.A.

AGE/SEX OF PLAINTIFF:

71 year-old female.

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

February 12, 2007

CAUSE OF INJURY:

On February 9, 2007, Marilyn Hare presented to Radiology Regional Center for bilateral screening mammography on a referral by her primary care physician, Tracy Vo, D.O. Dr. Turkel read the mammogram three days later on March 12, 2007, as showing a 2.5cm mass in the left breast consistent with breast cancer, as well as the presence of suspicious

calcifications in the right breast. Ms. Hare was not present at the time of interpretation.

At the time Dr. Turkel interpreted the mammogram and observed the abnormalities, he instructed his radiology assistant to contact Dr. Vo's office. Dr. Turkel and Dr. Vo discussed the abnormalities by telephone. In this conversation, Dr. Turkel recommended bilateral biopsies. The existence of this conversation was documented in Dr. Vo's office chart as well as in Dr. Turkel's report that he sent to Dr. Vo.

After speaking with Dr. Vo on February 12, 2007, Dr. Turkel dictated his report. In the report, he included not only the details of the right and left breast abnormalities, but also a recommendation of bilateral biopsies. His report also stated that the results of the abnormal mammogram were to be communicated to the patient in lay language via mail. Finally, Dr. Turkel confirmed in his report the discussion he had with Dr. Vo regarding the abnormal findings and the fact that Dr. Vo "would attempt to contact the patient."

Ms. Hare testified she never received the lay language letter required to be sent to patients. She testified she was never called for results because she figured "no news was good news."

Dr. Vo acknowledged receiving Dr. Turkel's report on February 14, 2007. It was undisputed that she did not contact Ms. Hare. Dr. Vo's explanation was that it was her understanding that Dr. Turkel and/or Radiology Regional Center would be contacting Ms. Hare to schedule her for biopsies.

She testified in deposition, while a defendant in the case, that she had given a verbal order to Dr. Turkel to perform the biopsies. She also testified in deposition that she had followed this same procedure with Radiology Regional Center in the past and that it was Radiology Regional Center's responsibility to contact the patient to schedule the biopsies. Dr. Vo settled the day after her deposition.

Ms. Hare followed-up with Dr. Vo on September 26, 2007, November 14, 2007 and again on November 21, 2007. At the time of the November 21, 2007 office visit, Ms. Hare was complaining of a lump in her left breast which she reported had been present for one month. This was inconsistent with

Dr. Vo's documentation of the office visit which occurred a week earlier on November 14, 2007, during which Dr. Vo documented that Ms. Hare's breast exam was normal. Dr. Vo admitted at trial that her November 14, 2007 office note was inaccurate in this regard.

At the time of the November 21, 2007 office visit, Dr. Vo discovered that she had Dr. Turkel's February 12, 2007 mammogram report in her chart for approximately 9 months. When she noticed this, she stated, "uh oh," according to both Ms. Hare and Dr. Vo. She then made a chart entry in which she stated that Radiology Regional Center never contacted Ms. Hare for biopsies.

Ms. Hare ultimately had bilateral breast biopsies. She was diagnosed with infiltrating ductal carcinoma on the left. On the right, she was diagnosed with carcinoma in situ. She had bilateral mastectomies on December 26, 2007. The left breast tumor was 3.5cm in greatest dimension. One of 11 axillary lymph nodes was positive on the left. The surgical margins on the left and the right were both negative for malignancy. There was no lymph node involvement on the right.

Ms. Hare was staged as a IIB breast cancer patient. After her mastectomies, she had four cycles of chemotherapy. Plaintiff's oncology expert, Dr. Ronald Citron, testified she would have been node-negative in February, 2007. Plaintiff's treating surgeon, Dr. Jeffrey Lewis, testified a February 2007 diagnosis would have allowed Ms. Hare to have a lumpectomy versus a mastectomy. By November 2007, a lumpectomy was no longer an option.

As of the time of trial, Ms. Hare was cancer-free. Her treating oncologist, Dr. Teufel, testified that there was a 75% chance that she would remain cancer-free. She presented testimony that she desired to have bilateral breast reconstruction which her surgeon, Dr. Robert Brueck, estimated would cost in the range of \$40,000 - \$45,000.

NATURE OF INJURY:

Ms. Hare alleged an approximate 9-10 month delay in diagnosing her breast cancer. She alleged that the delay caused her left breast tumor to grow from 2.5cm to 3.5cm and that her cancer progressed from lymph node-negative to lymph node-positive on the left.

She also alleged that an earlier diagnosis would have made a lumpectomy an option, which she lost because of the alleged delay requiring her to have mastectomies. This claim was supported by her treating surgeon, Dr. Lewis.

PLAINTIFF'S EXPERT WITNESSES:

Ronald Seth Citron, M.D.
4189 Silverado Trail
Calistoga, CA 94515

Dr. Citron is a preventative oncologist who last practiced medical oncology in the early 1980s. He testified by video. His opinion regarding causation was permitted over the defense's objection that it lacked scientific reliability. He opined that the 9-10 month delay caused Ms. Hare to go from lymph node-negative to lymph node-positive and for her tumor to go from 2.5cm to 3.5cm.

Jeffrey Lewis, M.D.
16400 Healthpark Commons Drive
Fort Myers, FL 33908

Dr. Lewis was the Plaintiff's treating surgeon. He testified that a lumpectomy was an option had he treated Ms. Hare back in February, 2007. However, as of December, 2007, he recommended a mastectomy instead due to the increased size of the tumor.

Barry Weiss, M.D.
124 Harbor Drive
Palm Harbor, FL 34683

Dr. Weiss was the Plaintiff's board-certified radiology expert. His opinion was that the standard of care required Dr. Turkel to follow-up with Dr. Vo in order to ensure that Dr. Vo's office had been in touch with Ms. Hare and that the biopsies had been scheduled.

DEFENDANT'S EXPERT WITNESSES:

Marc Homer, M.D.
Tufts Medical Center
800 Washington Street
Suite 388
Boston, MA 02111

Dr. Homer is a board-certified radiologist. He testified that Dr. Turkel complied with the standard of care. Dr. Turkel interpreted films that were of diagnostic quality. His interpretation was reasonable and accurate and he reported the findings both verbally and in writing to Dr. Vo. Radiology Regional Center also mailed a lay language letter to the Plaintiff.

This discharged his obligation to both the patient and the referring physician, Dr. Vo. He conceded that if Dr. Turkel agreed to contact Ms. Hare and to schedule her for biopsies (as claimed by Dr. Vo) and failed to do so, then he would not have met the standard of care.

Thomas Teufel, M.D.
811 Del Prado Boulevard
Cape Coral, FL 33990

Dr. Teufel was the Plaintiff's treating medical oncologist. His opinion was that Ms. Hare, as a three year survivor, had a 75% chance of remaining disease-free at the time of trial. He also provided testimony which undermined the basis for the opinion by the Plaintiff's preventative oncology expert, Dr. Citron, that the cancer spread to the lymph node during the 9-10 month delay.

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT: March 24, 2011

VERDICT: For the defense

JUDGMENT: Judgment For Defendants.

DATE OF JUDGMENT: March 30, 2011

DEFENDANT'S OFFER: 0

PLAINTIFF'S LAST DEMAND: \$600,000, requested in
Plaintiff's closing arguments.

ATTORNEY COMMENTS:

The jury deliberated for 29 minutes. Dr. Vo settled immediately after her deposition during which she pointed the finger at Dr. Turkel. A decision was made by the

defense to drop Dr. Vo as a Fabre defendant at trial and defend only Dr. Turkel's care.

The Defendants' motion for costs is pending. The Plaintiff has filed a motion for a new trial.

Submitted Richard B. Mangan, Jr. **Date:** May 5, 2011
By: R. Clifton Acord, II

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