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COUNTY and COURT: Broward County, Circuit Civil

NAME OF CASE: Xiang Ren v. Charles W. Markham, M.D.

DOCKET NO.: CASE-07-029705 JUDGE: Honorable Thomas Lynch

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

Allen M. Levine, Esquire
Becker & Poliakoff
Post Office Box 9057
Fort Lauderdale, FL 33310-9057

Robert I. Rubin, Esquire (trial counsel)
Becker & Poliakoff
625 North Flagler Drive
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West Palm Beach, FL 33401

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

AGE/SEX/OCCUPATION OF PLAINTIFF:

38 year old female massage therapist.

DATE, TIME and PLACE OF INCIDENT:

September 15, 2005

NATURE OF INJURY:

The plaintiff alleged that Dr. Markham incorrectly diagnosed her as suffering from microinvasive cervical cancer leading to an unnecessary hysterectomy and inability to have additional children.

CAUSE OF INJURY:

Ms. Ren had a LEEP (Loop Electrosurgical Excision Procedure) performed by her gynecologist, Dr. Yat Min Chen, on September 12, 2005. Tissue was taken from the anterior and posterior lips of the cervix and the endocervix. The specimens were sent to Lab Corp. in Tampa, Florida. Dr. Markham is the pathologist who read the slides and signed out the case on September 15, 2005.

Dr. Markham's diagnosis as documented in the pathology report sent to Dr. Chen was carcinoma in situ (CIS) and microinvasive cervical cancer. The CIS was adjacent to the endocervical cephalic margin. The microinvasive carcinoma was 2.5 mm in depth with a width of less than 3 mm. The report also included a comment advising Dr. Chen that the depth of the invasion may actually be less than 2.5 mm because of the tangential nature of the cut.

Dr. Chen's interpretation of Dr. Markham's report was that Ms. Ren had both CIS and microinvasive cervical cancer. The CIS extended to the margin of the specimen but the margins were clear of microinvasive cervical cancer.

Ms. Ren followed up with Dr. Chen in October 2005. He advised her to have a total abdominal hysterectomy because she had CIS with positive margins. However, because Ms. Ren was considering having more children, she and Dr. Chen agreed that she would not have a hysterectomy at that time and that she would follow up with him in three months for a repeat PAP smear. Dr. Chen's medical records clearly documented Ms. Ren's desire to have more children.

Ms. Ren did not return to Dr. Chen's office. Instead, she took a copy of Dr. Markham's report to Queens, New York, where she was evaluated by another gynecologist, Daniel Kuo, M.D, with whom she had treated in the past while she resided in New York prior to moving to Florida. Dr. Kuo advised her that she needed a hysterectomy because of the pathologic

findings, which included microinvasive carcinoma. Ms. Ren consented to the procedure based upon the advice of Dr. Kuo.

In February 2006, Dr. Kuo performed the hysterectomy at New York Hospital in Queens. The pathologist stated that there was no identified carcinoma identified in Ms. Ren's uterus. Plaintiff argued that the lack of uterine pathology proved Dr. Markham had negligently "over-read" the LEEP leading to an unnecessary hysterectomy.

At trial, Ms. Ren agreed with Dr. Markham's diagnosis of CIS, but she alleged:

- (a) that she did not have microinvasive cervical cancer;
- (b) that her hysterectomy was unnecessary because both of her gynecologists only recommended it based upon the diagnosis of microinvasive cervical cancer;
- (c) that the wording of Dr. Markham's pathology report was confusing and, in fact, confused Drs. Chen and Kuo; and,
- (d) that the report did not specifically state whether the margins of the specimen were positive or negative.

Dr. Ajami testified Dr. Markham fell below the standard of care because there was no microinvasion and the report failed to convey to the treating doctors the correct diagnosis. Dr. Solomon testified Dr. Markham's report was unclear in that a receiving OB/Gyn would not know if the margins were clear and, more likely than not, confused the physician into recommending a hysterectomy that was not required.

Dr. Austin disagreed and testified that the standard of care was met. He also opined that further evaluation by cone or repeat PAP smear was all that was required based upon Dr. Markham's final report.

Dr. Markham presented photographic evidence of the area of microinvasion and expert testimony that Ms. Ren did have both microinvasive cervical cancer and CIS. Dr. Markham also testified that his report clearly and unambiguously informed

Dr. Chen that there was CIS with unclear margins despite the absence of the specific word "unclear". Dr. Chen agreed and testified that Dr. Markham's report was not confusing to him. He interpreted it to mean exactly what Dr. Markham intended to convey and Dr. Chen's recommendation of a hysterectomy was because of the diagnosis of CIS with unclear margins, not microinvasive cancer.

PLAINTIFF'S EXPERT WITNESSES

Kamran Ajami, M.D. (Pathology)
Westside Regional Medical Center
8201 West Broward Boulevard
Plantation, FL 33324

Dr. Ajami testified that Ms. Ren's pathology slides did not show microinvasive cervical cancer. It was his opinion that the slides showed carcinoma in-situ. He opined that Dr. Markham's interpretation was below the standard of care.

Tara Solomon, M.D. (OB-GYN)
The Womens Wellness Center of South Florida, LLC
5901 Colonial Drive, Suite 303
Margate, FL 33063

Dr. Solomon testified that Dr. Markham's report was confusing and because of the confusion, Ms. Ren's gynecologists recommended an unnecessary hysterectomy. The confusion, according to Dr. Solomon, was that the report did not definitively state whether or not the margins of the specimen were negative or positive as they related to Dr. Markham's diagnosis of carcinoma in-situ.

DEFENDANT'S EXPERT WITNESSES

R. Marshall Austin, M.D., Ph.D. (gynecologic and breast pathology)
Magee Women's Hospital
Pathology Dept.
300 Halket Street
Room 4427
Pittsburgh, PA 15213

Dr. Austin testified that Dr. Markham complied with the standard of care and that his diagnosis of microinvasive cervical cancer was correct.

CHECK APPROPRIATE SPACE: X Verdict for Defense

DATE OF VERDICT: December 14, 2009

JUDGMENT: Final Judgment

DATE OF JUDGMENT: January 1, 2010.

DEFENDANT'S OFFER: Zero

PLAINTIFF'S DEMAND: \$2,500,000.

ATTORNEY COMMENTS: The jury deliberated for nine minutes.

Submitted by: Richard Mangan, Jr., Esquire
 R. Clifton Acord II, Esquire

Date: April 15, 2010

Firm: Rissman, Barrett, Hurt, Donahue & McLain,
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