

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

December 2013

Statewide Jury Verdict Coverage

14 IJVR 12

Unbiased and Independently Researched Jury Verdict Results

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Civil Jury Verdicts

Timely coverage of civil jury verdicts in Indiana including court, division, presiding judge, parties, cause number, attorneys and results.

Dental Negligence - A woman underwent a tooth extraction some 12 years after having cancer-related radiation treatments of her mandible; when the woman developed tissue necrosis and had to have her jaw removed, she blamed the dentist who had done the tooth extraction for ignoring the risk and failing to take appropriate prophylactic measures

Boender v. Frankos, et al.,

45D01-1007-CT-126

Plaintiff: Robert A. Montgomery, Chicago, IL

Defense: David C. Jensen and Brian R. DeHem, *Eichhorn & Eichhorn, LLP.*, Hammond

Verdict: \$2,500,000 for plaintiff

County: Lake, Superior

Court: J. Sedia, 8-9-13

In the late 1990's, Patti Boender was diagnosed with head and neck cancer for which she underwent radiation treatment of her mandible. Boender ultimately beat her cancer, but she would later be plagued by other health issues relating to poor dental hygiene.

By October of 2006, Boender had not seen a dentist in some 13 years – i.e., since before her cancer treatment. On 10-29-06, Boender went to the ER at Community Hospital in Munster with complaints of pain due to periodontal disease and a tooth infection.

The ER doctor who was on duty examined Boender and discharged her with instructions to follow up with an oral surgeon. Boender did follow up, but not with an oral

surgeon as instructed. Instead, on 11-10-06 Boender went to the Munster Dental Center located at 805 Ridge Road in Munster.

On the intake form at the center, Boender checked off a box indicating she had previous cancer treatments. It is unclear, however, whether Boender specified that those treatments included radiation therapy.

Once the intake process was complete, Boender came under the care of Dr. James Frankos, a dentist. Dr. Frankos treated Boender in accordance with her presentation and later, on 12-5-06, performed an extraction of tooth No. 31.

In the aftermath of the tooth extraction, Boender developed a condition known as osteoradionecrosis (ORN). This is a condition characterized by the death of bone and soft-tissue and is particularly associated with tooth extractions carried out following radiation therapy.

As a result of her development of ORN, Boender had to undergo two additional surgeries that included the removal of her jaw. The surgeries have left her permanently disfigured. The record does not reveal the amount of her medical expenses.

Boender presented the matter to a medical review panel and criticized the treatment she had received from Dr. Frankos and the Munster Dental Center. The panel members were Dr. John Havlick, Dentistry, Valparaiso;

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Case Style _____

Jurisdiction _____ Case Number _____

Trial Judge _____ Date Verdict _____

Verdict _____

For plaintiff _____ (Name, City, Firm)

For defense _____ (Name, City, Firm)

Fact Summary _____

Injury/Damages _____

Submitted by: _____

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Medical Negligence - An otolaryngologist who fled the country and was later indicted on 22 counts of healthcare fraud billed a patient for unnecessary surgery that was not actually performed; the fugitive doctor was eventually found living in a tent on a mountain in Italy

Hall v. Weinberger,
45D10-1105-CT-103

Plaintiff: David J. Cutshaw and

Kelley J. Johnson, *Cohen & Malad, LLP.*, Indianapolis

Defense: Joseph C. Klausung and Benjamin J. Weigel, *O'Bryan Brown & Toner, PLLC.*, Louisville, KY

Verdict: \$450,650 for plaintiff

County: Lake, Superior

Court: J. Pera, 3-14-13

Up until September of 2004, Dr. Mark Weinberger, a Merrillville otolaryngologist who advertised himself as "The Nose Doctor", was

living the high life. He had built a thriving medical practice that enabled him to purchase yachts, travel the world, and enjoy many of the finer things in life.

Among the patients attracted by Dr. Weinberger's billboard advertisements was Robert Hall. On 11-21-02, Hall consulted with Dr. Weinberger for complaints of loud snoring and difficulty breathing through his nose. Dr. Weinberger

performed a CT scan on Hall in his office that very day and read it himself.

Based on his read of the CT scan, Dr. Weinberger diagnosed Hall with a deviated septum and polyps. It would later be alleged that the CT scan did not actually show any such problems. Nonetheless, Dr. Weinberger recommended surgery.

The surgery was performed on 11-26-02, less than a week after the initial consultation. The surgery was supposed to have comprised no fewer than seven different procedures. Yet Dr. Weinberger was able to complete the entire process in only 35 minutes.

It would later turn out that Dr. Weinberger did not actually perform the procedures he had promised, yet he billed for all of them. He did, however, drill two unnecessary holes in Hall's maxillary sinus. Hall last saw Dr. Weinberger on 1-23-03 and never went back.

During this same time, and unbeknownst to Hall, other patients were beginning to complain about and file lawsuits against Dr. Weinberger. In response to this growing avalanche of litigation, Dr. Weinberger decided to make a drastic change in his life.

While on a family vacation in Greece, Dr. Weinberger went jogging on the morning of 9-21-04 and never came back. It soon came to light that Dr. Weinberger had accumulated much of his wealth by a longstanding practice of performing unnecessary medical procedures and billing heavily for procedures he did not actually perform.

This scheme that had worked so well for so long had begun to crumble, and Dr. Weinberger made the decision to flee the United States and abandon both his medical

practice and his family. Sometime after his disappearance his medical license was revoked, he was indicted on 22 counts of healthcare fraud, and he was listed as a fugitive on the *America's Most Wanted* website.

More than five years later, on 12-15-09, Weinberger (no longer a doctor) was found living in a tent on the side of a mountain in Italy. He was taken into custody by Italian authorities and extradited back to the United States.

Weinberger later pled guilty to all 22 counts against him and is now serving a seven-year sentence in a federal prison. His plea agreement also stipulates that he will be required to make restitution to the patients he admits to defrauding.

In the meantime, Hall consulted with other doctors both for his original symptoms and for the additional symptoms he had developed in the wake of Weinberger's "treatment." Hall had to undergo additional surgery in 2009 to repair the damage Weinberger had done to his sinuses. His medical expenses for those additional surgeries are unknown.

Hall presented his case to a medical review panel comprised of three otolaryngologists. They were Dr. Eric Carter of Jeffersonville; Dr. Scott Swim of Indianapolis; and Dr. Steven Ashton of Warsaw. The panel issues the unanimous opinion that Weinberger's treatment of Hall did fall below the otolaryngology standard of care, and it was a factor in Hall's damages.

Hall, who now resides in Arizona, filed suit against Weinberger and accused him of recommending unnecessary surgery and of failing to perform the surgeries he had promised and for which he had billed. Weinberger defended the

case as best he could and denied having caused Hall's claimed injuries.

The case was tried for four days in Crown Point. The jury returned a verdict for Hall and awarded him damages of \$450,650. The court entered a judgment for that amount, plus pre-judgment interest of \$35,181.

News reports indicate that more than 350 medical malpractice cases have been filed against Weinberger. In June of this year, the Indiana Department of Insurance settled a block of 282 of those cases for a total of \$55,000,000. In addition, Weinberger's medical malpractice insurer has filed a federal suit alleging that his decision to flee the country and become a fugitive effectively voided his coverage. That suit is still pending.

Civil Rights - As the plaintiff prepared to kill a confidential informant (who was exposing his criminal plans), the police burst in (to protect the informant) and roughly beat the plaintiff – in this lawsuit the plaintiff (who is serving 71 years for attempted murder regarding his attack on the informant) alleged excessive force by the police in preventing him from murdering the informant

Evans v. Indianapolis Police, 1:07-592

Plaintiff: Melinda K. Mains, Indianapolis,

Defense: Amanda J. Griffin and Alexander Will, *Office of Corporation Counsel*, Indianapolis

Verdict: Defense verdict on liability

Federal: **Indianapolis**

Judge: Sarah Barker

Date: 11-15-13

Melinda Keedy was working as a confidential informant for the