DISTRICT COURT, MONTROSE COUNTY, COLORADO
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CASE NUMBER: 2011CV94

Plaintiffs:
CRAIG MacCRAIGER and SARAH MacCRAIGER

v.

Defendants:
ROBERT G. KILBOURNE, M.D. and
STEVEN J. SAWYER, M.D.

Case Number:
2011CV94

DEPOSITION UPON ORAL EXAMINATION OF

DR. JAMES J. STARK

ON BEHALF OF THE DEFENDANT ROBERT G. KILBOURNE, M.D.

Norfolk, Virginia

Tuesday, January 24, 2012

EXHIBIT C

anterior resection on this man earlier would still be seeing him anyway for just exactly those issues.

He might have referred him back sooner than normal.

But I don't think any surgeon would -- again, this is a little bit outside of my range of expertise -- but no surgeon I know would have discharged this man from his practice yet --

Q. Okay.

A. -- because it's too soon.

Q. Okay. And you're right, and I don't mean to imply that he would have been.

But my point is that the result of Dr. Kilbourn's misperception of the path report is only that Mr. MacCraiger goes to see the surgeon again, right?

A. Yes, arguably sooner than he otherwise would have.

Q. All right. But you would agree that medical oncologists don't obtain informed consents for surgery, correct?

A. Correct.

Q. So when Dr. Kilbourn tells Mr. MacCraiger that he needs to go see Dr. Sawyer sooner rather than later, there's a whole other set of events that are presumably

going to occur after that, right?

A. Yes.

Q. Mr. MacCraiger's going to see Dr. Sawyer. Dr. Sawyer's going to do whatever the standard of care for a general surgeon requires in terms of informed consent, evaluation --

A. Right. Dr. Sawyer has his own separate duty.

Q. Right.

A. Which I'm not going to opine upon at trial.

Q. Right.

But for purposes of the impact of Dr. Kilbourn's mistake, the impact, the sole impact of that is that Mr. MacCraiger sees Dr. Sawyer sooner, right?

A. Well, I think he -- maybe a little more than that in the sense that Dr. Kilbourn has now set in motion a sequence of events by virtue of telling Mr. MacCraiger that he thinks he has recurrence, and it creates a mindset in everybody else's mind.

But formally speaking, you're correct in the sense all he's done is to make Mr. MacCraiger go back sooner.

But there is a subtext here which is he's created a certain set of expectations on everybody else's part by imparting this news.

Q. Well, he certainly created an impression in Mr. MacCraiger's mind and in his wife's mind, correct?

A. Right, and possibly, and I have no way of knowing this, in Dr. Sawyer's mind.

Q. Could be he created an impression in Dr. Sawyer's mind, too.

But, again, Dr. Sawyer has an independent set of obligations before he performs surgery, doesn't he?

A. Yes.

Q. And I'm not asking you what those are.

I'm just saying --

A. Right.

Q. -- he certainly does, correct?

A. Yes.

Q. So several things are true. First, Dr. Kilbourn -- the doctrine of informed consent does not apply to Dr. Kilbourn in this case, does it?

A. You mean with respect to surgery?

Q. Yes.

A. It does not.

Q. That's the only doctrine of informed consent there is, isn't there, surgical consent?

A. I mean, most oncologists now obtain informed consent before they give patients chemotherapy.

Q. Okay. But, I mean, certainly what we're

talking about in this case is the question of whether Mr. MacCraiger needed an APR in January of 2010, right?

A. Yes.

Q. And for purposes of the doctrine of informed consent as it involves discussions of risks, benefits and alternatives to that surgery, that doctrine doesn't apply to Dr. Kilbourn.

A. Correct.

Q. So hypothetically if assuming -- and I'm not saying one way or another what Dr. Sawyer's obligations are -- but assuming that Dr. Sawyer has an independent obligation to obtain and review the correct pathology report and to have a detailed discussion with his patient about surgical alternatives, the risks and benefits of those alternatives, then the misinformation by Dr. Kilbourn would have had no impact whatsoever if Dr. Sawyer had done those things, right?

A. Yes.

Q. When you see cancer -- rectal cancer, colon cancer patients -- let's stick with rectal cancer patients who have had a surgery, have had chemoradiation before surgery and have had some neoadjuvant chemotherapy after surgery and they have clinical information which is suspicious for recurrence, do you make recommendations as to the type of surgery that they