

TYPE OF ACTION: Medical Malpractice, Delayed Diagnosis of Cervical Cancer, Resulting in Death.

CASE NAME: *Burzio v. Gresinger, M.D., et al.*

COURT/CASE NO: Circuit Court of Fairfax County, Fairfax, Virginia

VERDICT: \$ 2,173,118.19

ATTORNEYS FOR PLAINTIFF: William E. Artz, Arlington, Virginia
Dominique D. Michel, Arlington, Virginia

ATTORNEY FOR DEFENDANT GRESINGER: Mark A. Barondess, Esquire
Vienna, Virginia

CASE SUMMARY: On September 26, 1996, Plaintiff's decedent, Heather Burzio, presented to a gynecologist, having been referred by a Planned Parenthood clinic for treatment in connection with an abnormal pap smear which had been performed on September 5, 1996. The gynecologist performed a repeat pap smear, which was reported by Defendant Pathologist #1, Dr. Aoe*, as "no atypical cells."

The gynecologist asked that Defendant Aoe's employer, Defendant Pathologist #2, Dr. Soe,* review both pap smears. Defendant Soe issued a revised report downgrading the Planned Parenthood pap from a "High Grade Squamous Intraepithelial Lesion" (HGSIL) to a "Low Grade Squamous Intraepithelial Lesion" (LGSIL). Plaintiff's pathology expert testified that the Planned Parenthood pap had been correctly interpreted as a HGSIL. Defendant Soe further indicated that the pap from September 26, 1996, which had been reported as "no atypical cells," showed "a small focus of mild dysplasia". Plaintiff's pathology expert testified that a HGSIL could not be excluded on the September 26, 1996 pap. The plan of care was for a repeat pap in one month.

On December 2, 1996, Ms. Burzio presented to Defendant Gynecologist, Dr. Thomas Gresinger, for follow-up care. Dr. Gresinger performed a colposcopy with biopsy. The biopsy specimen was interpreted by Defendant Aoe as evidencing "mild dysplasia and chronic inflammation in the endocervical component." Plaintiff's pathology expert testified that the biopsy evidenced a severe squamous dysplasia.

On December 11, 1996, Dr. Gresinger performed a laser vaporization procedure upon Ms. Burzio. Follow up was recommended for four months.

On April 18, 1997, Ms. Burzio returned to Dr. Gresinger for follow-up treatment of the laser surgery. Dr. Gresinger performed another pap smear that was interpreted as abnormal. Plaintiff's gynecology experts testified that the standard of care following an ablative procedure which revealed an abnormal pap smear four months later required a full investigation of the cervix, including colposcopy, directed biopsies and endocervical curettage.

Ms. Burzio returned to Dr. Gresinger, as instructed, in October, 1997. She underwent a thin prep pap smear that was interpreted by Defendant Dr. Aoe as abnormal.

Ms. Burzio returned to Dr. Gresinger on March 20, 1998, with complaints of vaginal bleeding. Dr. Gresinger performed another thin prep pap smear upon her and prescribed Provera.

On April 8, 1998, Ms. Burzio, returned to the offices of Defendant, Dr. Gresinger, still complaining of vaginal bleeding. Dr. Gresinger recommended that she undergo a dilation and curettage. However, on April 13, 1998, Ms. Burzio presented to another gynecologist, for purposes of obtaining a second opinion as to her condition. A pelvic sonogram was ordered, which revealed an enlarged heterogenous cervical portion of her uterus. When the gynecologist examined her, she found a hard, hypertrophic cervix that bled on contact. A colposcopy and biopsy was performed, which demonstrated invasive squamous cell carcinoma.

Following chemoradiation, Ms. Burzio underwent a radical hysterectomy in September, 1998. In October, 1998, Ms. Burzio was rehospitalized and learned that her cancer had metastasized to other areas of her body. Ms. Burzio became paralyzed due to metastasis to her spine and died on November 23, 1998, as a result of her advanced metastatic cervical cancer.

Plaintiff's gynecology expert testified that the mild dysplasia reported in April, 1997, following the laser treatment, was either present due to an inadequate laser treatment performed by Defendant Gresinger, or that a new dysplasia had developed. Regardless of either explanation, the standard of care required a full investigation of her cervix, beginning with colposcopy, directed biopsy and endocervical curettage. Had these procedures been performed, Plaintiff's experts testified, the cervical cancer would have been diagnosed, leading to the performance of either a cone biopsy or hysterectomy, and leaving Ms. Burzio with a greater than 90% chance for cure.

Defense counsel for Dr. Gresinger argued that Ms. Burzio suffered from an aggressive second lesion, high in the cervical canal, that was not detectable due to its location and that a cone biopsy would not have uncovered the lesion. The treating gynecological oncologist destroyed this

theory by testifying that she detected the cancer low in the cervix and that there was only one lesion.

Ms. Burzio had just turned 30, was single and studying to be a court reporter. Therefore, no claim was made for loss of wages.

The jury deliberated for nine hours and returned a verdict in favor of the Plaintiff and against Dr. Gresinger, clearing the pathologists. Total amount awarded was \$2,173,118.19.

The decedent's sister and mother were each awarded \$1,000,000 for solace. The jury also awarded medical expenses, totaling \$158,788.06, and funeral expenses in the amount of \$14,330.16. This is believed to be one of the largest awards for solace in a death case of a non-wage earner in the state of Virginia.

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*Names of parties are pseudonyms for confidentiality