

1 IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

2

3 MICHAEL WOOD, ET AL.

4 PLAINTIFFS,

5 VS Civil Action Law 09-04587

6 JAMES TZENG, ET AL.

7 DEFENDANTS.

8 /

9 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
10 [***EXCERPTED TRANSCRIPT/PLAINTIFF OPENING STATEMENTS***]

11
12 Upper Marlboro, Maryland
Monday, April 19th, 2010

13
14 BEFORE:

15 HONORABLE JULIA B. WEATHERLY, ASSOCIATE JUDGE

16
17 APPEARANCES:

18 For the Plaintiffs:
PATRICK MALONE, ESQUIRE
LEONARD W. DOOREN, ESQUIRE

19 For the Defendant:
20 DAVID ROLING, ESQUIRE

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22
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1 P R O C E E D I N G S

2 * * * *

3 THE COURT: Mr. Malone, would you like to
4 give an opening?

5 MR. MALONE: Yes, I would. Thank you very
6 much.

7 OPENING STATEMENTS/PLAINTIFF

8 MR. MALONE: May it please the Court, and
9 ladies and gentlemen:

10 Our case begins in an operating room at
11 Sibley Hospital in Washington, D.C. It's now June,
12 2007, and there is a nationally-renowned surgeon
13 named Dr. Ducic. D-U-C-I-C. You're going to hear
14 testimony from him early in this case.

15 Dr. Ducic is operating on a patient to try
16 to see what went wrong when that patient, six weeks
17 before, had had surgery with the Defendant doctor,
18 Dr. Tzeng. And it was supposed to be in-and-out
19 surgery but the patient woke up in horrible pain in
20 his left arm and he couldn't use his hand and he was
21 numb throughout the arm.

22 Dr. Ducic opened up the same incision in
23 the armpit that Dr. Tzeng had worked in. He opened
24 it up very carefully and he went down to an area
25 where Dr. Tzeng had worked on an artery, a blood

1 vessel, to try to open it up in Mr. Wood's -- my
2 client -- Mike Wood's shoulder. He found a little
3 anchor mark there. It was a suture, a little stitch
4 that Dr. Tzeng had left behind to close up the
5 artery.

6 But here's what he also found: He found
7 that one nerve, right next door to that stitch, had
8 been torn apart. And another nerve, on the other
9 side of the stitch, about the thickness of a pencil,
10 had somehow been damaged so bad that it was all
11 swollen for a segment about an inch or so long, and
12 it was deadened.

13 Dr. Ducic used an electrical device. You
14 know, nerves carry electrical signals. And he put
15 some electricity onto this nerve, it's called the
16 median nerve, right above this swollen and thickened
17 part and hardened part -- and normally, it would
18 make your hand twitch, even though he was under
19 anesthesia -- and nothing happened. The nerve was
20 dead. Now, Dr. Ducic did what he could to fix this
21 damage.

22 The horrific pain that Mr. Wood had
23 experienced -- pain so bad that it felt like the
24 worst toothache of his life, it felt like his
25 fingernails were going to pop off his hand -- that

1 was relieved, mostly, but he's never regained the
2 use of his hand.

3 And so why are we here? We're here
4 because Dr. Tzeng broke some very basic safety rules
5 that are there to protect all patients.

6 In law, sometimes we call these safety
7 rules standards of care, but they really are safety
8 rules, and I'm going to show you a list of them that
9 Dr. Tzeng broke in this case.

10 The first rule of medicine, doctors take a
11 solemn oath when they become doctors -- and you
12 might have heard of the Hippocratic Oath -- and the
13 first thing it says is, there's a saying, "First, do
14 no harm."

15 Now, obviously, when you do surgery on
16 somebody, you're doing, literally, some harm. It
17 doesn't mean that. It means that the doctors are
18 always supposed to make sure that they are doing
19 more good than bad for the patient. Because
20 otherwise, why do the surgery?

21 So for this surgery, I'm going to tell you
22 about a series of important rules that apply to this
23 surgery:

24 A surgeon should always give the patient
25 the safest option; if there are different ways of

1 getting the same result, the surgeon has to go with
2 the safest option.

3 There's kind of a sub-rule underneath
4 that; avoid cutting next to nerves if the surgeon
5 doesn't have to, and that's just part of the safest
6 option.

7 Another one underneath of that is; if the
8 surgeon lacks experience in doing this thing, if
9 he's only done it maybe once or twice in his
10 lifetime career, then maybe you should ask for help,
11 then maybe you should bring in another surgeon who
12 maybe is a specialist who has done this more often.

13 Because practice makes perfect. The more
14 you do something, the better -- and we're all like
15 that. But especially surgeons, and it's especially
16 important for patients.

17 Backing up to before the surgery, there's
18 another rule in medicine that says that patients
19 have got to be given all the important facts that
20 they need to make an intelligent decision about
21 undergoing a surgery; because it's your body and
22 doctors don't have a right to just say, look, I'm
23 going to do surgery on you now, I think it's the
24 best thing for you, sign here. That's not the way
25 it works in modern medicine.

1 In law, this is called informed consent.
2 Informed, comes before consent. Informed means, the
3 doctor has to tell the patient before the patient
4 can consent, even if the patient signs some form
5 with lots of fine print on it.

6 And actually, in this case, there's a
7 little form here that you'll see more of. This is
8 the fine print form that Mr. Wood signed before
9 surgery.

10 But what I wanted to point out is, there's
11 a certification that the doctor has to sign that
12 says:

13 "I certify that this patient has been
14 informed of the common, foreseeable risks
15 and benefits of undergoing the procedure,
16 as well as reasonable alternatives, if
17 any. Further questions with regard to
18 this procedure have been answered to his
19 or her apparent satisfaction."

20 Signed, Dr. Tzeng, April 26th, 2007, the
21 date of the surgery that he operated on Mr. Wood.

22 The final safety rule that I'm going to be
23 talking about a lot during this case is that the
24 surgeon has to put the patient's interests ahead of
25 the surgeon's interests.

1 They're not selling cars. If you go to a
2 car lot it's up to you to figure out if you need the
3 Honda Accord or the Toyota Camry, or whatever it is,
4 and the salesman's job is to just do his best to
5 close the deal.

6 Medicine is not like that. Patients have
7 a right to trust their doctors to do the best thing
8 for them. But that puts a solemn duty on a doctor,
9 to always put the patient's interests ahead of the
10 doctor's interests.

11 Now, at the end of this case I'm going to
12 stand up again and I'm going to ask you -- now that
13 we have proven the violations of these safety rules
14 with our evidence -- I'm going to ask you to enforce
15 accountability.

16 Because when someone hurts somebody else
17 through negligence or carelessness, they break
18 safety rules that are there to protect everybody,
19 and if you cause harm to somebody, you have to pay
20 for the harm you've caused. That's a rule that
21 applies to all of us.

22 So let's go back to the beginning. April
23 of 2007, six or seven weeks before Dr. Ducic has the
24 patient in Sibley, Mike Wood is home in bed on a
25 Saturday morning and he wakes up with chest pain and

1 the chest pain is going down his arm and his arm
2 feels a little numb. In fact, that day, that
3 Saturday, he gets himself to the hospital, because
4 of course he thinks that he's having a heart attack.

5 And they get a history, and among the
6 things they say is that, "patient describes CP,"
7 that's chest pain. It says, "patient's also CO,"
8 and that's complains of.

9 And you'll get all of these translations.

10 "Complains of numbness in fingers and his
11 arm, going numb, his arm going numb a few times
12 today." So that's what happened on that Saturday.

13 He gets to the hospital. They run all the
14 tests, an EKG, and all of that other stuff. And
15 they say, or finally they say -- after they keep him
16 overnight, just to make sure -- they say, Mr. Wood,
17 good news, no heart attack; but there is this
18 blockage we found; we did a CAT scan -- you know, an
19 x-ray scan, where they kind of put you in a
20 donut-shaped thing -- we did a CAT scan up here,
21 just to see if there was anything else going on.

22 Because we noticed that when the nurse
23 took your blood pressure in the right arm, she got a
24 good, strong blood pressure. But when she took --
25 but she couldn't get a pressure in the left arm.

1 And Mr. Wood said, well, you know, it's
2 always been that way with me, and I never paid any
3 attention to it because the left arm worked just
4 fine compared to the right arm, and they're -- both
5 are pink and warm, and you know, he was able to do
6 all the stuff he did. He was a two-handed guy, an
7 outdoorsman. More about that later.

8 But they say, you know what, we need to
9 send in somebody to talk to you about that, about
10 this apparent blockage up here in this shoulder.

11 So the next thing he knows, there's a
12 knock on his hospital room door and Dr. Tzeng comes
13 in, introduces himself and says you need to make an
14 appointment and come see me in my office -- and this
15 is right next door to Southern Maryland Hospital,
16 there's a doctor's office building there -- come in
17 and see me because we've got to talk about doing
18 surgery on this blockage that the CAT scan found in
19 your shoulder.

20 So what happens next? Well, Mike Wood
21 goes back to work the next day because he's feeling
22 fine. All this, the chest pain and the arm stuff,
23 all resolved itself on Saturday.

24 He sees Dr. Tzeng on a Monday. He's still
25 feeling good. He goes back to work Tuesday and

1 works the rest of the week. He is a heavy equipment
2 operator, backhoes, things like that. Two-handed
3 things.

4 They come back to see Dr. Tzeng on April
5 16th and Dr. Tzeng proceeds to show them an anatomy
6 chart of the shoulder and the arm, and he says to
7 take care of this blockage here I'm going to cut
8 into your armpit here.

9 The technical term that you're going to
10 hear during this case is axillary cut-down.

11 I'm going to cut into your armpit and I'm
12 going to expose an area of the artery that's a
13 little bit downstream from this blocked artery, and
14 then I'm going to stick a wire in there, a
15 guidewire, and then a little tiny balloon, and I'll
16 blow the balloon up and the balloon will clear up
17 this blockage.

18 And Mrs. Wood said, I'd always heard that
19 they do these things through the groin. And
20 Dr. Tzeng said no, that's not my approach.

21 And then he starts talking about the
22 possibility of losing blood flow to the brain, from
23 the arm taking away blood that is intended for the
24 brain.

25 And they still are saying, well, can we

1 wait a little bit because we don't have insurance
2 now, but I can -- Mrs. Wood, I can go back to work
3 with the school district and I'll have insurance
4 within 30 days. And they get the impression from
5 him that there's not enough time to wait.

6 So the next thing that happens is, they
7 are talking to his scheduling lady and the surgery
8 is scheduled for the following week. The surgery is
9 on 4/26/07. You will hear that date many times.

10 It's supposed to be in and out, a routine
11 surgery, back to work in a few days. But he wakes
12 up with this pain so bad that he can't sleep and he
13 can't do anything, and then the other events
14 happened that I've mentioned.

15 Now, what do competent doctors do for this
16 kind of blockage in the shoulder? There are two
17 approaches that they do.

18 (Counsel Using Diagram)

19 Here is your heart. Here is the aorta,
20 which is the major artery coming off the heart that
21 feeds your entire body with blood. Right here is
22 the left, what they call, subclavian artery.

23 Now, you know, these terms, with doctors
24 it's almost perverse that they are so fancy in their
25 terms. All it means is, this bone here is the

1 clavicle. Right? Subclavian just means below the
2 clavicle. So that's all that you have to remember
3 about that.

4 So he's got this blockage here. He's
5 getting blood supplied from other little arteries in
6 here, which is why he's not having a problem with
7 the arm.

8 But if you wanted to do the surgery, there
9 are two ways to do it, and both are called
10 noninvasive. Or the other fancy term, is
11 percutaneous. Again, that's one of these perverse,
12 fancy medical words that is less fancy than it
13 sounds. Percutaneous just means through the skin.

14 You just put a needle in here, in the
15 elbow. Or actually, the standard site is to go
16 through the, what they call the femoral artery, down
17 here in the groin, and snake up your thing -- and
18 this is around and behind the heart, it doesn't go
19 through the heart -- and work on your blockage this
20 way. And if that doesn't work, you try the elbow
21 approach.

22 But Dr. Tzeng is unique in saying I need
23 to cut into the armpit to do this surgery and expose
24 everything and then put the -- put the balloon in
25 there.

1 But here's the thing: These noninvasive
2 approaches have been developed because doctors know
3 the less cutting you do in the human body, the
4 better. It's just safer, because you're cutting
5 near nerves and near other blood vessels, you have
6 to pry things apart. Bad things can happen.

7 So the whole approach of noninvasive
8 surgery, with balloons and stents and things like
9 that, that all got developed to reduce the risk of
10 harming the patient.

11 The problem is, Dr. Tzeng didn't have
12 experience with this noninvasive approach. He had
13 done the femoral groin approach once maybe, he told
14 us. He had done the elbow zero times. And
15 actually, even in the shoulder, with this axillary
16 cut-down, he had only done that once or twice before
17 Mike Wood came onto his radar screen.

18 Most doctors refer these patients to
19 another kind of specialty called an interventional
20 radiologist. And all that means is, because you've
21 got to do this under x-ray guidance, as you're going
22 along, they squirt dye up there and they see the
23 artery, the wire goes up, and radiologists have
24 developed this as a specialty. But vascular
25 surgeons can do it, too.

1 Dr. Tzeng is a vascular surgeon. However,
2 he's not board certified in vascular surgery, and
3 he's actually in a little bit of a transition from
4 his main practice.

5 He's trained as a heart surgeon and a
6 chest surgeon, a cardiothoracic, heart and chest
7 surgeon. But he stopped all of his heart surgery in
8 2006, a year before this, even though heart surgery
9 is huge in this country, because, you know, it is
10 the number-one killer in the United States, heart
11 attack.

12 So he was shifting into the noninvasive,
13 the vascular work. He had taken a weekend course
14 from one of his partners in the same year, 2006, but
15 he did not do much of the noninvasive, particularly
16 here in the shoulder, after that.

17 Now, this is a large surgical practice.
18 These gentlemen, and they are all men, I believe, or
19 there may be one woman, do thousands of procedures
20 and surgeries every year, millions of dollars of
21 annual revenue.

22 And there was one aspect of this that
23 Dr. Tzeng, in fairness, was experienced at, and that
24 is, he did have experience cutting into people's
25 shoulders, an axillary cut-down, for a completely

1 different kind of procedure, once you got in there.

2 And that is, with kidney dialysis patients
3 sometimes they have to have a special access thing
4 put in, up in that area, and so the doctor then cuts
5 into that area to do that surgery, to make that
6 access. Now, the difference is, with that one,
7 you've got no choice, you have to do the cut-down
8 into the armpit.

9 With this other thing, with the artery
10 blockage, you don't have to cut into the armpit if
11 you don't want to, or if you're experienced.

12 So along comes Mr. Wood, and he is -- and
13 I will not insult you, sir, by mentioning to the
14 jury that you have an eleventh grade education --
15 but he has made a very good life for him and his
16 family.

17 He became a carpenter after school. He
18 built a lot of houses. He built his own house, a
19 couple of times. He built a bigger house.

20 And then he got into excavating work and
21 started buying his own equipment so he wouldn't be
22 employed by somebody else, so he could be his own
23 contractor. And that's what he was doing in April
24 of 2007, was running backhoes, bob-cats, that sort
25 of thing.

1 Business was good because he got most of
2 his jobs through the Government. The Government
3 doesn't go into recession the way the rest of the
4 construction industry does. This is Boeing and
5 Andrews, and places like that.

6 So he wakes up that one day and has the
7 chest pain, he goes to the hospital. He meets
8 Dr. Tzeng. Dr. Tzeng doesn't examine him or touch
9 him, at all, when they meet in the hospital.

10 He comes back a week later. I've
11 mentioned about the anatomy chart. But there are a
12 couple of other things that I need to tell you
13 about.

14 The couple, Mr. and Mrs. Wood, they get
15 pretty scared when Dr. Tzeng starts talking about
16 losing blood flow to the brain. But still, Mike
17 Wood, being a middle-age American male, like so many
18 of us, he didn't want to have to have any surgery
19 unless he really had to.

20 And so they asked Dr. Tzeng, can we wait
21 on this? And let's see what Dr. Tzeng says that he
22 told the patient.

23 (Video Clip of Dr. Tzeng Played)

24 "DR. TZENG: I also remember during the
25 discussion, they asked me, 'Doc, what

1 happens if I don't do anything?'"

2 "And I remember this specifically, what I
3 remember specifically, that I told him
4 'Nothing is going to happen right away;
5 however, I'm very concerned about your
6 chest pain and the numbness and the next
7 time it happens you may not be so lucky.'"

8 "After that I brought her to -- I brought
9 them to my secretary to schedule for
10 surgery."

11 (End Of Video Clip)

12 MR. MALONE: So when they hear that, they
13 think they're under the gun, there's no time for any
14 second opinion, or you know, signing onto the school
15 board and getting insurance.

16 So after he says that, "you may not be so
17 lucky next time" -- and it's something that many of
18 us would believe, because, you know, it sounds kind
19 of bad, having a blocked artery in your shoulder --
20 they're so scared that then Mrs. Wood comes back the
21 next day and puts down the deposit, to pay out of
22 their own pocket, because they don't have insurance,
23 to pay for his surgery, and she then goes over to
24 the hospital cashier and pays for that too, and then
25 he's back in there and he gets this surgery.

1 Now, Dr. Tzeng left some stuff out of this
2 conversation. He admits now there really was no
3 urgency to this thing. Let's listen to him again.

4 (Video Clip of Dr. Tzeng Played)

5 "QUESTION BY MR. MALONE: Was there
6 urgency to perform the surgery for
7 Mr. Wood?

8 "ANSWER BY DR. TZENG: There is no
9 urgency, no."

10 (End Of Video Clip)

11 MR. MALONE: He held back another
12 important detail, that he'd be operating in an area
13 that if he damaged nerves he could ruin the man's
14 hand. He held back the detail that he'd only done
15 it once or twice.

16 He held back the detail that there was a
17 higher risk of nerve injury with his technique
18 compared to other doctors' techniques, the
19 noninvasive thing. And he never suggested that they
20 consult with somebody else with more experience.

21 And the upshot is, what I call this, is
22 the meeting that didn't happen, all of these things
23 that were not said; I might ruin your hand by
24 damaging the nerves, other doctors do it a different
25 way with minimal risk of ruining the hand by

1 damaging the nerves, I've only done this once or
2 twice, you can put this off indefinitely.

3 Now, we know what common sense tells us
4 would have happened if that meeting had happened;
5 that they would have left that office, they would
6 have gone and at least have gotten a second opinion.

7 She would have had to drag her husband to
8 the next guy because all of a sudden he's getting
9 scared about, you know, losing his hand, because
10 that's his whole livelihood. And so we wouldn't be
11 here today because something different, very
12 different, would have happened.

13 But because these disclosures were not
14 made and because Dr. Tzeng went ahead with this
15 surgery, this man wound up losing the use of most of
16 his left hand. Oh, he does have the pinky. He can
17 use this and feel this.

18 The reason is, that the nerve that was
19 mostly damaged, it's called the median nerve, it has
20 a standard, what they call distribution of sensation
21 and motor muscle functions, and it's mostly thumb,
22 index and middle finger.

23 Dr. Tzeng admits that he caused this harm.

24 (Video Clip of Dr. Tzeng Played)

25 "QUESTION BY MR. MALONE: And the

1 dysfunction that Mr. Wood has, the
2 numbness, the loss of function in his hand
3 and in his arm, those are the result of
4 nerve injuries that he suffered during
5 your surgery, true?"

6 "MR. ROLING: Objection.

7 "ANSWER BY DR. TZENG: Probably.

8 "QUESTION BY MR. MALONE: And you'd agree
9 that if you didn't perform surgery,
10 Mr. Wood would not have suffered any nerve
11 injury?

12 "MR. ROLING: Objection.

13 "ANSWER BY MR. TZENG: That specific
14 injury, correct, yes.

15 "QUESTION BY MR. MALONE: And you'd agree
16 that if you had used a femoral approach,
17 that the injury that Mr. Wood suffered to
18 the nerves that we've just discussed, that
19 Dr. Ducic identified as being injured by
20 your surgery, would not have been injured?

21 "ANSWER BY DR. TZENG: That's correct."

22 (End Of Video Clip)

23 MR. MALONE: So the injury happens and
24 it's an unnecessary injury. After the surgery, when
25 he's in this horrible pain, they do some internet

1 research, they find Dr. Ducic.

2 Coincidentally, by the time they get back
3 to their third post-op visit with Dr. Tzeng, he also
4 mentions you may need to go see Dr. Ducic. So they
5 do that.

6 Dr. Ducic does his work. He does a second
7 surgery 10 months later, down in this, in the
8 forearm, because as the nerve tries to regrow it
9 goes through tight areas and it causes worse
10 problems, and so he tries to relieve some of the
11 numbness and tingling in the forearm with the second
12 surgery.

13 Now they're talking about doing a third
14 surgery. And on this one what they would do is kind
15 of rob Peter to pay Paul. They would take out the
16 nerve from over here on the pinky and kind of move
17 it over here, with the hopes of improving some of
18 the sensation.

19 Because he can't feel with this, this is
20 just completely dead. It's restoring some of the
21 sensation, although it's not going to restore the
22 strength. He has lost, and Dr. Ducic will say this,
23 the permanent use of his hand.

24 (Slideshow Pictures Displayed)

25 I told you about his work before. Just

1 quickly, you'll see. That's him and his backhoe.
2 And we'll talk about why it's a two-handed job, of
3 running a backhoe.

4 Now, fortunately, he's still mobile. He
5 can go bid on jobs. He can hire people to actually
6 do the work for him and he's become a supervisor.
7 So that has helped. But there are a lot of other
8 things that he has a lot of trouble doing.

9 I told you that he's a two-handed guy and
10 an outdoor guy. Here's a house that he built for
11 his family on nights and weekends when he was
12 working for somebody else in carpentry.

13 He would trade jobs with friends. Like,
14 he would get an electrician to come in and do the,
15 you know, the technical electrical part, and then he
16 would go dig the basement for that fellow, and
17 that's how they got their homes built.

18 Mr. Wood owned a boat. He liked to fish.
19 He liked to hunt. He liked to ride four-wheelers,
20 ATVs, with his grandchildren. All of those are
21 two-handed things.

22 Every Friday night at the Elks Lodge, at
23 2421, in Waldorf, Maryland, this man cooked more
24 than a hundred Kansas City strip steaks for the
25 members and their guests.

1 He's self-reliant in every way,
2 contributing to his community and his family.

3 Well, what's it like now? He gets up in
4 the morning. The chest of drawers is there. You
5 get your clothes out. Oh, there's two knobs, not
6 one knob. Try opening a two-handed chest of drawers
7 with one hand. So his wife gets his clothes out for
8 him. He puts on his work boots. Laces. Try tying
9 your shoes with one hand.

10 He used to get up at 5:00 a.m. and he'd
11 let her sleep in a little bit, and he would fix his
12 own breakfast and also he would fix himself a lunch
13 and put it in a lunch pail and take it with him.

14 So you get out your peanut butter and your
15 jelly and you open it up. That's two-handed, right
16 there. But then you've got a knife full of peanut
17 butter and you've got one hand behind your back.
18 Well, how are you going to get the peanut butter
19 spread on the bread?

20 So there's just all sorts of things like
21 that that impact this man in a daily way and have
22 turned him from being an independent and
23 self-reliant proud man, into a dependent person.

24 Now I want to run back just quickly
25 through these safety rules and talk about what

1 Dr. Tzeng said.

2 Remember, I showed you this.

3 (Referencing Text On Screen)

4 "Giving the patient the safest option
5 means even referring that patient to
6 another surgeon with a different approach
7 or technique if that's the safest for this
8 patient."

9 And this.

10 "Telling the patient the important facts
11 so the patient can make an intelligent
12 decision includes a doctor's obligation to
13 say things that might not be comfortable
14 for the doctor."

15 Such as, you know, I've got gray hair and
16 everything but I have -- and I look, you know, like
17 I have plenty of experience, but I've got to tell
18 you, candidly, with this surgery I've only done it
19 once or twice.

20 The patient has a right to know things
21 that a reasonable patient would want to know.
22 That's the rule in Maryland.

23 And at the end of this case you're going
24 to be asked to decide what would a reasonable
25 patient have wanted to know to make an intelligent

1 decision about doing this surgery.

2 We have these safety rules because
3 experience counts, because practice makes perfect,
4 because the best results come with the most
5 experienced doctors, and because patients come
6 first. Doctors have to earn their trust.

7 On the informational front, the law is
8 very interesting. The law treats all patients the
9 same. It does not favor sophisticated patients.

10 Some of us are sophisticated enough. I,
11 for example, I've been around medicine a lot, to
12 know all the questions to ask and to really probe
13 into the -- into what's going to go on.

14 But the law says that every patient has
15 got a right to the information. It's the doctor's
16 duty to disclose it.

17 Even if the patient does not have the
18 sophistication to ask the right questions, even
19 if -- and maybe especially if -- you have scared the
20 patient so much that they don't feel like they can
21 ask questions. So it's the doctor's duty to
22 disclose and the patient's duty to listen and to
23 decide.

24 Dr. Tzeng says "I used my best judgment."
25 But judgment comes with experience, and part of

1 using your best judgment includes knowing your own
2 limits.

3 Dr. Tzeng thought he was being careful, he
4 will tell us, he didn't try to hurt him; and of
5 course, he didn't try to hurt him.

6 We're not in a criminal Court here. This
7 is civil Court. This is the Court that happens
8 when -- well, I'll just hold it up. This is the
9 Court for when people get hurt by other people's
10 negligence or carelessness, for breaking safety
11 rules.

12 (Diagram On Screen)

13 What is this? This is a photograph from a
14 textbook, of that armpit area that Dr. Tzeng went
15 into. He had to dig behind these nerves here to
16 pull out this artery, to put the hole into it to run
17 back upstream over here to the left to get the job
18 done for Mr. Wood.

19 He wrote an operative report at the end of
20 this surgery and he doesn't describe anything going
21 wrong. Well, these nerves are right out there, and
22 this man has standard anatomy.

23 There wasn't anything weird about his --
24 the way that the nerves and the arteries came
25 through his shoulder, and the nerve is there to be

1 seen.

2 And yet somehow, he closed him up, and the
3 injury happened without him being aware of it. So,
4 you know, you've got to pay attention to what you're
5 doing and then you'll see what's going on.

6 Now, he said that he'd answered all the
7 patient's questions, showed them the anatomy, spent
8 time with them. Well, we have a couple of questions
9 on that.

10 Why did he feel the need to make this
11 ominous statement, "that you might not be so lucky
12 next time", right after he's been talking about the
13 heart and right after he's been talking about the
14 brain? He has to know that people don't make
15 rational decisions that well when they're scared.

16 So the question is, was he acting in the
17 patient's best interests, or was he trying to close
18 a sale? Does it matter that he wouldn't get paid if
19 he sent the patient to someone else?

20 So why we're here is because; Dr. Tzeng
21 took a perfectly good arm and hand and ruined it, he
22 didn't have to cut that into that area and expose
23 the nerves, he could have sent the patient to
24 somebody safer, with a better technique.

25 He knew he was risking this patient's

1 hand. He says now it's a normal outcome, that
2 sometimes just bad things happen to good people.

3 Well, how come you didn't tell the patient
4 that in advance? And, why did you scare the patient
5 into having the surgery?

6 So the bottom line is, when we have proven
7 what I have outlined for you today, and we've proven
8 that he broke the safety rules that are there to
9 protect all patients, that we will ask you to return
10 a verdict that will require Dr. Tzeng to pay for the
11 harm he caused, to pay for all of the harm he
12 caused.

13 Thank you.

14 THE COURT: Thank you.

15 (**TRANSCRIPT EXCERPT CONCLUDED**)

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1 REPORTER'S CERTIFICATE

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3 I, Debbie K. Klapaska, an Official Court
4 Reporter for the Circuit Court of Prince George's
5 County, Maryland, do hereby certify that I
6 stenographically reported the proceedings in the
7 matter of Michael Wood, et al. Versus James Tzeng,
8 M.D., et al., CAL-09-04587, in the Circuit Court of
9 Prince George's County, Maryland, on Monday, April
10 19th, 2010, before the Honorable Julia B. Weatherly,
11 Associate Judge.

12

13 I further certify that pages 1 through 28
14 constitute the official excerpts of the proceedings
15 as transcribed by me from my stenographic notes to
16 the within typewritten pages in a complete manner to
17 the best of my knowledge and belief.

18

19 In witness whereof, I have affixed my
20 signature, this 2nd day of June, 2010.

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Debbie K. Klapaska
Official Court Reporter