

MEDICAL MALPRACTICE**Couple Awarded \$2.7M for Failure To Diagnose Cancer****VERDICT:** \$2,703,055**CASE** Terry Lathrop and Douglas Lathrop v. Healthcare Partners Medical Group, Inc., Diagnostic Imaging Medical Associates and Robert Lanflisi, M.D., 313369**COURT** Superior Court of City and County of San Francisco, San Francisco**JUDGE** Diane E. Wick**DATE** 11/16/01**PLAINTIFF****ATTORNEY(S)** Jeffrey A. Haas; Law Office of Jeffrey A. Haas; Montara, CA (Douglas Lathrop, Terry Lathrop)

Cliff Weingus; McTernan, Stender & Weingus; San Francisco, CA (Douglas Lathrop, Terry Lathrop)

DEFENSE**ATTORNEY(S)** Robert M. Slattery; McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer; Walnut Creek, CA (Robert Lanflisi, M.D.)

Christopher A. Datomi; Ryan, Datomi & Flores; Glendale, CA (Healthcare Partners Medical Group Inc.)

Richard J. Ryan; Ryan, Datomi & Flores; Glendale, CA (Healthcare Partners Medical Group Inc.)

Geoffrey A. Mires; Rankin, Sproat, Mires & Trapani; Oakland, CA (Diagnostic Imaging Medical Associates)

Jane Luciano; McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer; Walnut Creek, CA (Robert Lanflisi, M.D.)

FACTS A jury in San Francisco awarded a plaintiff wife and her husband \$2,703,055 after they alleged that the defendants were negligent in failing to diagnose the wife's breast cancer, which has since metastasized and is considered terminal.

Between 1993 and March 1998, plaintiff Terry Lathrop, a 42-year-old part-time teacher's aide, received her primary care from defendant Healthcare Partners Medical Group when the group was known as Bay Shore Medical Group. Throughout this time, she underwent eight gynecological examinations. During an examination on Jan. 8, 1998, by Jon Friedman, M.D., while he worked for defendant Healthcare Partners, no breast masses were found. On March 17, 1998, the plaintiff discovered a lump in her

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left breast. Following an examination by Friedman, he confirmed the presence of a lump and ordered an ultrasound of the left breast that was performed on March 19, 1998. The ultrasound indicated a simple cyst. Six days later, Steven Rapaport, M.D., a surgeon, documented his findings as a moderate-to-severe fibrocystic condition and fibrocystic changes but found no dominant masses. This was the last contact between the plaintiff and Healthcare Partners.

In June 1998, the plaintiff and her husband moved to Northern California where she underwent care from another primary care physician. In September 1998, the plaintiff was referred to defendant Diagnostic Imaging Medical Associates for a mammogram of her left breast. The mammogram was read as normal. On Oct. 20, 1998, the plaintiff was referred to defendant Robert Lanflisi, M.D., for a surgical consultation relative to the lump in her left breast. The plaintiff claims that Lanflisi diagnosed cysts in her breast. Lanflisi, on the other hand, claims that no mass was found and none appeared on the mammogram.

By June 1999, the plaintiff claims that another lump had developed from which a biopsy was taken that showed breast cancer. The following month, the plaintiff underwent a modified radical mastectomy of her left breast, which confirmed extensive invasive cancer involving four lymph nodes.

The plaintiffs maintained that Terry Lathrop had cancer in her left breast, which was misdiagnosed by all of the defendants. The plaintiffs asserted that the cancer then grew and metastasized. Had the cancer been diagnosed, it could have been treated and cured, the plaintiffs claimed. Instead, the cancer metastasized, which reduces Terry Lathrop's chance for 10-year survival to 45%.

The plaintiffs' medical experts testified that the defendants were negligent, which resulted in a missed diagnosis of breast cancer and a shortened life expectancy. The plaintiffs' medical expert, Loretta Strachowski, M.D., testified that an ultrasound taken at Healthcare Partners was misinterpreted as a simple cyst and required follow-up with, among other things, a mammogram. Strachowski also stated that the mammogram, which was eventually taken in September 1998, was misinterpreted by Diagnostic Imaging as being normal when it was, in fact, abnormal. The plaintiffs' medical experts, Maurice Galante, M.D., and Samuel Spivack, M.D., testified that a biopsy was required, which would likely have disclosed cancer at an early stage resulting in treatment, and a favorable outcome for Terry Lathrop.

Defendant Healthcare Partners asserted that as soon as the lump in the plaintiff's left breast was brought to the attention of Friedman on March 17, 1998, he immediately referred her for an ultrasound and a consultation with a surgeon. Two days later, this ultrasound was interpreted as a small simple cyst. On March 24, 1998, the defendant claimed that Rapaport could not palpate the lump and instructed the plaintiff to continue monitoring her breasts through self-breast examinations. The defendant stated that the plaintiff then moved to Northern California and she was not diagnosed with breast cancer until 15 months after she was evaluated by Rapaport.

Lanflisi and Diagnostic Imaging claimed that they were not negligent and had properly managed the case. They asserted that by October 1998, the aggressive cancer had already spread to the

lymph glands and as a result, they had caused no harm to the plaintiff.

Defense medical experts Harvey Kalan, M.D., Lee Kissel, M.D., and Pamela Hilpert, M.D. all testified that the care provided by Healthcare Partners was appropriate, that the lump was, in fact, a simple cyst and that the cancer was sub-clinical when the plaintiff came to Healthcare Partners. Defense medical expert Peter Richards, M.D., testified that the care provided by Lanflisi was appropriate and that, in any event, the cancer has been cured. Defense medical experts, Richard Cohen, M.D. and Richard Kempson, M.D., testified that at least three lymph nodes were involved before the plaintiff saw Diagnostic Imaging and Lanflisi, so they did not cause a reduction in terms of life expectancy. Defense expert Denny Anspach, M.D., stated that the mammograms were, in fact, normal.

INJURIES Terry Lathrop claimed that had the cancer been diagnosed in March 1998, she might have been a candidate for lumpectomy, in which case her breast would have been saved. She stated that she progressed from an 85% chance of a cure in March 1998 to a 40% to 45% chance of a 10-year survival by July 1999. She claimed future medical expenses of \$117,000. Her past wage loss claim was \$30,000 and her future loss of earnings claim was \$600,000. The plaintiffs also made a past loss of household services claim of \$4,305. The future loss of household services was projected to be \$360,000. Douglas Lathrop made a claim for loss of consortium.

VERDICT The jury returned with an award of \$2,703,055 after voting, 10-2, on liability as to Healthcare Partners and Lanflisi, and 11-1 as to Diagnostic Imaging. The jury found Healthcare Partners 58% negligent, Diagnostic Imaging 35% negligent, Lanflisi 5% negligent and the others 2% negligent.

The plaintiffs' counsel reported that after the verdict, the defendants sought a reduction of the general damage verdict of \$2.1 million to \$250,000, pursuant to MICRA. The court reduced the general damage verdict and entered a judgment against defendant Lanflisi. The court refused to reduce the verdict as to Healthcare Partners Medical Group, finding it was not a healthcare provider under MICRA. It entered a judgment against Healthcare Partners for general damages in the amount of \$1,218,000. The plaintiffs' counsel further reported that the jury hung on the amount of damages for Douglas Lathrop's future loss of consortium claim. A retrial on that issue has been set for March 25, 2002. All of the defendants have filed motions for JNOV and for new trial.

TERRY LATHROP	\$2,100,000 non-economic damages \$403,055 economic \$2,503,055
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DOUGLAS LATHROP	\$200,000 non-economic damages
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DEMAND	\$1,000,000 to Healthcare Partners \$400,000 jointly to Diagnostic Imaging and Lanflisi
OFFER	Dismissal with prejudice in exchange for a CCP 998 offer for a waiver of costs and potential malicious prosecution claim from Healthcare Partners; None from Diagnostic Imaging and Lanflisi
TRIAL DETAILS	Trial length: 4 weeks Deliberations: 5 days
PLAINTIFF EXPERT(S)	Maurice Galante, M.D.; general surgery; San Francisco, CA Loretta Strachowski, M.D.; radiology; San Francisco, CA Samuel Spivack, M.D.; oncology; Sausalito, CA William Trezise; rehabilitation counseling; Portland, OR Phillip Allman; economics; San Francisco, CA
DEFENSE EXPERT(S)	Richard J. Cohen, M.D.; oncology; San Francisco, CA Harvey A. Kalan, M.D.; general surgery; Tarzana, CA Pamela Hilpert, M.D.; radiology; Redondo Beach, CA Lee Kissel, M.D.; family medicine; Manhattan Beach, CA Richard Kempson, M.D.; pathology; Stanford, CA Peter C. Richards, M.D.; oncology; San Francisco, CA Denny Anspach, M.D.; radiology; Sacramento, CA
INSURER(S)	Medical Insurance Exchange of California for Diagnostic Imaging and Robert Lanflisi, TIG Insurance Co. for Healthcare Partners