

IN RE:
MEDICAL REVIEW PANEL
OF
LAUREN ***
VERSUS
WILLIAM T. *, M.D. AND OCHSNER FOUNDATION CLINIC**

PCF File No.

PANELISTS:

*****, M.D.**

*****, M.D.**

*****, M.D.**

ATTORNEY CHAIRPERSON:

*** ** , ESQ.**

THE FIRM

BY: _____

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PREFACE

Beginning in May of 2010, Lauren ***, a twenty year old woman who had never been sexually active, sought medical attention for ongoing painful menstrual cycles. Ms. ***'s primary care physician, Michele ***, had been performing Ms. ***'s annual gynecological exams, as Ms. *** had never engaged in sexual activity and was therefore an uncomplicated patient in that regard. However, at her May 20, 2010 exam, Ms. *** complained of painful menstrual cycles. Based on a family history of endometriosis (maternal aunt) Dr. *** gave Ms. *** a referral for a gynecologist within the group practice, Monique ***, M.D.

While under Dr. ***'s care, Ms. *** required an appointment during a time when Dr. *** was unavailable. Accordingly, she was given an appointment with another gynecologist within the practice, William T. ***, M.D. During this appointment Ms. *** suffered a traumatic pelvic exam. As a result of damage caused during this exam, Ms. *** has developed Vulvodynia and Vaginismus. More specifically:

“Vulvodynia is not caused by an active infection or a sexually transmitted disease. Through continued research efforts, we move closer to uncovering the underlying cause(s) of vulvodynia. Researchers speculate that one or more of the following may cause, or contribute to, vulvodynia:

- An injury to, or irritation of, the nerves that transmit pain and other sensations from the vulva.”¹

“Vaginismus is a sexual problem. It has several possible causes, including:

- Past sexual trauma or abuse
- Psychological factors

¹ http://www.nva.org/what_causes_vulvodynia.html

- History of discomfort with sexual intercourse

Sometimes no cause can be found.

Vaginismus is an uncommon condition. The exact number of women who have this problem is unknown.

Symptoms:

The main symptoms are:

- Difficult, painful, or impossible, vaginal penetration during sex
- Vaginal pain during sexual intercourse or a pelvic exam

Women with vaginismus often become anxious about sexual intercourse.”²

On July 28, 2010, at the hands of William ***, M.D., Ms. *** was subjected to a pelvic exam that was so severe and so traumatic, that her therapist, Mary “Bess” ***, LCSW, classified it as a sexual assault (See, **Exhibit “G”** attached hereto). This assault left Ms. *** with permanent physical and psychological damages.

STATEMENT OF THE FACTS

On July 28, 2010, Lauren *** arrived for her appointment with William T. ***, M.D. Dr. *** was examining Ms. *** that day because Ms. ***’s regular gynecologist, Monique ***, M.D., was not available. (See, **Exhibit “A”** attached hereto, records of Ochsner Clinic Foundation dated 07/28/2010).

Upon Dr. *** entering the exam room, Ms. *** recalls that he was reviewing her medical chart and that they discussed her reasons for coming in to the office that day. During her deposition (See, **Exhibit “B”**, attached hereto, Deposition of L. ***, dated 11/13/2012), Ms. *** recalled the following:

² <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0002457/>

Q. Did you have the indication that he had your prior medical records that he was reviewing?

A. Yes.

Q. So you talked about the Seasonique?

A. Yes.

Q. Did you talk about whether it was helping your pelvic pain?

A. I told him that it wasn't helping. It seemed to be worsening.

Q. Can you remember anything else that you and Dr. *** discussed up to this point?

A. I don't recall anything else.

Q. Tell me what happened next.

A. After that he went to do the exam.³

Once the medical examination was underway, Ms. *** recounts the following events occurred. Upon the start of the exam:

Q. Okay. Was the medical assistant or nurse present?

A. Yes. He got her to come into the room.

Q. Tell me how you were positioned. Were you on a table? Were you on a stretcher? Tell me how -- before he began the exam.

A. I was sitting on the table prior to the exam.

Q. okay.

A. And he pulled out the end of the table and told me to put my feet up and I just looked at him because he never pulled the stirrups out and he said he didn't use stirrups.

Q. In previous exams had the doctors used stirrups?

A. Yes.⁴

As to the speculum portion of the examination, Ms. *** stated that she did not have an opportunity to see the speculum that Dr. *** was about to use to perform his examination. However, as Ms. *** believed that Dr. *** had reviewed her prior records, she didn't feel compelled to instruct this doctor on the need for a small speculum. Previously, Dr. *** and Dr. *** had each independently determined that the smallest available instrument was needed.

Q. Okay. Did you see the speculum that he used?

A. No, not at that point.

³ Exhibit "B" Deposition of L. ***, 35:2-35:10

⁴ Exhibit "B" Deposition of L. ***, 35:16-36:4

Q. Did you discuss with him anything about the speculum before he did the exam?

A. No.⁵

In selecting the wrong apparatus, Dr. *** conducted an exam that was both brutal and traumatic, causing an instantaneous adverse response in the patient.

Q. Did he talk with you as he was doing the speculum exam?

A. During the exam I don't recall very much because I had passed out as far as during the speculum exam.

Q. You passed out during the exam?

A. Yes.

Q. At what point did that happen?

A. When he started the exam I could feel that the speculum was much too large; but before I could say anything he forced it so hard that it shoved me further up on the table.⁶

Ms. ***'s response to this violent assault was to be rendered unable to communicate her discomfort before losing consciousness altogether on the examination table.

Q. And at what point did you pass out?

A. Immediately when it happened, I just remember the pain being extremely severe and my arms and legs began jerking and things were – I was just very dazed and confused at that point and I recall blacking out.

Q. Your arms and legs were jerking?

A. Yes.

Q. Like a seizure?

A. Yes.

Q. okay. What's the next thing you remember after you felt like you blacked out?

A. I was moaning and groaning a bit and he asked if the speculum was open too much.⁷

Dr. ***'s response to Ms. ***'s plight was to reprimand her for squirming and to tell her to hold still. There was no offer to terminate the exam; there was no inquiry into Ms. ***'s overall condition as a result of Dr. ***'s aggressive application of the speculum to Ms. ***'s

⁵ Exhibit "B" Deposition of L. ***, 37:6-37:- 37:11

⁶ Exhibit "B" Deposition of L. ***, 37:12-37:23

⁷ Exhibit "B" Deposition of L. ***, 38:10-38:23

anatomy. To the contrary, Dr. *** forcefully continued his exam of Ms. ***, even going so far as to prevent her from moving and to “fuss at her” for continuing to move.

Q. Did you have any other symptoms other than the pain that you were describing?

A. Just the pain and the jerking movements of my arms and legs. He fussed at me to hold still and I couldn't because my legs and arms were just jerking out of control. So he grabbed my legs by my ankles and held my legs down to the table.⁸

Dr. ***'s own assistant recognized that there was a problem and tried to stop the doctor from proceeding with the examination.

Q. You said you were having a difficult time hearing and seeing and that things were very blurry. Can you describe that any more?

A. I recall the nurse trying to get his attention when the jerking first began and when I was in a lot of pain at the beginning. And I could hear her trying to tell him something but I really couldn't make out what she was saying.

Q. And as we sit here, do you have any idea what she was saying?

A. I believe she was-- when I first started to hear her at the beginning she was telling him to stop. But as far as everything else she said, my hearing was too blurry and I really wasn't able to hear what she was saying.⁹

Dr. *** proceeded with a digital exam upon Ms. ***, regardless of the fact that the patient was in a disoriented and combative state. Additionally, Dr. *** went so far as to force the completion of the exam upon Ms. *** even though his medical assistant had left the exam room and did not return.

Q. Okay. After the speculum exam did Dr. *** perform any other exam?

A. Yes.

Q. what did he do?

A. He performed a digital exam.

Q. And how did he do that? Describe that for me.

A. He did that after the speculum exam. I was still unable to talk and very disoriented. I was still lying down and I had my legs

⁸ Exhibit “B” Deposition of L. ***, 39:5-39:12

⁹ Exhibit “B” Deposition of L. ***, 40:16-41:5

together and he told me not to worry, that he had long skinny fingers and he kept trying to pry my legs apart while I was trying to keep them together.

Q. And then what happened?

A. He eventually was able to pry my legs apart.

Q. And you were physically resisting him doing that?

A. Yes.

Q. Was the medical assistant there?

A. No. As soon as he handed her what he needed to give her after he did the speculum exam, she took that and left out the room.

Q. Did she ever come back?

A. No.

Q. Is it your testimony, ma'am, that he forced your legs apart in order to do the digital exam?

A. Yes.¹⁰

Further, Dr. *** performed the digital exam without wearing gloves.

Q. During either the speculum exam or the exam, did Dr. *** have gloves on?

A. No.

Q. He had no gloves on during either?

A. During the digital exam, he -- the one hand he was using to hold my legs open he didn't have a glove on, and then when I was able to sit up he didn't have a glove on the other hand either.

As a result of this harrowing experience, Ms. *** suffered physical and emotional injuries. The day after her appointment with Dr. ***, Ms. *** met with her primary care physician, ***, M.D. Dr. ***'s office note of 07/29/2010 outlines the following:

HPI: This is a 20-year-old female here today with vaginal burning following a GYN exam done by Dr. *** on yesterday. The patient was being seen for chronic pelvic pain. She underwent a pelvic exam, which was very traumatic for her. The patient is not and has not been sexually active. This was not (Dictation Anomaly) until after the pelvic exam was complete. She states that it appeared that initially the speculum did not fit and it was made to fit. The patient states that she was very uncomfortable throughout the exam, but will be (Dictation Anomaly) that was present. Attempted to stop the exam, however, it was completed instead. She was asked after

¹⁰ Exhibit "B" Deposition of L. ***, 45:4-46:7

exam if she had ever been sexually active and she responded no. Since that exam, she has had heavy menstrual bleeding, vaginal pain, and burning. Worse if she sits. She has been afebrile.

ASSESSMENT AND PLAN: Pelvic pain with vaginal abrasion and irritation. The patient was given Toradol 60 mg IM xl and sent home with prednisone 20 mg twice a day for 3 days. She was given Tylenol #3 for the pain. She may also try warm sitz baths for symptomatic relief. She is to follow with me on Saturday if her symptoms do not improve.¹¹

Dr. *** testified at her deposition that when Ms. *** came to see her the day after her experience with Dr. *** that she was there for vaginal pain.

Q. What was she complaining of?

A. Vaginal burning.

Q. Okay. Did you perform an examination?

A. Yes.

Q. What kind of examination did you perform?

A. Gyn, a pelvic exam.

Q. How did you do that?

A. Had her on the table in stirrups, did the inspection. Would have inserted the speculum to complete the exam. Like I said, that's all I do is internal and external with the speculum. According to my note, I could not insert the speculum.¹²

A. **So I could not insert the speculum due to her having swelling.** (emphasis added)

Q. Okay.

A. So I didn't do the speculum exam that day. I was able to get my index finger in her pelvis.¹³

Dr. *** went on to describe the condition of Ms. ***'s genitalia on July 29, 2010 by saying:

Q. You said she was swollen and red?

A. Yes.

¹¹Exhibit "C", Ochsner Clinic Foundation Office Note of *** (07/29/2010)

¹² Exhibit "D" Deposition of ***, 19:8-19:21

¹³ Exhibit "D" Deposition of ***, 19:24-20:4

Q. That was your visual inspection?

A. Yes.

Q. Okay. You mentioned some abrasions --

A. Yes.

Q. -- in the introitus. I want to look at Exhibit A. Can you point me out where those abrasions were? Mark this exhibit. Scratch it up as much as you want to.

A. Introitus is the opening.¹⁴

In fact, the extent of Ms. ***'s injuries was so severe that Dr. *** was unable to insert even the smallest speculum available.

A. I mentioned that I was unable to insert the small speculum.

Q. That would be the smallest size possible?

A. Yes. Well, the smallest size we have here.

Q. Yes. The smallest size you have here.¹⁵

Clearly, Ms. *** had suffered recent visible trauma to her genital area. In addition to the trauma being visible to Dr. ***, she also noted that her patient was "tender" in her genital area:

Q. Yes. How did you determine she was tender?

A. Like if you touch her, she says like it hurts.

Q. Okay.

A. You know, so that area was sensitive, like painful to touch.

Q. Okay.¹⁶

Dr. *** offered the following testimony as an explanation of the force required to achieve the level of injury Ms. *** demonstrated:

Q. Have you ever seen this type of abrasion before?

A. Oh, yes.

Q. Do you know what can cause those abrasions?

A. I've seen them like after a delivery.

Q. Okay.

¹⁴ Exhibit "D" Deposition of ***, 22:9-22:21

¹⁵ Exhibit "D" Deposition of ***, 22:2-22:8

¹⁶ Exhibit "D" Deposition of ***, 24:7-24:13

A. You know, from the baby's head coming down out of the canal, you can get like some abrasions, you know, brush burns.

Q. So the abrasions are more like brush burns?

A. Yeah. They're not cuts. Like cuts we refer to like as laceration.¹⁷

When asked during her deposition if anything other than childbirth could cause the type of injury she observed in her patient, Lauren ***, Dr. *** responded affirmatively. When asked if the injury could be caused by a speculum, she again responded affirmatively.

Q. All right. Other than childbirth, what else causes these types of abrasions?

A. Gosh, that can be a whole bunch of stuff, any type of friction.

Q. Any type of friction?

A. Yes.

Q. Can a speculum cause those types of abrasions?

A. I guess it could. I guess it could.¹⁸

Dr. *** indicated that she believed her patient's account of how she received the injuries to her vaginal region.

Q. Okay. Based on your training and experience and treatment of Lauren, do you have any idea what could have caused those abrasions?

A. I can go by what she said. So the speculum is the only thing that she said.¹⁹

Q. Assuming her description of the examination is correct, is it more likely so than not that the speculum caused the abrasions?

A. I have no idea. I mean, I've never seen it before, but I have no idea. I mean, yes, it could have. I've just never seen it before.²⁰

¹⁷ Exhibit "D" Deposition of ***, 25:6-25:19

¹⁸ Exhibit "D" Deposition of ***, 26:9-26:17

¹⁹ Exhibit "D" Deposition of ***, 27:3-27:8

²⁰ Exhibit "D" Deposition of ***, 41:18-42:3

Regardless, Ms. ***'s injuries could only be caused by vaginal penetration combined with force and friction.

A. No. If she had any other, I guess, type of penetration of her vaginal opening, that could have caused it.

Q. Let me see if I get this right. Those abrasions only occur when you have some kind of penetration in the vaginal canal?

A. From what I've seen.

Q. Okay. In your experience?

A. Right. Something has to be introduced in that area to rub, you know, to rub against her skin to cause it. Like, it doesn't just happen.²¹

The level of force applied would have to be comparable to childbirth; obviously there was enough force applied to shove Ms. *** up the exam table (See, Footnote Number 6).

Q. In your experience, training and education, do you know what kind of force an object would need to have to cause that kind of abrasion?

A. The only one I've seen is, like I say, with the childbirth. I've not seen it any other -- I mean, any other way. Like the only way I've seen it is with childbirth, which is forceful. You know what I mean?²²

***, Esq., counsel for the defendant, asked Dr. *** if she believed the injuries sustained by Lauren *** were caused by the exam performed by Dr. ***. Dr. ***'s response indicates that she does in fact believe that her patient's account of how the injuries were sustained is plausible and is the truth.

Q. Is her description of the exam, does that provide the basis for your belief that a speculum could have caused the abrasions?

A. Yes.²³

²¹ Exhibit "D" Deposition of ***, 27:14-27:5

²² Exhibit "D" Deposition of ***, 42:23-43:2

²³ Exhibit "D" Deposition of ***, 40:14-40:17

Dr. *** indicated that she advised Ms. *** to follow up if her symptoms did not improve, or worsened.

Q. Anything else that you recommended for Miss ***?

A. To follow up if she didn't get better.

Q. And did she follow up with you?

A. Yes.

Q. When was that?

A. July 31st, 2010.

Q. So that's what, two days later?

A. Yes.

Q. What was her complaint at that time?

A. Continued vaginal pain.²⁴

On July 31, 2010, Ms. *** returned to Dr. ***office, as her pain had not diminished. The following is taken from the records of Dr. ***.

HPI: This is a 20-year-old female (Dictation Anomaly) return into the clinic secondary to continued vaginal pain and irritation. She was treated with Toradol 60 mg IM in the clinic about 2 days ago in addition to prednisone. States that the Toradol initially helped, the swelling went down; however returned when she began walking around. The prednisone only helped it minimally. She was also given Tylenol #3. However, she states that it only makes her sleepy. It does not help with the pain. She tried the warm soaks, however it irritates her to sit too long. Therefore she is not able to complete the full treatment. The patient also states she had an episode of abdominal swelling, which has since resolved. She continues to have some vaginal bleeding.

ASSESSMENT AND PLAN: Continued pelvic pain. The patient was given Toradol 60 mg IM x1, prednisone taper starting at 60 mg, and Tylenol #3 was discontinued. She was placed on Vicodin. She is to call me on Monday. If pain and symptoms do not improve at which time I will call her GYN physician, Dr. *** for further evaluation and treatment of this patient status post traumatic pelvic exam.²⁵

²⁴ Exhibit "D" Deposition of ***, 29:5-29:15

²⁵ Exhibit "E", Ochsner Clinic Foundation Office Note of *** (07/31/2010)

Upon conclusion of this exam, Dr. *** directed Ms. *** to follow up with her gynecologist, Dr. ***, should her painful condition persist.

Q. Did you direct her to go to the emergency room or anywhere else?

A. If her pain didn't get better to follow up with her ob/gyn, Dr. ***.²⁶

On August 3, 2010, Ms. *** presented to the emergency department of Ochsner Medical Center, Main Campus, in Jefferson, Louisiana, due to ongoing pain from her traumatic pelvic exam. At the emergency department, she was treated by ***, MD and ***, MD who noted in the chart:

HISTORY OF PRESENT ILLNESS (Physician)

ACUITY: Level 3

20 year old woman with history of recurrent pelvic pain presents to ED from FP clinic for evaluation of recent fevers associated with pelvic pain and vaginal bleeding which began after pelvic exam by her GYN 6 days ago during which she believes she sustained an injury from a poorly sized speculum. She denies associated nausea or vomiting as well as any cough, vision change or headache. She describes maximum temperature as 101.0 yesterday and this am with 100.0 temp which resolved after Tylenol.²⁷

Ms. *** was treated for her pain and was discharged with instructions to follow up for re-evaluation and further treatment.

Primary diagnosis: Vulvitis/vulvovaginitis • acute

ED Physician(s): Christopher Voigt, MD

Discharge from ED: The patient is discharged to home. Patient's condition is satisfactory. The patient is to follow-up with OB/GYN Clinic in as scheduled. Purpose of referral: for re -evaluation and further treatment.

You received the following medications during your stay:

NS Intravenous 1000 ML Bolus

Toradol Intravenous 15 MG Ivp

²⁶ Exhibit "D" Deposition of ***, 0:9-30:-30:12

²⁷ Exhibit "F" Ochsner E.D. record 08/03/10

Lidocaine 2% Jelly Topical (see, Footnote 22)

The events Lauren *** endured on July 29, 2010, have left her emotionally scarred and physically damaged. She has since endured countless hours of physical treatment as well as psychological counseling to try and overcome the pain levels and distrust that have become her way of life since the traumatic examination. Lauren has treated with a pain management specialist, neurologist, psychiatrist and psychotherapist in a concerted effort to minimize her distress and restore some level of normalcy to her day to day activities.

As part of her attempts to regain some normalcy, Ms. *** is being treated by a therapist, Bess ***, LCSW. Therapist *** classified the pelvic exam conducted by Dr. *** as a *sexual assault* (emphasis added).

Trauma

07/12/11

July 28, 2010. Saw OBGYN at Ochsner on Jeff HWY to address pelvic pain. Was having ongoing pain prior to her menses. She reported 2 vaginal exams prior to this "with small speculums." Reported she was not offered stirrups and the Dr. told her to put her feet up on the table. Reported he used regular speculum, and said she was unsure if he used lubrication. Pt reported nurse present who "seemed uncomfortable". "She tried to stop him or question him, saying 'she seems uncomfortable". Pt reports "intense pain and the Dr. 'jammed in" the speculum and "laughed". Pt said the Dr. finished the exam with his fingers without a glove and he said, "don't worry, I have long, skinny fingers". Pt said "he wasn't examining me".

She reports this incident caused

- Internal tears and bleeding, hypersensitive nerve endings, fallen ovary with no blood flow, anxiety, paranoia about being I: 1 with people, vulvodynia, pain flare ups to the point of blackout, and irritation from pants and sitting on hard surfaces.

Initial Diagnosis, Anticipated Prognosis, and Treatment Plan

Axis I	309.0 Adjustment Disorder
	306.51 Vaginismus
Axis II	No Diagnosis
Axis III	Vaginismus; Vulvodynia; Chronic Pain

Axis IV Sexual assault (emphasis added)
Axis V 51

One month later, Therapist *** revised her diagnosis to include Post Traumatic Stress Disorder, among other conditions.

8/17/11 Revised diagnosis on client report of nightmares, flashbacks, dissociative experiences, hypervigilance, isolation, and hopelessness.

Axis I 309.81 PTSD, Chronic
 306.51 Vaginismus, Acquired, Generalized, Due to
 Combined Medical\and Psychological Factors
Axis II No Diagnosis
Axis III Vulvodynia, Chronic Pain, Asthma, Seizures (added
 1/31/12)
Axis IV Sexual Assault (emphasis added)
Axis V 51²⁸

DISCUSSION OF MEDICAL CARE RENDERED:

Lauren *** entrusted herself to the care of a medical professional in the absence of her regular health care provider. That professional, William T. ***, M.D. betrayed that trust and committed an assault upon Ms. *** under the guise of pelvic examination. The result of this assault was Ms. ***'s immediate physical and psychological injuries, as well as the ongoing somatic, psychosomatic and mental anguish she continues to suffer.

SPECIFIC ALLEGATIONS:

William *, M.D.**

Dr. *** terrorized Ms. *** and traumatically assaulted her, causing her injuries and damages. He committed this terrorization by forcing too large a speculum into Ms. ***'s

²⁸ Exhibit "G", Office notes of Bess ***

vagina; by forcing Ms. ***'s legs apart to continue his assault; by proceeding with an examination after his assistant had left the examination room; by digitally penetrating this sexually inactive victim with an ungloved hand; by inappropriately speaking to Ms. ***; by ignoring her struggle; and by dismissing her derisively upon the conclusion of his assault.

Ochsner Clinic Foundation, New Orleans

The clinical and medical support staff in Dr. ***'s office lacked the proper training necessary to recognize an inappropriate examination while one was being conducted and further failed to attempt to stop an examination while a patient was in visible distress on the examination table; failed to intervene on behalf a patient who was visibly having trouble articulating her distress; left the doctor in alone an examination room with a patient still undressed in the examination position; and failed to report the unusual events of the examination to any supervisor or colleague of the doctor in question.

CONCLUSION

On July 28, 2010, Lauren *** placed her trust in Dr. *** and Ochsner Clinic Foundation. That trust was betrayed and Ms. *** was assaulted during an examination with a health care provider and was caused to endure lasting and ongoing physical and psychological damages. The damages sustained by Ms. *** were a direct result of the substandard care provided to Ms. *** by both Dr. *** and his medical office staff. For the reasons outlined in the previous pages, the Plaintiff requests that you find in her favor, and against Dr. *** and Ochsner Clinic Foundation.