

2008 WL 3853176 (Cal.Super.) (Verdict and Settlement Summary)

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Superior Court, Los Angeles County, California.

Irvin Strub, M.D. v. Southern California Permanente Medical Group, Kaiser Foundation Health Plan Inc. and Paul Deiter

No. BC355468

DATE OF VERDICT/SETTLEMENT: July 16, 2008

TOPIC: PROFESSIONAL NEGLIGENCE - ATTORNEY - INTENTIONAL TORTS - FRAUDULENT CONCEALMENT -
PROFESSIONAL NEGLIGENCE - BREACH OF FIDUCIARY DUTY

After His License Was Revoked, Doctor Sued Lawyer, Health Care System

SUMMARY:

RESULT: Verdict-Plaintiff

The jury returned a verdict for Strub in the amount of \$3,949,580.25.

EXPERT WITNESSES:

Plaintiff: [Anthony E. Reading](#); Clinical Psychology; Beverly Hills, CA [Dean Rider](#), M.D.; Gastroenterology; San Francisco, CA [Gert Hirschberg](#), Esq.; Legal Malpractice; Calabasas, CA [John DiCaro](#), Esq.; Legal Malpractice; San Diego, CA [Richard Perillo](#), Ph.D.; Neuropsychology; San Francisco, CA [Ted Vavoulis](#); Economics; Los Angeles, CA

Defendant: [Behrooz Bernous](#), Ph.D.; Psychology/Counseling; Tustin, CA [Michael J. Ward](#); Economics; Los Angeles, CA Philip Feldman; Legal Malpractice; Unknown, CA [Robert A. Gross](#), M.D.; Toxicology; Culver City, CA

ATTORNEYS:

Plaintiff: [Charles T. Mathews](#); [Charles T. Mathews & Associates](#); San Marino, CA (Irvin Strub, M.D.); [Deane L. Shanander](#); [Charles T. Mathews & Associates](#); Pasadena, CA (Irvin Strub, M.D., Irvin Strub, M.D.); [Jeffrey A. Rager](#); Rager Law Office; Torrance, CA (Irvin Strub, M.D.)

Defendant: [Jennifer Goldberg](#); Thelen, Reid, Brown, Raysman & Steiner LLP; Los Angeles, CA (Kaiser Foundation Health Plan Inc., Paul Deiter, Southern California Permanente Medical Group); [James Moak](#); Thelen, Reid, Brown, Raysman & Steiner LLP; Los Angeles, CA (Kaiser Foundation Health Plan Inc., Paul Deiter, Southern California Permanente Medical Group)

JUDGE: [Mark Mooney](#)

RANGE AMOUNT: \$2,000,000-4,999,999

STATE: California

COUNTY: Los Angeles

INJURIES: Strub alleged emotional distress as a result of being falsely accused of misconduct and from losing his license. He demanded damages for the costs of defending himself before the board and for past and future loss of income.

Facts:

On July 6, 2004, plaintiff Irvin Strub, 87, a gastroenterologist, was fired by the Southern California Permanente Medical Group after he allegedly inserted an instrument into a patient's vagina instead of her rectum as he was supposed to do. The patient made no complaint, but Strub's supervisors inspected the pictures taken during the procedure and stated that they were of the patient's cervix.

Paul Deiter, a medical doctor and lawyer who was general counsel for Kaiser at the time, assisted in filing the [Cal. Business and Professions Code § 805](#) report (to retract clinical privileges) with the state medical board. Deiter then agreed to become Strub's attorney and represent him before the board in March 2005. Deiter was in possession of the patient's chart, which contained the patient's history. Deiter did not reveal this information to the board or Strub. The board revoked Strub's medical license.

Strub sued Deiter and Kaiser for fraudulent concealment, professional negligence and breach of fiduciary duty. The plaintiff contended that Deiter did not inform him that he had personally advised Kaiser as to how to file the 805 report to the board before agreeing to represent him in front of the board, and argued that this constituted a conflict of interest. Strub also stated that Deiter would not reveal the plaintiff's name or medical records to him due to privacy laws, and argued that this created a conflict as well because Deiter, as his lawyer, was obliged to use this information to defend him.

Strub also contended that Deiter did not adequately prepare him for the interview, arguing that he was unaware that Kaiser had provided the board with the pictures that allegedly showed the patient's cervix.

Strub further contended that the 805 report should not have been filed because Kaiser never gave Strub notice of what he was accused of and never gave him an opportunity to respond.

A plaintiff medical expert testified that the pictures were not of the patient's vagina.

Defense legal malpractice expert Philip Feldman testified that there was no conflict, and that Deiter acted within the standards of reasonable care.

The defense admitted at trial that the pictures taken during the patient's treatment could not show her cervix, but argued that they did show her vagina.

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