

NEW YORK

QUEENS COUNTY

SCHOOL

Negligent Supervision

Teacher not responsible for student's acupuncture injuries

Verdict Defense

Case Xuan Qian 3rd Party Action New York College Of Traditional Chinese Medicine v. New York College Of Traditional Chinese Medicine and Dr. Jae Moon, Allied Professionals Insurance Co., and State Farm Fire & Casualty Company, No. 8665/09

Court Queens Supreme

Judge Valerie Brathwaite Nelson

Date 8/10/2012

Plaintiff

Attorney(s)

Nicholas I. Timko, Kahn, Gordon, Timko & Rodrigues, P.C., New York, NY

Defense

Attorney(s)

John J. Nicolini, Nicolini, Paradise, Ferretti & Sabella, Mineola, NY

Facts & Allegations

On April 14, 2006, plaintiff Xuan Qian, 47, self-employed, and a student at the New York College of Traditional Chinese Medicine, took a final clinical examination for her introductory acupuncture course. The course was taught by Dr. Jae Moon. Students were required to perform acupuncture on each other as part of the final examination. Qian claimed that she suffered back injuries after a fellow student inserted needles into her back.

Qian sued Dr. Moon claiming that he failed to provide adequate instruction and properly supervise students during the final exam. She also sued the New York College of Traditional Chinese Medicine claimed that it was vicariously responsible for Moon's actions. She claimed that it was improper to require students to perform acupuncture at their beginning level of experience.

Injuries/Damages

herniated disc at L2-3; herniated disc at L4-5; herniated disc at L5-S1; radiculopathy

Qian claimed that she sustained injuries to her back after a fellow students improperly inserted needles into her back during a final examination in her introductory acupuncture course. She claimed that she was diagnosed with herniated discs at L2-3, L4-5 and L5-S1. She also claimed she suffered lumbar radiculopathy.

On March 16, 2011, she claimed she underwent percutaneous disc decompression surgery at her Lumbar L4-5 and L5-S1. She also had five epidural steroid injections. The plaintiff's acupuncture expert testified that was improper for students with only an introductory level of experience to perform acupuncture on each other. The expert further testified that needles should not have been inserted into Qian's lower back because the nerves in that area are very sensitive and prone to injury. The plaintiff's treating neurologist testified that Qian sustained permanent nerve damage in her lumbar spine region.

Qian sought to recover damages for past and future pain and suffering and past and future medical expenses. Plaintiff's attorney asked the jury to award \$1.5 million in damages.

The defense's acupuncture expert testified that Dr. Moon adequately instructed the class and properly supervised the clinical exam. The expert further testified that

allowing introductory students to insert needles into each other during clinical exams was well accepted in academic settings of acupuncture instruction.

Result

The jury rendered a verdict for the defense, ruling that New York College of Traditional Chinese Medicine and Dr. Jae Moon were not negligent.

Plaintiff(s)

New York College of Traditional Chinese Medicine

Xuan Qian

Demand \$500,000

Offer \$60,000

Insurer(s)

None reported

Trial Details

Trial Length: 2.5 Weeks

Jury Deliberations: 1.5 Hours

Jury Poll: None reported

Jury Composition: 6 males

Plaintiff

Expert(s)

Shan Najendra, M.D., neurology, (John J. Nicolini, Nicholas I. Timko) (testified)

David Wurzel, acupuncture, Ellicott City, MD (Nicholas I. Timko) (testified)

Defense

Expert(s)

Dennis Moseman, M.D., acupuncture, (John J. Nicolini) (testified)

Post-Trial

None reported

Editor's Note

None reported

Plaintiff(s)

Demographics

New York College of Traditional Chinese Medicine

Age: None reported

Occupation: None reported

Gender: None reported

Married: None reported

Children: None reported

Children Description: None reported

Xuan Qian

Age: 47 Years

Occupation: self-employed

Gender: Female

Married: No

Children: No

Written By -Gary Raynaldo