

2015 WL 12711957 (N.Y.Sup.) (Verdict, Agreement and Settlement)
Supreme Court of New York.
Nassau County

Arlene DANIELE, Plaintiffs,
v.
Neil B. KIRSCHEN, M.D., Winthrop University Hospital, Linda W. Roberts,
Prac, and North American Partners in Pain Management, Defendants.

No. 0049362012.
November 2, 2015.

Special Verdict

ACCORDING TO THE PRINCIPLES OF LAW AS CHARGED BY THE COURT:

1. Did defendant Dr. Neil B. Kirschen depart from accepted medical practice by not advising plaintiff of the potential seriousness and urgency of plaintiffs condition and to recommend a prompt work-up on September 3, 2010?

At least five (5) jurors must agree on the answer to this question.

YES _____

NO X

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Dissenting juror, if any:

If your answer to Question 1 is "yes," proceed to Question 2.

If your answer to Question 1 is "no," proceed to Question 3.

2. Was this departure a substantial factor in depriving plaintiff of a substantial chance for an improved outcome?

At least five (5) jurors must agree on the answer to this question.

_____   YES

_____ NO

Dissenting juror, if any:

Proceed to Question 3.

3. Did Dr. Jacob Rauschwerger, an employee of defendant North American Partners in Pain Management, depart from accepted medical practice by not directly speaking to plaintiff and advising her to go to the hospital for an immediate work up on September 5, 2010?

At least five (5) jurors must agree on the answer to this question.

_____   YES

X NO

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Dissenting juror, if any:

If your answer to Question 3 is "yes," then proceed to Question 4.

If your answer to Question 3 is "no," then proceed to Question 5.

4. Was this departure a substantial factor in depriving plaintiff of a substantial chance for an improved outcome?

At least five (5) jurors must agree on the answer to this question.

_____   YES

_____ NO

Dissenting juror, if any:

Proceed to Question 5.

5. Did Dr. Jacob Rauschwerger, an employee of defendant North American Partners in Pain Management, depart from accepted medical practice by not following up on plaintiff's medical case by himself on September 5, 2010?

At least five (5) jurors must agree on the answer to this question.

_____   YES X NO

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Dissenting juror, if any:

If your answer to Question 5 is "yes," then proceed to Question 6.

If your answer to Question 5 is "no," then proceed to Question 7.

6. Was this departure a substantial factor in depriving plaintiff of a substantial chance for an improved outcome?

At least five (5) jurors must agree on the answer to this question.

_____   YES _____ NO

_____	_____
_____	_____
_____	_____

Dissenting juror, if any:

Proceed to Question 7

7. Did Dr. Jacob Rauschwerger, an employee of defendant North American Partners in Pain Management, depart from accepted medical practice by not alerting Dr. Kirschen about plaintiff's medical case on September 5, 2010?

At least five (5) jurors must agree on the answer to this question.

_____   YES X NO

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Dissenting juror, if any:

If your answer to Question 7 is "yes," then proceed to Question 8.

If your answer to Question 7 is 'no,' then proceed to Question 9.

8. Was this departure a substantial factor in depriving plaintiff of a substantial chance for an improved outcome ?

At least five (5) jurors must agree on the answer to this question.

_____   YES _____ NO

Dissenting juror, if any:

Proceed to Question 11. Do not answer Questions 9 and 10.

9. Did the defendant Dr. Neil B. Kirschen depart from accepted medical practice by not following up on plaintiff's medical case on September 5, 2010?

At least five (5) jurors must agree on the answer to this question.

X YES _____ NO

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Dissenting juror, if any:

If your answer to Question 9 is "yes," then proceed to Question 10.

If your answer to Question 9 is 'no,' then proceed to Question 11.

10. Was this departure a substantial factor in depriving plaintiff of a substantial chance for an improved outcome ?

At least five (5) jurors must agree on the answer to this question.

X YES _____ NO

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Dissenting juror, if any:

Proceed to Question 11

11. Did the defendant Linda Roberts, PA depart from accepted medical practice by not performing a sufficiently thorough physical examination and /or ordering or recommending an MRI, and/or blood test on September 7, 2010?

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

If your answer to Question 11 is "yes," then proceed to Question 12.

If your answer to Question 11 is 'no,' then proceed to Question 13.

12. Was this departure a substantial factor in depriving plaintiff of a substantial chance for an improved outcome ?

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

Proceed to Question 13

13. Did the defendant Linda Roberts, PA depart from accepted medical practice by not having plaintiff examined by a physician on September 7, 2010?

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

If your answer to Question 13 is "yes," then proceed to Question 14.

If your answer to Question 13 is 'no,' then proceed to Question 15.

14. Was this departure a substantial factor in depriving plaintiff of a substantial chance for an improved outcome ?

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

Proceed to Question 15

15. Did the defendant Linda Roberts, PA, depart from accepted medical practice by discharging plaintiff on September 7, 2010?

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

If your answer to Question 15 is "yes," then proceed to Question 16.

If your answer to Question 15 is "no," then proceed to court instructions.

16. Was this departure a substantial factor in depriving plaintiff of a substantial chance for an improved outcome ?

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

Proceed to Court Instructions

Court Instructions

If you have answered:

"yes" to Questions 1 and 2;

and/or "yes" to Questions 3 and 4;

and/or "yes" to Questions 5 and 6;

and/or "Yes" to Questions 7 and 8;

and/or "yes" to Questions 9 and 10;

and/or "Yes" to Questions 11 and 12;

and/or "Yes" to Questions 13 and 14;

and/or "Yes" to Questions 15 and 16.

you have found for plaintiff and must answer the next question.

If you have not answered these questions in the manner just indicated, then report your findings to the Court.

17. State the percentage of negligence of the respective parties causing injury to plaintiff, Arlene Daniele.

NEIL B. KIRSCHEN, M.D./ NORTH AMERICAN PARTNERS IN PAIN MANAGEMENT 15 %

(Apportion fault only if you answered "Yes" to questions 1 and 2; and/or 9 and 10)

LINDA ROBERTS, PA/ WINTHROP UNIVERSITY HOSPITAL 85 %

(Apportion fault only if you answered "Yes" to questions 11 and 12; and/or 13 and 14; and/or 15 and 16)

JACOB RAUSCHWERGER, M.D./ NORTH AMERICAN PARTNERS IN PAIN MANAGEMENT 0 %

(Apportion fault only if you answered "Yes" to questions 3 and 4; and/or 5 and 6; and/or 7 and 8)

TOTAL MUST ADD UP TO 100%

At least five (5) jurors must agree on the answer to this question.

X YES _____ NO

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Dissenting juror, if any:

Proceed to Question 16

18. State separately the amount awarded for the following items of damages, if any, up to the date of your verdict:

(1) loss of earnings \$ 250,000

(2) Pain and suffering \$ 500,000

If you decide not to make an award as to the above item, then you will insert the word "none" as to that item.

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

Proceed to Next Question

19. State the amount awarded, if any, for

future pain and suffering: \$ 1,500.000

(a) State the number of years the future pain and suffering will continue 20.

If you decide not to make an award as to any of the above items, you will insert the word "none" as to that item.

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

Proceed to Next Question

20. For loss of earnings, if any, you find will be incurred in the future state the following:

(i) the annual amount in current dollars:

\$ 50,000

(ii) the number of years

7

If you decide not to make an award as to any of the above items, you will insert the word "none" as to that item.

At least five (5) jurors must agree on the answer to this question.

X YES

_____ NO

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Dissenting juror, if any:

PLEASE REPORT YOUR FINDINGS TO THE COURT

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