

# VERDICTS & SETTLEMENTS

FRIDAY, DECEMBER 12, 2008

## EMPLOYMENT LAW

Retaliation  
Defamation

**VERDICT: \$11,441,559**

RESULT DATE: Dec. 11, 2008

CASE/NUMBER: *Michael Martinucci, M.D. v. Southern California Permanente Medical Group, Kaiser Foundation Health Plan, et al.* (BC365398)

### JUDGE:

Hon. Mary Thornton House  
L.A. Superior Central

### ATTORNEY:

Plaintiff — Charles T. Mathews (**Charles T. Mathews & Associates, San Marino**); Jeffrey A. Rager (The Rager Law Firm, Torrance).

Defendant — Charles M. Dyke (Nixon Peabody, LLP, San Francisco); Kenneth R. Pedroza (Cole Pedroza, LLP, Pasadena).

### MEDICAL:

Plaintiff — Barry D. Pressman, M.D., neuroradiology, Los Angeles; Anthony E. Reading, Ph.D., psychology, Beverly Hills.

### TECHNICAL:

Plaintiff — Ted Vavoulis, M.A., economics, Los Angeles.

### FACTS:

Plaintiff Dr. Michael Martinucci, M.D., began working in the Radiology Department at Kaiser-Sunset on Jan. 31, 2003.

### PLAINTIFF'S CONTENTIONS:

The plaintiff contended that he was defamed and retaliated against for trying to improve the care given to patients in the radiology department. Upon Dr. Martinucci's arrival, the care in department was so deficient it was below the minimally accepted standard of care. An internal report by Kaiser agreed, and summarized the state of the Radiology Department, "Few state-of-the art resources (technology, space, training) so that resources are perceived to be inadequate."

Dr. Martinucci opined that the care provided to patients was 25 years behind. According to Dr. Martinucci, "[T]he Sunset Kaiser Per-

manente facility technologists were operating at a level much below the standard level of care. And to adequately bring patient care to the level of Cedars or UCLA, that we had to strive for better. Better quality, better consistency, better commitment."

The Radiology Department had been operating without any uniform procedures resulting in low-quality and incomplete films or even films missing body parts to interpret. This resulted in incomplete and low-quality examinations, leading to poor clinical judgment, and bad patient care.

Accordingly, Dr. Martinucci advocated for improved patient care, including training of the radiology technicians and uniform protocols. He not only advocated for improved quality of care, he implemented it. Dr. Martinucci developed and instituted uniform protocols for conducting radiological examinations.

His efforts to improve care were "met with resistance, complaints, passive aggressive behavior, limited support, and resentment" from both the staff and administration.

Noting that his oral complaints to administration had proved fruitless, Dr. Martinucci decided to put his complaints in writing. Less than six weeks after putting his complaints in writing, on July 12, 2005, Dr. Martinucci was formally rebuked by the Medical Director of Sunset, Dr. Godfrey, and Dr. Terasaki, the Chief of Radiology. He was told that the staff perceived his protocols and radiology requirements as excessive.

Dr. Martinucci was promptly placed on an Action Plan to improve alleged deficiencies in his performance. Interestingly, there had not been performance issues raised in the past, and Dr. Martinucci received good ratings in 2005 from his colleagues. The retaliation was manifest, but it did not end there. Again, on Aug. 8, 2005, Dr. Terasaki further admonished to Dr. Martinucci: "We know and appreciate that you have tried to help improve the quality of radiology studies within our department by working with the technologists and clerks. While much of what you have done has been successful, we feel at times, it is possible to accomplish the same goals without alienating the staff."

Dr. Terasaki then told Dr. Martinucci that the staff had complained to him about the rigorous quality of care required by the doctor.

They took offense to being held to the standard of care provided at Cedars and UCLA. Dr. Terasaki expressed his view that it was more important to get along with the staff than to be an extraordinary radiologist.

After being rebuked, Dr. Martinucci felt he was being "targeted" by Drs. Terasaki and Godfrey and the technicians. He felt administration "looking for issues" to raise with him as result of his patient advocacy.

Not surprisingly, two months after being rebuked by administration for his efforts to improve patient care, Dr. Martinucci was accused of sexual harassment of an older, male technician. While this charge was pending, the defendants added a charge of racism.

The charges emanated from the same Radiology Department he was trying to improve despite resistance. Being that Dr. Martinucci was heterosexual and not a racist, he was shocked by the allegations. The allegations were pretext for retaliation, accomplished by defaming Dr. Martinucci.

Notwithstanding, defendants found that Dr. Martinucci had committed the alleged offenses. He was then terminated on Feb. 2, 2006 by Dr. Terasaki, the same administrator who had rebuked him for his efforts to improve the Radiology Department.

### DEFENDANT'S CONTENTIONS:

The defendants denied retaliation against plaintiff, and contended that he inappropriately touched a co-worker and made racist remarks.

### JURY TRIAL:

Length, 19 days; Poll, 12-0 (punitive damages against Southern California Permanente), 11-1 (punitive damages against Kaiser Foundation), 10-2 (various issues), 9-3 (liability).; Deliberation, two days

### SETTLEMENT DISCUSSIONS:

The defendant refused to mediate, and offered \$50,000 at the mandatory settlement conference.

RESULT: Verdict for \$11,441,559.

OTHER INFORMATION: The defendants have indicated that they will file motions for new trial and judgment notwithstanding the verdict.