

SEPTEMBER - OCTOBER 2022

CLACKAMAS COUNTY

KAELEN PARK v. DR. DANIEL BURNETT, D.C. AND BOONES FERRY CHIROPRACTIC
& MASSAGE CLINIC P.C.

Number: 18CV11836

Trial Date: 5/9/22 (3-week hybrid trial)

Plff Atty: Anne Foster, Sam Smith & Jaimee King of Smith Foster King
LLP(Portland)

Def. Atty: Adina Matasaru & Iayesha Smith of Harrang Long Gary
Rudnick for Def. Burnett; Steven Lindsey, Lindsey Law
Firm for Def. Boones Ferry (both Portland)

Plff Med.: Paul Ash MD (Neurologist/Stroke Specialist); Alejandro
Perez MD (Vascular Medicine), both Portland; Brandy
Burnett DC (Chiropractor) Milwaukie

Def. Med.: Gary Nesbit MD (Radiologist); Beth Howell MD (Forensic
Psychiatrist), both Portland; Richard Polin MD
(Neurologist) Clackamas; Mark Sepulveda DC (Chiropractor)
Beaverton

Plff Exp.: Susan Rosenzweig Psy.D. (Psychologist) Portland

Trial Judge: Hon. Ulanda Watkins

**MEDICAL MALPRACTICE (FAILURE TO DIAGNOSE); CHIROPRACTOR NEGLIGENCE;
BATTERY**

STROKE

2016 - Plff, female age 27, international logistics manager. In November of 2015, Plff presented to the Defs.' clinic for possible chiropractic treatment. At the time, Plff had been experiencing intermittent upper back, shoulder, and neck pain. Plff's doctors suggested she try chiropractic care as a way to manage her pain. During Plff's first visit in November 2015, she met with Def. Burnett, who recommended a chiropractic procedure known as the high velocity, low amplitude ("HVLA") cervical adjustment. The Defs. admitted that they never informed Plff that arterial dissections and strokes are known risks associated with this procedure. Plff had never received a cervical adjustment of any kind before and, not knowing these risks, agreed to the procedure. Importantly, Plff testified at trial that, had she known these risks, she would not have agreed to the procedure and would have opted for massage therapy (or another form of palliative care) instead. Over the next few months, Plff received

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Facts Cont'd: chiropractic care at the Defs.' clinic on an intermittent basis, which included HVLA cervical adjustments. Between November 2015 and July 2016, all HVLA cervical adjustments the Def. performed on Plff were non-problematic. Some provided temporary pain relief. On August 26, 2016, Def. Burnett performed an HVLA cervical adjustment on Plff, which felt very different than prior cervical adjustments. Plff felt an immediate rush of excruciating pain on the right side of her neck and head - which she described at trial as the worst pain she had felt in her life. Plff also had trouble walking out of the clinic and had to grip the front desk at the clinic to stabilize herself. Plff reported this pain to Def. Burnett, who dismissed them as normal side effects of an HVLA cervical procedure. Despite this, Def. Burnett also recommended (for the first time since she had started treatments) that Plff return the following day for another HVLA cervical adjustment. Plff then went home and slept approximately 18 hours. On August 27, 2016, Plff returned to the Defs.' clinic, whereupon Def. Burnett performed another HVLA cervical adjustment. Plff once again felt an abnormal amount of pain following the procedure, which she reported to Def. Burnett. In response, Def. Burnett recommended that Plff return the following business day for yet another HVLA cervical adjustment. Defs.' clinic was closed on August 28, 2016. As such, Plff returned to Defs.' clinic on August 29, 2016, whereupon Def. Burnett performed another HVLA cervical adjustment. Plff experienced some discomfort following this procedure, but not to the degree she had felt following the August 26th procedure. Def. Burnett recommended that Plff return in three days for additional care. Three days later, on September 1, 2016, Plff returned to the Defs.' clinic as instructed, whereupon Def. Burnett performed yet another HVLA cervical adjustment. This time, immediately following the procedure, Plff began experiencing dizziness, facial numbness on one side, and blurred/double vision. Plff was unable to get off the treatment table under her own power. . Plff reported these symptoms to Def. Burnett, who assisted Plff off the table and - believing she had low blood sugar - fed Plff goldfish crackers and rice crispy treats. One of Def. Burnett's non-medically-trained office employees suggested that the clinic call 911 and get Plff to a hospital, but Def. Burnett rejected that suggestion. Instead, Def. Burnett asked Plff if she wanted an ambulance. Plff responded by asking "I don't know. Do I need one? What is happening to me?" Def. Burnett did not answer these questions. And, for the next 45-60 minutes, Plff remained in the Defs.' treatment room. At trial, Def. Burnett testified that he

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Facts Cont'd: suspected Plff was having a panic attack, or possibly had low blood sugar, and wanted to wait to see if her condition improved. Eventually, Plff used her cell phone to contact her roommate, who came to the clinic and took her to a local hospital. Plff arrived at the hospital's emergency department approximately 20 minutes after being picked up. The hospital staff reviewed her symptoms and quickly called a "stroke code" - meaning that Plff was taken into immediate care. Imaging taken at the hospital confirmed the presence of a vertebral artery dissection (on the right side) and multiple strokes. Plff's treating neurologist, Dr. Paul Ash, testified at trial that Plff's vertebral dissection initially occurred on August 26th as a result of the HVLA cervical adjustment performed by Def. Burnett. Dr. Ash also testified that the HVLA adjustments prevented this dissection from healing on its own. Instead, one or more of the HVLA adjustments caused clot material to dislodge from the injury site within Plff's vertebral artery and traveled into her brain, causing her to suffer multiple strokes. The evidence at trial was that Plff suffered approximately seven strokes between August 26th and September 2nd. Plff brought this action alleging two claims for relief: (1) a claim for technical battery stemming from the Defs.' failure to obtain her informed consent for HVLA cervical adjustments, and (2) a claim for medical malpractice associated with Defs.' failure to recognize that she had suffered a vertebral artery dissection on August 26, 2016 following an HVLA cervical adjustment, and repeated performance of additional HVLA adjustments on August 27, 29, and September 1, 2016, which led to Plff suffering multiple strokes. The Defs. denied both liability and damages under each claim. The Defs.' theory of the case was that Plff's arterial dissection and resulting strokes were caused by something other than Def. Burnett's HVLA cervical adjustments. The Defs. also took the position that it is "impossible" for an HVLA cervical adjustment to cause a vertebral artery dissection. However, two factors undermined that defense theory. First, the Defs. were unable to point to anything else that Plff did on or around August 26, 2016, that could have caused the dissection. Second, The Defs.' own experts admitted at trial to the existence of a 2017 scientific paper that concluded that the HVLA cervical adjustment might not be safe due to the high risk of abnormal events associated with procedure, including arterial dissection and stroke. (The 2017 paper was included in one of Defs.' expert files, even though said expert denied reading it.) The findings of the 2017 paper were consistent with the testimony of

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Facts Cont'd: Plff' s experts, who testified that HVLA cervical adjustments cause dissection and/or stroke much more frequently than the chiropractic community cares to admit.

Injuries: Multiple strokes (seven) and ongoing deficits from the same.

Specials: Med. \$63,274 (past); Days in Hosp. - 2 days; Days Work Lost - approximately 10 days.

Settlement: Demand: \$650,000. Plff asked the jury for \$1,000,000 plus medical expenses. Offer: none. The Defs. asked the jury for a defense verdict.

Result: PLAINTIFF VERDICT for \$213,274. (After three weeks of trial, and 1½ days of deliberation, the jury found for the defense on the technical battery claim, despite the Defs. admitting that they never warned Plff of the risk of arterial dissection or stroke associated with HVLA cervical adjustments. However, the jury found in Plff's favor on the claim for medical malpractice, and awarded \$63,274 in past medical expenses and \$150,000 in non-economic damages. The Def. asserted the affirmative defense of contributory negligence, which the jury rejected. The Defs. also argued that Plff failed to mitigate her damages, which the jury also rejected. The Defs.' motion for new trial was denied. This was a hybrid trial that was intended to be in-person but multiple parties and attorneys tested positive for COVID-19 throughout the trial. Therefore, those testing positive attended trial via video conferencing.)