

# Cervical Cancer: Physician Did Not Read Pap Smear Results, Jury Returns \$30 Million Verdict.

The fifty-one year-old patient's pap smear results from her annual exam came back from the lab "within normal limits." However, there was a further notation that the specimen was incomplete in that there was "no endocervical component in a menopausal patient."

## **Nurse Received Results**

### **Results Filed Away in Patient's Chart**

The pap-smear report was apparently placed in the patient's chart by the physician's office nurse without being reviewed by the physician.

### **Second Pap Smear**

### **Results Filed Away in Patient's Chart Not Reviewed by Physician**

The patient returned nine months later, for another routine exam, not having been informed her previous pap smear required follow-up.

The pap smear lab result from this exam again reported "within normal limits," but with a further notation that inflammation and/or infection was present.

This report, like the earlier one, was apparently placed in the chart by the office nurse without the physician seeing it.

It was not clear whether the office nurse misinterpreted the results from the lab and did not see any need for further action, or just filed them away without paying any attention to what they said.

## **Patient Diagnosed**

### **With Advanced Cervical Cancer**

Only four weeks later the patient returned to the physician after beginning to hemorrhage vaginally at home.

The physician did a biopsy which led to a diagnosis of Stage 3B cervical cancer.

### **Total Pelvic Exenteration**

The patient immediately began chemo and radiation treatments which seemed for a time to result in remission of the cancer.

Unfortunately the remission was only temporary. An extensive exenteration became necessary. Her bladder, rectum, colon, anus and vagina were removed.

### **Assessment of Liability**

In this case the experts testified that the physician always has to review the pap smear lab results. The earlier pap smear should have been repeated and a complete pelvic exam done, the experts said.

### **Failure to Diagnose Cancer**

#### **Assessment of Damages**

In failure-to-diagnose or delayed-diagnosis malpractice litigation, the patient's experts look at the nature and staging of the cancer when it was actually discovered and extrapolate backward to determine the staging when it should have been discovered.

The experts then explain to the jury the relatively less invasive measures that likely would have worked earlier compared to the more invasive and debilitating measures that were necessary later on.

The net difference in degree of difficulty becomes the basis for the jury's assessment of compensation. According to the patient's experts, "only" a radical hysterectomy should have been necessary, not extensive exenteration.

The jury in the Supreme Court, Queens County, New York awarded \$30,000,000. Liability was apportioned 90% to the physician and 10% to the lab, which had already settled prior to trial for \$2,500,000. Trainer v. Bio-Reference Laboratories, Inc., 2007 WL 4911572 (Sup. Ct. Queens Co., New York, December 7, 2007).