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JURY AWARDS \$1.1 MILLION FOR DELAYED DIAGNOSIS OF CANCER

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Of the Legal Staff

After deliberating for more than four hours, a Philadelphia jury awarded \$1.1 million to man and his wife, compensating them for a doctor's failure to timely diagnose prostate cancer.

The two-week trial before Philadelphia Common Pleas Court Judge Myrna P. Field wrapped up last Friday, with a 12-person jury ruling 10-2 that Dr. Terrence Malloy was negligent.

Another doctor was a named defendant but was dismissed on a motion.

The jury's award breaks down to \$1 million to compensate Charles Floyd for pain and suffering, mental anguish, humiliation, embarrassment and loss of life's pleasures. The jury awarded his wife Nancy \$100,000 for loss of consortium.

Alan Schwartz and Lisa R. Schwartz, both of Anapol Schwartz Weiss Cohan Feldman & Smalley, were co-counsel to Floyd and his wife. David J. Griffith of Harvey Pennington Herting & Renneisen represented Malloy.

Floyd went to his family doctor to get a screening test for prostate cancer. The doctor performed a prostatic specific antigen (PSA) test which indicated a high possibility of the presence of cancer in the prostate.

In July 1992, Floyd went to Malloy, who repeated the PSA test, then ordered a needle biopsy.

"The final pathology report indicated a greater portion of the specimen was smooth muscle and skeletal muscle with very little prostate tissue, and they could not rule out a tumor," Alan Schwartz said. "They recommended a repeat biopsy if clinically indicated."

Nine months later, in March 1993, Malloy conducted a trans-urethral resection, a process conducted to improve urinary flow. Tissue taken from that process was sent to pathology and later reported to be benign, Schwartz said.

At that time, Floyd said, Malloy told him to return in one year.

Floyd returned to the doctor in June 1994, when he had another biopsy and an ultrasound. At this point, five out of seven cords were positive for grade-two carcinoma.

Floyd received treatment at Johns Hopkins and had to undergo a total removal

of the prostate.

After the prostate was removed, another PSA indicated that Floyd still had cancer cells in his system, but the cancer had yet to localize.

Schwartz said the cancer has yet to be specifically detected and because there is no indication where and when the cancer may resurface, he could not seek recovery for future medical expenses. Floyd was given less than 10 years to live.

Floyd was a mental-health worker prior to his development of cancer. Schwartz said the court would not allow recovery for lost wages because Floyd had voluntarily retired, even though Schwartz said Floyd retired because of embarrassment.

Schwartz said after the jury rendered its verdict, many said that they believed a note Schwartz presented at trial as evidence was key. The note indicated that Floyd should return for a check-up in six months, not a year later as Floyd had said.

Schwartz said it appeared that the note was superimposed over something, but he could not determine what it was covering. The jury agreed.

"When [the jurors were asked] if they thought that record had been altered, they said they thought that it had, including one of the jurors who did not find in Floyd's favor," Schwartz said.

Schwartz said his opponent withdrew allegations of comparative negligence before the close of the trial.

Griffith could not be reached for comment yesterday afternoon.