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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

GEORGE RALLI et al., Plaintiffs and Respondents, v. SKULL BASE INSTITUTE et al., Defendants and Appellants.	B225675 (Los Angeles County Super. Ct. No. BC362005)

APPEAL from a judgment of the Superior Court of Los Angeles County. J. Stephen Czulegar, Judge. Affirmed.

Buchalter Nemer, Harry W.R. Chamberlain II, Robert M. Dato and Efrat M. Cogan; Carroll, Kelly, Trotter, Franzen & McKenna and Richard D. Carroll, for Defendants and Appellants.

Law Offices of Richard T. Lobl and Richard T. Lobl; Law Offices of Michael Oran and Michael Oran, for Plaintiffs and Respondents.

Hyayr K. Shahinian, M.D. and his wholly-owned professional medical corporations, Skull Base Institute and Skull Base Medical Group, Inc., appeal from the medical malpractice, fraud, intentional infliction of emotional distress, and loss of consortium judgment entered against them in favor of respondents George and Lynda Ralli. We affirm.

FACTS AND PROCEEDINGS

When he was a young boy in the late 1960s, respondent George Ralli lost his hearing in his right ear from mumps. In mid-2005, he noticed he was losing his hearing in his left ear. Dr. David Eisenman, an otorhinolaryngologist (ear, nose, and throat specialist) in Maryland where George lived with his wife, respondent Lynda Ralli, examined George. (To distinguish between respondents George and Lynda Ralli, we refer to them by their first names without intending any disrespect). Dr. Eisenman ordered an MRI for George. The MRI, which was done on February 7, 2006, revealed a three-millimeter by six-millimeter benign tumor, known as an acoustic neuroma, growing on nerve bundles connected to George's inner ear and filling the distal, or far, end of George's left internal auditory canal. The internal auditory canal is a bony opening in the skull enclosing nerves passing from the inner ear to the brain; the distal end is the part of the opening farthest from the brain. Because the canal exists in bone, the canal cannot expand to accommodate a growing tumor. Thus, an expanding tumor compresses surrounding soft tissue, including nerves and blood vessels in the canal. Accordingly, although the tumor is benign, a surgeon must remove it or it will eventually destroy a patient's hearing and likely cause other problems, such as facial paralysis and loss of balance.

Dr. Eisenman proposed removing the tumor through the middle fossa surgical approach, which is an accepted method for taking out an acoustic neuroma. Dr. Eisenman told George and Lynda that the middle fossa approach, by which a surgeon reaches the tumor by entering through the side of the patient's skull, involved a one to

two week hospital stay and four to eight weeks of recovery at home. He also told them the approach was not guaranteed to preserve George's hearing. He estimated George had a 60 to 70 percent chance of keeping his hearing given the tumor's then-size and location, a success rate seconded by independent expert testimony at trial.[1]

Seeking better odds and a quicker recovery, Lynda began researching the topic on the internet. In her research, Lynda discovered appellant Skull Base Institute located in Southern California. Lynda contacted the institute which, along with its affiliated practice group, appellant Skull Base Medical Group, Inc., is wholly-owned by appellant Dr. Hyayr K. Shahinian. During phone conversations with Lynda, appellants told her that Dr. Shahinian had refined the retrosigmoid surgical approach for removing acoustic neuromas. Using that method, Dr. Shahinian proposed to remove George's tumor by guiding an endoscope through the base of George's skull under his ear. According to appellants, the approach resulted in briefer hospitalization and less recovery time than the middle fossa approach recommended by Dr. Eisenman. Additionally, according to appellants, their approach promised a 98 percent chance of preserving George's hearing. Nevertheless, and notwithstanding appellants' pre-surgery promises, medical experts testified at trial that the retrosigmoid approach allows the surgeon to reach no deeper than six millimeters into a patient's internal auditory canal because nearby balance organs make going deeper too risky. Thus, Dr. Shahinian's approach was appropriate for removing acoustic neuromas located in the medial part of the internal auditory canal which lie closer to the brain, but inappropriate for removing a tumor located in the lateral or distal end of the canal such as George's, that lies farther from the brain. Additionally, the retrosigmoid approach carries an elevated risk of post-operative debilitating headaches that can last years.

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[1] In his pretrial deposition, Dr. Eisenman testified that a patient manifesting the hearing loss George exhibited in February 2006 had a "probably less" than 50 percent chance of preserving useful hearing after surgery.

Based on Lynda's conversations with appellants, George sent his medical records and a $600 consultation fee to appellants. George and Lynda thereafter traveled from their home in Maryland to Los Angeles. On March 1, 2006, Dr. Shahinian performed surgery on George using the retrosigmoid approach. Immediately after completing the operation, Dr. Shahinian told Lynda he had successfully removed the entire tumor. In fact, Dr. Shahinian had completely missed the tumor, which remained intact in George's internal auditory canal. When George later awoke from the surgery, he could still hear, but suffered from a painful headache. (George continued to suffer headaches as of the time of trial.) Because of the headache, Dr. Shahinian ordered an MRI of George's skull. The radiologist who interpreted the MRI taken the next day reported the tumor remained, but Dr. Shahinian told George and Lynda the radiologist had misinterpreted normal post-surgical scarring and that, according to Dr. Shahinian, the MRI showed the surgery had succeeded. At trial, the court found the pre-surgery MRI taken in Maryland in February 2006 and the post-surgery MRI ordered by Dr. Shahinian showed even to a lay person's cursory examination that the surgery had failed. The court stated, "No competent physician could have come to any conclusion other than the tumor was still present post-surgery." Moreover, a few days after the surgery, Dr. Shahinian received a pathology report stating no tumor tissue existed in the material he had removed from George during surgery. As the court found, "Soon after the surgery Dr. Shahinian had both an MRI and a pathology report available which showed that the surgery was an abject failure. He did not communicate this information to the Rallis." Accepting Dr. Shahinian's assurances that all was well, George and Lynda flew back home to Maryland after George's surgical wound had sufficiently healed.

In Maryland, Lynda had a practice of keeping a personal copy of family medical records. On March 25, 2006, in response to her request to appellants for George's surgical records, she and George received in the mail two separate envelopes. Each envelope contained the pathology report from George's operation. The reports recorded diametrically opposite results. One report stated the pathologist had detected no tumor

tissue – the operative language being "no features of acoustic neuroma seen" – in the material Dr. Shahinian took from George's skull, meaning Dr. Shahinian had not removed the tumor. The other report, which was an altered copy of the first report with the word "no" apparently whited-out to change its operative language to "features of acoustic neuroma seen," suggested Dr. Shahinian *had* removed the tumor. The court found the altered report had been mailed to George and Lynda either by Dr. Shahinian or at his direction. The court observed, "This was telling evidence in support of plaintiff's case. No one besides Dr. Shahinian would benefit from or had the motivation to falsify a pathology report to hide the fact that he failed to remove the tumor during surgery. The falsified report therefore confirmed what Dr. Shahinian had told Lynda Ralli following surgery, that he removed the tumor."

George and Lynda testified that when they read the two reports, a sickening feeling overcame them. Lynda felt "really sick. I just felt this horrible feeling came over me." George testified "I remember just being smacked right in the gut. You almost lose your air." And Lynda described George as "Just mortified. Shocked. Freaked out. Terribly upset. We just couldn't believe that this was happening. That there would be – that something was going on. Devastated."

Based on the contradictory pathology reports, George's physician in Maryland ordered a third MRI of George's skull in April 2006. George's Maryland otorhinolaryngologist, Dr. Eisenman, reviewed the three MRIs from February 2006, the day after George's surgery in March 2006, and April 2006. Placing the three MRI images side-by-side, Dr. Eisenman showed George and Lynda that the tumor remained in George's left internal auditory canal. On May 25, 2006, Dr. Eisenman operated on George and removed the tumor. Unfortunately, the surgery rendered George completely deaf. Medical expert Dr. Rick Friedman testified at trial that Dr. Eisenman's middle fossa approach for removing the tumor would to a "reasonable degree of medical probability" have preserved George's hearing if it had been used in March 2006 instead of Dr. Shahinian's unsuccessful retrosigmoid approach.

In November 2006, George and Lynda filed their complaint against appellants.[2] George alleged causes of action for medical malpractice, fraud, and intentional infliction of emotional distress. Lynda alleged a cause of action for loss of consortium. Following a bench trial, the court entered judgment for George and Lynda. In a 12-page statement of decision, the court found multiple ways in which Dr. Shahinian's treatment of George was negligent. Dr. Shahinian's negligence included: using the retrosigmoid approach to try to remove the tumor at the distal end of George's internal auditory canal; failing during the operation to locate and identify the tumor; telling George the operation had succeeded; misinterpreting the post-operative MRI which showed the tumor remained; misreporting to George the post-operative MRI's results; and misreporting to George the pathologist's conclusion that Dr. Shahinian had not removed the tumor. The court additionally found Dr. Shahinian acted outrageously by trying to hide his failure to remove the tumor, and that his conduct was a substantial factor in causing George emotional distress. Finally, the court found Dr. Shahinian had knowingly committed fraud by falsely telling George and Lynda that his surgical approach promised a 98 percent chance of preserving George's hearing.

The court awarded George $500,600 in compensatory damages, consisting of $250,000 for pain and suffering, $100,000 in lost wages, $150,000 for intentional infliction of emotional distress, and $600 (Dr. Shahinian's initial consultation fee) for fraud. The court also awarded George $300,000 in punitive damages, calculated as two times his damages for intentional infliction of emotional distress. The court awarded Lynda $150,000 for loss of George's consortium. This appeal followed.

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[2] George also sued the hospital in which Dr. Shahinian operated on him and a second doctor, but they were dismissed without prejudice from the action and are not parties to this appeal

DISCUSSION

1. *George's Hearing Loss and Causation*

The trial court found multiple ways in which Dr. Shahinian's treatment of George fell below the standard of care. For example, the court concluded that Dr. Shahinian's retrosigmoid approach was medically inappropriate. The court's statement of decision explained: "Plaintiffs proved by a preponderance of the evidence that Dr. Shahinian was negligent as he fell below the standard of care reasonably careful surgeons in the same or similar circumstances by using an endoscopic surgery to attempt to remove the tumor located within the lateral or distal end of George Ralli's left internal auditory canal. [¶] . . . [¶] Dr. Shahinian knew at the time he operated on Mr. Ralli, that the tumor was in the lateral portion of the left internal auditory canal. Yet, Dr. Shahinian performed the surgery on Mr. Ralli nevertheless – a surgery on the opposite end of the IAC [internal auditory canal] from where the tumor was located. Therefore, Dr. Shahinian fell below the standard of care in performing an endoscopic surgery, using the posterior approach, to attempt to remove a tumor from George Ralli's distal left internal auditory canal . . . ."

The court also found Dr. Shahinian fell below the standard of care by not detecting the tumor in the post-operative MRI, by misreporting the pathologist's findings, and by insisting he had removed the tumor – all of which delayed the tumor's eventual removal by Dr. Eisenman.

Appellants note that George's total hearing loss followed Dr. Eisenman's surgery in May 2006, not Dr. Shahinian's operation in March 2006. According to appellants, no evidence existed that anything they did or failed to do destroyed George's hearing. (*Espinosa v. Little Co. of Mary Hospital* (1995) 31 Cal.App.4th 1304, 1314-1315 ["In a medical malpractice action the element of causation is satisfied when a plaintiff produces sufficient evidence 'to allow the jury to infer that in the absence of the defendant's negligence, there was a *reasonable medical probability* the plaintiff would have obtained a better result.' "]; *Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396,

402-403.) Appellants thus contend the evidence did not support the trial court's finding that Dr. Shahinian injured George.

Appellants' contention fails because the record contains sufficient evidence for the court to find Dr. Shahinian substantially contributed to George's deafness.[3] Perhaps foreseeing the central thrust of appellant's causation argument, the court's discussion of causation evidence with trial counsel anticipated the question appellants ask: If George's deafness followed the second surgery performed by Dr. Eisenmen, why is Dr. Shahinian responsible for George's hearing loss? The answer is that the delay in the second operation, performed by Dr. Eisenman who appropriately used the middle fossa approach, was a substantial factor in Dr. Eisenman's inability to preserve George's hearing. Doctor Friedman testified as follows: "Q. Assuming that instead of using Dr. Shahinian, a competent prudent otologist or neurootologist had operated to remove the lesion in Mr. Ralli's ear, do you have an opinion to a reasonable degree of medical probability as to the likelihood that he would have maintained his hearing at or near the level that it was when he went into the surgery? . . . [¶] A. Based upon the literature . . . hearing preservation through the middle fossa is in the neighborhood of 65 to 75 percent. There's clear evidence in the literature that hearing preservation through the retrosigmoid approach is inferior. [¶] Q. Would it be accurate, then, to state that, to a reasonable degree of medical probability, Mr. Ralli would have retained his hearing at or near the level that he had going into surgery? . . . [¶] A. Based upon the statistics, that would be reasonable to assume." The court's statement of decision summarized the key evidence: "[T]here was expert testimony by Dr. Friedman that there was a reasonable medical probability that surgery performed by the middle fossa approach *in March, 2006* [the month Dr. Shahinian used the retrosigmoid approach] would have preserved hearing. There was no contrary opinion offered."

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3 In any case, appellants do not mention two other physical injuries that supported awarding George damages for pain and suffering for medical malpractice: his debilitating headaches caused by the retrosigmoid approach, and the need for a second operation to remove the tumor.

Tackling appellants' causation question head-on, the court inquired of medical expert Dr. Friedman during trial as follows: "THE COURT: One of the things the plaintiff is going to have to establish is, but for the first surgery, that there was a good chance that Mr. Ralli's hearing could have been saved. But as I understand the second surgery, a number of nerves were cut that are the reasons he has no hearing in the left ear now, . . . Help me understand why that first surgery is the cause of his present situation if the second surgery did what it did? [¶] . . . [¶] What did the first surgery do that resulted – that causes the hearing loss that we see after the second surgery? [¶] THE WITNESS: Well, as [another medical expert witness] has pointed out very nicely, could it be the endoscope, or could it be time? [¶] It could be either. Really, it could be either. But it's the time. It's the time. [¶] THE COURT: So if Dr. Eisenman had done the surgery – I think it was February 2006, which was his first recommendation, but Mr. Ralli, instead, went to Dr. Shahinian a month later and had what was an ineffective surgery, the subsequent surgery, I guess, one month later in April – [¶] COUNSEL: May. May 25. [¶] THE COURT: -- May 2006, the passage of time, could have made a difference? [¶] THE WITNESS: Absolutely."

Appellants contend that Dr. Friedman testified that if Dr. Eisenman had operated on George in February when the tumor was first detected, George would still have lost his hearing. Appellants quote the following testimony by Dr. Friedman under cross-examination by appellants' counsel: "Q. If [Dr. Eisenman] did the exact same surgery that he did on May 25th on March 1st or February 8th, he would have . . . cost Mr. Ralli his hearing, right? [¶] A. *To say somebody would do the exact same procedure on two different days, it's absurd.* [¶] Q. Well, I understand that . . . . [¶] . . . So if he had done the exact same surgery he did on May 25th on February 7th, this gentleman would have woken up, regardless of his preoperative hearing, in exactly the same situation, because of the sacrifice of that cochlear nerve, or the large part of it, right? [¶] A. If he had done it *exactly the same way*." (Italics added.) From this testimony, appellants assert the delay caused by Dr. Shahinian's operation in March in Dr. Eisenman's removal of the

tumor in May did not cause George's hearing loss. Appellants' assertion fails, however, because it takes Dr. Friedman's testimony out of context. Dr. Friedman rejected as "absurd" the premise of appellants' hypothetical that surgeries in February and May could be performed in exactly the same way. In other words, Dr. Friedman refused to assume away as irrelevant the passing of time, an assumption which appellants built into their hypothetical. Compelled, however, by the process of cross-examination to accept a premise which he rejected as "absurd" – that two surgeries could be done exactly the same way regardless of the passage of time – Dr. Friedman gave appellants the answer they sought – but an answer he did not embrace as his own. Hence, Dr. Friedman cannot be fairly understood to have testified that the delay in removing the tumor caused by Dr. Shahinian's malpractice did not substantially contribute to George's deafness.

Appellants also contend Dr. Friedman himself would have recommended that George "wait and see" when the tumor was detected in February whether to undergo surgery. Appellants' contention mischaracterizes Dr. Friedman's recommendation. Dr. Friedman would have recommended against removing the tumor, presumably because even the preferred surgical approach – middle fossa – offered only a 60 to 70 percent chance of preserving George's hearing. Instead, he would have recommended enlarging the internal auditory canal, but would have suggested waiting to see if it was necessary to do so. An exchange between the court and Dr. Friedman clarified the point. ' "THE COURT: [Y]ou said that you would not have done the surgery at the time Mr. Ralli presented himself. What is the anticipated course of the tumor's affect? [¶] [DR. FRIEDMAN]: I would not - let me just clarify. I would not recommend an operation to remove the tumor when he first presented, and I don't know that I would have even done it had he insisted. I would have recommended he go somewhere else. What I would have offered, based upon the progression in his hearing loss, preoperatively, is a middle [de]compression procedure, where, as I said before – [¶] THE COURT: You'd just open up the bone so that the tumor has room to grow. [¶] THE WITNESS: Exactly. Room to move."

2. *Fraud*

The court awarded George $600 in damages for his fraud cause of action. Six hundred dollars was appellants' consultation fee for reviewing George's medical records after Lynda contacted appellants. Appellants contend the court erred in awarding fraud damages because no substantial evidence existed that they misrepresented a material fact to respondents. The record contains sufficient evidence for the court to find otherwise because the trial court found appellants misrepresented to Lynda that Dr. Shahinian's surgical approach promised a 98 percent chance of preserving George's hearing.

Appellants contend they spoke only of a 98 percent chance of preventing facial paralysis, which is a recognized possible consequence of surgery to remove an acoustic neuroma. Appellants testified they told George his chance of keeping his hearing was only 60 to 70 percent. In support, appellants cite evidence that their website states that Dr. Shahinian has a 98 percent success rate in avoiding facial paralysis, while his success rate in avoiding hearing loss is 60 to 70 percent, a figure consistent with independent data cited by medical expert Dr. Friedman. But the website evidence creates a conflict in the record which the trial court resolved against appellants and which we may not reweigh. (*In re Maria R.* (2010) 185 Cal.App.4th 48, 57; *Williams v. Hilb, Rogal & Hobbs Ins. Services of California, Inc.* (2009) 177 Cal.App.4th 624, 643.)

Appellants additionally contend George could not have reasonably relied on representations that Dr. Shahinian had a 98 percent success rate in preserving hearing because George signed a surgical consent and disclosure form which stated one risk of surgery was hearing loss. But the form is beside the point because the court limited George's recovery for fraud to the damages he incurred in paying appellants' consultation fee. George paid that fee before he signed the surgical consent and disclosure form, making the form irrelevant to whether George reasonably relied on appellants' representations at the time of the consultation.

3. *Spoliation and Intentional Infliction of Emotional Distress*

The trial court awarded George $150,000 in damages for intentional infliction of emotional distress. The elements of that cause of action are "(1) extreme and outrageous conduct by the defendant with the intent to cause, or reckless disregard for the probability of causing, emotional distress; (2) suffering of severe or extreme emotional distress by the plaintiff; and (3) plaintiff's emotional distress is actually and proximately the result of the defendant's outrageous conduct." (*Conley v. Roman Catholic Archbishop* (2000) 85 Cal.App.4th 1126, 1133.) In awarding damages, the court found Dr. Shahinian tried to cover-up the surgery's failure, which the court described as "extreme and outrageous conduct" consisting of a "series of acts all designed to hide and secrete from Mr. Ralli the fact that Dr. Shahinian had failed to remove the tumor." The court further found that Dr. Shahinian's conduct caused George emotional distress. The court observed: "George Ralli had put his faith and confidence in Dr. Shahinian. Dr. Shahinian acted with reckless disregard of the probability that his conduct would cause Mr. Ralli to suffer emotional distress. Mr. Ralli did suffer severe emotional distress which was aptly described by Mr. Ralli as like being kicked in the stomach. Dr. Shahinian's conduct was a substantial factor in causing Mr. Ralli to experience substantial and continued anguish, anger, humiliation, shock and shame."

Appellants contend the award for intentional infliction of emotional distress was error because it compensated George for spoliation of evidence for appellants' alteration of the pathology report. Thus, according to appellants, George's cause of action for intentional infliction of emotional distress was a "disguised tort claim for spoliation of evidence." Appellants correctly note that case law prohibits tort recovery for a litigant's spoliation of evidence, and a plaintiff may not plead around that bar by relabeling a spoliation claim with the name of a different cause of action. (*Cedars-Sinai Med. Ctr. v. Superior Court* (1998) 18 Cal.4th 1, 4; *Rosen v. St. Joseph Hospital of Orange County* (2011) 193 Cal.App.4th 453, 462.)

Although appellants cite the correct legal rules, their contention nevertheless fails

because it views the court's award for intentional infliction of emotional distress too narrowly. The court awarded damages to George based on appellants' sustained campaign to keep George ignorant of Dr. Shahinian's malpractice. (See *Aquino v. Superior Court* (1993) 21 Cal.App.4th 847, 860 [medical provider's cover-up of negligent care might be "extreme circumstance" that would permit recovery for intentional infliction of emotional distress].) For example, the court found that Dr. Shahinian misrepresented the post-operative MRI. In its statement of decision, the court noted that, "The preoperative and postoperative MRI's were identical, even from a cursory, lay person's view. No competent physician could have come to any conclusion other than the tumor was still present post-surgery. In any case, Dr. Shahinian had an obligation to resolve the findings of the MRI." The court additionally found Dr. Shahinian did not follow up on the post-operative MRI's troubling revelation that the tumor remained, the statement of decision continuing: "Dr. Shahinian did not tell the plaintiffs of that fact and instead, he sent the plaintiffs on their way back to Maryland. He did not communicate again with them. Dr. Shahinian, before sending the plaintiffs home, only said the MRI showed something that was *not* a tumor and that he would have to have a consultation with the radiologist who read the MRI and tell him to correct his report. He never did that." Finally, the court found that Dr. Shahinian either altered, or directed the alteration, of the pathology report which confirmed he had not removed the tumor. In awarding punitive damages for intentional infliction of emotional distress, the court noted "Dr. Shahinian's conduct herein was deplorable and involved much more than creation of a modified pathology report." Because appellants do not fully address the basis of the trial court's award for intentional infliction of emotional distress, they do not overcome the presumption on appeal that the trial court's judgment is correct. (*Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, 1161-1162.)

4. *Punitive Damages*

The court awarded George $300,000 in punitive damages. (*Aquino v. Superior*

Court, supra, 21 Cal.App.4th at p. 860 [medical provider's cover-up of negligent care might be "extreme circumstance" that would permit punitive damages].) Appellants contend the award was error because the record contains no clear and convincing evidence that they acted with oppression, fraud, or malice. (Civ. Code, § 3294.) According to appellants, the court imposed punitive damages solely on the "conjecture" that Dr. Shahinian, or someone at his direction, altered the pathology report in order to deceive George and Lynda. In support of their characterization of the court's decision, appellants cite the court's comment that "it's game over" for appellants if it were proven they altered the report. Appellants' characterization of the court's comment misses the mark, however, because it ignores that the court was commenting on the devastating effect on Dr. Shahinian's credibility if it were shown he had participated in altering the report, and how discrediting him undermined appellants' defenses to George and Lynda's claims against them. Although the court did secondarily acknowledge that altering the report was itself malpractice, the court did not rule that such an instance of malpractice by itself made appellants liable for the balance of George and Lynda's claims.

In any case, the record shows the court awarded punitive damages for reasons beyond the pathology report's alteration. The award rested on five factors established by case law. (See *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 418 and *Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1180.)

> ● Appellants inflicted physical harm: The court noted "The first [factor] is whether the harm caused was physical as opposed to economic. Here, there was physical harm, independent of the harm caused by the medical negligence. Such harm . . . is that suffered by George Ralli."
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> ● Appellants showed indifference or recklessness about the health of others. The court explained: "There was both indifference as well as wilfull, conscious and reckless disregard. Mrs. Ralli told Dr. Shahinian that she was worried because

Mr. Ralli was having headaches and that was unusual for her husband. Dr. Shahinian ordered an MRI. The MRI showed the exact same tumor that Dr. Shahinian was supposed to have removed when performing brain surgery on Mr. Ralli the day before. However, Dr. Shahinian did not advise Mr. and Mrs. Ralli of the presence of the tumor on the MRI and instead made excuses, i.e., the radiologist was misreading the MRI. Such MRI report put Dr. Shahinian on notice that there was an issue that he had an obligation to resolve medically. Dr. Shahinian intentionally withheld this information from the plaintiffs and in dereliction of his obligation to be of assistance to the plaintiffs. Furthermore, he caused an altered pathology report to be sent to the plaintiffs in willful and conscious disregard for plaintiff's health and safety."

● George was financially vulnerable.

● Appellants committed multiple acts of misconduct: The court explained: "The fourth factor is whether the conduct involved repeated actions or was an isolated incident. The court finds that such factor was proved here as Dr. Shahinian engaged in repeated inappropriate actions. The post-operative MRI showed that the tumor he said he had removed was, in fact, still there. Dr. Shahinian did not tell the plaintiffs of that fact and instead, the evidence showed that he sent the plaintiffs home to Maryland, and did not communicate again with them. Next, within a few days of surgery, Dr. Shahinian received the pathology report that showed that there was no evidence of tumor having been removed during his surgery. Despite the receipt of such report, Dr. Shahinian did not take any action. Instead, Dr. Shahinian engaged in further deceit by either personally sending or directing someone to send a falsified pathology report to the plaintiffs which mendaciously showed that the specimen taken from Mr. Ralli's skull was a tumor – thereby perpetuating Dr. Shahinian's cover-up that he did, indeed, remove a

tumor during the March [1], 2006 surgery."

● Appellants injured George through trickery, not by accident. The court found: "The fifth factor is whether the harm was a result of intentional malice, trickery or deceit, or rather mere accident. The court finds that there was no mere accident here; rather there was trickery as detailed herein. Dr. Shahinian was more interested in marketing than medicine as it relates to these plaintiffs."

Because appellants do not address the factual underpinnings of the trial court's award of punitive damages, they do not show the court erred. (*Salehi v. Surfside III Condominium Owners Assn., supra*, 200 Cal.App.4th at pp. 1161-1162.)

Appellants also claim $300,000 was constitutionally excessive. They rest their argument of excessiveness on their misplaced contention that George's recovery of $150,000 for intentional infliction of emotional distress was error. We have already held, however, that the award for intentional infliction of emotional distress was proper. Accordingly, appellants' contention fails.

DISPOSITION

The judgment is affirmed. Respondents to recover their costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.