

A doctor ordered chest X-rays for a patient who smoked cigarettes. After the consulting radiologist told the doctor that the X-rays looked normal, the doctor told the patient that he was in good health. In fact, the radiologist had missed signs of cancer on the X-rays that a trained radiologist, acting competently, would have detected.

After another X-ray of the patient's chest, performed one year later, showed advanced lung cancer, the doctor discovered that the radiologist had misinterpreted the patient's earlier X-rays. The patient died within four months of the later X-ray, because by then his cancer had become untreatable.

In a wrongful death suit against the radiologist based on only the facts set out above, a jury found the radiologist negligent and awarded \$3 million in compensatory damages and \$21 million in punitive damages.

Is the radiologist likely to have the punitive damages award vacated on appeal?

- A. No, because a 7 to 1 ratio of punitive to compensatory damages is constitutionally permissible. (25%)
- B. No, because an award of punitive damages is appropriate for medical malpractice that results in death or serious injury. (10%)
- C. Yes, because punitive damages awards are not authorized unless there is proof of willful or wanton misconduct on the defendant's part. (62%)
- D. Yes, because the patient smoked cigarettes and therefore was contributorily negligent. (0%)

Incorrect

Correct answer C

62% Answered correctly

01 min, 25 secs Time Spent

2023 Version

Explanation:

Punitive damages are money damages awarded to **punish** the defendant for **outrageous, malicious, or evil conduct** and to **deter** the defendant and others from engaging in **similar conduct** in the future. Punitive damages are only **available for** torts involving **willful or wanton misconduct** (ie, intentional or reckless torts). A plaintiff **cannot recover** punitive damages **for negligent conduct** because these damages are designed to punish and deter outrageous, malicious, or evil conduct—not mere unreasonable conduct.

Here, the jury found the radiologist *negligent* for missing signs of cancer on the patient's X-rays that a trained radiologist, acting competently, would have detected. The jury then awarded \$3 million in compensatory damages and \$21 million in punitive damages. However, there is no proof that the radiologist engaged in willful or wanton misconduct in failing to detect the patient's cancer. As a result, the radiologist will likely have the punitive damages award vacated on appeal.

(Choice A) The Supreme Court has held that the ratio of punitive to compensatory damages generally cannot exceed 9 to 1. Here, the jury awarded the patient \$21 million in punitive damages compared to \$3 million in compensatory damages—a constitutionally permissible 7-to-1 ratio. But since there is no proof that the radiologist engaged in willful or wanton misconduct, the punitive damage award will likely be vacated.

(Choice B) An award of punitive damages is appropriate for medical malpractice that results in death or serious injury—but only if the defendant acted willfully or wantonly (not seen here).

(Choice D) The fact that the patient smoked cigarettes and therefore may have been contributorily negligent is irrelevant to determining whether punitive damages are appropriate.

Educational objective:

Punitive damages are imposed to punish and deter outrageous, malicious, or evil conduct. As a result, punitive damages may be awarded for torts involving willful or wanton conduct—not mere negligent conduct.

References

Restatement (Second) of Torts § 908 cmt. b (Am. Law Inst. 1979) (explaining that punitive damages are available for willful or wanton misconduct but are unavailable for negligent conduct).

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Recoverable personal-injury damages

| | Intentional torts | Reckless torts | Negligence |
|----------------------|-------------------|----------------|------------|
| Compensatory damages | ✓ | ✓ | ✓ |
| Nominal damages | ✓ | ✓ | |
| Punitive damages | ✓ | ✓ | |