

ROSALIND W. SUTCH, AS EXECUTRIX OF
THE ESTATE OF ROSALIND WILSON,
DECEASED

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

ROXBOROUGH MEMORIAL HOSPITAL,
SOLIS HEALTHCARE, LP, ANDORRA
RADIOLOGY ASSOC., TENET
HEALTHSYSTEM ROXBOROUGH, LLC,
TENET, INC., TENET GROUP, LLC,
ROXBOROUGH EMERGENCY PHYSICIAN
ASSOCIATES, LLC, BARBARA ROBINS,
M.D., JEFFREY GELLER, M.D., AND
MELANIO D. AGUIRRE

APPEAL OF: NANCY K. RAYNOR,
ESQUIRE

No. 1836 EDA 2015

Appeal from the Judgment Entered May 2, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 0907-0901

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APPEAL OF: JEFFREY GELLER, M.D. AND
ROXBOROUGH EMERGENCY PHYSICIAN
ASSOCIATES, LLC

No. 1852 EDA 2015

Appeal from the Judgment Entered May 15, 2015
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 0907-0901

BEFORE: FORD ELLIOTT, P.J.E., DUBOW, J., and JENKINS, J.

OPINION BY JENKINS, J.:

FILED NOVEMBER 15, 2016

In this contentious medical malpractice action, Jeffrey Geller, M.D. ("Dr. Geller") and Roxborough Emergency Physician Associates, LLC ("REPA") appeal at 1852 EDA 2015 from a judgment of \$778,643.85 entered in favor of Rosalind Sutch, personal representative of the Estate of Rosalind Wilson, deceased ("the Estate").¹ Dr. Geller and REPA argue, among other things, that the trial court abused its discretion by disqualifying their attorney, Nancy Raynor, Esquire, from representing them during the second trial in this case.

Raynor herself appeals at 1836 EDA 2015 from an order directing her to pay \$44,693.25 in counsel fees to the Estate.

¹ There were two trials in this case. Following the first trial, the trial court granted the Estate's motion for new trial, and this Court affirmed. The second trial resulted in a verdict for the Estate, which the trial court subsequently reduced to judgment. The appeal at 1852 EDA 2015 followed.

On August 17, 2015, we consolidated these appeals *sua sponte*. For the reasons that follow, we affirm.

Factual and Procedural History

Decedent's illness and lawsuit. On May 3, 2007, Rosalind Wilson ("Decedent"), then 68 years old, visited the emergency room of Roxborough Memorial Hospital ("Hospital") due to a headache, chest pains and shortness of breath. Jeffrey Geller, M.D. ("Dr. Geller") saw Decedent and ordered a chest x-ray. A radiologist, Barbara Robins, M.D., reviewed the x-ray and noted a suspicious 2.3 centimeter nodule on both a hospital STAT sheet and in her preliminary and final reports. Dr. Robins also recommended a CT scan.

During Decedent's overnight stay, Hospital physicians ruled out cardiac problems and pulmonary embolism. But at discharge, neither Dr. Geller nor the attending physicians, including Melanio Aguirre, M.D., advised Decedent of her lung nodule or her need for a CT scan.

Twenty months later, in January 2009, Decedent learned that she had Stage IV lung cancer. The malignant lung nodule had grown to 8 centimeters and metastasized to her brain. In early July 2009, Decedent filed a writ of summons against Hospital, Dr. Geller, REPA and other defendants. On July 21, 2009, Decedent passed away. After her death, her personal representative ("the Estate") filed a complaint alleging that all

defendants breached their duty to tell Decedent about her lung nodule during her hospitalization in May 2007.

Raynor's and Packett's letters to HUP. On July 21, 2009, attorney Raynor of the law firm of Raynor & Associates ("the Raynor firm") entered her appearance for Dr. Geller and REPA in the medical malpractice action. Trial was originally scheduled for December 6, 2011, but another defendant, Dr. Aguirre, had a medical emergency which necessitated a continuance until May 21, 2012.

On January 13, 2012, four months before the new trial date, Raynor sent a letter to general counsel for HUP, a non-party in the medical malpractice action. Raynor's letter attacked the anticipated testimony of the Estate's expert witness on emergency medicine, Stefanie Porges, M.D., whom HUP employed as an emergency room physician. Raynor labeled Dr. Porges' opinion "untenable" and wrote: "I thought you might want to know that, if this is [Dr. Porges'] position and plaintiff[s'] attorneys become aware of it, it could expose [HUP] to significant liability ... I find it very difficult to believe that [Dr. Porges' opinion] could be the official position of [HUP] under these circumstances ..."

The head of HUP's Emergency Department contacted Dr. Porges about Raynor's letter, and Dr. Porges in turn notified the Estate's attorney. The Estate filed a motion seeking monetary sanctions and Raynor's disqualification from representing Dr. Geller and REPA. Undaunted, Raynor

had an associate in her law firm, Judy May Packett, send letters to the Estate's attorney in March and April of 2012 inquiring whether Dr. Porges would remain as the Estate's expert.

On April 19, 2012, Raynor and Packett attended a hearing before the Honorable Jacqueline Allen concerning the Estate's motion for sanctions. Raynor stated that she "simply just said to someone outside the course of what [Dr. Porges] did in this case that hey, this is an opinion that's out there." N.T., 4/19/12, at 47. Raynor contended that her letter to HUP "is the type of thing that happens all the time. It could have been information relayed at lunch or at a cocktail party." *Id.* at 18.

On April 30, 2012, Judge Allen granted the Estate's motion in part and ordered Raynor to refrain from contacting the Estate's expert witnesses and/or their employers about any matter relating to the Estate's case. Judge Allen determined that another hearing was necessary to determine the proper sanction but stayed the hearing pending the disposition of the upcoming trial.

First trial. Prior to trial, the Honorable Paul Panepinto, the assigned trial judge, granted the Estate's motion *in limine* to preclude all references to Decedent's long history of smoking.

During trial, Dr. Porges testified for the Estate as an expert witness on emergency room medicine. Raynor called John Kelly, D.O., as a defense expert on the same subject. During direct examination, Raynor asked Dr.

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