

IN THE COURT OF APPEAL (CIVIL DIVISION)

*Laurie (dec'd) v Dorian*

Mr Dorian was a consultant ophthalmic surgeon with a private clinic in Harley Street. He was a flamboyant and eccentric surgeon and in his spare time, performed as an amateur stage hypnotist. Having seen episodes of the US TV shows of *Scrubs* and *House*, he had considered the possibility of undertaking a minor surgical procedure using hypnotherapy rather than traditional anaesthesia. He had completed a hypnosurgery course provided by The Hypnotherapy Training Institute, but since then had not attempted such a procedure on a patient.

In 2004, Laurie, a teacher, was accidentally hit in the face by a child. Since then he had complained of a watery, irritated left eye. He made an appointment to see Mr Dorian, at his private clinic. Mr Dorian diagnosed a blocked tear duct and recommended a punctoplasty to open up the puncta of the left lower eyelid. Mr Dorian informed Laurie that he would be administered with a local anaesthetic by a small injection. Unfortunately, Laurie suffered from a fear of syringes and was adamant that he did not want to be anaesthetised.

Mr Dorian explained his training in hypnosurgery to Laurie and suggested he perform the procedure using hypnotherapy rather than anaesthesia. He fully informed Laurie of all the risks of the treatment, and Laurie was happy to proceed. He reassured Laurie that he would have an anaesthetist waiting on hand, just in case. An initial hypnotherapy consultation was undertaken, with the surgery taking place a week later.

Before surgery, Laurie was successfully hypnotised, but when the first incision was made, however, he screamed in agony. Laurie then suffered a massive cardiac arrest and died.

Laurie's widow brought an action in negligence against Mr Dorian at the Central London County Court. Breach of duty was denied but causation was admitted. In his defence, Mr Dorian relied on the expert evidence of Sir Turkleton, an eminent ophthalmic surgeon who had successfully undertaken surgical procedures using hypnotherapy at his own Harley Street practice.

At first instance, Fry J found the following facts:

1. Mr Dorian had followed the training provided by The Hypnotherapy Training Institute, and his performance of the hypnotherapy itself had not been negligent.
2. Other than Sir Turkleton, no other surgeon had, in the United Kingdom, attempted to replace anaesthesia with hypnotherapy in punctoplasty procedures.

Fry J found for the Claimant on the following grounds:

1. Mr Dorian acted negligently as the standard of care demonstrated by administering hypnotherapy instead of anaesthesia fell below that required of a reasonable doctor.
2. Although Sir Turkleton had performed this surgery before, nevertheless no substantial, reasonable, respectable and responsible body of opinion existed in support.

Mr Dorian appeals on the following grounds:

1. Fry J erred in law in holding that the reasonable and responsible body of opinion needed to be substantial or respectable, and therefore liability for negligence was not established.
2. In any event, as the alleged negligence related to Mr Dorian's administration of hypnotherapy, he should only be judged against the reasonable practitioner of hypnotherapy, as in *Shakoor v Situ*, [2001] 1 WLR 410.