Stunning Victory for Academy in Radial Keratotomoy Antitrust Litigation

On March 3, 1989, The United States Court of Appeals for the Seventh Circuit rendered a stinging opinion in favor of The American Academy of Ophthalmology and its Board of Directors, who had been accused by Ronald Schachar and seven of his colleagues of violating the Sherman Antitrust Act by labeling radial keratotomy "experimental" in 1980. (See News Commentary Section.) The Court stated, "... this case should not have gone to the jury; indeed it should not have gone to trial. All the Academy did is state its position that radial keratotomy was 'experimental' and issue a press release with a call for research." The Court stated later in the opinion that "An organization's towering reputation does not reduce its freedom to speak out... If such statements should be false or misleading or incomplete or just plain mistaken, the remedy is not antitrust litigation but more speech—the marketplace of ideas. (Schachar v American Academy of Ophthalmology, No. 88-2398, 7th Cir, March 3, 1989)

We have reviewed recently in this Journal the events that led up to this lawsuit,1-3 and Duffey has analyzed the details of this and a related antitrust suit (Vest v Waring). Now the opinion of both the jury and the Court of Appeals sends a resounding message to clinicians and researchers involved in new ophthalmic procedures: the forceful and open expression of opinions from individuals and organizations concerning ophthalmic procedures and practices is a necessary part of vigorous science and free enterprise. This opinion brings a reassuring conclusion to what otherwise might have been a dark decade in the history of refractive surgery.

Had the questions surrounding radial keratotomy been decided by litigation rather than by experimental clinical and laboratory investigation, refractive surgery might have been sent along a crooked path, where aggrieved surgeons would turn to courts of law to determine the safety and effectiveness of surgical procedures, rather than turning to the courts of scientific methodology and prospective clinical trials—the proper venues for such decisions. The Court of Appeals' approval of vigorous ferment in the marketplace of scientific and medical ideas emphasizes the basic questions that determine the truth about medical and surgical procedures. What are the facts? Where are the results? By what methods were they obtained and analyzed? Can they stand up in the court of professional peer review?

We think that the arduous, expensive, and time-consuming exercise of these two antitrust lawsuits concerning radial keratotomy have established the following:

1. Public statements of opinion—both pro and con—from practitioners, leaders, and organizations in ophthalmology concerning refractive (and other) procedures are an essential ingredient in the pursuit of scientific truth and in the protection of the public interest, provided they are not coupled with conduct that illegally restrains competition.

2. Properly conducted prospective clinical trials are valuable investigations—the modern norm for establishing the safety and effectiveness of refractive surgical procedures.4,5

3. Questions of commerce in refractive surgery do not take precedence over considerations of the safety and efficacy of procedures for individual patients—even in an era of medicine-as-business, assuming proper conduct.

We hope that the opinion in the Schachar case will have far-reaching consequences, not only in the field of refractive surgery, but across all medical disciplines, sealing shut the doors of destructive litigation.
among physicians and opening the floodgates of creative innovation, vigorous debate, and responsible scientific investigation that will create definitive, verifiable information on which we can base clinical practice.

References

GEORGE O. WARING III, MD, FACS
Editor-in-Chief

---

International Refractive Corneal Surgery Symposium
March 16 - 17, 1990
Mandarin Hotel-Singapore

The XXVI International Congress of Ophthalmology—Singapore, March 1990 and its Satellite Symposia, will be an academic and cultural highlight of the Ophthalmology world. An event you can’t afford to miss. And IPMC—as the official Congress travel company for North America—has designed a series of exciting travel programs to help you make the most of your visit to Singapore.

Let IPMC take you to Singapore ‘90 and beyond...

- Bali • Burma • Malaysia • Indonesia • India • Nepal • Taiwan • Japan • Hong Kong
- Macau • People’s Republic of China • Thailand • Australia • New Zealand • Europe

- Air transportation to and from ICO Singapore ’90 and its Satellite Symposia • Hotel accommodations • Pre- and post-Congress tours to exotic destinations in the Orient and Europe

Call us now for more information.
INTERNATIONAL PROFESSIONAL MEETING COORDINATORS, LTD. (IPMC) 770 Broadway, New York, NY 10003
800-645-2222 / 212-598-4700
FAX # 212-598-0117

The official North American travel company for ICO Singapore ’90 and Satellite Symposia