

WEDNESDAY, MARCH 26, 2008
11:00 A.M.

NO. 3

#24109, #24125

DIANE MOUSSEAU,
Plaintiff and Appellant,

vs.

STEVEN SCHWARTZ, M.D., AND
STEVEN SCHWARTZ, M.D. P.C.,
d/b/a WEST RIVER NEUROSURGERY
& SPINE,
Defendants and Appellees.

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The Honorable A. Peter Fuller
Seventh Judicial Circuit
Pennington County
(CIV 02-1241)

NOTICE OF REVIEW FILED JUNE 5, 2006

20-20-10

APPELLANT'S BRIEF

STATEMENT OF THE ISSUES

1. Whether the trial court in a medical malpractice action erred in excluding evidence of disciplinary proceedings brought against the Defendant by the South Dakota Board of Medical and Osteopathic Examiners, including the fact that the Defendant's South Dakota medical license had been placed on probation for malpractice. Martinmaas v. Engelmann, 612 N.W.2d 600 (S.D. 2000).

APPELLEES' BRIEF

STATEMENT OF ISSUES

- I. Whether the trial court abused its discretion in excluding evidence of licensure proceedings brought against Dr. Schwartz by the South Dakota Board of Medical and Osteopathic Examiners

The trial court by excluding such evidence ruled in the negative.

1. *Martinmaas v. Engelman*, 2002 SD 85, 612 N.W.2d 600 (S.D. 2000)
2. *Boomsma v. Dakota Minnesota & Eastern Railroad Corp.*, 2002 SD 106, 651 N.W.2d 238 (S.D. 2002)
3. *Fjerstad v. Knutson*, 271 N.W.2d 8 (S.D. 1978)
4. *Hall v. Hilbun*, 466 So. 2d 856 (Miss. 1985)

STATEMENT OF THE CASE

This was a medical malpractice action brought by Mousseau against Dr. Schwartz in the Seventh Judicial Circuit, Pennington County, South Dakota, the Hon. A. P. Fuller trial judge. The action was tried to a jury on February 13-17, 2006. The jury entered a verdict in favor of Dr. Schwartz. SR p. 767. The trial judge entered a Judgment on a Jury Verdict on February 21, 2006. SR p. 768.