STATE OF VERMONT
DEPARTMENT OF LABOR

Shazad Buksh

v.

Southwestern Vermont Medical Center, Inc.

Opinion No. 05-26WC

By: Stephen W. Brown
Administrative Law Judge

For: Kendal M. Smith
Commissioner

State File No. RR-52778

OPINION AND ORDER

Hearing held via Microsoft Teams on June 4, 5, and 6, 2025
Record closed on August 1, 2025

APPEARANCES:

Kaveh S. Shahi, Esq., for Claimant
Jennifer K. Moore, Esq., for Defendant

ISSUES PRESENTED:

1) Did Claimant develop bladder cancer?

2) If so, did that condition arise out of and in the course of his employment with Defendant?

3) If so, to what benefits is he entitled?

EXHIBITS:

Claimant's Exhibit 1	Joint Medical Exhibit ("JME")
Claimant's Exhibit 2	*Curriculum Vitae* of Phillip Beron, MD
Claimant's Exhibit 3	*Curriculum Vitae* of Alan Fellman, Ph. D.
Claimant's Exhibit 4	Vermont Department of Health, Radiological Health Radiation Survey Report - Podiatry, dated August 26, 2020
Claimant's Exhibit 5	Radiation Exposure Worksheet for Claimant
Claimant's Exhibit 6	Radiation Exposure Worksheet for Krishna Gathani, DPM
Claimant's Exhibit 7	Email from Claimant's Counsel to Alan Fellman, Ph.D.
Claimant's Exhibit 14	Podiatry Compliance Risk Assessment, dated January 23, 2020
Claimant's Exhibit 19	May 19, 2020 Memorandum regarding Claimant's Internal Grievance Appeal with Defendant
Claimant's Exhibit 20	Emails between William Sarchino, MD and Kevin Dailey, dated May 28, 2020 through June 1, 2020
Claimant's Exhibit 21	June 15, 2020 Memorandum from Mitchell Baroody to Karl Hayden of Vermont Occupational Safety and Health Administration ("VOSHA")

Claimant's Exhibit 22	June 18, 2020 Letter from Karl Hayden to Defendant
Claimant's Exhibit 23	June 18, 2020 Emails between Mitchell Baroody and Karl Hayden
Claimant's Exhibit 25	Text messages from Daryl Silva
Claimant's Exhibit 26	July 30, 2020 Emails between Mitchell Baroody and William Sarchino, MD
Claimant's Exhibit 27	August 3, 2020 Memorandum from William Sarchino, MD to residents
Claimant's Exhibit 29	Defendant's Radiation Safety Policy
Claimant's Exhibit 36	Photos of X-ray room
Claimant's Exhibit 37	Video and screenshots of fluoroscopy

Defendant's Exhibit A:	*Curriculum vitae* of Michael Gossman, MS
Defendant's Exhibit B:	*Curriculum vitae* of Robert Swedarsky, MD
Defendant's Exhibit C:	Radiation Exposure Worksheet
Defendant's Exhibit D:	Dosimetry Badge Data
Defendant's Exhibit E:	Photograph of x-ray room
Defendant's Exhibit F:	Rotation Schedule from Claimant's residency with Defendant
Defendant's Exhibit G:	September 9, 2020 Letter to Claimant from Vermont Department of Health Radiological Sciences Program
Defendant's Exhibit H:	June 10, 2020 Email from Vermont Department of Health with Radiation Survey Report
Defendant's Exhibit I:	September 2, 2020 Email from Vermont Department of Health with Radiation Report Survey
Defendant's Exhibit J:	Spreadsheet of X-ray count
Defendant's Exhibit J-1:	Spreadsheet of X-ray count (revised)
Defendant's Exhibit K:	Spreadsheet of X-ray count
Defendant's Exhibit L:	Deposition of McCamie Patterson, DPM
Defendant's Exhibit M:	Deposition transcript of Breton Fox, DPM
Defendant's Exhibit N:	June 2, 2020 Letter from Karl Hayden of Vermont Occupational Safety and Health Administration ("VOSHA") to Defendant
Defendant's Exhibit O:	June 16, 2020 Letter from Claimant to Karl Hayden of VOSHA
Defendant's Exhibit P:	June 30, 2020 Memorandum from Defendant's Corporate Compliance Officer to Karl Hayden of VOSHA

FINDINGS OF FACT:

1. I take judicial notice of all relevant forms and correspondence in the Department's file for this claim.

2. Between July 1, 2018 and June 30, 2021, Defendant employed Claimant as a resident physician in its podiatry program. He had two rotations with podiatrist Dr. William Sarchino, director of the Defendant's residency program. Claimant also occasionally worked in Dr. Sarchino's office clinic at the end of his workday.

3. Claimant asserts that he was exposed to excessive radiation without adequate protective measures during his residency, specifically while taking foot and ankle x-rays in Dr. Sarchino's clinic and while working with fluoroscopy (a form of continuous x-ray

imaging) in the operating room. He alleges that this radiation caused him to develop bladder cancer.

Claimant's Radiation Exposure

4. The precise amount of Claimant's radiation exposure was the subject of extensive evidence at the formal hearing, including fact witness testimony about the practices in the clinic where Claimant performed services during his tenure with Defendant, the available protective equipment and practices, allegations of Dr. Sarchino's discouragement of residents from taking precautionary measures, and expert testimony regarding the calculation of radiation exposure based on distance from the source of radiation.[1] The parties disputed virtually every aspect of the practice and procedure for taking x-rays in Dr. Sarchino's clinic, including how many x-rays Claimant would have performed.

5. Ultimately, the evidence concerning the extent of Claimant's radiation exposure is relevant to establishing the extent of his *risk* for injury from that exposure, but it is ultimately not probative of *whether* he sustained such an injury. Despite intense factual disputes about the extent of protective measures taken to mitigate radiation risk, it is undisputed that Claimant was exposed to radiation in his workplace and that radiation is a known risk factor for cancer. However, I find the efforts to compute the specific amount of Claimant's radiation exposure both intrinsically speculative and non-dispositive to the question of whether Claimant developed bladder cancer or any other injury as a result.

6. Claimant's exposure to radiation contributed to an increased risk of developing cancer compared to the general population. However, for the reasons that follow, the medical evidence does not convince me that he actually developed cancer, or any injury, because of his radiation exposure. As such, the increased risk that his radiation exposure could cause cancer is ultimately beside the point.

Claimant's Medical Course

7. On April 12, 2021, Claimant presented to his primary care provider with concerns of sexual dysfunction and requested a referral to urology. (JME 006). Approximately two weeks later, Claimant saw Dr. Andrew Cowder with Defendant's urology department, who found microscopic amounts of blood in Claimant's urine. Dr. Cowder recommended a standard protocol including sending a urine sample for cytology, a CT scan of the abdomen and pelvis, and a bladder cystoscopy. (JME 011-12).

8. Claimant's urine pathology report noted that his urothelial cells were "atypical," but nothing in this pathology report suggested that they were cancerous. (JME 015). A CT

[1] Specifically, the record contains testimony from three former podiatry residents whose tenures with Defendant overlapped with Claimant's (Drs. Patterson, Malkames, and Fox); Dr. Sarchino also testified about the practices in his clinic. Additionally, medical physicists Michael Gossman Alan Fellman, Ph.D. provided expert testimony about techniques for measuring radiation exposure levels, as well as accepted levels for both the general population and specific classes of workers. The parties also presented documentary evidence of a Vermont Occupational Safety and Health (VOSHA) inspection. Because none of this evidence ultimately affects my analysis of the merits of this case, this opinion does not recite it at length.

scan of Claimant's abdomen and pelvis on April 30, 2021 was normal (JME 16-17). Claimant's May 7, 2021 cystoscopy, however, identified two small papillary lesions, one of which was biopsied. Dr. Cowder found Claimant's test results surprising, and he noted that given the size of the lesions, Claimant's biopsy pathology could come back as positive for cancer, or a neoplasm of low malignant potential, or indeterminate. In any of those scenarios, he recommended surveillance cystoscopies. (JME 019). The biopsy results came back with a diagnosis of "benign urothelium and stroma, negative for neoplasia." (JME 021). There is no documentation of any post-biopsy follow-up with Dr. Cowder.

9. Claimant subsequently moved to Oregon. On November 11, 2021, he presented to Oregon-based radiation oncologist Nancy Reyes-Molyneux, MD, and expressed concerns about past occupational radiation exposure resulting in "suspected bladder cancer." (JME 023). Dr. Reyes-Molyneux's record indicates that Claimant relayed the following:

    a. That he presented to Dr. Cowder with symptoms of erectile dysfunction and urinary urgency;

    b. That Dr. Cowder's suspicion for bladder cancer was "very high" based upon his findings of one primary lesion and three other suspicious lesions in close proximity;

    c. Dr. Cowder expected the biopsy to be benign because a student did not perform the biopsy correctly;

    d. Dr. Cowder's plan was to treat for bladder cancer based on his "high clinical suspicion;"

    e. Dr. Cowder told him he could have a histochemical evaluation to determine the markers for cancer.

10. As there was no diagnosis of bladder malignancy, Dr. Reyes-Molyneux did not recommend that Claimant undergo radiation therapy at that time, though she requested consultation with a medical physicist to assess Claimant's concerns of radiation exposure. (JME 027).

11. Claimant established care with urologist Theresa Koppie, MD, in December 2021. Her recitation of Claimant's medical history substantially restates Dr. Reyes-Molyneux's note, including Claimant's report of Dr. Cowder's high suspicion of cancer. Dr. Koppie's note records the impression: "44 y/o gentleman with bladder cancer based on high clinical suspicion and appearance with his previous urologist 6 months ago in Vermont. The lesions were fulgurated and surveillance cystoscopies for monitoring was recommended." (JME 047-48).

12. As of January 2022, Claimant had had a negative urine cytology, a normal CT scan, a pathology report confirming a benign papillary lesion, and a normal post-biopsy cystoscopy; he had seen urologist Dr. Cowder twice, urologist Dr. Koppie once, and

radiation oncologist Dr. Reyes-Molyneux once. Medical physicist Lichung Ku, Ph.D., had calculated Claimant's radiation exposure at 3.0 millisieverts (mSv), or 300 millirem, per year, below the occupational health limits of 50 mSv or 5,000 millirem.[2]

13. Based on this history, on January 26, 2022, Claimant's expert, radiation oncologist Phillip Beron, MD, issued a report stating an opinion that Claimant had bladder cancer caused by radiation exposure at work. (JME 055).

14. Claimant returned to Dr. Koppie in March 2022 for another cystoscopy, which was normal. She recommended sending a urine sample for genetic testing and for Claimant to return for another cystoscopy in three months. (JME 060-65).

15. Claimant followed up with Dr. Reyes-Molyneux in April 2022 and requested that the physicist who had previously calculated radiation exposure recalculate and consider his fluoroscopy exposure in the operating room; he also asked about sending his tissue specimen to a lab in Oregon and for genetic testing. (JME 073). Dr. Ku subsequently calculated fluoroscopy exposure based upon 378 surgical cases as 37mSv or 3,700 millirem. He found that Claimant's exposure levels were higher than the general public safety limits, but within annual occupational exposure limits. (JME 077).

16. A UroAmplitude report dated April 26, 2022 documented the results of genomic data and a purported need for a higher degree of surveillance monitoring based on Claimant's history of a tumor. (JME 078).

17. Dr. Koppie performed her fourth cystoscopy in September 2022. During that visit, Claimant reported that he had recently learned that his biopsy showed no tumor and that he did not want to continue cystoscopy without an indication. The noted plan was to pursue a molecular workup with a national lab. (JME 100-104).

18. Dr. Koppie subsequently referred Claimant for a pathology consultation with Dr. Jonathan Epstein at Johns Hopkins University. (JME 110). The Johns Hopkins pathology report dated October 27, 2022, states in its entirety: "Minute fragment of a low-grade papillary urothelial neoplasm with prominent denudation, with a differential diagnosis of papilloma versus noninvasive low-grade papillary urothelial carcinoma." (JME 111).

19. Claimant returned to Dr. Koppie in January and April 2023 for a fifth and sixth surveillance cystoscopy, which were both normal. Claimant requested further diagnosis with molecular testing and was referred back to Dr. Epstein. (JME 147-154, 176-182).[3]

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[2] Radiation is measured in both millisieverts and millirem, which have a formulaic conversion factor of 100 millirem to 1 millisieverts.

[3] Some of Dr. Koppie's treatment records mention "bladder cancer" or "history of bladder cancer" under Claimant's medical history or in impressions (*e.g.,* JME 148); this appears to be a carry-forward of her initial history taken from Claimant in 2021, *cf.* Finding of Fact No. 11, *supra*, rather than her own new independent diagnoses. Dr. Koppie did not testify at the formal hearing.

20. In July 2024, Claimant established care with a new urologic oncologist, Sudhir Isharwal, MD, and he underwent a seventh cystoscopy, which was normal. The treatment plan at that time was for Claimant to return in one year for surveillance. (JME 210-212).

21. The following month, Dr. Koppie noted that another provider had called on Claimant's behalf, seeking a new urologist for Claimant who "was younger and more comfortable with technology." (JME 213). In October 2024, Claimant saw urologist Mark Mhoon, MD, for an eighth cystoscopy, which was also normal. (JME 221-223).

22. Three pathologists analyzed Claimant's biopsied specimen (discussed *supra* at Finding of Fact No. 8). Their respective conclusions are as follows:

    a. On May 10, 2021, Leslie Dowd, MD, issued a final report with her opinion: Benign urothelium and stroma. (JME 021);

    b. On October 27, 2022, pathologist Jonathan Epstein, MD, issued a differential diagnosis that the lesion was either a papilloma or a low-grade, non-invasive carcinoma. (JME 111); and

    c. On February 27, 2023, pathologist Robert Swedarsky, MD, assessed a benign urothelial papilloma with background mild chronic cystitis, or inflammation. (JME 159 *et seq.*).

Defendant's Expert, Robert Swedarsky, MD

23. Defendant presented board-certified pathologist Robert Swedarsky as an expert witness. Dr. Swedarsky currently serves as a staff pathologist at Mon Health Medical Center. In that role, he reviews on average six to eight bladder biopsies per week. He described his microscopic analysis of Claimant's tissue specimen and addressed three differential diagnoses in play, specifically a urothelial papilloma, a PUNLMP (papillary urothelial lesion of low malignant potential), and a low-grade papillary urothelial carcinoma, and included images of each. (JME 166-168).

24. In Dr. Swedarsky's opinion, Claimant's lesion was benign. He compared the similarities between Claimant's lesion and an enhanced image of a urothelial papilloma, specifically including a delicate fibrovascular core supporting a layer of four to six urothelial cells and no miotic findings. He also noted the lack of similarity between Claimant's specimen and either a PUNLMP or a urothelial carcinoma. He explained that the negative cystoscopy results since his first review fit the natural history of a benign papillary lesion and lent further support to his diagnosis of a benign lesion.

25. Dr. Swedarsky outlined potential risk factors at play for the development of bladder cancer in this case, including Claimant's status as overweight, his pre-residency occupational exposure,[4] and a membranous urothelial stricture that Dr. Cowder had

[4] There was evidence at the formal hearing that Claimant worked in an administrative role at a stone cutting facility before his medical studies, though he was not a stone cutter.

observed during Claimant's first cystoscopy, specifically an abnormal urethral narrowing caused by scar tissue. Dr. Swedarsky testified that these factors could explain Claimant's chronic inflammation, and that this inflammation in turn could explain the benign papillary lesion, or even cancer itself, if the lesion were cancerous, but papillary lesions can occur "de novo" as well. (JME 246). Irrespective of Claimant's risk factors, Dr. Swedarsky testified that tissue analysis is a "fact on the ground" diagnosis, and a pathological diagnosis does not change based on the patient's risk factors. I find Dr. Swedarsky's analysis credible and well-supported.

26. Dr. Swedarsky testified that although he considers Claimant's lesion to be benign, the course of surveillance that his providers have undertaken has been medically reasonable. I find this reasonable and well-supported.

Claimant's Expert, Phillip Beron, MD

27. Claimant presented radiation oncologist Phillip Beron, MD, as an expert witness. Contrary to Dr. Swedarsky, Dr. Beron believes that Claimant had bladder cancer. Dr. Beron was confident that Claimant's treating urologist, Dr. Cowder, had a high clinical suspicion that Claimant's lesion was cancerous based on Dr. Cowder's office notes. While Dr. Cowder's notes record "surprise" at Claimant's lesion (JME 017), Dr. Cowder's notes themselves do not record any impression or high suspicion of cancer.[5]

28. With respect to Dr. Cowder's surprise at Claimant's lesion, Dr. Beron acknowledged at the formal hearing that even a non-cancerous bladder lesion would be a surprising finding in someone as young as Claimant and would justify the surveillance cystoscopy protocol.

29. Dr. Beron also relied upon Dr. Koppie's records identifying Claimant as a "44 y/o gentleman with bladder cancer based on high clinical suspicion and appearance with his previous urologist 6 months ago in Vermont." (JME 048). However, it is not clear from this record whether Dr. Koppie's description was her independent diagnosis or a recitation of Claimant's oral history.

30. Dr. Beron also interpreted Dr. Epstein's differential diagnosis (JME 111) as meaning that Claimant had a fifty percent chance of having bladder cancer. I find this leap unsupported by the text of Dr. Epstein's note, and Dr. Epstein did not testify and did not provide any explanation or clarification of what he meant by his differential diagnosis.

31. Dr. Beron also relied in part on his impression that Claimant's treating physicians had engaged in an aggressive treatment plan and would not have done so if they did not believe Claimant had bladder cancer. However, I find this difficult to square with his acknowledgement that surveillance cystoscopy would have been reasonable even with a benign papillary lesion given Claimant's age and the fact that Claimant's cystoscopies were normal. See Finding of Fact Nos. 12-21 *supra*.

[5] Subsequent medical records reflect Claimant's verbal summaries of his visits with Dr. Cowder including reports of Dr. Cowder's suspicion of cancer (*e.g.,* JME 120), but Dr. Cowder's records do not themselves record a specific suspicion of cancer.

32. Regarding Claimant's risk factors, Dr. Beron testified that Claimant's obesity was a weak factor in this case, as Claimant told Dr. Beron he had put on weight later in life. Dr. Beron also acknowledged that Claimant had a previous history of employment in a stone working company, but Dr. Beron thought that he was unlikely to have had significant occupational exposure to carcinogens there because Claimant told him that he performed administrative work only.

33. Dr. Beron acknowledged that the estimates of Claimant's radiation exposure are low, and that increased exposure would increase the risk of cancer. However, he maintained that low levels of radiation could cause cancer and, in his view, did cause cancer here.

34. Dr. Beron believes that he is the most qualified of all the experts to opine on the bladder cancer diagnosis because he did a "clinical correlation" of all the evidence, and it is true that he was the sole testifying radiation oncologist.

35. I find Dr. Beron's opinion that even low levels of radiation exposure *can* cause cancer to be credible and well-supported; this aspect of his testimony appears uncontroversial. I also find that viewing the course of Claimant's history and course of treatment holistically is a legitimate approach to informing his opinions.

36. However, I find that Dr. Beron's specific inferences that lead to his central opinion in this case—*i.e.,* that Claimant developed cancer—are based in significant part on marginally supported inferences regarding what treating providers must have believed based on inferences from their medical records. At most, Claimant's treatment records reflect suspicions of cancer and a combination of investigative and prophylactic modalities. I do not find that his treatment records explicitly diagnose him with cancer, even if some of them recite it as medical history. If his providers had formed the conclusion that he had cancer, they could have said so in their records, and Claimant could have called them to testify to resolve any doubts about what they believed. I therefore cannot find that Dr. Beron's inferences sustain Claimant's burden of proof on this contested diagnosis.

CONCLUSIONS OF LAW:

1. Claimant has the burden of proof to establish all facts essential to the rights he asserts. *Goodwin v. Fairbanks Morse & Co.*, 123 Vt. 161, 166 (1962); *King v. Snide*, 144 Vt. 395, 399 (1984). He must establish by sufficient credible evidence the character and extent of the injury, *see Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17, 20 (1941), as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367, 369 (1984). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton, supra*, 112 Vt. at 20; *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. The parties presented conflicting expert medical testimony regarding the causal relationship between Claimant's bladder condition and his potential workplace radiation exposure. In such cases, the Commissioner traditionally uses a five-part test to determine

which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).

3. In this case, all factors except the third weigh substantially equally as to Drs. Beron and Swedarsky. Both were hired experts and not treating providers; both are highly qualified in relevant medical subspecialties; and both had thorough knowledge of Claimant's history and had performed comprehensive reviews of his medical records. However, for the reasons outlined *supra* at Finding of Fact Nos. 29-34, Dr. Beron's key opinion that Claimant had cancer at all requires both (1) accepting his inferences and suppositions about what Claimant's non-testifying treating providers must have thought, and (2) crediting those inferred opinions as accurate. I cannot make these inferential leaps with sufficient confidence to say that Claimant has bladder cancer beyond a mere "possibility, suspicion or surmise." *Cf. Burton*, *supra*. By contrast, I am persuaded by Dr. Swedarsky's opinion that pathological tissue analysis must be based on "facts on the ground," independent of risk factors, and that Claimant's tissue sample showed no basis for him to find that it was either cancerous or a PUNLMP.

4. Although Claimant's specific request in this case is that the Department conclude that he developed bladder cancer, I also considered whether the tumor that Dr. Swedarsky credibly found benign was itself caused by his workplace radiation exposure. However, without expert testimony explicitly asserting such a causal claim, I do not have a sufficient basis to find that Claimant's workplace exposure caused him to develop a benign lesion. While I am persuaded by Dr. Swedarsky's testimony that Claimant's medical monitoring regimen is reasonable even for a benign lesion, I do not find sufficient basis to find that the lesion itself, or the medical monitoring that it prompted, is causally related to a work-related injury.

5. Nothing in this opinion and order precludes Claimant from filing a claim for workers' compensation benefits should he develop bladder cancer or other injury in the future, provided there is credible medical evidence causally tying such injury to his workplace exposure. However, until he is able to demonstrate an injury, and not simply an increased risk of an injury, there is nothing for him to claim.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant has not established his entitlement to workers' compensation benefits for bladder cancer. Accordingly, his claim for benefits is hereby DENIED.

DATED at Montpelier, Vermont this 13th day of April 2026.

_____
Chris Winters
Deputy Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.