

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Johnny Jones, )  
                  )  
                  )  
                  *Plaintiff*, )  
                  )  
                  )     No. 17-cv-8218  
-vs-            )  
                  )     (*Judge Rowland*)  
Wexford Health Sources, Inc., a )  
foreign corporation, and Dr. )  
Marshall James, )  
                  )  
                  *Defendants*. )

**PLAINTIFF'S RESPONSE TO DEFENDANTS'  
LOCAL RULE 56.1 STATEMENT**

Plaintiff submits the following pursuant to Local Rule 56.1(b):

1. Plaintiff filed his Complaint on November 13, 2017 alleging deliberate indifference to Plaintiff's serious medical needs in violation of 42 U.S.C. § 1983 and healing arts malpractice. [Dkt. #1, ¶ 22]. Plaintiff's alleged injuries occurred while he was an inmate at Sheridan Correctional Center ("Sheridan") [Dkt. #1, ¶ 4] which is located in LaSalle County, Illinois, thus venue is proper in the Northern District of Illinois.

Response: Agree.

2. [a] Plaintiff, Johnny Jones, is a 47 year-old former inmate in the Illinois Department of Corrections ("IDOC") See Deposition Testimony of Johnny Jones, attached as Exhibit A, 7:23-24; Dkt. #1, ¶ 4. [b] Plaintiff was incarcerated in the IDOC between February 14, 2014 and June 2016 serving a seven year sentence for the offense of Manufacture and Delivery of a Controlled Substance, (Ex. A, 11:1-3; 12:23-13:7; 14:11-14), and has been out of custody uninterrupted since his release. (Ex. A, 11:4-6). [c] Plaintiff also has criminal convictions for attempt Armed Robbery, Possession of a Controlled Substance and Driving under the Influence. (Ex. A, 13:13-22). [d] Plaintiff is not a licensed medical doctor and does not have any special education or work experience related to diagnosing or treating medical conditions. (Ex. A, 18:15- 19:9; 20:3-4).

Response: [a] Agree.

[b] Objection, plaintiff's criminal background has no relevance to defendants' motion.

[c] Objection, plaintiff's criminal background has no relevance to defendants' motion.

[d] Objection, plaintiff's lack of medical expertise has no relevance to defendant's motion.

3. [a] Defendant, Dr. Marshall James, is a physician currently employed at Marram Health Clinic in Gary, Indiana. See Deposition Testimony of Dr. Marshall James, attached as Exhibit B. [b] Between the dates of September 2014 and October 2015 Dr. James was employed by Wexford as the Medical Director at Sheridan. (Ex. B, 11:11-14).

Response: [a] Agree.

[b] Disagree. Defendant was the medical director at Sheridan between about September of 2015 and about October of 2016. (Dr. James Dep. 11:11-14, ECF No. 91-2 at 4.)

4. Defendant, Wexford Health Sources, Inc. is a correctional healthcare company that provides specified medical services to inmates at IDOC prisons pursuant to a contract with the State of Illinois. [Dkt. # 1, ¶ 6].

Response: Agree.

5. Neil Fisher, M.D. provided testimony as Wexford's 30(b) (6) witness. See, Deposition Testimony of Dr. Neil Fisher, attached as Exhibit C.

Response: Agree.

6. [a] Ankhur Behl, M.D. testified as Plaintiff's treating physician. See Deposition Testimony of Dr. Ankhur Behl, attached as Exhibit D. [b] Dr. Behl attended the University of Oklahoma for both undergraduate and medical school, (Ex. D, 5:7-10), trained in orthopedic surgery for five years at Fort Worth Affiliated Hospitals and did a one year fellowship in sports medicine at Indiana University in Indianapolis. (Ex. D, 5:10-20). [c] Dr. Behl works at Midwest Orthopedics in Sandwich, Illinois and has [had] approximately 25 inmates as patients during the five years he has been employed by Midwest Orthopedics. (Ex. D, 6:11-20).

Response: [a] Agree.

[b] Agree.

[c] Agree.

7. [a] Nikhil Verma, M.D. testified as Plaintiff's treating physician. See Deposition Testimony of Dr. Nikhil Verma, attached as Exhibit E. [b] Dr. Verma attended medical school at the University of Pennsylvania, completed an orthopaedic residency at Rush University Medical Center in Chicago, Illinois, and completed a fellowship in sports medicine and shoulder at the Hospital for Special Surgery in New York. (Ex. E, 5:5-11).

Response: [a] Agree.

[b] Agree.

8. [a] Chadwick Prodromos, M.D. obtained his Bachelor of Arts degree from Princeton University in 1975 and his medical degree from Johns Hopkins University Medical School in 1979. [b] He completed his surgical internship at the University of Chicago in 1980, his orthopaedic residency at Rush Presbyterian St. Luke's Medical Center in 1984 and his orthopaedic and sports medicine fellowship at Harvard Medical School/Massachusetts General Hospital in 1985. [c] Dr. Prodromos has been board certified in orthopaedic surgery since 1987. Dr. Prodromos served as an assistant professor in Rush University's Department of Orthopaedic Surgery for more than 25 years and is currently the President of the Illinois Sportsmedicine and Orthopaedic Centers and Medical Director of the Illinois Orthopaedic Foundation. See Expert Witness Report of Dr. Chadwick Prodromos, attached as Exhibit F.

Response: [a] Agree.

[b] Agree.

[c] Agree.

9. [a] Vincent Cannestra, M.D. testified on behalf of Plaintiff. [b] Dr. Cannestra received his undergraduate and medical degrees from Northwestern University. [c] He completed his internship in internal medicine at the State University of New York at Buffalo, his residency in orthopaedic surgery at Northwestern University in Chicago, Illinois and a joint replacement/reconstruction fellowship at Rush Presbyterian St. Luke's Medical Center and Central DuPage Hospital. [d] Dr. Cannestra is employed by Orthopedic and Spine Surgery Associates, Ltd. in Elgin, Illinois. See Deposition Testimony of Vincent Cannestra and attached Exhibits, attached as Exhibit G.

Response: [a] Agree.

[b] Agree.

[c] Agree.

[d] Agree.

10. Plaintiff entered the IDOC on February 14, 2014. After a short stay at Stateville Northern Reception Center, Plaintiff was transferred to Sheridan Correctional Center ("Sheridan") where he served the remainder of his sentence. (Ex. A, 14:15-15:6).

**Response: Agree.**

11. [a] Upon his arrival at Sheridan, Plaintiff received an inmate handbook from which he learned the rules of the facility, including the rules related to sick call and grievances. (Ex. A, 15:7-16:15). [b] In order to obtain healthcare while an inmate at Sheridan, Plaintiff would submit a request and [c] he would be called to sick call the following day. (Ex. A, 16:13-18).

**Response: [a] Agree.**

[b] Objection, the procedure to obtain healthcare while an inmate at Sheridan has no relevance to defendant's motion.

[c] Objection, this contention is not supported by the cited material nor by any other evidentiary material defendants submitted in support of their motion for summary judgment.

12. Plaintiff's left leg was injured prior to his admission to the IDOC—Plaintiff has a rod in his left leg as the result of a gunshot wound, (Ex. A, 24:9-25:2), and in 2007 he ruptured his left achilles tendon. (Ex. A, 28:7-16).

**Response: Agree.**

13. [a] While an inmate at Sheridan, on Saturday, November 14, 2015, Plaintiff was playing basketball when he jumped up to rebound a basketball. While he was in the air Plaintiff felt and heard something snap. (Ex. A, 31:2-10; Dkt. #1, ¶9). [b] Plaintiff was helped from the ground by a couple of prison guards who took Plaintiff to the health care unit where he was examined by a nurse. (Ex. A, 31:11-22). [c] The nurse noted that Plaintiff's left knee did not have any swelling, any tenderness, any bruising, no cuts or open wounds, and [d] Plaintiff's pain level was four on a scale of one to ten. (Ex. G, 42:22-43:17). [e] The nurse contacted Dr. James via telephone and Plaintiff was returned to his cell with a pair of crutches and pain medication. (Ex. A, 32:3-33:5). [f] Plaintiff was in the healthcare unit with the nurse for approximately one hour. (Ex. A, 32:19-21).

**Response: [a] Agree.**

**[b] Agree.**

**[c] Agree.**

[d] Disagree. The Nurse's note states that plaintiff's head pain—not knee pain—was 4 out of 10. (Offender Injury Report, November 14, 2015, at 2, Plaintiff's Exhibit 2.) Plaintiff testified that his knee pain was 10 out of 10. (Jones Dep. 47:20-23, ECF No. 91-1 at 14.)

[d] Agree.

[e] Agree.

14. [a] Two days later, Plaintiff returned to the healthcare unit to see Dr. James. (Ex. A, 33:21-34:11; Ex. B, 26:12-14). [b] It was not unreasonable for Dr. James to wait two days to see Plaintiff based on the physical exam findings of the nurse on November 14, 2015. (Ex. G, 49:17-23). [c] Dr. James conducted a 20-minute examination of Plaintiff during which Plaintiff told Dr. James that he injured his head and knee playing basketball and told Dr. James how he was feeling. (Ex. A, 34:17-20; 35:17-36:1; Ex. B 26:15-19). [d] Dr. James noted that Plaintiff's left knee was slightly swollen, did not have any deformities, had a little laxity, or movement, in the left patella, was similar in presentation to Plaintiff's right knee. (Ex. B, 15:14-16:1). [e] Dr. James ordered x-rays, prescribed Plaintiff 600 milligrams of Motrin twice a day for pain for six weeks, crutches for six weeks, lay-in for four weeks, and no group classes for four weeks. (Ex. B, 26:22- 27:10).

Response: [a] Agree.

[b] Objection, this contention is not supported by the cited material. The deposition excerpt defendants cite is to an ambiguous hypothetical question that incorporated disputed facts, which defense counsel posed to plaintiff's expert:

Defense Counsel: Okay. So with that information is it unreasonable that Dr. James did not see Mr. Jones immediately after his injury on November 14th, during the day on November 15th, and that he only saw him on November 16th? Is that unreasonable with that information?

Dr. Cannestra: No

(Dr. Cannestra Dep. 49:17-23, ECF No. 91-7 at 14.) Moreover, the Court should not consider the opinion of plaintiff's expert, elicited by defense counsel, on whether something is "unreasonable." While plaintiff's expert can explain medical conditions and is qualified to offer opinions about the standard of care, an expert does not have any particular insights into

whether particular actions are “reasonable.” *Thompson v. City of Chicago*, 472 F.3d 444, 458 (7th Cir. 2006).

[c] Agree.

[d] Disagree. These purported observations of Dr. James conflict with the observations he recorded in the medical record and explained at his deposition. (Medical Record, November 16, 2015, Plaintiff's Exhibit 3; Dr. James Dep. 26:12-28:19, ECF No. 91-2 at 8; Dr. Cannestra Verified Expert Report at 7, Plaintiff's Exhibit 1.)

[e] Agree.

15. [a] A week later, Dr. James personally told Plaintiff the results of his x-ray, (Ex. A, 36:13-20), [b] which showed that Plaintiff had some osteoarthritis of his knee joint, mild swelling and a slightly high riding patella. (Ex. B, 34:16-22). [c] Plaintiff's x-ray did not show any loose bodies and there was no evidence of an acute boney fracture. (Ex. B, 34:23-35:5).

Response: [a] Disagree. The medical record and Dr. James's testimony show that Dr. James related the results of the X-ray to plaintiff on December 8, 2015, 22 days after initial visit on November 16, 2015. (Medical Record, December 8, 2015, Plaintiff's Exhibit 5; Dr. James Dep. 36:16-37:14, ECF No. 91-2 at 10-11.)

[b] Agree.

[c] Agree.

16. [a] Between the date Plaintiff first saw Dr. James after his knee injury and the date Plaintiff received his x-ray results, he received pain medication and all other requested healthcare from the prison healthcare staff, (Ex. A, 38:7-23), and [b] Plaintiff was never refused healthcare treatment related to his knee injury. (Ex. A, 39:7-9). [c] Plaintiff's only complaint related to Dr. James' medical care is that Dr. James did not order an MRI within the timeframe Plaintiff felt was appropriate. (Ex. A, 84:2-17).

Response: [a] Objection, this contention is not supported by the cited material, an excerpt from plaintiff's deposition:

Q: When you filled out the form on those dates between November 18 and the day that you got the results of your x-ray, what happened?

Were you taken to the health care unit or were you not taken to the health care unit?

Jones: Could you repeat that.

Q: You said you didn't receive any health care between November 18, 2015 and the day you got the results of your x-rays you said that you requested health care in between that time.

My question to you is what happened when you requested health care?

Jones: I think I went for pain, and they gave me pain medication.

Q: So when you requested health care, you received it?

Jones: Yes.

(Jones Dep. 38:7-23, ECF No. 91-1 at 12.)

[b] Objection, this contention is not supported by the cited material, an excerpt from plaintiff's deposition:

Q: After he gave you the results of your x-ray, when was the next time you got health care?

Jones: I can't remember.

Q: Were you ever refused health car in *that period of time*?

Jones: No.

(Jones Dep. 39:4-9, ECF No. 91-1 at 12) (emphasis added). Nothing in the deposition questioning establishes the starting and ending date of "that period of time." This questioning does not show that plaintiff "was never refused healthcare treatment."

Moreover, disagree. Plaintiff was refused healthcare treatment related to his knee injury when Dr. James did not order an MRI or an evaluation by an orthopedic surgeon after examining plaintiff and again after reviewing the X-ray report confirming plaintiff's injury. (Dr. James Dep. 35:24-36:12, ECF No. 91-2 at 10.) Instead Dr. James persisted in his "conservative treatment" of pain medication, complete rest, and no weightbearing on the left knee. (*Id.*) Plaintiff explained this refusal in a prison grievance he submitted on December 29, 2015, stating:

It's been almost 2 months since I ruptured my patella tendon. I know it takes time to get things did around here but I only have a 156 day to my release and I haven't gotten an MRI yet. I don't even know if the referral has been approved. . . . I really need for the process to speed up. I need for the process to speed up to get my leg fix.

(Offender's Grievance, December 29, 2015, Plaintiff's Exhibit 11.)

[c] Disagree. Plaintiff brought this lawsuit because "if I had proper care, I wouldn't have this limp or still be in pain." (Jones Dep. 30:2-5, ECF No. 91-1 at 10.) Moreover, objection, this contention is not supported by the cited material, an excerpt from plaintiff's deposition:

Q: And it's your contention that it was Dr. James' medical care that led you to being disabled?

Jones: Yes.

(Jones Dep. 83:22-84:1, ECF No. 91-1 at 23.)

17. [a] Dr. James referred Plaintiff for an MRI on December 8, 2015 and his referral was approved by Wexford on December 15, 2015. (Ex. B, 38:21-41:8). [b] When a Wexford-employed physician, such as Dr. James refers a patient for an off-site medical procedure, that referral is forwarded to the Wexford corporate offices by an employee of the IDOC for a collegial review among physicians. (Ex. C, 7:14-11:8). [c] These reviews take place on a weekly basis. (Ex. C, 10:8- 10). [d] Once an off-site procedure is approved, IDOC staff at the facility where the patient resides schedules the off-site medical procedures. (Ex. B, 44:9-18; Ex. C, 17:4-23). [e] This procedure was followed for Plaintiff. (Ex. C, 18:19-22). [f] Dr. James was not involved in scheduling off-site procedures for inmates. (Ex. B, 44:19-21).

Response: [a] Agree.

[b] Agree.

[c] Disagree. A Wexford physician can request that collegial review be performed before the regularly weekly meeting as an "urgent consultation." (Dr. Fisher Dep. 12:12-23, ECF No. 91-3.)

[d] Objection, this contention is not supported by the cited material: Dr. James testified, "I *assume* they contact the local facility." (Dr. James Dep. 44:15-16, ECF No. 91-2 at 12) (emphasis added). Dr. Fisher testified that he did not "know the individual person" and that "[t]ypically it would be an IDOC employee." (Dr. Fisher Dep 17:14-20, ECF No. 91-3 at 6) (emphasis added).

[e] Objection, this contention is not supported by the cited material: Dr. Fisher stated only that in reviewing the record of this case, he

did not see anything that “was out of line” with Wexford policies and procedures. (Dr. Fisher Dep. 18:19-22 ECF No. 91-3 at 6.)

[f] Agree.

18. [a] Plaintiff had an MRI at Valley West Hospital on January 18, 2016. (Ex. B, 47:21- 23). [b] Between the date of his injury and the date Plaintiff had his MRI he saw Dr. James on multiple occasions. (Ex. A, 49:18-22).

Response: [a] Agree.

[b] Disagree. Dr. James saw Jones on two occasions in this time period, January 6, 2016 and January 18, 2016. (Dr. James Dep. 45:16-18, 47:3-13, ECF No. 91-2 at 13.)

19. [a] Plaintiff's MRI showed a complete tear of his patellar tendon at its origin. (Ex. B, 51:2-10). [b] Plaintiff first saw the surgeon, Dr. Behl, on February 8, 2016, (Ex. D, 15:10-13), and [c] Dr. Behl successfully performed patellar reconstruction surgery on February 16, 2016. (Id.; Ex. D, 27:4-22).

Response: [a] Agree.

[b] Agree.

[c] Disagree. Dr. Behl's surgery was not completely successful because plaintiff did not recover his function and continued to have pain. (Dr. Cannestra Dep. 74:15-75:8, ECF No. 91-7 at 20.)

20. The day after his surgery, Plaintiff saw Dr. James in the Sheridan infirmary. (Ex. A, 50:24-51:2). Between the date of his surgery in February 2016 and his release from the IDOC in June 2016, Plaintiff saw Dr. James three times a week. (Ex. A, 51:3-6). During this time, Plaintiff was housed in the prison infirmary where he had access to 24 hour a day medical care, (Ex. A, 51:7-24), and was never refused medical care. (Ex. A, 52:1-4; 62:13-18).

Response: Objection, plaintiff's treatment after his surgery has no relevance to defendants' motion.

Plaintiff objects to all contentions about events that occurred after Dr. Behl performed patellar reconstruction surgery on February 16, 2016. Nothing that happened after this surgery is relevant to the issues framed by defendants in their motion for summary judgment:

- a) Whether defendant Dr. James was deliberately indifferent in November and December of 2015 to plaintiff's serious medical need (treatment for his ruptured patella), and
- b) Whether defendant Dr. James committed medical malpractice in his treatment of plaintiff in November and December of 2015.

Events that occurred after Dr. Behl performed the reconstruction are relevant to damages, but defendants do not seek summary judgment on any damages related issue.

21. [a] Following his surgery, and prior to his release from the IDOC, Plaintiff was taken to all his follow-up appointments with his surgeon, (Ex. A, 52:5-16), and his progress was as expected by Dr. Behl. (Ex. D, 28:9-11, 29:24-30:2, 31:2-4, 31:10-12). [b] During at least two of these appointments, Plaintiff worked with a physical therapist. (Ex. A, 53:8-13; Ex. D, 29:1-7). [c] The physical therapist instructed Plaintiff on exercises to perform, (Ex. D, 29:4-10, 31:15-17), although Plaintiff denies this. (Ex. A, 53:17-20). [d] Instead, every three days Plaintiff would do one exercise on his own that he learned about on television. (Ex. A, 53:21-54:9).

Response: Objection. See Response to Contention 20. Without waiving this objection:

[a] Agree.

[b] Agree.

[c] Objection: Defendants have included a disputed fact in their statement of undisputed facts.

[d] Objection. This contention is not supported by the record. The cited deposition excerpt consists of the following:

Q: What exercises did you do on your own when you were in the infirmary on Sheridan?

Jones: I took a towel, and I put it on the tip of my feet and put pressure on my feet and push[ed] my feet down.

Q: How often would you do that?

Jones: Probably every three days?

Q: What other exercises did you do on your own?

Jones: I saw it on TV or something. I saw it on TV.

(Jones Dep. 53:21-54:9, ECF No. 91-1 at 15-16.)

22. Plaintiff was released from custody on June 6, 2016, (See, Illinois Department of Corrections, Offender Count Adjustment, attached as Exhibit H), with a knee brace, crutches and a cane. (Ex. A, 64:15-24). At that time, Plaintiff had a follow up appointment scheduled with his surgeon that he did not attend, (Ex. A, 62:19-63:22), instead, on July 5, 2016, a month after his release and nearly two months to the day after he last saw Dr. Behl, Plaintiff called Dr. Behl for a referral to a new physician. (Ex. D, 32:7-33:16). During this time, Plaintiff did not do any physical therapy, (Ex. A, 63:23-64:2; 67:17-21), or see any other doctors. (Ex. A, 64:3-5).

**Response: Objection. See Response to Contention 20.**

23. [a] When Plaintiff left Dr. Behl's care, Dr. Behl considered Plaintiff's surgery a success and did not expect that Plaintiff would need further surgery. (Ex. D, 27:4-6, 34:1-4, 34:24-35:7). [b] However, Plaintiff had a second surgery on October 11, 2016. [c] At that time, Dr. Verma successfully performed elective arthroscopic surgery on Plaintiff's knee. (Ex. E, 19:2-21). [d] According to Dr. Verma, the surgery he performed on Plaintiff is the most common problem doctors see following patellar tendon ruptures. (Ex. E, 9:3-8). [e] Likewise, Plaintiff's prior medical history, including the history of Plaintiff's knee injury was irrelevant to Dr. Verma. (Ex. E, 16:18-19:1).

**Response: Objection. See Response to Contention 20. Without waiving this objection:**

[a] Disagree. Dr. Behl testified that "there is always a risk of needing an additional surgery" and it was too early to tell if plaintiff would need additional surgery the last time Dr. Behl saw him. (Dr. Behl Dep. 34:7-8, 34:24-35:7, ECF No. 91-4 at 10.)

[b] Agree.

[c] Agree.

[d] Agree.

[e] Agree.

24. Following surgery, Dr. Verma ordered physical therapy for Plaintiff to try and maximize Plaintiff's motion recovery. (Ex. E, 21:16-22:2). If a patient does not follow through on the recommended physical therapy, they will have a suboptimal result, (Ex. E, 22:3-8), and it is Dr. Verma's expectation that his patients will follow through on his physical therapy orders. (Ex. E, 28:11-14). Between October 2016 and January 2017, Dr. Verma ordered a more than 60 physical therapy visits for Plaintiff. (Ex. E, 21:19-

23, 26:8-11, 27:23-28:1, 30:21-31:1, 31:12-15, 33:5-6). On December 14, 2016, Dr. Verma admonished Plaintiff about the importance of his home exercise program, [e] noting that the more compliant Plaintiff was with his exercises—whether they are done with a therapist or on his own—the better his surgical outcome would be. (Ex. E, 30:1-10). [f] Plaintiff was discharged from physical therapy for non-compliance in February 2017. See Plaintiff's February 24, 2017 Physical Therapy note, filed under seal as Exhibit I.

Response: Objection. See Response to Contention 20. Without waiving this objection:

- [a] Agree.
- [b] Agree.
- [c] Agree.
- [d] Agree.

[e] Objection, this is Dr. Verma's answer at his deposition to the question “why is the home exercise program important?” (Dr. Verma Dep. 30:5-6, ECF No. 91-5 at 9.) Nothing in the cited material supports the contention that Dr. Verma shared this information with plaintiff. (Dr. Verma Dep. 30:5-10, ECF No. 91-5 at 9.)

[f] Disagree. The contention fails to include the fact, set out in the cited physical therapy note, that plaintiff “is being discharged from physical therapy at this time due to non-compliance with *the attendance policy.*” (ECF No. 95) (emphasis added.)

25. Dr. Verma ordered Plaintiff a hinged knee brace on December 14, 2016 to provide Plaintiff some additional stability. (Ex. E, 28:22-24, 29:1-5). Dr. Verma's expectation was that Plaintiff would wear the knee brace for standing and walking for six to 12 weeks, (Ex. E, 29:6-13). On January 13, 2017, Plaintiff reported to his physical therapist that he quit wearing his knee brace three weeks earlier, or December 23, 2016, nine days after Dr. Verma ordered it. See Plaintiff's January 13, 2017 Physical Therapy note, filed under seal as Exhibit J.

Response: Objection. See Response to Contention 20.

26. [a] In April 2017, Plaintiff complained to Dr. Verma that he was still experiencing pain. (Ex. E, 34:11-35:1). [b] This was unexpected by Dr. Verma because there was no anatomic basis for this type of pain. (Ex. E, 35:2-6). [c] At this time, Dr. Verma ordered another course of physical therapy for Plaintiff, (Ex. E,

35:19-21), and told Plaintiff there was no reason for him to be seen again by Dr. Verma. (Ex. E, 35:22-24). [d] Regardless, Plaintiff again returned to see Dr. Verma in October 2017 at which time Dr. Verma again ordered a course of physical therapy for Plaintiff, (Ex. E, 41:16-18, 42:18-22), [e] bringing the total number of physical therapy appointments ordered to approximately 100. (Ex. E, 43:8-12). [f] Plaintiff only completed approximately 25 of those visits, [g] resulting in a suboptimal outcome for his surgery. (Ex. E, 43:16-20).

Response: Objection. See Response to Contention 20. Without waiving this objection:

[a] Agree.

[b] Agree.

[c] Agree.

[d] Agree.

[e] Agree.

[f] Objection, this contention is not supported by the cited material, which refers to defense counsel's hypothetical question "So if you learned that he only completed approximately 25 of those sessions ...." (Dr. Verma Dep. 43:16-17, ECF No. 91-5 at 12).

[g] Objection. The hypothetical question which defense counsel posed to Dr. Verma assumes a fact not in evidence, i.e., the number of physical therapy sessions that plaintiff attended.

27. It was incumbent upon Plaintiff following through on Dr. Verma's post-operative recommendations to have an optimal surgical outcome. (Ex. E, 44:16-45:3).

Response: Objection. See Response to Contention 20.

28. If a patient presented to Dr. Behl, a trained orthopaedic surgeon, with mild pain, no swelling, and an x-ray that showed a slightly high-riding patella, he would not expect that the person had a ruptured patellar tendon. (41:21-42:3). Instead, a physical exam of a person with a ruptured patellar tendon would show an inability to extend the knee, a palpable defect at the inferior aspect of the patella, a patella that is superiorly migrated which is confirmed by x-ray, immediate significant bloody swelling, and immediate and continued pain. (Ex. D, 40:14-41:20).

Response: Objection, this opinion is based on resolving disputed facts against plaintiff, who contends that he presented with extreme pain.

swelling, without an X-ray, and is therefore inadmissible at summary judgment.

29. [a] When Plaintiff presented to Dr. James he had little swelling, [b] little pain, [c] no bruising and [d] an essentially normal x-ray. [e] There was no reason for Dr. James or the nurse who initially triaged Plaintiff to suspect a complete patellar tendon rupture as the clinical and radiologic presentations were atypical. [f] It would not be expected that a primary care physician would diagnose a complete patellar tendon rupture based on this presentation. (Ex. F, pg. 3).

Response: [a] Disagree. Dr. James recorded in his medical record, and explained at his deposition, that plaintiff had “increased swelling and pain.” (Medical Record, November 16, 2015, Plaintiff’s Exhibit 3; Dr. James Dep. 26:15-27:10, ECF No. 91-2 at 8.)

[b] Objection, this contention is not supported by the cited material, which appears to rely on the Nurse’s Note referred to in Paragraph 13(d). The Nurse’s note states that plaintiff’s head pain—not knee pain—was 4 out of 10. (Offender Injury Report, November 14, 2015, at 2, Plaintiff’s Exhibit 2.)

Moreover, disagree. Plaintiff’s knee pain in November 2015 was a 10 out of 10. (Jones Dep. 47:20-23, ECF No. 91-2 at 14.) Plaintiff reported to Dr. James that his knee pain was 8 out of 10. (Dr. James Dep 16:1-3, ECF No. 91-2 at 5). Dr. James recorded in his medical record, and explained at his deposition, that plaintiff had “increased swelling and pain.” (Medical Record, November 16, 2015, Plaintiff’s Exhibit 3; Dr. James Dep. 26:15-27:10, ECF No. 91-2 at 8.)

[c] Disagree. Dr. James’s failure to document plaintiff’s bruising is evidence that his examination was inadequate. (Dr. Cannestra Verified Rebuttal Expert Report at 4, Plaintiff’s Exhibit 10.)

[d] Disagree. The X-Ray was not normal. (Dr. Cannestra Verified Rebuttal Expert Report at 6, Plaintiff’s Exhibit 10.) The X-Ray report was not available for review on November 16, 2015. (Dr. James Dep. 33:8-33:16, ECF No. 91-2 at 9.)

[e] Objection, the nurse’s conduct is irrelevant to defendants’ motion. Disagree with the remainder of the contention. This opinion as to Dr. James is disputed by plaintiff’s expert, (Dr. Cannestra Verified Rebuttal Expert Report at 6, Plaintiff’s Exhibit 10), and Dr. James’s own medical

assessment was to be suspicious of a patellar tendon rupture. (Medical Record, November 16, 2015, Plaintiff's Exhibit 3; Dr. James Dep. 26:15-27:10, 27:1-16, ECF No. 91-2 at 8.)

[f] Disagree. This opinion is disputed by plaintiff's expert, (Dr. Cannestra Verified Rebuttal Expert Report at 6, Plaintiff's Exhibit 10), and Dr. James's own medical assessment was to be suspicious of a patellar tendon rupture. (Medical Record, November 16, 2015, Plaintiff's Exhibit 3; Dr. James Dep. 26:15-27:10, 27:1-16, ECF No. 91-2 at 8.)

30. [a] Dr. James prescription of an MRI only after Plaintiff did not improve with rest and home exercise is exactly consistent with community norms and the standard of care. (Ex. F, pg. 4). [b] Dr. James was astute in even considering an injury to Plaintiff's patellar tendon, Id., and [c] Dr. James met the standard of care in the community for a primary care doctor evaluating an acute knee injury. (Ex. F, Op. 1).

Response: Objection, plaintiff files contemporaneously a motion to exclude the opinions of Dr. Prodromos, on whose report defendants base this contention. Without waiving this objection:

[a] Disagree. This statement of Dr. Prodromos is "outright false." (Dr. Cannestra Verified Rebuttal Expert Report at 6-7, Plaintiff's Exhibit 10.)

[b] Objection, this opinion has no relevance to defendants' motion.

[c] Disagree. This statement of Dr. Prodromos is "outright false." (Dr. Cannestra Verified Rebuttal Expert Report at 6-7, Plaintiff's Exhibit 10.)

31. [a] Plaintiff's February 2016 surgery successfully restored function of Plaintiff's patellar tendon. (Ex. F., Op. 2). [b] The success of Plaintiff's surgery was not affected by any perceived delay in surgery. (Ex. F., pg. 4). [c] Any suboptimal result was the fault of Plaintiff for not following through on his ordered course of physical therapy. Id.

Response: Objection, plaintiff files contemporaneously a motion to exclude the opinions of Dr. Prodromos, on whose report defendants base this contention. Without waiving this objection:

[a] Disagree. This statement of Dr. Prodromos is "false" because the excessive delay in treatment made a repair of plaintiff's patellar

tendon impossible. (Dr. Cannestra Verified Rebuttal Expert Report at 3, Plaintiff's Exhibit 10.) This statement of Dr. Prodromos is "erroneous." (*Id.* at 7). Dr. Behl's surgery was not successful because plaintiff did not recover his function and continued to have pain. (Dr. Cannestra Dep. 74:15-75:8, ECF No. 91-7 at 20.)

[b] Disagree. This statement of Dr. Prodromos is "also a false statement" because "both Dr. Behl and Dr. Verma indicated that Mr. Jones' delay in obtaining timely surgery did affect the end result of Mr. Jones' surgical outcome." (Dr. Cannestra Verified Rebuttal Expert Report at 3, Plaintiff's Exhibit 10.)

Dr. Behl noted in the medical record, "I did state that his outcome, no matter if operate or nonoperative management, with this long delay, will be affected. (Dr. Behl Chart Note, February 8, 2016, at 2, Plaintiff's Exhibit 7.)

Dr. Verma noted in the medical record that plaintiff had a "chronic neglected patellar tendon disruption," meaning that the tendon rupture was not treated initially. (Dr. Verma Note, October 11, 2017, at 1, Plaintiff's Exhibit 8, Dr. Verma Dep. 14:12-17, ECF No. 91-5 at 5.)

[c] Disagree. Physical therapy was not available to plaintiff at the prison. (Dr. Behl Dep. 44:6-8, ECF No. 91-4 at 12; Jones Dep. 52:19-20, ECF No. 44-1 at 15.)

Moreover, Plaintiff's failure to achieve full range of motion of his left knee after Dr. Behl's patellar tendon reconstruction was more likely than not due primarily to the delay in surgical treatment. (Dr. Cannestra Verified Rebuttal Expert Report at 7-8, Plaintiff's Exhibit 10.)

32. [a] Between his first surgery and second surgery, Plaintiff had 90° of knee flexion [b] which would allow him to perform all activities of daily living without pain. (Ex. F, pg. 4). [c] Following his second surgery, Plaintiff maintain 120° of flexion [d] which would not restrict activities of any kind. *Id.*

Response: Objection, plaintiff files contemporaneously a motion to exclude the opinions of Dr. Prodromos, on whose report defendants base this contention.

Objection. See Response to Contention 20.

Without waiving these objections:

[a] Agree.

[b] Disagree. Dr. Verma testified that 90 degrees means that plaintiff could not “do things like run,” that “stair climbing would be difficult,” and the “degree of deficit” was frustrating. (Dr. Verma Dep. 10:10-14, ECF No. 91-5 at 4.)

[c] Agree.

[d] Disagree. Dr. Verma testified that normal flexion is “typically around 130.” (Dr. Verma Dep. 39:20-21, ECF No. 91-5 at 11.)

33. Plaintiff’s expert, Dr. Cannestra, opined that Dr. James did not conduct a thorough examination of Plaintiff’s knee based entirely on a review of Dr. James’ examination notes. (Ex. G, 51:1-52:17).

Response: Disagree. Dr. Cannestra reviewed Dr. James’s deposition testimony. (Dr. Cannestra Verified Expert Report at 1, Plaintiff’s Exhibit 1.) Moreover, Dr. Cannestra’s opinion is also based on clinical findings not made by Dr. James that are present in every patient with an acute patellar tendon rupture. (Dr. Cannestra Dep 52:18-23, ECF No. 91-7 at 14.)

/s/ Joel A. Flaxman  
Joel A. Flaxman  
ARDC No. 6292818  
Kenneth N. Flaxman  
200 S Michigan Ave, Ste 201  
Chicago, IL 60604  
*Attorneys for Plaintiff*