

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

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

**PLAINTIFF'S LOCAL RULE 56.1(b)  
STATEMENT OF ADDITIONAL FACTS**

Plaintiff submits the following pursuant to Local Rule 56.1(b):<sup>1</sup>

1. Plaintiff ruptured the patella tendon on his left knee (Dr. Cannestra Verified Expert Report at 3-4, Plaintiff's Exhibit 1) while playing basketball on November 14, 2015: when plaintiff went for a rebound, he felt something snap and he heard something snap. (Jones Dep. 31:4-5, ECF No. 91-1 at 10.)

2. Plaintiff's injury exhibited "the classic mechanism of injury for a patellar tendon rupture." (Dr. Cannestra Verified Expert Rebuttal Report at 6, Plaintiff's Exhibit 10.)

---

<sup>1</sup>Plaintiff files the exhibits cited below in a separate document entitled "Plaintiff's Summary Judgment Exhibits."

3. A ruptured patellar tendon is a “bad injury” (Behl Dep. 43:17, ECF No. 91-4 at 12) that can be “career ending” for an athlete (*id.* 43:17-18) because it prevents the patient from walking and causes severe pain. (Dr. Cannestra Dep. 97:8-10, ECF No. 91-7 at 26.)

4. A ruptured patellar tendon should be surgically repaired within ten days of the injury. (Dr. Cannestra Dep. 83:19-21, ECF No. 91-7 at 22.) A delay longer than three weeks means that the surgeon cannot repair the tendon but must reconstruct by using cadaver tendon, causing a poorer result: the longer a patient waits for surgery, the greater the likelihood of having complications, such as the chronic pain and stiffness that plaintiff is currently experiencing. (Dr. Cannestra Dep. 74:4-75:21, ECF No. 91-7 at 20.)

5. After plaintiff’s knee went out, a prison guard helped plaintiff off the floor and several guards took plaintiff to the health care unit (Jones Dep. 31:12-14, ECF No. 91-1 at 10) where plaintiff was examined by a nurse. (Jones Dep. 31:21-22, ECF No. 91-1 at 10.)

6. The nurse conferred by telephone about plaintiff with defendant Dr. James (Jones Dep. 32:22-33:5, ECF No. 91-1 at 10), then provided plaintiff with ibuprofen and crutches, and instructed him to rest

and keep his left leg elevated. (Offender Injury Report, November 14, 2015, at 2, Plaintiff's Exhibit 2.)

7. Dr. James examined plaintiff for the first time on November 16, 2015. (Medical Record, November 16, 2015, Plaintiff's Exhibit 3.)

8. 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 observed increased knee swelling and pain (Dr. James Dep. 26:15-27:10, ECF No. 91-2 at 8; Medical Record, November 16, 2015, Plaintiff's Exhibit 3) and suspected a patellar tendon rupture. (Dr. James Dep. 26:23, 28:4-6, ECF No. 91-2 at 8; Medical Record, November 16, 2015, Plaintiff's Exhibit 3.)

9. Dr. James ordered an X-ray to "rule out" a ruptured patellar tendon (Medical Record, November 16, 2015, Plaintiff's Exhibit 3.) Dr. James's intent to "rule out" means that Dr. James "clearly had a suspicion of an acute patellar tendon rupture." (Dr. Cannestra Dep. 80:9-10, ECF No. 91-7 at 21.)

10. When he examined plaintiff on November 16, 2015, Dr. James considered presenting plaintiff's case at a "collegial," that is, a "conference ... with a senior doctor that pretty much determines where we [are] going

to go forth with the management of the particular patient.” (Dr. James Dep. 16:17-17:3, ECF No. 91-2 at 5-6.)

11. Approval at a collegial was required before plaintiff could be sent for an MRI or referred to an orthopedist for evaluation. (Dr. James Dep. 38:7-13, ECF No. 91-2 at 11.)

12. Dr. James did not present plaintiff’s case at a collegial after examining him on November 16, 2015; instead, he prescribed conservative treatment: pain medication, complete rest, and no weightbearing. (Dr. James Dep. 16:4-17:13, ECF No. 91-2 at 5-6.)

13. Dr. James’s examination of plaintiff on November 16, 2015 was inadequate and deviated from the standard of care because Dr. James did not document plaintiff’s inability to extend his knee, his active range of motion of the injured knee, any tenderness to palpation in the knee, his inability to perform a straight leg raise, any defect in the patellar tendon, or the presence of an effusion or hemarthrosis. (Dr. Cannestra Verified Expert Report at 8, Plaintiff’s Exhibit 1.)

14. Based on his review, *inter alia*, of the medical records and the deposition of Dr. James, plaintiff’s retained expert (Dr. Vincent Cannestra) has formed the opinion that a physician who met the standard of care would

have performed a more thorough examination of plaintiff on November 16, 2015 and would have determined that there was a need for urgent surgical consultation. (Dr. Canestra Verified Expert Report at 8, Plaintiff's Exhibit 1.)

15. Dr. James learned on November 16, 2015 that the X-ray he ordered had been taken that day. (Dr. James Dep. 31:19-32:1, ECF No. 91-2 at 9; Medical Record, November 16, 2015, Plaintiff's Exhibit 3.)

16. The X-ray was read by a radiologist working offsite on November 18, 2015 (Dr. James Dep. 33:8-33:16, ECF No. 91-2 at 9) who wrote a report interpreting the X-ray on the same day. (X-Ray Report of November 18, 2015, Plaintiff's Exhibit 4.)

17. The radiologist found that plaintiff's "patella is slightly high riding," (X-Ray Report of November 18, 2015, Plaintiff's Exhibit 4); this finding supported, rather than ruled out, that plaintiff had suffered a patellar tendon rupture. (Dr. Canestra Dep. 54:10-11, 82:13-14, ECF No. 91-7 at 15, 22.)

18. The report of the radiologist was transmitted by fax or by email to Dr. James on November 18, 2015. (Dr. James Dep. 34:1-8, ECF No. 91-2 at 10.)

19. After he reviewed the X-ray report, Dr. James persisted in his “conservative treatment” of pain medication, complete rest, and no weightbearing on the left knee. (Dr. James Dep. 35:24-36:12, ECF No. 91-2 at 10.)

20. The standard of care for a physician who had access to the information available to defendant Dr. James on November 18, 2015 after the radiologist reviewed the X-ray required that the physician immediately order an MRI or refer plaintiff to an orthopedic surgeon. (Dr. Cannestra Verified Expert Report at 7-8, Plaintiff’s Exhibit 1.)

21. Dr. James deviated from the standard of care when he failed to order an MRI or refer plaintiff to an orthopedic surgeon after receipt of the radiologist’s report of the X-ray. (Dr. Cannestra Verified Expert Report at 7-9, Plaintiff’s Exhibit 1.)

22. A physician of ordinary competence would have known in November of 2015 that a ruptured patellar tendon should be repaired within ten days of the injury and that a delay in treatment increased the likelihood of complications, such as severe stiffness, weakness, and quadriceps atrophy. (Dr. Cannestra Verified Expert Report at 11, Plaintiff’s Exhibit 1.)

23. Dr. James disregarded plaintiff's serious medical need when he ignored the need for a prompt repair of plaintiff's ruptured patellar tendon. (Dr. Cannestra Verified Expert Report at 10, Plaintiff's Exhibit 1.)

24. Dr. James's above-described deviations from the standard of care were so egregious that they constituted no treatment at all. (Dr. Cannestra Verified Expert Report at 9, Plaintiff's Exhibit 1.)

25. On November 30, 2015, Dr. James reviewed the nurse's injury report from November 14, 2015, and stated on the report that he wished to see plaintiff PRN, meaning as needed. (Offender Injury Report, November 14, 2015, at 2, Plaintiff's Exhibit 2.)

26. Dr. James examined plaintiff on December 8, 2015 and found that plaintiff continued to show signs and symptoms of a probable patella tendon rupture. (Dr. James Dep. 37:6-9, ECF No. 91-2 at 11; Medical Record, December 8, 2015, Plaintiff's Exhibit 5.)

27. This was the first time after November 16, 2015 that the medical records show that Dr. James examined plaintiff. (Dr. Cannestra Dep. 58:13-17, ECF No. 91-7 at 16; Dr. Cannestra Verified Expert Report at 2-3, Plaintiff's Exhibit 1.)

28. After examining plaintiff on December 8, 2015, Dr. James presented plaintiff's medical condition at a "collegial" on December 15, 2015 and obtained authorization for an MRI. (Dr. James Dep. 41:2-8, ECF No. 91-2 at 12.)

29. Dr. James could have requested that collegial review be performed as an "urgent consultation." (Dr. Fisher Dep. 12:12-23, ECF No. 91-3.)

30. On December 29, 2015, plaintiff submitted a prison grievance, 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.)

31. Plaintiff received an MRI on January 18, 2016 that confirmed that plaintiff had a complete tear of the patellar tendon in his left knee. (MRI Examination Report, January 18, 2016, Plaintiff's Exhibit 6.)

32. Plaintiff was examined by Dr. Behl, an orthopedic surgeon, on February 8, 2016. (Dr. Behl Dep. 16:5-6, ECF 91-4 at 5; Dr. Behl Note, February 8, 2016, Plaintiff's Exhibit 7.)



33. The delay between plaintiff's injury and his consultation with an orthopedic surgeon did not meet the standard of care and caused harm to plaintiff. (Dr. Cannestra Verified Expert Report at 11, Plaintiff's Exhibit 1.)

34. Dr. Behl diagnosed plaintiff with a torn patella tendon (Dr. Behl Dep. 16:7, ECF 91-4 at 7; Dr. Behl Note, February 8, 2016, Plaintiff's Exhibit 7) and recommended surgery as soon as possible. (Behl Dep. 17:8-11, ECF No. 91-4 at 6; Dr. Behl Note, February 8, 2016, Plaintiff's Exhibit 7.) Dr. Behl concluded and advised plaintiff on February 8, 2016, that the long delay between the injury and surgery would negatively impact the outcome of the surgery. (Dr. Behl Note, February 8, 2016, Plaintiff's Exhibit 7.)

35. The surgery, which Dr. Behl performed on February 16, 2016 (Dr. Behl Dep. 19:20-21, ECF No. 91-4 at 6), was complicated by the delay in treatment, which had allowed scar tissue to develop. (Dr. Behl Dep. 20:1-22:19, ECF No. ECF No. 91-4 at 6-7.) As a result of the delay, Dr. Behl was forced to use a graft to do a reconstruction rather than a repair. (Dr. Behl Dep. 14:12-14, ECF No. 91-4 at 5.)

36. Dr. Behl's surgery was not completely successful because plaintiff did not recover his function and continued to have pain; after a

three-month delay between injury and surgery it was not possible to have a successful surgery. (Dr. Cannestra Dep. 74:15-75:8, ECF No. 91-7 at 20.)

37. Plaintiff was treated by Dr. Verma in 2016 for his continuing knee problems; Dr. Verma determined that another surgery was the only option. (Dr. Verma Dep. 7:10-20, ECF No. 91-15 at 3.)

38. Dr. Verma observed that plaintiff had a chronic neglected patellar tendon disruption, meaning that the original tendon rupture had not been treated promptly. (Dr. Verma Note, October 11, 2017, at 1, Plaintiff's Exhibit 8, Dr. Verma Dep. 14:1217, ECF No. 91-5 at 5.)

39. Dr. Verma performed surgery to remove scar tissue on October 11, 2016. (Dr. Verma Deposition 6:5-8, 19:16-18, ECF No. 91-5 at 3,6; Operative Report of Dr. Verma, October 11, 2016, Plaintiff's Exhibit 9.)

40. The delay in treatment between plaintiff's injury and first surgery caused plaintiff to have irreversible quadriceps atrophy, severe stiffness, scarring, weakness, persistent and chronic pain, limited range of motion, dysfunction, and inability to use his left leg as he did prior to the injury:

It is also highly unlikely that plaintiff will ever return to the basketball court or participate in recreational activities as he did prior to his prison injury.

(Dr. Cannestra Verified Expert Report at 11, Plaintiff's Exhibit 1; Jones Dep. 30:2-5, ECF No. 91-1 at 10.)

/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*