

043133/19344/MHW/REN/SLB

Firm ID No.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JOHNNY JONES,

Plaintiff,

v.

WEXFORD HEALTH SOURCES, INC.
and DR. MARSHALL JAMES,

Defendants.

No. 17 cv 8218

**DEFENDANTS, WEXFORD HEALTH SOURCES, INC. AND DR. MARSHALL JAMES,
RESPONSE TO PLAINTIFF'S RULE 56.1(b) STATEMENT OF ADDITIONAL FACTS**

NOW COME Defendants, WEXFORD HEALTH SOURCES, INC. and DR. MARSHALL JAMES, by and through their attorneys, CASSIDAY SCHADE LLP, by and through their attorneys, Matthew H. Weller and Sandra L. Byrd of CASSIDAY SCHADE LLP, and for their Local Rule 56.1(a) Statement of Facts, state:

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.)

RESPONSE: Deny and move to strike Dr. Cannestra's opinion related to the day on which Plaintiff's patellar tendon ruptured as Dr. Cannestra did not examine Plaintiff on November 14, 2015 and cannot opine that Plaintiff ruptured his patellar tendon on that date. As well, Plaintiff did not testify that he ruptured his patellar tendon on November 14,

2015, instead he testified that he tore his patellar tendon on November 14, 2015. (Defendants' Statement of Facts ("DSOF") Ex. A, 30:19-31:6).

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.)¹

RESPONSE: Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G). Further, Plaintiff's presentation was atypical for a person with a complete patellar tendon rupture. (DSOF ¶¶28-29).

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.)

RESPONSE: Deny. Dr. Behl testified that he has seen guys return to the NFL after a ruptured patellar tendon, but that for a professional athlete it can be a career-ending injury, (DSOF Ex. D 43:17), and Dr. Cannestra testified that "most of these patients end up going to the emergency room before seeing any medical provider because they can't walk and they can't straighten their knee out. They can't extend it and they have quite severe pain." (DSOF Ex. G, 97:6-10)

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

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

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.)

RESPONSE: Deny. The referenced portions of Dr. Cannestra's deposition testimony do not support Plaintiff's contention. Dr. Cannestra testified that "the treatment for an acute patellar tendon rupture in a young, active individual is surgical and surgically optimal within ten days." (DSOF Ex. G, 83:19-21). Further, Dr. Cannestra testified that the optimal time-frame for repairing a patellar tendon rupture is three weeks or less. Dr. Cannestra did not testify that a surgeon cannot repair the tendon but must reconstruct by using a cadaver tendon. (DSOF, Ex. G, 74:4-75:21).

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.)

RESPONSE: Admit.

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.)

RESPONSE: Admit.

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

RESPONSE: Admit that Dr. James examined plaintiff for the first time for his knee injury on November 16, 2015.

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.)

RESPONSE: Admit that Dr. James testified that on November 16, 2015 Plaintiff reported "he had some pain probably about a eight out of ten." (DSOF Ex. B, 16:1-3). Admit that Dr. James medical record noted "increased knee swelling and pain," (DSOF Ex. B, 26:21), and that Dr. James testified that at the time he examined Plaintiff on November 16, 2015 Plaintiff's knee was "slightly swollen. No deformities noted. There was a little laxity with the patella, laxity meaning movement, with the patella. But also examined his right knee, and it was pretty similar in presentation, but there was some swelling there." (DSOF, Ex. B, 15:19-16:1). Deny that Dr. James "suspected" a patellar tendon rupture, instead Dr. James wanted to rule out a patellar tendon rupture. (DSOF, Ex. B, 26:23; 28:4-5).

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.)

RESPONSE: Admit Dr. James wanted to rule out a ruptured patellar tendon. Deny and move to strike Dr. Cannestra's opinion of Dr. James's intent.

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.)

RESPONSE: Deny. Dr. James testified that “the swelling wasn’t huge, and there was no deformity noted at that time, and I felt like until I had a chance to present it to my superior at collegial...collegial. It’s a conference we have every week with a senior doctor that pretty much determines where we going to go forth with the management of the particular patient in question. (DSOF Ex. B, 16:117-17:3).

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.)

RESPONSE: Deny. The cited portion of the transcript of Dr. James’s testimony does not support the assertions set forth in Paragraph 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.)

RESPONSE: Admit.

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.)

RESPONSE: Deny. Dr. Cannestra’s opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G).

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. Cannestra Verified Expert Report at 8, Plaintiff's Exhibit 1.)

RESPONSE: Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G).

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.)

RESPONSE: Deny. Dr. James testified that the technician noted that the x-ray was completed not that Dr. James learned it had been taken. (DSOF, Ex. B 31:19-32:3).

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.)

RESPONSE: Admit.

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. Cannestra Dep. 54:10-11, 82:13-14, ECF No. 91-7 at 15, 22.)

RESPONSE: Admit that the radiologist found that plaintiff's "patella is slightly high riding." Deny that this supported that plaintiff had suffered a patellar tendon rupture.

(DSOF ¶¶28-29). Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G).

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.)

RESPONSE: Deny. Dr. James testified that the x-ray report is transmitted through fax or by computer to the facility. He did not testify as to the date or that the report was transmitted to him. (DSOF, Ex. B, 34:1-8).

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.)

RESPONSE: Admit that Dr. James followed a course of conservative treatment that included Plaintiff being confined to the infirmary, continued bedrest and physical therapy. (DSOF, Ex. B 36:6-12).

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.)

RESPONSE: Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G). Plaintiff presented with atypical symptoms. (DSOF ¶¶28-29).

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.)

RESPONSE: Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G).

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.)

RESPONSE: Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty, (DSOF, Ex. G), and Plaintiff presented with atypical symptoms. (DSOF ¶¶28-29).

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.)

RESPONSE: Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G).

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.)

RESPONSE: Deny and move to strike. Dr. Cannestra is not qualified to give an opinion on a legal standard and his medical opinions are not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G).

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.)

RESPONSE: Admit.

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.)

RESPONSE: Admit that Dr. James examined Plaintiff on December 8, 2015. Deny that Dr. James found that Plaintiff "continued" to show signs and symptoms of a probable patellar tendon rupture. Instead, Dr. James noted that Plaintiff for the first time had persistent left knee pain and swelling, notable displacement of his patella and a probable patellar tendon rupture. Dr. James referred Plaintiff for further care. (DSOF, Ex. B, 37:4-11).

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.)

RESPONSE: Deny. Dr. Cannestra testified that he did not have medical records to say "one way or the other" if Plaintiff attempted to obtain medical treatment between November 16th 2015 and December 3, 2015. (DSOF, Ex. G, 58:13-17).

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.)

RESPONSE: Admit.

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.)

RESPONSE: Deny. Dr. Fisher testified that "[i]f something is requested in an urgent manner, which means that the review needs to occur before the next scheduled collegial

call, if you had someone see an eye doctor today and they say I want to see the person tomorrow, and your collegial is not until Friday, you send it in as an urgent consultation....” (DSOF, Ex. C, 12:16-22).

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.)

RESPONSE: Deny that Paragraph 30 fully and accurately states the content of Plaintiff’s grievance.

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.)

RESPONSE: Admit that Plaintiff received an MRI on January 18, 2016. Deny that it “confirmed” plaintiff had a complete tear of the patellar tendon in his left knee. Plaintiff was sent for an MRI to “rule out” a patellar tendon rupture. (DSOF, Ex. B, 41:8). Plaintiff had never been diagnosed with a torn patellar tendon so the MRI did not “confirm” anything.

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.)

RESPONSE: Admit.

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.)

RESPONSE: Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G).

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.)

RESPONSE: Deny that page 16, line 7 of Dr. Behl's deposition transcript says that Dr. Behl diagnosed Plaintiff with a torn patella tendon ("Here's radiology. Here we go." (DSOF, Ex. D, 16:17)). Admit that Dr. Behl recommended surgery as soon as possible. Deny that 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 surgery, instead Dr. Behl advised Plaintiff that either an operative or nonoperative outcome would "be affected." (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.)

RESPONSE: Deny. Dr. Behl was happy with results of the surgery and considered the surgery successful. (Ex. D, 27:1-6).

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.)

RESPONSE: Deny. Dr. Behl was happy with results of the surgery and considered the surgery successful. (Ex. D, 27:1-6).

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.)

RESPONSE: Agree that Plaintiff was treated by Dr. Verma in 2016. Deny that Dr. Verma determined that another surgery was the only option. (DSOF, Ex. E, 7:16).

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.)

RESPONSE: Deny. Dr. Verma testified "[t]o be honest with you I don't know what that's referring to." (DSOF, Ex. E, 13:15-23). Further, Dr. Verma stated he did not know what the language "chronic neglected patellar tendon disruption" means. (DSOF, Ex. E, 14:4-7).

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.)

RESPONSE: Admit.

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.)

RESPONSE: Deny. Dr. Cannestra's opinion is not rendered to a reasonable degree of medical certainty. (DSOF, Ex. G).

Respectfully submitted,

WEXFORD HEALTH SOURCES, INC., and DR.
MARSHALL JAMES

By: /s/ Sandra L. Byrd

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Certificate of Service

I hereby certify that on August ____, 2020, I electronically filed the foregoing document with the clerk of the court for Northern District of Illinois, Eastern Division, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of E-Filing” to the attorneys of record in this case.

/s/ Sandra L. Byrd

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