

043133/19344/MHW/REN/SLB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JOHNNY JONES,

Plaintiff,

v.

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

Defendants.

Case Number 17 cv 8218

Honorable Mary M. Rowland

**DEFENDANTS' LOCAL RULE 56.1 STATEMENT OF FACTS IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

Defendants, WEXFORD HEALTH SOURCES, INC. (“Wexford”) and DR. MARSHALL JAMES (“Dr. James”) (collectively, “Wexford Defendants”), by and through their attorneys, Matthew H. Weller, Ronald E. Neroda and Sandra L. Byrd of CASSIDAY SCHADE LLP, and for their Local Rule 56.1(a) Statement of Facts, state:

Jurisdiction and Venue

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.

The Parties

2. 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. 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). Plaintiff also has criminal convictions for attempt Armed Robbery, Possession of a Controlled Substance and Driving under the Influence. (Ex. A, 13:13—22). 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).

3. 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***. 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).

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].

Non-Party Witnesses

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***.

6. Ankur Behl, M.D. testified as Plaintiff's treating physician. *See* Deposition Testimony of Dr. Ankur Behl, attached as ***Exhibit D***. 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). Dr. Behl works at Midwest

Orthopedics in Sandwich, Illinois and has approximately 25 inmates as patients during the five years he has been employed by Midwest Orthopedics. (Ex. D, 6:11-20).

7. Nikhil Verma, M.D. testified as Plaintiff's treating physician. *See* Deposition Testimony of Dr. Nikhil Verma, attached as ***Exhibit E***. 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).

8. 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. 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. 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***.

9. Vincent Cannestra, M.D. testified on behalf of Plaintiff. Dr. Cannestra received his undergraduate and medical degrees from Northwestern University. 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. 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*.

Factual Background

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).

11. 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). In order to obtain healthcare while an inmate at Sheridan, Plaintiff would submit a request and he would be called to sick call the following day. (Ex. A, 16:13-18).

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).

13. 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). 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). The nurse noted that Plaintiff’s left knee did not have any swelling, any tenderness, any bruising, no cuts or open wounds, and Plaintiff’s pain level was four on a scale of one to ten. (Ex. G, 42:22-43:17). 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). Plaintiff was in the healthcare unit with the nurse for approximately one hour. (Ex. A, 32:19-21).

14. Two days later, Plaintiff returned to the healthcare unit to see Dr. James. (Ex. A, 33:21-34:11; Ex. B, 26:12-14). 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). 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). Dr. James noted that Plaintiff's left knee was slightly swollen, did not have any deformities, had a little laxity, or movement, in the patella, was similar in presentation to Plaintiff's right knee. (Ex. B, 15:14-16:1). 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).

15. A week later, Dr. James personally told Plaintiff the results of his x-ray, (Ex. A, 36:13-20), which showed that Plaintiff had some osteoarthritis of his knee joint, mild swelling and a slightly high riding patella. (Ex. B, 34:16-22). 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).

16. 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 Plaintiff was never refused healthcare treatment related to his knee injury. (Ex. A, 39:7-9). 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).

17. 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). 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). These reviews take place on a weekly basis. (Ex. C, 10:8-10). 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). This procedure was followed for Plaintiff. (Ex. C, 18:19-22). Dr. James was not involved in scheduling off-site procedures for inmates. (Ex. B, 44:19-21).

18. Plaintiff had an MRI at Valley West Hospital on January 18, 2016. (Ex. B, 47:21-23). 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).

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

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).

21. 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). During at least two of these appointments, Plaintiff worked with a physical therapist. (Ex. A, 53:8-13; Ex. D, 29:1-7).

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). Instead, every three days Plaintiff would do one exercise on his own that he learned about on television. (Ex. A, 53:21-54:9).

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 do any physical therapy, (Ex. A, 63:23-64:2; 67:17-21), or see any other doctors. (Ex. A, 64:3-5).

23. 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). However, Plaintiff had a second surgery on October 11, 2016. At that time, Dr. Verma successfully performed elective arthroscopic surgery on Plaintiff's knee. (Ex. E, 19:2-21). 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). 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).

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, 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). 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***.

25. Dr. Verma order 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***.

26. In April 2017, Plaintiff complained to Dr. Verma that he was still experiencing pain. (Ex. E, 34:11-35:1). This was unexpected by Dr. Verma because there was no anatomic basis for this type of pain. (Ex. E, 35:2-6). 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). 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), bringing the total number of physical therapy appointments ordered to approximately 100. (Ex. E, 43:8-12). Plaintiff only completed approximately 25 of those visits, resulting in a suboptimal outcome for his surgery. (Ex. E, 43:16-20).

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).

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).

29. When Plaintiff presented to Dr. James he had little swelling, little pain, no bruising and an essentially normal x-ray. 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. 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).

30. 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). Dr. James was astute in even considering an injury to Plaintiff's patellar tendon, *Id.*, and Dr. James met the standard of care in the community for a primary care doctor evaluating an acute knee injury. (Ex. F, Op. 1).

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

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

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).

Respectfully submitted,

WEXFORD HEALTH SOURCES, INC. and DR.
MARSHALL JAMES

By: /s/ Sandra L. Byrd

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TABLE OF EXHIBITS

- Exhibit A** — Plaintiff's Deposition Testimony
- Exhibit B** — Defendant, Dr. Marshall James' Deposition Testimony
- Exhibit C** — Wexford Corporate Representative, Dr. Neil Fisher's Deposition Testimony
- Exhibit D** — Treating Physician, Dr. Ankhur Behl's Deposition Testimony
- Exhibit E** — Treating Physician, Dr. Nikhil Verma's Deposition Testimony
- Exhibit F** — Expert Witness, Dr. Chadwick Prodromos' Expert Report
- Exhibit G** — Expert Witness, Dr. Vincent Cannestra Deposition Testimony and Expert Report
- Exhibit H** — Illinois Department of Corrections, Offender Count Adjustment
- Exhibit I** — Plaintiff's February 24, 2017 Physical Therapy note, filed under seal
- Exhibit J** — Plaintiff's January 13, 2017 Physical Therapy note, filed under seal

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 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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