

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

Sidney L. Peterson,)	
)	
<i>Plaintiff,</i>)	
-vs-)	No. 19-cv-415
)	
Sarah Mays,)	(Judge Kocoras)
)	
<i>Defendant.</i>)	

AMENDED COMPLAINT

Pursuant to leave of Court, plaintiff files this amended complaint and, by counsel, alleges as follows:

1. Plaintiff brought this case pursuant to 42 U.S.C. § 1983, invoking the jurisdiction of this Court pursuant to 28 U.S.C. § 1343 and 28 U.S.C. § 1367. On remand, following the decision of the Court of Appeals, 986 F.3d 746 (7th Cir. 2021), the Court elected to retain jurisdiction over plaintiff's state law claim.

2. Plaintiff Sidney L. Peterson is a resident of the Northern District of Illinois.

3. The events giving rise to plaintiff's claims occurred at the Stateville Correctional Center in Joliet, Illinois and were at issue in 16-cv-1135, voluntarily dismissed on January 25, 2018.

4. Defendant Sarah Mays was at all relevant times a licensed practical nurse employed at the Stateville Correctional Center.

5. On January 19, 2015, a physician at the Stateville Correctional Center prescribed for plaintiff a medication known as “Podocon-25.”

6. On January 19, 2015 and again on February 27, 2015, the physician directed that the medication be administered by a nurse.

7. Podocon-25 is composed of Podophyllin in a Benzoin Tincture.

8. Podophyllin is a powerful caustic and severe irritant prescribed for the removal of soft genital warts. It is to be applied topically.

9. The packaging for “Podocon-25,” in accordance with the regulations of the United States Food and Drug Administration, includes repeated warnings, in bold, capital letters that **“PODOCON-25© IS TO BE APPLIED ONLY BY A PHYSICIAN. IT IS NOT TO BE DISPENSED TO THE PATIENT.”**

10. On March 9, 2015 and again on March 11, 2014 defendant Mays gave plaintiff a package of Podocon-25 and told him to apply it to his penis.

11. At all times relevant, the standard of care for administering Podophyllin is that it must be administered by a physician.

12. Defendant Mays breached that standard of care when she gave plaintiff a package of Podocon-25 and told him to apply it to his penis.

13. As a result of the foregoing acts of defendant Mays, plaintiff suffered personal injuries to his penis.

14. Plaintiff demands trial by jury.

WHEREFORE plaintiff requests that judgment be entered against defendant for appropriate compensatory damages, and that the costs of this action be taxed against defendant.

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 08830399
Joel A. Flaxman
200 South Michigan Ave. Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiff



October 1, 2023

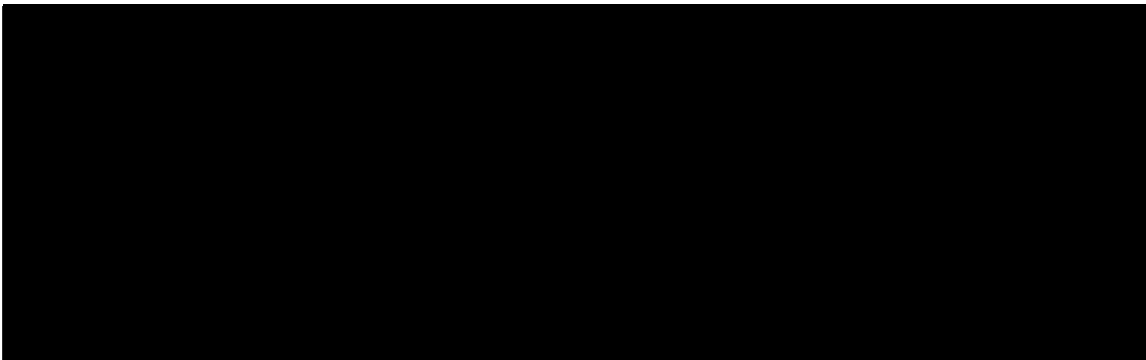
Dear Mr. Flaxman:

I am an Internal Medicine physician licensed to practice medicine in all of its branches. I am also a Fellow of the American College of Physicians. My practice involves primary care of patients and I am familiar with the standard of care, methods, procedures, and treatments relevant to the issues presented by the care and treatment of Sidney Peterson while he was being treated for genital warts in the Illinois Department of Corrections.

I have reviewed the records that are accurately summarized by Denise Panosky in her affidavit September 8, 2021. I have also reviewed the deposition of Loretta Coleman taken on April 5, 2022 and the deposition of Sarah Mays taken on April 6, 2022. Based on this review, it is my opinion that there is reasonable and meritorious cause for the filing of an action against Mays.

The standard of care for administering Podophylin is that it must be administered by a physician. The Medication Administration Record, marked as Exhibit 3 at the deposition of Ms. Mays, shows that she administered Podophylin to Mr. Peterson on March 9 and 11, 2015.

It is my opinion, to a reasonable degree of medical certainty, that the above-described departure from the ordinary standard of care caused Mr. Peterson to incur personal injuries.



AFFIDAVIT OF MERIT OF DENISE PANOSKY DNP, RN, CNE, CCHP, FCNS

I, Denise Panosky DNP, RN, CNE, CCHP, FCNS, hereby certify that I reviewed the Complaint and all medical records supplied by the Plaintiff's attorney concerning the allegations contained in the Complaint regarding Mr. Sidney Peterson. I am a licensed Registered Nurse (RN). During the year immediately preceding the date of the occurrence that is the basis for this action, I devoted a majority of my professional time to the active clinical practice of nursing, including teaching nursing, in a correctional setting. I further reserve the right to add to or amend this Affidavit as information becomes available. My opinions are preliminary because I have not reviewed any deposition testimony and may not have received/reviewed complete medical records. I therefore, reserve the right to amend and supplement my opinions after reviewing any additional materials submitted to me.

THE APPLICABLE STANDARD OF CARE OR PRACTICE

The standard of care applicable to Registered Nurse (RN) Loreatha Coleman is that of a reasonable prudent registered nurse, acting in the same or similar circumstances, and had a duty to:

- a. Exercise that degree of reasonable judgement and provide appropriate care that a reasonable registered nurse would under the same or similar circumstances;
- b. Be familiar with, and comply with, national and facility guidelines, pathways and protocols, and peer-reviewed research, that are applicable to patients presenting with similar signs and symptoms and/or needing medication(s) for treatment;
- c. Timely and accurately assess the patient, perform a complete and accurate nursing physical assessment, and accurately document all clinical findings and symptoms that were observed and reported, including evaluation, and re-evaluation of the patient;
- d. Timely and accurately discuss with, and assess, the patient's condition, to accurately obtain and report his medical history, medications, and to report these findings to the physician or medical provider in charge;
- e. Properly formulate a nursing plan of care which would consist of routine assessments, documentation, medication administration, and nursing care;
- f. Properly administered medications, knowing the "Five Rights" of medication administration including: the right patient, right drug, right dose, right route, and right time. Nurses have a responsibility with medication administration and must know that the medication is correctly prescribed by a physician and/or medical provider and dispensed/administered correctly for all patients. Nurses must remain educated and up to date on all medications in clinical practice to safely administer medications and to prevent medication errors;
- g. Immediately report to the physician that administering a medication NOT allowed to be administered by a nurse, will not be given, and formulate a plan with the physician how this medication will be administered by a physician or medical provider as required;

- h. Timely collaborate with the physician to establish optimal treatment plans and to achieve favorable patient outcomes; and
- i. Follow national standards and guidelines, and facility protocols, when administering medications.

The standard of care applicable to Licensed Practical Nurse (LPN) Sarah Mays is that of a reasonable prudent licensed practical nurse acting in the same or similar circumstances.

- a. Exercise that degree of reasonable judgement and provide appropriate care that a reasonable licensed practical nurse would under the same or similar circumstances;
- b. Be familiar with, and comply with, national and facility guidelines, pathways and protocols, and peer-reviewed research, that are applicable to patients presenting with similar signs and symptoms and/or needing medication(s) for treatment;
- c. Timely and accurately assess the patient as delegated by a registered nurse or other medical provider, conduct a focused nursing assessment contributing to the ongoing comprehensive nursing assessment of the patient performed by the registered nurse, and accurately document all clinical findings and symptoms that were observed and reported, including evaluation, and re-evaluation of the patient in collaboration with the registered nurse;
- d. Timely and accurately discuss with, and assess, the patient's condition, to accurately obtain and report his medical history, medications, as delegated by a registered nurse or other medical provider, and to report these findings to the registered nurse, physician, or medical provider in charge;
- e. Properly collaborate in the development or modification of the nursing plan of care which would consist of routine assessments, documentation, medication administration, and nursing care;
- f. Properly administered medications, knowing the "Five Rights" of medication administration including: the right patient, right drug, right dose, right route, and right time. Nurses have a responsibility with medication administration and must know that the medication is correctly prescribed by a physician and/or medical provider and dispensed/administered correctly for all patients. Nurses must remain educated and up to date on all medications in clinical practice to safely administer medications and to prevent medication errors;
- g. Immediately report to the registered nurse and physician that administering a medication NOT allowed to be administered by a nurse, will not be given, and collaborate with the registered nurse to formulate a plan with the physician how this medication will be administered by a physician or medical provider as required;
- h. Timely collaborate with the registered nurse, who will collaborate with the physician, in assisting to establish optimal treatment plans and to achieve favorable patient outcomes; and
- i. Follow national standards and guidelines, and facility protocols, when administering medications.

On 1-19-15, Dr. Davida wrote on the Prescription Order (Exhibit 5) an Order for: Podophyllin 25% Solu or Oint to be applied by Nurse qod to penile warts x 1 (illegible word). I am unable to determine from the records the identity of the nurse who signed/noted this record. There is also an Offender Outpatient Progress Note (Exhibit 6) including an assessment and plans by a physician, whose name is illegible, for this same medication order.

On 1-24-14, the Offender Outpatient Progress Notes (Exhibit 6) includes a RN Note which includes S. "I'm feeling dizzy. I'm a diabetic". O. 0 distress noted. A. Blood glucose 91. P. I/m educated in diabetes & parameters, expressed understanding but with hostility.

On 2-26-15, Dr. Davida wrote on the Prescription Order (Exhibit 5) a renewal Order for: daily sick call for nursing for Podophyllin apply to penile warts. pt may apply c (with) nurse observation wash in 4 hours x 1 MD. I am unable to determine from the records the identity of the registered nurse who signed/noted this record. There is also an Offender Outpatient Progress Note (Exhibit 6) including an assessment and plans by a physician, whose name is illegible, for this same medication order increased from qod to daily.

On 2-13-15, 3-23-15, and 4-13-15 on a Prescription Order Chart Copy (Not a prescription) (Exhibit 7) there are medications listed including: Zantac, Metformin, and HCTZ x 30 days for each date.


Exhibit 4 includes Medication Administration Records (MAR) for the medication Podophyllin 25% for dates beginning on 1-19-15 QOD and changed on 1-26-15 to QD. Two nurses, whose names/signatures I cannot make out, signed and administered the medication Podophyllin 25%. Exhibit 8 includes the MAR for the medication Podophyllin 25% for March 2015. Nurse Mays LPN, and three other nurses, whose names/signatures I cannot make out, signed and administered the medication Podophyllin 25%.

Nurses Mays LPN, and three other nurses, whose names/signatures I cannot make out, administered Podophyllin 25% (also called Podocon-25), a medication that nurses are NOT allowed to administer. Medication manufacture instructions, and warnings, are clear that "Podocon-25 is to be applied only by a physician. It is not to be dispensed to the patient". Although Nurse Mays LPN, and three other nurses, whose names/signatures I cannot make out, did not actually apply the Podocon-25 medication, they gave/administered the Podocon-25 to Mr. Peterson and allowed Mr. Peterson to apply a medication that ONLY a Physician should apply. This medication should NOT have been given/dispensed to Mr. Peterson. Nurses must follow guidelines, warnings, and protocols for all medications they administer. Nurses must always follow their Nursing Scope of Practice. Mr. Peterson's history included taking the medication Metformin (which is a medication for diabetes). There is also documentation on the Offender Outpatient Progress Notes (Exhibit 6) by a RN, that Mr. Peterson is a diabetic. Podocon-25 is contraindicated in diabetic patients. Yet, these nurses administered/dispensed and allowed Mr. Peterson to apply Podocon-25.

Nurses Mays LPN, and three other nurses who administered Podophyllin 25%, fell below the nursing standard of care that is expected of a reasonable prudent registered nurse/licensed practical nurse acting in the same or similar circumstances. These actions contributed to Mr.

Peterson's personal injuries as stated in the Complaint and fell below the nursing standard of care. It is my opinion that there is reasonable and meritorious cause for the filing of the action.

September 8 , 2021

A handwritten signature in black ink, reading "Denise M. Panosky". The signature is written in a cursive, flowing style. The first name "Denise" is written in a larger, more prominent script, followed by "M." and then "Panosky". The signature is positioned above a horizontal line.

Denise Panosky DNP, RN, CNE, CCHP, FCNS

DECLARATION OF KENNETH N. FLAXMAN

The undersigned, under penalties of perjury under the laws of the United States of America that the following statements are true:

1. I have consulted and reviewed the facts of the case with a health professional who I believe: (i) is knowledgeable in the relevant issues involved in the particular action; (ii) practices or has practiced within the last 6 years medicine that is at issue in the particular action; and (iii) is qualified by experience or demonstrated competence in the subject of the case.

2. The reviewing health professional has determined in a written report, after a review of the medical record and other relevant material involved in the particular action, that there is a reasonable and meritorious cause for the filing of such action.

3. I have concluded, based on the reviewing health professional's review and consultation, that there is a reasonable and meritorious cause for filing of such action.

Dated: October 2, 2023

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman