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NO. 20-CI-000888

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JEFFERSON CIRCUIT COURT
DIVISION ONE (1)
HON. ERIC HANER
MEM 5022

BEN PHELPS, Administrator of the Estate of
ASHLEY NICOLE PHELPS, deceased, ET AL.

PLAINTIFFS

v.

UNIVERSITY OF LOUISVILLE PHYSICIANS, INC.’ TRIAL MEMORANDUM

UNIVERSITY MEDICAL CENTER, INC.,
ET AL.

DEFENDANTS

* * * * *

Comes the defendant, University of Louisville Physicians, Inc., (ULP), by counsel, pursuant to the Third Civil Trial Order, and for its Trial Memorandum respectfully states the following:

I. FACTS

This is a medical negligence action involving stage IV Hodgkin’s lymphoma. The jury will hear evidence regarding that disease and available treatments.

Ashely Phelps was first diagnosed with stage IV Hodgkin’s lymphoma in 2014. At the time of her diagnosis, Ms. Phelps’ cancer had spread to her lungs, pelvis, and lymph nodes. She sought treatment in Bowling Green and Nashville. Her primary oncologist was Vidya Seshadri, M.D., who practices in Bowling Green.

For a time after her treatment, Ms. Phelps’s physicians could not detect any remaining cancer. NED, for no evidence of disease, is the cautious term.

In December 2017, a CT scan of Ms. Phelps chest, abdomen, and pelvis indicated a concern for recurrent Hodgkin’s lymphoma. In January 2018, a PET scan confirmed recurrent Hodgkin’s

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lymphoma. Stage IV B. This is the most advanced stage, and the B reflects systemic symptoms.

Ms. Phelps was admitted for chemotherapy at the Medical Center at Bowling Green, where she received two cycles of ICE (ifosamide, carboplatin, etoposide).

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In February 2018, Dr. Seshadri referred Ms. Phelps to see Robert Emmons, M.D., at the University of Louisville Brown Cancer Center to evaluate whether she might be a candidate for an autologous stem cell transplant. Dr. Emmons is a hematologist who specializes in blood cancers and stem cell transplants. Ms. Phelps agreed to a treatment plan which included chemotherapy and an autologous stem cell transplant.

After the stem cell transplant, also known as a bone marrow transplant (BMT), Ms. Phelps returned to Bowling Green for follow-up with Dr. Seshadri. Dr. Emmons communicated with Dr. Seshadri about Ms. Phelps' need for post-transplant Brentuximab every two weeks for a total of sixteen doses. On June 12, 2018, Dr. Seshadri oversaw the Brentuximab infusion. After the first infusion, Ms. Phelps experienced severe and unexplained tachycardia. Dr. Seshadri suspected that these symptoms were side effects of Brentuximab and recommended the dose be lowered. However, because Ms. Phelps' symptoms never fully resolved, she did not receive another cycle of Brentuximab.

From June 27, 2018, through June 30, 2018, Ms. Phelps was hospitalized in Bowling Green with abdominal pain, nausea, vomiting and diarrhea. Dr. Seshadri prescribed steroids, Decadron, 4mg, twice per day to continue post-discharge. On July 3, 2018, Dr. Seshadri wrote a second thirty-day prescription for steroids. Dr. Emmons was not aware that steroids were being taken post-discharge.

On July 15, 2018, Ms. Phelps was readmitted to the Medical Center at Bowling Green for a complaint of tachycardia. Dr. Seshadri suspected a pulmonary embolus and requested a cardiac

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consultation. Ms. Phelps remained in the hospital for several days and a CT scan was taken which indicated some inflammation. Ms. Phelps was discharged from the hospital on July 17. On July 20, 2018, a chest CT scan showed “enlarging bilateral upper lobe patchy and nodular ground-glass opacities.” “This could reflect an infectious or inflammatory etiology, drug reaction or nonspecific pneumonitis.” Dr. Seshadri kept Ms. Phelps on steroids.

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On July 26, 2018, Ms. Phelps returned to see Dr. Emmons in Louisville. Dr. Emmons discussed the recent history with Ms. Phelps, and he noted an improvement of the tachycardia. He suggested referral to an electrophysiologist for possible cardiac explanation. Following this visit, Ms. Phelps returned to Bowling Green and was monitored by Dr. Seshadri.

On August 17, 2018, Ms. Phelps returned to see Dr. Emmons for her 100-day checkup. Dr. Emmons noted that Ms. Phelps had been taking steroids for the past three weeks and he documented a concern that tapering-off steroids might cause tachycardia.

On August 19, with Ms. Phelps experiencing tachycardia in the 140s, Dr. Seshadri sent Ms. Phelps to the ER at Greenview Hospital for evaluation due to a concern for a possible pulmonary embolus. A pulmonologist listed within his differential diagnosis, pulmonary edema, diffuse alveolar hemorrhage, or atypical infectious / inflammatory process. Ms. Phelps was admitted to the ICU. A critical care specialist listed PCP pneumonia within his differential diagnosis and IV Bactrim was ordered.

On August 23, 2018, Ms. Phelps was stat-flighted to Louisville. She was diagnosed with acute severe hypoxemic respiratory failure and suspected PCP pneumonia. She was placed on a ventilator. On August 25, 2018, she was transferred to Jewish Hospital for further care but did not recover. On September 5, 2018, the decision was made to withdraw support, and Ms. Phelps passed away.

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STATEMENT OF THE APPLICABLE LAW

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The applicable law in this alleged medical negligence action is common to any professional negligence claim. The plaintiffs must prove that the medical care and treatment in question was below the degree of care and skill expected of a reasonably competent healthcare provider. Reams v. Stutler, Ky., 642 S.W.2d 586 (1982). The instructions regarding the care expected of a physician are well settled matters. See, Palmore's Instructions to Juries.

In addition to establishing by a preponderance of the evidence a breach of the prevailing standard of care, plaintiffs must prove that any alleged deviation proximately caused a discreet injury. The bare possibility of causation will not suffice. Reams v. Stutler, infra. In assessing causation, Kentucky courts employ a "substantial factor" test. Deutsch v. Shein, Ky., 597 S.W.2d 441 (1980).

To the extent damages are awarded, they must be reasonable and necessary and predicated upon the evidence appropriately admitted at trial. Juror speculation is uniformly prohibited.

II. DISPUTED FACTS AND LEGAL ISSUES

1. Whether Dr. Emmons failed to meet his duty to exercise the degree of care expected of a reasonably competent oncologist acting under the same or similar circumstances.
2. Whether Dr. Seshadri failed to meet her duty to exercise the degree of care expected of a reasonably competent oncologist acting under the same or similar circumstances.
3. Whether any such breach was a substantial factor in causing Ms. Phelps' death.

Plaintiffs assert that Dr. Seshadri and Dr. Emmons should have prescribed PCP prophylaxis antibiotics after the stem cell transplant and, had that occurred, Ms. Phelps would survive and remain employed for years to come.

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Plaintiffs assert that Dr. Seshadri should have prescribed PCP prophylaxis after prescribing a lengthy course of steroids to address tachycardia and other symptoms. They assert that the steroids made her more immunocompromised, thus making her more susceptible to contracting the PCP infection. Plaintiffs assert that Dr. Seshadri should have referred Ms. Phelps to a pulmonologist in mid-July 2018 following concerning findings on the CT scans.

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Plaintiffs allege that the standard of care required that PCP prophylaxis antibiotics be prescribed. Defendants disagree. The practice is subject to individual judgment and assessment of the circumstances. In Ms. Phelps' situation, the single post-transplant dose of Brentuximab (secondary to concerns about Ms. Phelps's adverse reaction) did not appreciably increase her risk of PJP pneumonia.

III. REMAINING LEGAL ISSUES TO BE ADDRESSED

1. ULP's motion for partial summary judgment based on the statute of limitations.
2. Motions in limine
3. Objections to depositions

Respectfully submitted,

/s/Justin W. Janes

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CERTIFICATE OF SERVICE

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I hereby certify that on the **29th day of June, 2023**, a copy of the foregoing was filed electronically through the KCOJ eFiling system which will provide notice to the following:

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/s/Justin W. Janes

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