

STATE OF INDIANA )  
) SS:  
COUNTY OF PORTER )

IN THE PORTER SUPERIOR COURT  
CAUSE NO. 64D05-1901-CT-000923

WERONIKA SZPRYCHEL, )  
)  
Plaintiff, )  
)  
v. )  
)  
DAVID CUMMINS, M.D., )  
)  
Defendant. )

**FILED**  
IN OPEN COURT

MAR 26 2021

*Mary DeBour*  
Porter Circuit and Superior Court

**PRETRIAL ORDER**

The parties having conferred and agreed to submit this Pretrial Order in accordance with the Court's June 1, 2020 Case Management Order, and the Court being duly advised, it is HEREBY ORDERED as follows:

A. **Jurisdiction.** Both personal and subject-matter jurisdiction were conceded by counsel and found by the Court to be present.

B. **The Pleadings Raising the Issues.** This dispute arises on Plaintiff's *Complaint for Damages*, which was filed on January 25, 2019, and Defendant's *Answer to Plaintiff's Complaint*, which was filed on February 5, 2019.

C. **Motions or Other Matters Requiring Action by the Court.** Motions in limine, any objections to proposed preliminary and final jury instructions filed with the Court, the status of any other case set for trial as a prior choice before this case.

D. **Concise Statement of Stipulated Facts, With Reservations, If Any.** The parties stipulate to the authenticity of all medical records obtained during discovery, including imaging studies from St. Mary Medical Center and Advocate Good Samaritan Hospital. The parties reserve

objections as to relevance, but they anticipate that most medical records and other exhibits will be admitted upon agreement of counsel.

E. **Concise Statement of Issues of Fact.** The contested issues of fact remaining for litigation include:

1. Whether the Defendant, Dr. David Cummins, fell below the applicable standard of care when he evaluated and treated the Plaintiff, Weronika Szprychel, upon her presentation to Porter Regional Hospital's emergency department on August 18, 2011;
2. The nature, extent, and proximate cause of Plaintiff's injuries, specifically her right lower extremity amputation;
3. Any other issues of fact inherent in the parties' contentions and pleadings in this case.

F. **Concise Statement of Issues of Law.** There are no contested issues of law which are not implicit in the foregoing issues of fact and the pleadings in this case.

G. **Plaintiff's Contentions.**

1. When Dr. Cummins performed an examination of Weronika Szprychel on August 18, 2011, he did not use the degree of care and skill that a reasonably careful, skillful, and prudent emergency room doctor would have used under the same or similar circumstances. Dr. Cummins was negligent.
2. Dr. Cummins failed to make an adequate examination of Ms. Szprychel's foot and leg and he failed to take an adequate history.

3. Dr. Cummins failed to perform an adequate differential diagnosis and he failed to address adequately the threat of an ischemic limb.
4. Dr. Cummins failed to provide adequate documentation of his care.
5. Dr. Cummins failed to conduct needed testing and he failed to make a needed referral to a vascular specialist or otherwise admit Ms. Szprychel to the hospital.
6. Dr. Cummins gave inadequate instructions to Ms. Szprychel.
7. On August 18, 2011, before Dr. Cummins had committed the breach of the standard of care as described above, Mrs. Szprychel had a 30% to 40% chance of saving her lower limb from the amputation that she ultimately suffered had there been an immediate referral for a vascular consult and workup as required by the standard of care. With the delayed referral for a vascular consult and workup of approximately 21 days (as occurred in this case because of the breach of the standard of care by Dr. Cummins) Mrs. Szprychel's chance of saving her lower limb from amputation decreased to 5% to 15%. Thus, because of Dr. Cummins' substandard care, Mrs. Szprychel incurred at least a 30% increased risk of amputation.
8. Dr. Cummins' breach of the standard of care described above was a substantial factor in causing Mrs. Szprychel's amputation.
9. Dr. Cummins' breach was a responsible cause of Ms. Szprychel's reduction in the chance of saving her leg from amputation.
10. Ms. Szprychel incurred medical bills for the amputation paid by Medicare for which she is required to reimburse out of the judgment in this matter.

11. Dr. Cummins caused Ms. Szprychel to suffer physical pain and mental suffering, along with disfigurement and decreased enjoyment of life.
12. Dr. Cummins caused Ms. Szprychel to incur the cost of an accessibility van in the approximate amount of \$7,000, and expenses for ramps and lifts in the approximate amount of \$3,000.
13. Dr. Cummins caused Ms. Szprychel to have life-long use of a colostomy bag.

**H. Defendant's Contentions.**

1. Dr. Cummins met the standard of care applicable to an emergency medicine physician in his evaluation and treatment of Mrs. Szprychel on August 18, 2011;
2. Dr. Cummins appropriately performed an examination of Mrs. Szprychel's right lower extremity for the laceration between her 4-5<sup>th</sup> toes and foot pain as to which she was treated and prescribed an antibiotic by her primary care physician the preceding day;
3. Dr. Cummins made appropriate diagnoses, instructed Plaintiff to continue taking the antibiotic and pain medicine prescribed by her primary care physician, advised her to return to the ER for fever, chills, or any concerning new symptoms, and appropriately referred Plaintiff back to her primary care physician to follow-up with him in two to three days;
4. Dr. Cummins did not negligently cause or contribute to cause the injuries and damages she claims to have sustained;

5. Dr. Cummins disputes the nature and extent of Mrs. Szprychel's claimed injuries and damages.

I. **Plaintiff's Numbered List of Trial Exhibits.** Plaintiff's exhibits at trial may include any or all of the following:

EX 1. Affidavit of Mark Keldahl (Exhibit to various depositions).

EX 2. Dr. Keldahl's CV (Exhibit to various depositions).

EX 3. Dr. Waller's records (Exhibit 2 to various depositions).

EX 4. Dr. Skarzynski's records (Exhibit 3 to various depositions).

EX 5. Porter Hospital records (Exhibit 4 to various depositions).

EX 6. Dr. Bruell records (Exhibit to Cummins submission).

EX 7. St. Mary Records (exchanged in discovery).

EX 8. Good Samaritan records (exchanged in discovery).

EX 9. Community Hospital records (exchanged in discovery).

EX 10. CPL.

EX 11. Photos of Plaintiff as exhibits to the depositions of Roseanne Bednarski and Richard Szprychel. Photos supplied for Gennie Sosnowski's deposition.

EX 12. Exhibits on Defendant's Exhibit List.

EX 13. Timelines and Illustrations yet to be determined, and those disclosed for Dr. Saltzberg's trial deposition.

EX 14. Dr. Saltzberg's CV.

EX 15. Dr. Saltzberg's Affidavit.

EX. 16. Medical literature on Dr. Keldahl's thumb drive.

J. **Defendant's Numbered List of Trial Exhibits.** Defendant's exhibits at trial may include any or all of the following:

1. Certified Medical Review Panel Opinion and Oaths;
2. All health care treatment records of Weronika Szprychel, including but not limited to office notes, physician orders, procedure notes, x-rays and other imaging studies, progress notes, nurses' notes, prescription notes, prescription records, billing statements, telephone records, or photographs, including but not limited to those from the following healthcare providers and institutions:
  - i. J. Gregory Waller, M.D.;
  - ii. Lakeshore Bone & Joint Institute;
  - iii. Aleksander Skarzynski, M.D.;
  - iv. Porter Regional Hospital;
  - v. St. Mary Medical Center;
  - vi. Advocate Good Samaritan Hospital;
  - vii. Community Hospital (Munster);
  - viii. Franciscan St. Margaret Mercy South (now Franciscan Health Dyer);
  - ix. Franciscan Health Michigan City;
3. Any and all Imaging studies of Weronika Szprychel, including but not limited to those from St. Mary Medical Center and Advocate Good Samaritan Hospital;
4. Any and all exhibits contained within the submissions tendered to the Medical Review Panel in this matter;

5. Any and all discovery responses served by the parties to this action at any stage of the litigation, including any requests to non-parties, and including any and all documents exchanged in the discovery process;
6. All pleadings filed in this matter at any stage of the litigation;
7. All transcripts of proceedings in this matter, including depositions and attachments or exhibits to those depositions;
8. Any and all documents or items listed or offered at trial by Plaintiff;
9. Curriculum vitae, file materials, or expert disclosure for each expert witness called to testify on behalf of Defendants, including the following:
  - i. Mark J. Lowell, M.D.,
  - ii. Martin Borhani, M.D.
  - iii. Jill M. Grant, M.D.,
  - iv. Edward A. Seall, M.D.;
10. Demonstrative exhibits which will assist the jury in understanding the evidence, including but not limited to enlargements, diagrams, models, photographs, charts, and graphs;
11. Demonstrative posters or Power-Point slides regarding the treatment at issue or the subsequent procedures performed;
12. Any and all documents or evidence needed for impeachment purposes or to refresh a witness's memory;
13. All exhibits evidencing collateral source payments, discounts, adjustments and other reductions in medical bills and invoices;

14. Upon leave of Court, any additional exhibits discovered between now and trial, which will be disclosed promptly to plaintiff's counsel;

15. Curriculum vitae of Dr. David Cummins.

**K. Plaintiff's Trial Witnesses.** Plaintiff's witnesses at trial may include any or all of the following:

1. Weronica Szprychel.
2. Dr. Keldahl.
3. Roseanne Bednarski.
4. Dr. Saltzberg.
5. Custodians of medical records needed for authentication.
6. Richard Szprychel.
7. Dr. Cummins.
8. Karen Szprychel.
9. Gennie Sosnowski.
10. Witnesses on Defendant's Witness List.

**L. Defendant's Trial Witnesses.** Defendant's witnesses at trial may include any or all of the following:

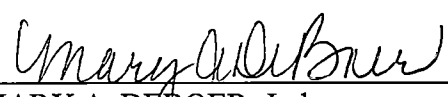
1. David Cummins, M.D., Defendant;
2. Weronika Szprychel, Plaintiff;
3. G. Anthony Bertig, Esq., Medical Review Panel Chairman;
4. Jill M. Grant, M.D., Physician Panel Member;
5. Edward A. Seall, M.D., Physician Panel Member;



- 6. Mark J. Lowell, M.D., Defense expert physician;
- 7. Martin Borhani, M.D., Defense expert physician;
- 8. All records custodians for healthcare providers who treated or examined Weronika Szprychel unless the parties reach a pretrial stipulation regarding the admissibility and authenticity of records which will be introduced at trial;
- 9. Any and all other witnesses identified by or called upon to testify by Plaintiff;
- 10. Any and all witnesses necessary for rebuttal or impeachment;
- 11. Any witnesses whose identities or relevancies become known through subsequent discovery or investigation prior to trial, who will be promptly disclosed to plaintiff's counsel.

M. The Estimated Length of Trial. Five (5) days.

SO ORDERED this 26 day of March.

  
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 MARY A. DEBOER, Judge  
 Porter Circuit/Superior Court #5

AGREED AND APPROVED:

s/ Louis W. Voelker  
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