

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

WILLIAM H. WILLIAMS,)
 PLAINTIFF)
)
v.)
)
BAPTIST HEALTHCARE SYSTEM,)
INC. d/b/a BAPTIST HEALTH)
LEXINGTON,)
 DEFENDANT)

CASE 3:16-cv-00236-CRS-DW
ELECTRONICALLY FILED

DEFENDANT’S PRETRIAL MEMORANDUM

Comes Defendant, Baptist Healthcare System, Inc. d/b/a Baptist Health Lexington (“Baptist”), by counsel, and hereby submits its Pretrial Memorandum in accordance with this Court’s Pre-Trial Order (D. 151, 2(d)).

i. Statement of the Facts of the Case.

Plaintiff William Williams contends that, on April 5, 2015 just after midnight, a nurse at Baptist Health Lexington hospital did not accept him into the Emergency Department when he presented by EMS transport with symptoms consistent with an ST-elevation myocardial infarction (“STEMI”). Instead, nurse Micki Blankenship told EMS they could not help him there and he needed to go to another facility. Baptist Health Lexington was under diversion of inbound transported STEMI patients to another hospital because it had no on-call cardiothoracic surgeons during the April 3-5, 2015 weekend. However, the diversion plan did not include STEMI patients who had actually arrived at the hospital. Plaintiff contends that Ms. Blankenship’s conduct and that of the hospital leading up to it departed from the standard of care, violated the Emergency Medical Treatment and Active Labor Act (“EMTALA”) and violated certain regulations. Plaintiff

contends that he had more emotional distress, pain and suffering as a result than if Baptist had diverted EMS to UK Medical Center while still in transit.

During the week prior to April 4-5, 2015, Baptist found itself in a first-time situation of having no on-call coverage for cardiothoracic (CT) surgery required to perform open heart bypass surgery. Some patients with an active myocardial infarction (M.I. or heart attack) cannot be stabilized by a cardiac catheterization procedure and require emergency open heart bypass surgery. Others who may need open heart surgery can wait hours or more for bypass surgery. Cardiologists perform the cardiac catheterization procedure, but only a CT surgeon can perform open heart surgery. On March 31, anticipating this lack of an on-call CT surgeon for the April 3-5 weekend, Baptist planned that any patient requiring cardiac surgery be treated collaboratively with UK Medical Center and would require patient transfer there. Because of the risk that a STEMI patient's heart attack could not be stopped in the cath lab and would require emergency CT surgery to do so (that Baptist could not provide), Baptist also diverted inbound STEMI patients for the weekend.

On Saturday, April 4, 2015, 58-year-old Mr. Williams was working in his own business as a tow truck driver in Paris, Kentucky. Around noon, he began having chest pain so bad that he went to the local fire station for an EKG. The EKG was normal, but paramedics urged him to go to the hospital because these were unusual symptoms for him. Mr. Williams declined and continued about his business.

Later that evening, around 10:00 p.m., Mr. Williams went on a tow truck assignment to Millersburg, 12 miles outside of Paris, to retrieve a vehicle that had been stranded in high water. He hooked up the vehicle and felt "heartburn from hell," that wouldn't go away. As Mr. Williams was taking the car home, he stopped at a convenience store for TUMS, which did not provide any

relief. He was “very concerned” that he was having heart attack. Mr. Williams then took the vehicle home and went to the fire station.

At the fire station for the second time that day, Mr. Williams again reported his chest pain. EMS personnel at the fire station asked Mr. Williams to allow them to perform an EKG, but he initially would not agree to do so. It took EMS 30 to 45 minutes to get Mr. Williams to agree to proceed to the ambulance to receive an EKG. The EKG showed that Mr. Williams was likely having a STEMI heart attack. EMS then transported Mr. Williams to Baptist Health Lexington, roughly 20 miles and 23-25 minutes away.

When the ambulance was about eight to ten minutes from Baptist, EMS personnel called Baptist to inform them of Mr. Williams’s arrival and suspected STEMI. Nurse Micki Blankenship took the call. Ms. Blankenship had worked on Friday night and learned that in-bound STEMI patients should be diverted to UK Medical Center – 0.9 miles away from Baptist Health Lexington. Unfortunately, Ms. Blankenship was not thinking of the diversion when she took the EMS call, and she told the ambulance to come ahead. As with all inbound EMS vehicles, Ms. Blankenship told her charge nurse that a STEMI patient was coming. The charge nurse reminded Ms. Blankenship of the diversion and that the hospital was under diversion of STEMI patients to UK Medical Center.

Ms. Blankenship immediately tried to contact the ambulance to reroute it to UK Medical Center, but EMS did not leave a telephone number. At just after midnight on April 5 – before Ms. Blankenship could reach the inbound EMS vehicle and only minutes after EMS’s initial call – Mr. Williams arrived outside at the ER entrance door. Concerned for Mr. Williams’s health, Ms. Blankenship ran out of the ER entrance door, saw Mr. Williams and EMS getting out of the vehicle,

and told them “we can’t help you here.” She directed EMS to take Mr. Williams to UK Medical Center. In that moment, Ms. Blankenship was focused on Mr. Williams’s safety.

EMS transferred Mr. Williams to UK Medical Center within minutes. On arrival to UK Medical Center, a cardiologist from the catheterization lab (cath lab) was waiting for Mr. Williams and met EMS at the door. They escorted Mr. Williams straight to the cath lab where staff was waiting. Doctors at UK took his EKG immediately which showed Mr. Williams’ heart attack had spontaneously stopped. At that point, the cardiologist at UK Medical Center took Mr. Williams non-emergently to the cath lab and found that he did in fact need open heart surgery – but not emergently. On Monday, April 6, 2015, Mr. Williams underwent a five-vessel open heart bypass graft surgery, and he has fortunately recovered well. If Mr. Williams had been treated at Baptist Health Lexington, the cath lab cardiologist and staff were “on-call” and not present in the hospital at midnight. They would have been called and come from home to perform the cath procedure which would have caused an approximate 30-minute delay. Also, if he needed emergency open heart surgery, he would have required transport from Baptist to UK causing a further delay.

ii. The Issues of Fact to be Resolved at Trial.

The fact issues in this case:

1. Whether Baptist Healthcare Lexington violated EMTALA and as a result caused Plaintiff more pain, emotional suffering or mental anguish than he otherwise would have had.
2. Whether Baptist Healthcare Lexington met the ordinary standard of care for a hospital and, if not, whether its conduct was a substantial factor in causing Plaintiff more pain, emotional suffering or mental anguish than he otherwise would have had.

3. If the jury finds against Baptist Health Lexington, and if Plaintiff had “prolonged pain and suffering or severe emotional suffering and mental anguish” damages beyond what he otherwise would have had if transported directly to UK Medical Center: what is the money award for his additional pain, suffering, emotional suffering or mental anguish.¹

iii. The Disputed Issues of Law that must be Resolved in Connection with the Trial.

1. Issues contained in the parties’ motions *in limine*, objections and other filings with the Court, including but not limited to whether Plaintiff 901 KAR 20:016(4)(8) presents an independent claim or represents the standard of care and whether the OIG Report and Baptist’s Response are admissible
2. The appropriate instructions to submit to the jury in this case.

iv. Expected Evidentiary Objections.

Defendant has filed motions *in limine* and objections and will likely file additional objections per the Court’s pretrial deadlines. These will include the likely objections Defendant may make at trial. Plaintiff’s motions *in limine* and objections will include issues that are likely to arise. Defendant is uncertain what objections Defendant may make at trial to Plaintiff’s evidence and directs the Court to any motions *in limine* filed by Defendant. In addition:

1. Baptist will object to any evidence or reference concerning claims the Court has dismissed on summary judgment – which leaves only claims for emotional damages, pain and suffering, and other mental anguish beyond what Plaintiff would have had with an earlier diversion to UK Medical Center.

¹ In its September 30, 2019 Order Denying in Part and Granting in Part Defendant’s Motion for Summary Judgment, this Court granted Baptist summary judgment for: 1) physical damages; 2) past or future medical treatment or expenses; and 3) punitive damages. [R. 143]. Therefore, on damages, Plaintiff’s only remaining claims are for “prolonged pain and suffering or severe emotional suffering and mental anguish.”

2. Baptist will object to any evidence or reference to 902 Ky. Admin Reg. 20:16(4)(8) or KRS 216B.400.
3. Baptist will object to any evidence or reference to any OIG investigation, statement of deficiencies or response to same.

v. **All Pending Motions.**

Defendant has filed motions in *limine* and objections for the Court to rule upon, and it will likely file additional objections within the Pretrial Order's parameters.

vi. **The Status of Settlement Negotiations and the Likelihood of Settlement.**

The parties have participated in two settlement conferences to date. Unfortunately, the parties have substantial differences in their evaluation of Plaintiff's claims, particularly after summary judgment has been granted precluding all of Plaintiff's claims except for physical and mental pain and suffering. Settlement negotiations have not resumed since the January 7, 2021 settlement conference.

vii. **The Feasibility of Alternative Dispute Resolution.**

Defendant is always willing and interested in attempting to resolve this matter.

Respectfully submitted,

/s/ Clay M. Stevens

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was electronically filed and served, this 4th day of October, 2021, to the following:

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