

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

WILLIAM H. WILLIAMS,)
PLAINTIFF)
)
v.) Case No. 3:16-00236-CRS-DW
)
BAPTIST HEALTHCARE SYSTEM,)
INC. d/b/a BAPTIST HEALTH) ELECTRONICALLY FILED
LEXINGTON)
DEFENDANT)
)

PLAINTIFF'S PRETRIAL MEMORANDUM

Comes the Plaintiff, William Williams, by and through counsel, and in accordance with this Court's Pre-Trial Order (R. 151, 2(d)), hereby submits the following pretrial memorandum:

1. Summary statement of the facts of the case.¹

This is a medical malpractice and EMTALA case concerning Defendant Baptist Health Lexington's ("BHL") refusal to provide any assessment or stabilizing treatment to Plaintiff William "Tully" Williams upon his arrival at the hospital while suffering a heart attack, forcing him and an EMT crew to turn around in the emergency room lobby and go to a different hospital. The improper diversion of Tully Williams was the result of a reckless comedy of errors which the Center for Medicare and Medicaid Services (CMS) determined posed "an immediate threat and jeopardy to the health and safety of any individual who comes to [BHL]." This includes a failure to have cardiothoracic surgery on call the weekend of April 4-5, 2015, leading BHL to decide not to accept cardiac transfers from other hospitals; however, no decision was made to go on diversion

¹ See Plaintiff's Response to MSJ, Doc. 84, p. 2-7, for a full discussion of the facts with citations to the record.

for cardiac patients coming from to the emergency room and local ambulance services were not told in advance that BHL was not accepting heart attack patients. In fact, BHL's policies and procedures state BHL can never go on diversion for heart attack patients.

The decision to not accept transfers of patients from other hospitals was miscommunicated in a game of "telephone" between BHL's leadership and the nursing staff in the emergency department. While the cardiology department at BHL was ready to open the catheterization lab to treat heart attack patients as needed, the nurses in the emergency department were under the incorrect impression that no cardiology services were available and no cardiac patients could be accepted at the ER, no matter how they were transported to or received by the hospital.

On the night of April 4, 2015, William "Tully" Williams was experiencing chest pain and went to his local fire station in Paris, Bourbon County, Kentucky. When the Paris/Bourbon EMTs read his vitals on an EKG monitor it was clear he was having a STEMI.² He was transported by ambulance to BHL. While in route, EMT Ashley Blankenship called ahead on her cell phone and spoke to ER nurse Micki Blankenship (no relation) at BHL. Nurse Blankenship told EMT Blankenship to come to the BHL ER and that the hospital would be ready to treat him for his STEMI (*i.e.*, the cath lab would be opened).

Before Nurse Blankenship could begin the protocol for opening the cath lab, she was told by nurse manager Nic Newsome the cath lab could not be opened and the hospital was on diversion for all cardiac patients, including field STEMIs. Nurse manager Newsome's statement about being on diversion was wrong as the hospital had merely decided to not accept hospital-to-hospital transfers; however, the shoddy communication and lack of direction in the hospital allowed for the incorrect instructions to be communicated to and among ER nursing staff.

² "ST-Segment Elevation Myocardial Infarction," the most severe type of heart attack.

Nurse Blankenship attempted to contact the ambulance to tell it to go elsewhere because they were on diversion. However, she did not record the phone number or even what EMS service was transporting Mr. Williams; therefore, she was unable to contact the ambulance. Moreover, no one at BHL provided Nurse Blankenship with instructions on what to do other than to tell the ambulance to go somewhere else and Mr. Williams would not be seen at the BHL.

Approximately 10-12 minutes later, early in the morning on April 5, 2015, Mr. Williams arrived by ambulance and the EMT crew wheeled him into the hospital ER lobby where they were met by nurse Blankenship. Nurse Blankenship told the ambulance service to go elsewhere because the hospital was on “diversion” for STEMIs. Neither she—nor anyone else at BHL—assessed Mr. Williams, checked his vitals, or did anything to ensure he was stable and safe for a transfer to another facility. No one at BHL called ahead to UK Hospital, where he was eventually transported, to help arrange a transfer or ensure availability to treat a field STEMI. These actions and inactions (1) violate federal law (EMTALA) and state law (901 KAR 20:016(4)(8)) concerning the provision of medical care, (2) violate the requisite standard of care, and (3) are reckless and placed Mr. Williams life at risk. CMS said BHL’s conduct placed the public in “immediate jeopardy” and threatened to shut the hospital down unless it remediates the conduct that led to Mr. Williams’ improper diversion.

As a result of the improper diversion and violation of EMTALA, Mr. Williams was wheeled back into the ambulance and transported to a second hospital, UK Chandler Medical Center, where he was able to be seen in the cath lab and received an angioplasty to treat his heart attack at 1:02 am. Had BHL followed its cath lab protocol after being notified by the EMS service about Mr. Williams’ STEMI, its cath lab would have been able to treat Mr. Williams at least 25

minutes sooner³; however, because of the improper diversion, his physical pain while enduring a heart attack was extended. Additionally, had BHL not diverted Mr. Williams, he would not have suffered the prolonged emotional pain and suffering of the fear of dying while suffering a heart attack and being denied care by BHL.

2. Issues of fact to be resolved at trial.

The jury will be tasked with answering the following fact questions:

- i. Whether BHL's conduct violates EMTALA and was a substantial factor in causing Mr. Williams injury.
- ii. Whether BHL's conduct violated the requisite standard of care for a hospital and was a substantial factor in causing Mr. Williams' injury.
- iii. Whether BHL's conduct violated 901 KAR 20:016(4)(8) and was a substantial factor in causing Mr. Williams' injury.
- iv. The value of Mr. Williams' pain and suffering damages claim.
- v. The value of Mr. Williams' punitive damages claim against BHL.

3. Disputed issues of law that must be resolved in connection with the trial.

Please see the above section for disputed issues concerning EMTALA, the medical standard of care, and Kentucky's administrative regulations for provision of emergency medical care. These issues concern mixed questions of facts and violations of law for the jury to decide.

Additionally, the Court may need to address definitions of legal terms and define statutes and regulations for the jury. Simultaneously with the filing of the memorandum, Plaintiff tendered jury instructions with proposed definitions for the Court to use for defining EMTALA and 901 KAR 20:016(4)(8) for the jury.

³ BHL's cath lab should have been ready for Williams at approximately 12:25 am. UK's cath lab was opened at 12:50 am, a delay of approximately 25 minutes.

Last, Plaintiff has tendered a punitive damages jury instruction. The Court earlier entered an interlocutory order dismissing the punitive damages claim; however, the evidence which will be presented at trial will indicate that the jury should be instructed on punitive damages.

4. Expected evidentiary objections.

Simultaneously with the filing of this memorandum, Plaintiff filed motions in *limine* concerning likely objections Plaintiff may make at trial. Plaintiff 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.

5. All pending motions.

Plaintiff has filed motions in *limine* for the Court to rule upon either at the final pretrial conference or the morning of trial.

6. Status of settlement negotiations and the likelihood of settlement.

This case has been unsuccessfully mediated twice at settlement conferences—once with Magistrate Judge Whalin and once with Magistrate Judge Edwards. Based on the *de minimis* settlement offers from Defendant, it is unlikely this case will be resolved other than by the jury's verdict.

7. Feasibility of alternative dispute resolution.

See above. This case will most likely need to be resolved through trial by jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of this electronic filing to:

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