

NOT ORIGINAL

DOCUMENT

02/05/2026 11:43:22

AM

COMMONWEALTH OF KENTUCKY  
KNOTT CIRCUIT COURT  
CIVIL ACTION NO. 22-CI-00099

MEDIA5022

*ELECTRONICALLY FILED*

**PHILLIP JED MAGGARD**  
*and TONYA LYNN MAGGARD, his wife*

**PLAINTIFFS**

*And*

**KENTUCKY EMPLOYERS' MUTUAL  
INSURANCE COMPANY**

**INTERVENING PLAINTIFF**

v.

**PRIMARY CARE CENTERS OF EASTERN  
KENTUCKY, LLC; JAMES D. HALL, APRN;  
KENDALL L. BOWLING, D.O.**

**DEFENDANTS**

---

**DEFENDANTS' TRIAL MEMORANDUM**

---

Come the Defendants, Primary Care Centers of Eastern Kentucky, LLC, James D. Hall, APRN and Kendall Bowling, D.O. ("the Primary Care Center Defendants"), by and through counsel, and pursuant to Court Order, hereby submit the following Trial Memorandum:

**I. FACTS**

In this medical negligence action, Mr. Maggard alleges that James D. Hall, APRN, breached the standard of care in his diagnosis and treatment of Mr. Maggard's left biceps tendon tear. He further alleges that Kendall Bowling, D.O., breached the standard of care in his supervision of APRN Hall's care of Mr. Maggard. Plaintiffs contend that APRN Hall did not appreciate the significance of Mr. Maggard's biceps tendon injury during his May 26, 2021, office visit and failed to make expedited referrals for an MRI and an orthopedic surgery consult at the time of the visit. With respect to Dr. Bowling, Plaintiffs claim that when he reviewed and co-signed APRN Hall's

MEM : 000001 of 000006

NOT ORIGINAL

DOCUMENT

02/05/2026 11:43:22

AM

May 26th visit note, the documentation contained in the note should have prompted him to investigate why Mr. Maggard had not been referred to an orthopedic surgeon, or to make the referral himself.

MEDIA5022

On May 26, 2021, Mr. Maggard presented to the Primary Care Centers of Kentucky clinic complaining of upper left arm pain that was reported to have been caused by moving heavy boxes at work the week prior. Assessment by APRN Hall revealed moderate bruising of the medial bicep, left elbow and left upper forearm. Mr. Maggard was noted to have full ROM but diminished strength of that arm. APRN Hall's differential diagnosis was biceps tendon strain vs. partial/total tear. APRN Hall demonstrated home range of motion exercises to be done several times per day, advised against any heavy lifting/pulling/tugging with left arm, and recommended ibuprofen and heat as needed. He also ordered an MRI so the nature and extent of Mr. Maggard's injury could be further evaluated and diagnosed.

Mr. Maggard's MRI was ordered, and ultimately took place two weeks later, on June 9, 2021. The MRI results confirmed a total tear of Mr. Maggard's left biceps tendon. APRN Hall received the MRI results the following day on June 10, 2021, and he immediately attempted to contact Mr. Maggard as well as made a referral for orthopedic surgeon, Dr. Ryan Shepard for a complete tear of the biceps tendon. As Mr. Maggard was injured during the course of his employment, this orthopedic referral was faxed to Kentucky Employment Mutual Insurance (KEMI) for approval on June 11, 2021. On June 14, 2021, APRN Hall noted in the chart that the approval letter was received and charted. Mr. Maggard was then notified of his appointment with Dr. Shepard for June 21, 2021, which was eleven days after the referral was made.

At the June 21, 2021, appointment, Dr. Shepard noted the diagnostic MRI was ordered and performed roughly 2 weeks prior, which had confirmed the complete tear of the distal biceps

NOT ORIGINAL

DOCUMENT

02/05/2026 11:43:22

AM

tendon. It is also documented that Mr. Maggard denied any major pain (noted to be 3/10), and his primary complaint was left arm weakness. Dr. Shephard diagnosed a rupture of the left distal bicep tendon, and recommended surgical repair. Surgery was scheduled for eight days later, June 29, 2021, which is a total of four weeks after the injury.

MEDIA5022

During surgery, there was limited excursion of the tendon or biceps muscle both due to scarring and insufficient tendon. The remaining tendon was measured and there was less than 2 cm remaining before the myotendinous junction and with no opportunity for advancement of the tendon to the bicipital tuberosity. Unfortunately, the decision was made to close the incision since the tendon was deemed irreparable.

Mr. Maggard sought another opinion at the Cleveland Clinic in February 2023. He was seen by Dr. Yuji Umeda, who also determined additional surgical intervention was not an option. Dr. Umeda ordered physical therapy to improve strength, particularly elbow flexion and supination. Mr. Maggard started PT at Appalachian Rehab on March 14, 2023, and continued at least through May 2023. Mr. Maggard's bicep fatigue was noted to be improving, and he was able to perform several different weighted exercises including bicep/hammer curls, reverse curls, pro/sup stick, wrist yo-yo, wrist roll-up, bicep curl with elastic band, overhead press, and weighted ball holds. During this time, Mr. Maggard continued working full-time for the Knott County School Board with no restriction and with no days off.

In this lawsuit, Plaintiffs assert that the Primary Care Center Defendants breached the standard of care by not appreciating the extent of Mr. Maggard's injury and not expediting the MRI and orthopedic surgery consult referrals. They allege that more likely than not, the four-week time period between injury and surgery was an unnecessary delay and contributed to the inability to achieve a successful repair of the biceps tendon, which has resulted in permanent injury and

MEM : 000003 of 000006

NOT ORIGINAL

DOCUMENT

02/05/2026 11:43:22

AM

weakness to Mr. Maggard's left arm. Mrs. Maggard also asserts a claim for a loss of consortium from Mr. Maggard's injuries.

MEDIA5022

## II. DEFENSES

### A. Standard of Care

The following standard of care defenses will be presented by the defense experts at trial:

The Primary Care Center Defendants complied with the standard of care in their care and treatment of Mr. Maggard. Dr. Eric Byrd, primary care, will testify that APRN Hall performed an appropriate examination and arrived at the proper differential diagnoses. Likewise, Dr. Bryd will testify that Dr. Bowling complied with the standard of care when he reviewed and co-signed APRN Hall's May 26, 2021, office note as nothing in the note required additional action or investigation. Moreover, within two weeks of Mr. Maggard's initial presentation, APRN Hall ordered and facilitated MRI imaging to be performed to confirm the extent of the injury, and made a referral to the appropriate specialist for further treatment with the severity of the injury noted and communicated to the treating orthopedist, Dr. Byrd and Dr. Wes Cox (orthopedic surgery) will testify this is timely treatment by any standard.

### B. Causation

With respect to causation, the defense experts will establish the following defenses at trial:

Dr. Byrd will testify that the timeline of care in this case from Mr. Maggard's initial presentation on May 26, 2021, to when surgical repair was attempted on June 29, 2021, is within standard of care and consistent with what he would expect under the same or similar circumstances. He will testify that an unreasonable or unnecessary delay did not contribute to Mr. Maggard's outcome because he does not believe anything the Primary Care Center Defendants did or allegedly failed to do caused or contributed to any such delay.

MEM : 000004 of 000006

NOT ORIGINAL

DOCUMENT

02/05/2026 11:43:22

AM

Dr. Cox will testify that the timing in which Dr. Shepard first saw Mr. Maggard on June 21st (11 days after the referral was made), and took Mr. Maggard to surgery on June 29th (an additional 8 days after the first appointment) indicates Mr. Maggard's biceps tendon injury was treated in a timely manner. The period of time between Mr. Maggard's initial presentation to APRN Hall on May 26, 2021, to when Dr. Shepard attempted the repair on June 29, 2021, is not an unreasonable delay for treatment of a biceps tendon rupture as the ideal window for surgical repair for a biceps tendon tear is 4-6 weeks. Dr. Cox will further testify that the success of surgical repair of a complete biceps tendon tear is variable upon the index injury, patient anatomy, and surgical technique used, and regardless of the timing of the procedure. Dr. Cox will also discuss that the nature of Mr. Maggard's index injury alone may have impacted the chances of a successful surgical repair. Therefore, no unreasonable delay in treatment occurred that contributed to or caused the unsuccessful repair.

MEDIA5022

Dr. Cox will testify that, despite the unsuccessful repair, Mr. Maggard has been left with reasonable functionality. This is not a disabling injury, and it is not likely that Mr. Maggard's ability to work will be significantly impacted, nor does Dr. Cox anticipate Mr. Maggard having severe difficulties with activities of daily living.

Lastly, defense vocational expert, Dr. Ralph Crystal, will testify that Mr. Maggard does not have a loss of employability, earnings capacity or work life based on the effects of the biceps tendon injury and unsuccessful repair.

### III. ISSUES OF LAW AND EVIDENCE

The primary issue to be decided by the jury regarding the Primary Care Center Defendants is whether they complied with the applicable standard of care and whether any alleged deviation

NOT ORIGINAL

DOCUMENT

02/05/2026 11:43:22

AM

caused Mr. Maggard's injuries. Pending rulings on the parties' motions in limine, there are no current issues of law and evidence anticipated.

MEDIA5022

Respectfully submitted,

ROBINSON & WEBER, PSC  
 101 Prosperous Place, Suite 100  
 Lexington, KY 40509  
[nedwards@robinsonweber.com](mailto:nedwards@robinsonweber.com)  
[jweber@robinsonweber.com](mailto:jweber@robinsonweber.com)  
[eblack@robinsonweber.com](mailto:eblack@robinsonweber.com)

/s/ Ellen L. Black \_\_\_\_\_  
 JONATHAN D. WEBER, ESQ. (#89537)  
 NICK W. EDWARDS, ESQ. (#95628)  
 ELLEN L. BLACK, ESQ. (#96957)  
**COUNSEL FOR DEFENDANTS**

**CERTIFICATE OF SERVICE:**

It is hereby certified that on the 6th day of November 2025, the foregoing was electronically served to the parties as follows:

J. Tyler Ward II, Esq.  
 Ward & Associates, PSC  
 P O Box 100  
 Whitesburg, KY 41858  
**COUNSEL FOR PLAINTIFF**

John Abaray, Esq.  
 Nicholas Craddock, Esq.  
 Abaray, Craddock and Smith, PLLC  
 12800 Townepark Way, Suite 202  
 Louisville, KY 40243  
**COUNSEL FOR PLAINTIFF**

Morgan J. Fitzhugh  
 HASSMAN & FITZHUGH, PLLC  
 333 West Vine Street, Suite 300  
 Lexington, KY 40509  
**COUNSEL FOR INTERVENING PLAINTIFF**  
**KENTUCKY EMPLOYERS MUTUAL INSURANCE CO.**

/s/ Ellen L. Black \_\_\_\_\_  
 ELLEN L. BLACK, ESQ.