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COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION 10
CIVIL ACTION NO. 23-CI-004748
(Electronically Filed)

MEDIA5022

PATRICIA SKEETERS
and MICAH SKEETERS

PLAINTIFFS

v.

UNIVERSITY OF LOUISVILLE PHYSICIANS, INC.
d/b/a UOFL Physicians – Colon and Rectal Surgery
and d/b/a UofL Physicians – OB/GYN & Women’s Health;
RUSSELL W. FARMER, M.D.; and
SHAN M.K. BISCETTE, M.D.

DEFENDANTS

PLAINTIFFS’ TRIAL MEMORANDUM

Come now the Plaintiffs, Patricia Skeeters and Micah Skeeters, by counsel, pursuant to the Scheduling Order entered October 10, 2024, and for their Trial Memorandum, herein state as follows:

I. FACTUAL BACKGROUND

Patricia Skeeters, a 41-year-old female with a history of endometriosis and chronic pelvic pain, presented to Defendant UofL Physicians – OB/GYN & Women’s Health on July 7, 2022, for management of degenerating fibroids. She had a history of Stage IV endometriosis with severe, dense pelvic adhesive disease diagnosed previously.

A da Vinci assisted total hysterectomy, bilateral salpingectomy, and cystoscopy was planned. Due to a concern of a possible bowel lesion – “?endometriosis nodule vs other bowel etiology (sp) vs artifact?” – the plan was to contact General Surgery for pre-surgery consult. A mechanical bowel prep was ordered/authorized prior to surgery in anticipation of possible endometriosis bowel surgery. This was planned as an elective procedure.

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Defendant Dr. Shan Biscette, as the attending physician in charge, co-signed and attested the August 4, 2022, clinic visit, stating, "Will contact general surgery for presurgery consult." MEDIA5022

Despite this note, no formal preoperative consultation with the general surgery service, in this case Defendant Dr. Russell Farmer, occurred. Dr. Biscette stated that she contacted Dr. Farmer verbally to discuss the case, and it would be up to him how to move forward. She stated that if there was no order for a formal consult, it wasn't a formal consultation. Dr. Farmer confirmed he did not order a formal pre-surgery consultation.

An OB-GYN resident on Dr. Biscette's team, Dr. Hajrunisa Cubro, testified that not having a consultation was an omitted safety step in Mrs. Skeeters' preoperative planning. Dr. Cubro further stated that she would likely order a preoperative consult if imaging, such as an MRI or ultrasound, indicated potential bowel involvement – here, notably, Mrs. Skeeters did have an ultrasound suggesting potential bowel involvement. Dr. Cubro noted that ultrasound is "very unreliable for imaging bowel," which she acknowledged provides more reason to have a consultation with the colorectal surgeon. Dr. Farmer also stated that ideally, it is better to have an office visit with a patient undergoing elective rectal resection prior to surgery day.

In an office consultation, the colorectal surgeon can evaluate the patient and determine the parameters of potential intervention. Dr. Farmer testified there is a benefit to having an office visit with a patient undergoing elective rectal resection prior to surgery day, as this would allow the surgeon to take a history, perform an exam, and perform diagnostic studies, in addition to discussing the risks, benefits, and alternatives to surgery. The lack of a formal preoperative consult meant that Dr. Farmer did not perform such an evaluation prior to the day of surgery.

The failure to obtain in-office consultation with a UofL Colorectal surgeon resulted in the UofL OB-GYN team ordering the wrong bowel preparation. A mechanical bowel preparation

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(GoLYTELY) was ordered for Mrs. Skeeters by Dr. Cubro, and authorized by Dr. Biscette, in anticipation of possible endometriosis bowel surgery. This was ordered "just in case" bowel resection was needed. Dr. Biscette stated she authorized it "in case the surgeon required it" and that she defers the decision for bowel prep to the colorectal surgeon.

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Contrary to the order by Dr. Biscette and her team, however, Dr. Farmer's standard practice for elective rectal resections – before Mrs. Skeeters' surgery – included a specific preoperative instruction handout with both a mechanical bowel preparation and oral antibiotics. These instructions are consistent with the bowel preparation standard cited by Plaintiffs' experts in addition to long-standing guidelines from the American College of Surgeons, the Surgical Infection Society, and the American Society of Colorectal Surgeons.

The OB/GYN team was not aware of this specific handout. Dr. Farmer stated that had it been his order, rather than from the OB/GYN office, it would have included both mechanical bowel preparation in addition to oral antibiotics. Dr. Farmer further testified that the colorectal service had used the bowel preparation sheet for a long time, all 50-100 elective rectal resection patients from 2020-2022, before Mrs. Skeeters should have received the standard bowel preparation instructions, and that this was the practice of all the colorectal surgeons at Defendant UofL Physicians – Colon and Rectal Surgery. ULP's Corporate Representative, Dr. Jason Smith, testified there's been no change in protocols following Mrs. Skeeters' surgery.

Dr. Cubro left a voice message for Mrs. Skeeters regarding the bowel prep. She does not believe there was any follow-up to determine if the message was received. She is not aware of any policy beyond leaving a voice message if unable to speak directly with the patient. Dr. Biscette is not aware of this voice message. Dr. Farmer questioned the follow-up of Dr. Biscette's office with respect to implementing this order.

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Mrs. Skeeters did not receive the voicemail until the morning of surgery. Concerned, she told everyone she encountered at the hospital of the fact she just received the voicemail and therefore had not completed the bowel preparation. The nurse informed Dr. Biscette that Mrs. Skeeters did not bowel prep. Mrs. Skeeters also described conversations with Dr. Farmer where they made him aware the bowel prep was not completed.

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Despite being informed that Mrs. Skeeters did not complete the appropriate bowel prep, and knowing there was no formal evaluation by the colorectal service of the suspected bowel lesion, Drs. Biscette and Farmer proceeded with the elective gynecological and colorectal surgeries on August 8, 2022.

Dr. Farmer admits he did not discuss with Mrs. Skeeters the reasons for ordering the bowel prep. Dr. Farmer admits he did not discuss with Mrs. Skeeters the risks of proceeding with surgery without completing the bowel prep. Dr. Farmer admits he did not offer Mrs. Skeeters an alternative treatment plan, such as rescheduling the elective surgery.

Yet, Dr. Farmer acknowledged that a reasonable conversation would have explained why bowel prep is recommended by his office, his colleagues, and all the leading surgical societies – it lessens the bacterial load – and that it's standard for rectal resections.

Similarly, Dr. Biscette admits she did not discuss with Mrs. Skeeters the reasons for prescribing/ordering the bowel prep. Dr. Biscette admits she did not discuss with Mrs. Skeeters the risks of proceeding with the surgery without completing the bowel prep. Dr. Biscette admits she did not offer Mrs. Skeeters an alternative treatment plan, such as rescheduling the elective surgery.

Dr. Farmer acknowledged that elective rectal surgery is sometimes rescheduled if the bowel preparation has not been done. Dr. Biscette also agreed that rescheduling was one of the

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options available that morning. Dr. Farmer stated that if a similar patient came in next week, the same decisions regarding proceeding without bowel prep would not be made.

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In sum, Mrs. Skeeters did not receive the necessary evaluation and consultation in order to give informed consent for the proposed elective surgeries. Instead, the final decision to perform the rectal resection was debated and made intraoperatively by Drs. Biscette and Farmer – without adequate input from Mrs. Skeeters.

Mrs. Skeeters testified that had she been informed of the risks, benefits, and alternatives, in the context of an incomplete preoperative workup and lack of bowel preparation, she would not have consented to the procedure.

The lack of standard bowel preparation (both mechanical and antibiotic) is not the only standard practice of Dr. Farmer's that he omitted in his care and treatment of Mrs. Skeeters. Dr. Farmer testified his typical practice would be to review the records and imaging of his patient before surgery. The audit trail of Mrs. Skeeters' medical records revealing who reviewed her records and when, however, proves Dr. Farmer did not review any records or imaging prior to Mrs. Skeeters' surgery.

Mrs. Skeeters developed complications following the surgery. On August 12, 2022, she presented to the hospital complaining of worsening abdominal pain and deranged labs. On August 15, 2022, an exploratory laparotomy revealed intra-abdominal fluid, free air, disruption of the rectal anastomosis, and feculent peritonitis – the exact type of complications standard bowel preparation works to avoid. Mrs. Skeeters's post-operative course was very difficult and continues, including multiple surgeries, vaginal fistula, a painful abdomen, and a significant impact on her ability to perform and enjoy physical activities.

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II. ISSUES OF LAW

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At this time, issues of law include the Motions *in limine*, separately filed, in addition to the issue of whether the Defendants Drs. Farmer and Biscette are each entitled to separate peremptory juror strikes. In light of their joint defense agreement and waivers of conflicts between each other, Plaintiffs' position is that they are not "antagonistic" and therefore share one set of peremptory strikes. CR 47.03

III. ISSUES OF FACT

At this time, issues of fact include:

1. Whether Shan Biscette, M.D. failed to exercise the degree of care and skill expected of a surgeon under like or similar circumstances, and whether such failure was a substantial factor in causing Patricia Skeeters's injuries.
2. Whether Russell Farmer, M.D. failed to exercise the degree of care and skill expected of a surgeon under like or similar circumstances, and whether such failure was a substantial factor in causing Patricia Skeeters's injuries.
3. Whether University of Louisville Physicians, Inc., by and through its agents, servants and/or employees, failed to exercise the degree of care and skill expected under like or similar circumstances, and whether such failure was a substantial factor in causing Patricia Skeeters's injuries.
4. Whether Shan Biscette, M.D. failed to provide informed consent as would be expected from a reasonably prudent healthcare provider acting under like or similar circumstances, but rather concealed material facts from Ms. Skeeters, and whether such failure was a substantial factor in causing Patricia Skeeters's injuries.

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5. Whether Russell Farmer, M.D. failed to provide informed consent as would be expected from a reasonably prudent healthcare provider acting under like or similar circumstances, but rather concealed material facts from Ms. Skeeters, and whether such failure was a substantial factor in causing Patricia Skeeters's injuries.
6. An assessment of the damages that will fairly and reasonably compensate Plaintiffs for medical expenses; physical pain and mental anguish; and loss of consortium.
7. Whether Defendants' conduct in the care and treatment of Ms. Skeeters, as anticipated, ratified, and authorized by Defendants, was grossly negligent and recklessly indifferent to the rights of Plaintiffs, such that imposition of punitive damages is warranted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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I hereby certify that on May 20, 2026, I electronically filed the foregoing with the Clerk of the Court by using the Kentucky's Courtnet E-Filing system, which will electronically notify the following:

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*/s/D. Tysen Smith II
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