

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MICHAEL RODGERS,

Plaintiff,

v.

JOHN R. ORPHANOS, M.D.

Defendant.

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CATY S. GANSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
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2019 MAY 30 PM 4:13
CATY S. GANSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
Civil Action No.: 19-C-561
Judge Salgado

COMPLAINT

Now Comes Plaintiff, Michael Rodgers, by counsel P. Gregory Haddad and Bailey and Glasser, LLP, for his Complaint against John Orphanos, M.D., and states as follows:

PARTIES

1. Plaintiff Michael Rodgers was at all times relevant to the events underlying this Complaint, a citizen and resident of Pocahontas County, West Virginia.
2. Defendant John Orphanos, M.D. (hereinafter sometimes referred to as "Dr. Orphanos") is a medical doctor specializing in the field of Neurosurgery.
3. Dr. Orphanos at all times relevant hereto was a resident of the State of West Virginia. Upon information and belief, Dr. Orphanos resides in Kanawha County, West Virginia and practices medicine in Kanawha County, West Virginia.

JURISDICTION AND VENUE

4. The minimum jurisdictional amount in controversy is established for filing this action.

5. This Court possesses jurisdiction over the defendant because the acts giving rise to the Complaint either occurred in Kanawha County, West Virginia, or the defendant conducts business and practices medicine in West Virginia, including Kanawha County.

6. Venue is proper in the Circuit Court of Kanawha County as Dr. Orphanos resides and/or conducts business in Kanawha County, West Virginia and the acts and/or failures to act giving rise to this action occurred in Kanawha County, West Virginia.

OPERATIVE FACTS

7. On or about June 4, 2017, Michael Rodgers was transported to Charleston Area Medical Center's Level 1 Trauma Center ("CAMC") with injuries sustained in a motorcycle accident.

8. At the time of his admission to CAMC, Mr. Rodgers underwent a chest CT, which suggested he was suffering from a T5 chance fracture.

9. Mr. Rodgers showed no neurological deficits initially.

10. For the first two days at CAMC, Mr. Rodgers had sensation in and could move all his extremities.

11. On June 6, 2017, Dr. Orphanos prescribed a course of treatment that would require Mr. Rodgers to wear a back brace for six to eight weeks.

12. Later that day, however, Dr. Orphanos changed the course of treatment and recommended surgery to treat Mr. Rodgers' injuries.

13. Despite recommending surgery, Dr. Orphanos did not order a dedicated pre-operative MRI of the thoracic spine to evaluate the spinal cord and determine whether there were any existing or potential problems with the spinal cord and soft tissue surrounding the fracture.

14. Due to the lack of an MRI of the thoracic spine, Dr. Orphanos did not know Mr. Rodgers had an abundance of epidural fat, cord compression, cord edema, spinal abnormality, and spinal cord injury.

15. As a result, that critical information was unknown to Dr. Orphanos and did not factor into his workup of Mr. Rodgers and the development of a surgical plan.

16. Dr. Orphanos's surgical plan thus did not include decompression of the spinal column or the use of neurophysiological intraoperative monitoring ("NIOM").

17. NIOM allows intraoperative recognition of neurological compromise and assists in guiding immediate exploration, decompression, and surgical management of patients during spinal surgery.

18. Nevertheless, in the late evening of June 6, 2017, Dr. Orphanos performed surgery on Mr. Rodgers, ostensibly geared toward fusing his vertebrae from T2–T6, without NIOM and without the information from a pre-operative MRI.

19. After the first surgery, Mr. Rodgers was taken to the recovery room, where it was noted that he had lost motor function and sensation to his bilateral lower extremities.

20. As a result of the first surgery, Mr. Rodgers suffered from a complete loss of motor function and sensation of his lower extremities.

21. After the first surgery, Dr. Orphanos ordered an MRI, which did not provide a visualization of the surgical site and the areas of concern due to ferromagnetic distortion caused by the hardware placed during surgery.

22. The area of surgery is where detailed imaging would have revealed cord compression, cord edema, any underlying spinal abnormality, associated condition, or cord injury.

23. A CT myelogram would have revealed necessary detailed imaging of the surgical site.

24. After the first surgery, however, Dr. Orphanos did not order a CT myelogram.

25. In the second surgery, Dr. Orphanos performed a T5 laminectomy and further evaluation.

26. Like the first surgery, the second surgery was performed without the critical knowledge that the appropriate diagnostic tests would have revealed.

27. Upon awakening from anesthesia after his second surgery, Mr. Rodgers still experienced persistent loss of motor function and sensation to the lower extremities and has been a T5 level paraplegic ever since.

28. Mr. Rodgers' resulting paraplegia was due to a failure to address various problems that were unknown to Dr. Orphanos because he failed to properly obtain the necessary pre-operative imaging, monitor the injury intra-operatively, or obtain the appropriate imaging after the first surgery.

29. More specifically, Dr. Orphanos did not order a pre-operative MRI of the thoracic spine, nor did he order a CT myelogram after the first surgery.

30. Upon information and belief, NIOM was available to Dr. Orphanos, but he negligently chose not to use NIOM during Mr. Rodgers' surgery.

31. Due to numerous deviations from the standard of care, those two surgeries performed by Dr. Orphanos left Mr. Rodgers a permanent paraplegic.

32. Mr. Rodgers has had to adapt his life to his deficits and relies on a wheelchair for mobility.

33. Mr. Rodgers has lost all feeling and control in his legs, his bowel, and his bladder.

34. Mr. Rodgers has a nonexistent chance of recovery.
35. Mr. Rodgers is unable to find similar work since the surgeries.

COUNT I
Negligence Against Dr. John Orphanos

36. Plaintiff incorporates all allegations above as if fully restated and re-alleged and further complains as follows:

37. During Michael Rodgers' treatment, Defendant Orphanos owed a duty to Mr. Rodgers to exercise the degree of care, skill, and learning required by or expected of a reasonable, prudent health care provider in the profession or class to which Dr. Orphanos belongs.

38. The standard of care required a neurosurgeon to order or perform the appropriate pre-operative tests, to utilize the appropriate surgical tools and techniques during surgery, and to provide appropriate post-operative care and testing.

39. Dr. Orphanos failed Mr. Rodgers, breaching the standard of care at each of those critical steps.

Pre-operative Care

40. As part of his pre-operative assessment, Dr. Orphanos noted that Mr. Rodgers had a T5 chance fracture, which was suggested based on a chest CT.

41. Before undertaking a surgery to repair the fracture, however, the standard of care required that Dr. Orphanos order a dedicated preoperative MRI of the thoracic spine to evaluate the spinal cord and determine whether there was any existing or potential spinal cord compression, cord edema, underlying spinal abnormality, associated condition, or cord injury.

42. In the presence of the above symptoms, the standard of care required a different surgical plan that included decompression during the surgery.

43. Dr. Orphanos breached the standard of care by failing to order a dedicated pre-operative MRI of the thoracic spine and developing a surgical plan without that critical knowledge.

44. As a result, Dr. Orphanos breached the standard of care when he cobbled together a surgical plan in ignorance of essential underlying medical information that was discoverable through ordering the appropriate medical tests required by the standard of care.

45. The standard of care for developing a surgical plan for the type of injury suffered by Mr. Rodgers required the use of NIOM.

46. Dr. Orphanos breached the standard of care by failing to include NIOM as part of the surgical plan.

The First Surgery

47. The standard of care required that Dr. Orphanos utilize NIOM during Mr. Rodgers' surgery.

48. Dr. Orphanos breached the standard of care by failing to use NIOM which, upon information and belief, was available to him at CAMC.

49. Alternatively, he breached the standard of care by performing a complex spinal surgery when NIOM was not available at CAMC.

50. Dr. Orphanos also breached the standard of care by failing to recognize and correct Mr. Rodgers' underlying spinal injuries during surgery.

51. Dr. Orphanos breached the standard of care in causing Mr. Rodgers, as the result of surgical error, to lose all motor function and sensation in his lower extremities.

Post-operative Care

52. It was evident from the radiological films and report that the MRI taken after the initial surgery was unable to produce images of the surgical areas of concern due to ferromagnetic distortion caused by the hardware implanted during surgery.

53. The standard of care required detailed imaging of the surgical area to determine whether there is any spinal cord compression, edema, underlying spinal abnormality, associated condition, or spinal cord injury after the surgical intervention. This is especially important where the patient goes into the operating room with full sensation and motor function of his lower extremities and comes out of the operating room a paraplegic.

54. Because the post-operative MRI images did not clearly display the first surgical site, to determine the potential causes of Mr. Rodgers' new onset paraplegia the standard of care required Dr. Orphanos to order a CT myelogram immediately once he learned that Mr. Rodgers had lost function and sensation in his lower extremities after the first surgery.

55. Dr. Orphanos breached the standard of care by failing to order the appropriate post-surgical imaging—namely a CT myelogram—when he knew the MRI failed to provide an image of the surgical site.

The Second Surgery

56. Despite not being fully equipped with the requisite post-operative tests and radiological images, Dr. Orphanos proceeded with another surgery.

57. As explained above, the standard of care required Dr. Orphanos to order a CT myelogram before conducting another surgery.

58. Dr. Orphanos breached the standard of care by failing to order a CT myelogram, which would have revealed the problems with Mr. Rodgers spinal cord at the surgical site.

59. Dr. Orphanos thus breached the standard of care by performing the second surgery without that critical, clear visualization of the surgical site, which would have been revealed via a CT myelogram.

60. As explained above, the standard of care required NIOM during the procedure.

61. Mr. Rodgers' permanent paralysis of his lower extremities could have been avoided had he been appropriately treated within the standard of care by Dr. Orphanos.

62. As a direct and proximate result of Dr. Orphanos's negligence and breach of the duties owed to his patient, Mr. Rodgers suffered complete paraplegia in his lower extremities, including losing control of his bladder and bowel.

63. As a direct and proximate result of Dr. Orphanos's negligence, Mr. Rodgers suffered enormous conscious pain and suffering, including mental and emotional distress, with losing all function of his lower extremities.

64. As a direct and proximate result of Dr. Orphanos's acts and/or failures to act and negligence, Mr. Rodgers is entitled to damages for medical bills incurred and for his conscious pain and suffering and mental and emotional distress prior to his death.

65. As a direct and proximate result of Dr. Orphanos's acts and/or failures to act, Mr. Rodgers will never be able to find similar employment.

COUNT II
Gross Negligence Against Dr. Orphanos

66. Plaintiff incorporates all allegations above as if fully restated and re-alleged and further complains as follows:

67. As Mr. Rodgers' treating physician, Dr. Orphanos was solely responsible for evaluating his T5 chance fracture and determining the treatment necessary based on that diagnosis.

68. Dr. Orphanos acted with gross negligence and recklessness when he ignored the standard of care at each critical step of Mr. Rodgers' treatment.

69. As it became later in the day on June 6, 2017, rather than postpone the surgery, and obtain the preoperative diagnostic imaging required by the standard of care, Dr. Orphanos rushed

Mr. Rodgers to surgery without that critical knowledge. That reckless conduct put Mr. Rodgers at great risk and demonstrated a wanton disregard for his health and well-being.

70. Dr. Orphanos acted with gross negligence when he chose not to order imaging tests he knew would reveal the extent of the spinal injuries Mr. Rodgers suffered.

71. Dr. Orphanos acted with gross negligence and reckless indifference when he knowingly breached the standard of care by performing the first surgery without obtaining a dedicated MRI of the thoracic spine.

72. Dr. Orphanos' gross negligence directly and proximately caused Mr. Rodgers to lose all sensation and motor function in his lower extremities after the first surgery.

73. Dr. Orphanos knew that the post-operative MRI did not provide a clear image of the surgical site and that a CT myelogram would have provided the imaging required to conduct a second surgery.

74. Despite that knowledge, Dr. Orphanos performed a second spinal surgery when he knowingly lacked the information necessary to comply with the standard of care.

75. Dr. Orphanos thus acted with gross negligence when he knowingly and intentionally performed the second surgery without a clear image of the surgical site.

76. Despite knowing that NIOM was required by the standard of care, Dr. Orphanos acted with gross negligence when he ignored that standard and performed surgery without the use of NIOM.

77. A reasonable and prudent health care provider operating in the same or similar circumstances would not have failed to provide the appropriate care and treatment as identified above.

78. Dr. Orphanos acted with gross negligence when he failed to consider, treat, address, or in any way seek to determine the cause of Mr. Rodgers' lack of sensation in his lower extremities.

79. As a direct and proximate result of Dr. Orphanos's gross negligence, Mr. Rodgers' condition rapidly declined and, ultimately, resulted in his permanent paralysis.

80. As a direct and proximate result of Dr. Orphanos's gross negligence, Mr. Rodgers suffered enormous conscious pain and suffering, including mental and emotional distress.

81. As a direct and proximate result of Dr. Orphanos's negligence and gross negligence, Mr. Rodgers is entitled to damages for medical bills incurred, for past and future conscious pain and suffering, for past and future mental and emotional distress, for past and future loss of enjoyment of life, for past lost wages and loss of future earning capacity, and all other damages he is entitled under West Virginia law.

82. The aforementioned acts of negligence constitute a breach of the duties owed to Michael Rodgers under the Medical Professional Liability Act, W. Va. Code § 55-7B-1 *et seq.*, and proximately caused Mr. Rodgers's injuries and damages.

WHEREFORE, Michael Rodgers, demands compensatory and punitive damages from Defendant John Orphanos in an amount to be determined by the trier of fact. Plaintiff further demands prejudgment and post-judgment interest, as well as such other relief as a judge or jury shall find fair and just.

PLAINTIFF DEMANDS A TRIAL BY JURY

PLAINTIFF, MICHAEL RODGERS

By counsel.



P. Gregory Haddad (WVSB #5384)

BAILEY & GLASSER, LLP

6 Canyon Road, Suite 200

Morgantown, WV 26508

Telephone: 304-594-0087

Facsimile: 304-594-9709

ghaddad@baileyglasser.com