

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CATHY S. CATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

SW
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BETH ANN GEORGE

Plaintiff,

v.

Civil Action No. 23-C- 206

Judge: Ballard

**LEELA KIRAN PATEL, M.D.,
KROGER SPECIALTY PHARMACY HOLDINGS I, INC.,
KROGER SPECIALTY PHARMACY FL2, LLC, and
KROGER LIMITED PARTNERSHIP I,**

Defendants.

COMPLAINT

NOW COMES Plaintiff Beth Ann George, by counsel, Mark R. Staun and Hartley Law Group, PLLC and for her Complaint against the above referenced defendants, states as follows:

PARTIES AND JURISDICTION

1. Plaintiff Beth Ann George (hereinafter sometimes referred to as "Plaintiff or Ms. George"), now age 62, was at all times relevant to the events underlying this Complaint, a citizen and resident of Kanawha County, West Virginia.
2. Defendant Leela Kiran Patel, M.D. (hereinafter sometimes referred to as "Dr. Patel"), was at all times relevant to the events underlying this Complaint, a physician residing and practicing Family Medicine in Kanawha County, West Virginia.
3. Defendants Kroger Specialty Pharmacy Holdings I, Inc., Kroger Specialty Pharmacy FL2, LLC and Kroger Limited Partnership I (hereinafter collectively referred to as "Kroger Defendants") are the owners and/or operators of the Kroger Pharmacy located Ashton Place Kroger Pharmacy in Charleston, Kanawha County, West Virginia.

4. Kroger Defendants employed unknown pharmacists and pharmacy technicians who administered vaccinations to Ms. George which are the subject of this suit.

5. Ms. George received medical care in Kanawha County by Dr. Patel which care forms, in part, the basis of Plaintiff's complaint.

6. Jurisdiction and venue are proper in the Circuit Court of Kanawha County, West Virginia, as the alleged acts and/or failures to act giving rise to the action occurred in Kanawha County, West Virginia.

OPERATIVE FACTS OF THE CASE

7. Ms. George, age 60, had a telemedicine visit with her Family medicine physician Dr. Patel on November 25, 2020.

8. Dr. Patel advised Ms. George to get the Flu, Prevnar 13 and Shingles vaccines.

9. Dr. Patel did not advise Ms. George to space out the vaccines as opposed to getting all three at once.

10. On November 30, 2020, Ms. George presented to The Ashton Place Kroger Pharmacy and received the following three vaccinations: Flublok Quad 2020-2021, Pneumovax 23 and Shingrix.

11. The administration of the vaccinations would have to be approved by a Registered Pharmacist at Kroger to then be administered by an employee and/or agent of the Kroger Defendants.

12. On December 3, 2020, Ms. George had a telemedicine appointment with Dr. Patel, where she reported symptoms that started Monday night after she got the three vaccines. She reported malaise, sore throat, nausea and vomiting, that she was not sleeping well and had fatigue and loose stools for one day.

13. Dr. Patel prescribed Zofran® (ondansetron) as needed for the nausea and Pepcid® (famotidine). Ms. George was instructed to go to the Emergency Department if her symptoms did not improve due to her underlying Addison's Disease.

14. Ms. George remained ill and present to Charleston Area Medical Center Memorial Division ED (hereinafter referred to as "CAMC") on December 5, 2020.

15. Ms. George was admitted to CAMC for four days until December 9, 2020. It was reported she was a 60-year-old female with a history of hypothyroidism and Addison's Disease who presented with secondary to generalized weakness, nausea and vomiting since the prior Monday night, after which she received the three vaccinations for, flu, pneumonia and shingles at Kroger Pharmacy. She had had intermittent slurred speech. On presentation her TSH was elevated at over 15, and she had acute kidney injury with a creatinine greater than 6.

16. Ms. George's lab values were remarkably deranged. She was diagnosed with acute adrenal crisis, hypothyroidism, and acute renal failure. Her viral respiratory panel was negative.

COUNT I
NEGLIGENCE OF LEELA KIRAN PATEL, M.D.

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged, and Plaintiff further complains and says as follows:

17. Dr. Patel knew that Ms. George had a documented history of hypothyroidism and Addison's Disease.

18. Dr. Patel knew that Ms. George was immune compromised as she was on long term corticosteroids.

19. Acute adrenal insufficiency, also known as adrenal crisis, is an emergency characterized by a sudden lack of cortisol production. Adrenal crisis is an acute complication of

chronic adrenal insufficiency. Major precipitating factors of adrenal crisis include infections, trauma, surgery, and emotional stress.

20. Notable manifestations of adrenal crisis are fatigue, weight loss, reduced appetite, nausea, vomiting, and abdominal pain. On physical examination, patients may have hypotension or shock that is refractory to fluid challenges and vasopressors, tachycardia, and skin hyperpigmentation. Remarkable initial laboratory findings include hyponatremia, hyperkalemia, recurrent hypoglycemia, and elevated creatinine levels, possibly secondary to acute kidney injury.

21. In retrospective and prospective studies, the most frequent precipitating causes of adrenal crisis are gastroenteritis, but other stressful events such as trauma, surgery, dental procedures, and major psychological distress can cause adrenal crisis.

22. Vaccines can act as a stressor which can potentially induce an adrenal crisis. The greater the number of vaccines given at one time further increases the risk of adrenal crisis.

23. Per CDC guidelines, vaccine providers should consider consulting with the provider most responsible for managing the patient's immunocompromising condition or therapy, as needed.

24. The indication for Shingrix is in immunocompetent individuals.

25. Per CDC guidelines, Shingrix and pneumococcal vaccine can be administered at the same visit if the person is eligible for both.

26. When both pneumococcal conjugate vaccine PCV13 and PPSV23 are recommended for an adult, PCV13 should always be administered first and can be administered concomitantly with Shingrix.

27. For Pneumovax 23, fever is a relatively common adverse reaction of pneumococcal vaccination. As far as gastrointestinal effects, anorexia (decreased appetite), vomiting, diarrhea,

nausea and dyspepsia have also been reported to occur in patients receiving the pneumococcal vaccine.

28. For Shingrix, fever and gastrointestinal symptoms (i.e., nausea, vomiting, diarrhea, and/or abdominal pain) are among the most frequent adverse effects reported.

29. For Flublok Quadrivalent, gastrointestinal adverse reactions that have occurred after administration of influenza virus vaccine including anorexia (loss of appetite), nausea, change in eating habits, upper abdominal pain and diarrhea.

30. Contraindications and precautions to vaccination dictate circumstances when vaccines should not be administered.

31. Most precautions are temporary, and the vaccination can be administered later.

32. A contraindication is a condition in a recipient that increases the risk for a serious adverse reaction.

33. A vaccine should not be administered when a contraindication is present.

34. A precaution is a condition in a recipient that might increase the risk for a serious adverse reaction or that might compromise the ability of the vaccine to produce immunity.

35. Vaccinations should be deferred when a precaution is present, as per the CDC General Recommendations on Immunization.

36. Treatment with long term corticosteroids predisposes a recipient to being immunocompromised and thus a precaution for administering single vaccines, much less three vaccines at once.

37. All three vaccines that Ms. George was administered carry precautions regarding administration to immunocompromised individuals.

38. As stated, *supra*, Ms. George was an immunocompromised individual on long term corticosteroids.
39. Dr. Patel owed a duty of care and the standard of care required Dr. Patel advise Ms. George to space out or stagger the three vaccines that she advised her to receive given her known diagnosis of hypothyroidism, Addison's Disease, and the fact she was immunocompromised.
40. Dr. Patel breached the standard of care by not providing Ms. George clear instructions to spread out or stagger the three vaccinations.
41. As a direct and proximate result of Dr. Patel's acts and/or failures to act and negligence, Ms. George suffered an adrenal crisis after the administration of the three vaccines which was a medical emergency, requiring hospitalization for treatment.
42. As a direct and proximate result of Dr. Patel's acts and/or failures to act and negligence, Ms. George incurred medical expenses for her care and treatment.
43. As a direct and proximate result of Dr. Patel's acts and/or failures to act and negligence, Ms. George suffered a loss of enjoyment of life.
44. As a direct and proximate result of Dr. Patel's acts and/or failures to act and negligence, Ms. George endured pain and suffering, physical, mentally, and emotionally.
45. As a direct and proximate result of Dr. Patel's acts and/or failures to act and negligence, Ms. George suffered other damages to her person and other economic losses.
46. The failure to comply with the standard of care increased the risk of harm to Ms. George which was a substantial factor in bringing about her illness. Had the standard of care been followed it would have resulted in a greater than 25% chance that Ms. George would not have become ill and needed hospitalization.

COUNT II
NEGLIGENCE OF THE KROGER DEFENDANTS

Plaintiff incorporates all allegations above the same as if fully restated and re-alleged, and Plaintiff further complains and says as follows:

47. The Kroger Defendants employed the Pharmacist(s) and technicians at the Ashton Place Kroger involved in the administration of the vaccines to Ms. George on November 30, 2020.
48. The Kroger Defendants are vicariously liable for all acts and/or failures to act of their employees as discussed *infra* in this Complaint.
49. The Pharmacist(s) at the Ashton Place Kroger owed Ms. George a duty of care and the standard of care required them to review Ms. George's prescription history prior to permitting the administration of the three vaccines.
50. The Pharmacist(s) knew Ms. George was on hydrocortisone and fludrocortisone, and the standard of care required the Pharmacist(s) to deduce she had Addison's disease and was immunocompromised.
51. The Pharmacist(s) at the Ashton Place Kroger owed Ms. George a duty of care and the standard of care required that the Pharmacist(s) involved in the administration of the three vaccines on November 30, 2020, to contact Dr. Patel regarding the administration of multiple vaccines at a single visit in her immunocompromised patient.
52. The Pharmacist(s) at the Ashton Place Kroger breached the standard of care in failing to review Ms. George's prescription history prior to permitting the administration of the three vaccines.
53. The Pharmacist(s) at the Ashton Place Kroger breached the standard of care in failing to deduce she had Addison's disease and was immunocompromise based upon her prescription history

54. The Pharmacist(s) at the Ashton Place Kroger breached the standard of care in failing to contact Dr. Patel regarding the administration of multiple vaccines at a single visit in her immunocompromised patient.

55. As a direct and proximate result of the Pharmacist(s) at the Ashton Place Kroger's acts and/or failures to act and negligence, Ms. George suffered an adrenal crisis which was a medical emergency, requiring hospitalization for treatment.

56. As a direct and proximate result of the Pharmacist(s) at the Ashton Place Kroger's acts and/or failures to act and negligence, Ms. George incurred medical expenses for her care and treatment.

57. As a direct and proximate result of the Pharmacist(s) at the Ashton Place Kroger's acts and/or failures to act and negligence, Ms. George suffered a loss of enjoyment of life.

58. As a direct and proximate result of the Pharmacist(s) at the Ashton Place Kroger's acts and/or failures to act and negligence, Ms. George endured pain and suffering, physical, mentally, and emotionally.

59. As a direct and proximate result of the Pharmacist(s) at the Ashton Place Kroger's acts and/or failures to act and negligence, Ms. George suffered other damages to her person and other economic losses.

60. The failure to comply with the standard of care increased the risk of harm to Ms. George which was a substantial factor in bringing about her illness. Had the standard of care been followed it would have resulted in a greater than 25% chance that Ms. George would not have become ill and needed hospitalization.

WHEREFORE, Plaintiff demands compensatory damages from the Defendant in an amount in excess of this court's jurisdictional minimum 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.

DATED: April 5, 2023

BETH ANN GEORGE

Plaintiff,



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