

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TYLER LAFFERTY,

Plaintiff,

v.

CIVIL ACTION NO. _____

JUDGE: _____

**JAMES B. COX, D.O., CHARLESTON AREA
MEDICAL CENTER, INC. d/b/a CAMC TEAYS
VALLEY HOSPITAL and CAMC ORTHOPEDICS
TEAYS VALLEY, PAUL DEXTER AKERS, II., M.D.
AND RADIOLOGY, INC.**

COMPLAINT

COMES NOW Plaintiff, Tyler Lafferty, (hereinafter sometimes referred to as “Plaintiff” or “Mr. Lafferty”), by counsel, R. Dean Hartley, Mark R. Staun, James M. Barber and Hartley Law Group, PLLC and for his Complaint against the above referenced Defendants, states as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Tyler Lafferty (hereinafter sometimes referred to as “Mr. Lafferty”), is a citizen and resident of Kanawha County, West Virginia.

2. Defendant James B. Cox, D.O. (hereinafter sometimes referred to as “Dr. Cox”), is a citizen and resident of Hurricane, Putnam County, West Virginia. Dr. Cox is a Doctor of Osteopathic Medicine and is licensed to practice medicine in the State of West Virginia practicing Orthopedic Surgery at CAMC Teays Valley Hospital.

3. Defendant Charleston Area Medical Center, Inc., d/b/a CAMC Teays Valley Hospital and CAMC Orthopedics Teays Valley (hereinafter sometimes referred to as “CAMC”)

is a non-profit West Virginia corporation with its principal office address located in Charleston, Kanawha County, West Virginia, 25301.

4. At all times relevant hereto, Defendant Cox was employed by Defendant CAMC and was acting individually and as actual and/or apparent agent or employee or pursuant to a joint venture relationship with Defendant CAMC, and as such his acts and failures to act are imputed to Defendant CAMC under the doctrines of agency, vicarious liability, respondeat superior and/or joint venture.

5. Defendant, Paul Dexter Akers, II, M.D, (hereinafter sometimes referred to as “Dr. Akers” or “Defendant Akers”) is an adult individual citizen and resident of Cabell County, West Virginia. Dr. Akers is a physician licensed to practice medicine in West Virginia practicing Diagnostic Radiology.

6. Defendant, Radiology, Inc., is a West Virginia Corporation with its principal office address located at 3448 US Route 60 Huntington, West Virginia 25705-2906.

7. At all times relevant hereto, Defendant Akers was employed by Defendant Radiology and was acting individually and as actual and/or apparent agent or employee or pursuant to a joint venture relationship with Defendant Radiology, Inc. and as such his acts are imputed to Defendant Radiology, Inc. under the doctrines of agency, vicarious liability, respondeat superior and/or joint venture.

8. Dr. Cox, CAMC, Dr. Akers and Radiology Inc. were served with a Notice of Claim and Screening Certificate of Merit, *via* Certified Mail Return Receipt Requested. The envelope containing these documents was signed for and accepted.

9. Plaintiff has complied with the Notice of Claim and Screening Certificate of Merit requirements set forth in W.Va. Code §55-7B-6.

10. In a letter dated August 28, 2024, Counsel for Dr. Akers and Radiology, Inc. stated to undersigned counsel for Mr. Lafferty, *inter alia*, as follows:

I represent Paul Dexter Akers, II, M.D. and Radiology, Inc. (Collectively “Respondent”) with respect to the Notice of Claim and Certificates of Merit that you sent dated July 27, 2024, regarding Dr. Akers interpretation of Tyler Lafferty’s (“Mr. Lafferty”) July 17, 2023 MRI. Please accept this letter as Respondent’s Response to the Notice of Claim and Certificates of Merit pursuant to W. Va. Code § 55-7B-6(f).

After a review of the Notice of Claim and Certificates of Merit, Respondent denies that Dr. Akers departed from the applicable standard of care and skill in his care of Mr. Lafferty. Respondent specifically denies the theories of liability as set forth in the Notice of Claim and Certificates of Merit. Respondent maintains that Dr. Akers and Radiology, Inc. met the standard of care in all respects and that they did not negligently cause harm to Mr. Lafferty.

Please be advised that Respondent waives their right, pursuant to W. Va. Code § 55-7B-6(g), to engage in pre-litigation mediation.

11. Counsel for Dr. Cox and CAMC have not responded to plaintiff’s Notice and Claim and Certificates of Merit as of the filing of this Complaint, but their Counsel agreed to accept service of this complaint on their behalf.

12. Jurisdiction and venue are proper in the Circuit Court of Kanawha County, West Virginia as CAMC principal office is in Kanawha County, West Virginia and Dr. Akers and Radiology, Inc. conduct business in Kanawha County, West Virginia.

OPERATIVE FACTS

13. Plaintiff incorporates by reference all preceding allegations contained above as if fully stated herein.

14. In the fall of 2022, Mr. Lafferty, a college baseball pitcher at West Virginia State University, was experiencing pain in his right shoulder when throwing and sought out and received physical therapy services.

15. On January 4, 2023, Plaintiff saw Dr. Cox and according to Dr. Cox, Mr. Lafferty presented with a history of right shoulder sprain, rotator cuff tendonitis and impingement syndrome. Dr. Cox stated in his office note: “He has been treated so far with physical therapy and has been making good progress with his strength and pain. The therapist contacted me over the weekend and recommended a subacromial cortisone injection to further decrease rotator cuff tendonitis and hopefully enhance his progress in therapy.”

16. On January 4, 2023, Dr. Cox performed a right shoulder subacromial cortisone injection.

17. Following the injection, Plaintiff resumed physical therapy at Generations Physical Therapy for right shoulder pain.

18. On July 12, 2023, Mr. La again saw Dr. Cox for right shoulder pain. Dr. Cox diagnosed adhesive capsulitis and right rotator cuff tendinitis and ordered an MRI without contrast.

19. On July 17, 2023, Mr. Lafferty had an MRI at Logan Regional Medical Center. The MRI was read by Defendant Dr. Akers who found “Rotator Cuff tendons: interstitial tears of the supraspinatus tendon posteriorly” and “Labrum: There are no abnormalities.”

20. On July 19, 2023, Mr. Lafferty returned to Dr. Cox. At that time, Dr. Cox stated: “I have reviewed his MRI scan from Logan General Hospital. That study showed partial thickness/interstitial tears of the rotator cuff superiorly at the supraspinatus tendon. The remainder of the exam was essentially normal.” Dr. Cox then recommended surgery to Tyler: “I recommended arthroscopy of the right shoulder with debridement of partial rotator cuff tear and lysis adhesions with concomitant manipulation under anesthesia of the right shoulder.”

21. An “*Informed Consent To Procedures And Other Medical Services*” was prepared and signed by Dr. Cox on July 19, 2023; however, Plaintiff did not sign the Consent, nor was it ever discussed with him by Dr. Cox.

22. The Consent described the possible procedures to be performed as Acromioplasty, Acromioclavicular (AC) joint resection, and Rotator cuff repair.

23. No injury to or repair of the Labrum was mentioned in the Consent.

24. On July 27, 2023, Plaintiff underwent surgery. Dr. Cox’s Pre-Operative Diagnosis was Chronic impingement syndrome right shoulder with adhesive capsulitis and partial rotator cuff tear.

25. There was no mention of a Labrum injury in Dr. Cox’s Pre-operative Diagnosis.

26. However, in surgery, Dr. Cox found a Superior Labrum Anterior to Posterior (SLAP) lesion and performed a SLAP lesion repair. No rotator cuff tear was seen or repaired by Dr. Cox.

27. Plaintiff followed up with Dr. Cox in the months following the surgery and began physical therapy in the fall of 2023. He continued to experience pain when throwing and did not progress favorably with his rehabilitation plan.

28. On January 18, 2024, Plaintiff had a second MRI at Logan Regional Medical Center. This MRI was read by Dr. Francesa Beaman, an employee of defendant Radiology, Inc. In her Findings, Dr. Beaman noted: Tendons/Muscles: The rotator cuff is intact with no evidence of high-grade partial thickness or full thickness tearing. Labrum: Superior labral repair with anchor in the superior glenoid with surgical Artifact in the anterior margin of the superior labrum.

29. Contrary to the findings of her colleague defendant Dr. Akers in his July 17, 2023, read of Mr. Lafferty's MRI, Dr. Beaman found no injury to Mr. Lafferty's rotator cuff.

30. Dr. Beaman was correct that Mr. Lafferty's rotator cuff was intact with no evidence of high-grade partial thickness or full thickness tearing.

31. Plaintiff last saw Dr. Cox on January 22, 2024. Thereafter, he was seen and treated by Timothy Kremchek, M.D. at Beacon Orthopaedics & Sports Medicine in Cincinnati, Ohio. He has since undergone surgery to release a very tight posterior capsule.

32. Plaintiff has been unable to resume pitching following the surgery to his labrum and his college pitching career has ended.

COUNT I
MEDICAL BATTERY BY JAMES B. COX, D.O.

33. Plaintiff incorporates by reference all preceding allegations contained above as if fully stated herein.

34. Defendant Dr. Cox failed to obtain informed consent from Tyler Lafferty for labrum repair surgery and performed this surgery without the necessary informed consent under West Virginia Law.

35. In its 2022 Comprehensive Accreditation Manual glossary, The Joint Commission stated as follows regarding Informed Consent:

Informed consent: Agreement or permission accompanied by full notice about the care, treatment, or service that is the subject of the consent. A patient must be apprised of the nature, risks, and alternatives of a medical procedure or treatment before the physician or other health care professional begins any such course. After receiving this information, the patient then either consents to or refuses such a procedure or treatment.

36. Defendant Dr. Cox discovered an injury to Plaintiff's labrum during the surgery on July 27, 2023.

37. Defendant Dr. Cox made the decision to perform a SLAP lesion repair procedure on Mr. Lafferty's labrum despite knowing he didn't have consent to perform the same.

38. Defendant Cox intentionally performed a medical surgical procedure on the plaintiff for which no informed consent had been sought or given, causing harm to his patient, Mr. Lafferty.

39. As a direct and proximate result of Dr. Cox' medical battery, Dr. Cox is liable to Mr. Lafferty for loss of his baseball career, his scholarship to West Virginia State University, past and future medical bills, past and future pain and suffering, mental anguish, disfigurement, physical limitations, insult, indignity, humiliation, diminished capacity to enjoy life, annoyance and inconvenience.

COUNT II
VICARIOUS LIABILITY OF CHARLESTON AREA MEDICAL CENTER, INC.
FOR THE MEDICAL BATTERY OF JAMES B. COX, D.O.

40. Plaintiff incorporates by reference all preceding allegations contained above as if fully stated herein.

41. Defendant Dr. Cox, acting as actual and/or apparent agent or employee or pursuant to a joint venture relationship with Defendant CAMC, failed to obtain informed consent from Tyler Lafferty for labrum repair surgery and performed this surgery without informed consent.

42. Defendant Dr. Cox, acting as actual and/or apparent agent or employee or pursuant to a joint venture relationship with Defendant CAMC, performed SLAP lesion repair when he discovered the injury to Plaintiff's labrum during the surgery on July 27, 2023.

43. Defendant Dr. Cox, acting as actual and/or apparent agent or employee or pursuant to a joint venture relationship with Defendant CAMC, intentionally performed a

medical surgical procedure on the plaintiff for which no informed consent had been sought or given, causing harm to the Plaintiff.

44. As a direct and proximate result of Dr. Cox' medical battery, defendant CAMC is vicariously liable to Plaintiff Tyler Lafferty for Mr. Lafferty for loss of his baseball career, his scholarship to West Virginia State University, past and future medical bills, past and future pain and suffering, mental anguish, disfigurement, physical limitations, insult, indignity, humiliation, diminished capacity to enjoy life, annoyance and inconvenience.

COUNT III
NEGLIGENCE OF PAUL DEXTER AKERS, II, M.D., AND RADIOLOGY, INC. AS
THE EMPLOYER OF PAUL AKERS, II.

45. Plaintiff incorporates by reference all preceding allegations contained above as if fully stated herein.

46. Dr. Akers, individually and while acting in the scope of his employment and/or pursuant to an agency relationship with Defendant Radiology, Inc. was negligent in the care and treatment he rendered or failed to render to Plaintiff.

47. Dr. Akers owed Plaintiff a duty to use the degree of skill and learning required or expected of a reasonably prudent physician practicing diagnostic radiology under the same or similar circumstances in the treatment and management of his care.

48. The standard of care required Dr. Akers on July 17, 2023, to accurately read the MRI and correctly diagnose the presence of a superior labral tear.

49. Dr. Cox found and repaired a superior labral tear during his July 27, 2023, surgery.

50. Dr. Akers' MRI report read as follows regarding Mr. Lafferty's Labrum: "Labrum: There are no abnormalities."

51. Dr. Akers was wrong when he stated in his report that there was "no abnormality" to the labrum, as Dr. Cox objectively found a labrum injury.

52. Dr. Akers breached the standard of care by misreading the MRI and failing to diagnose the superior labral tear, which was clearly visible in the MRI study, and further misdiagnosed a rotator cuff tear.

53. As a direct and proximate result of Dr. Akers' failure to act within the standard of care, negligence, gross negligence, careless, and reckless conduct as hereinabove described while acting within the scope of his employment with Defendant Radiology, Inc., Dr. Cox was provided with incorrect diagnostic information regarding Mr. Lafferty's shoulder injury.

54. Dr. Akers' failure to follow the accepted standard of care while acting within the scope of his employment and/or agency with Defendant Radiology, Inc. increased the risk of harm to Mr. Lafferty which was a substantial factor in bringing about his patient's misdiagnosis which in turn led to the injuries and damages as described, *supra*.

55. Had Dr. Akers followed the accepted standard of care, Mr. Lafferty's superior labral tear would have been properly diagnosed regardless of Dr. Cox's failure to properly diagnose Mr. Lafferty's injury and Dr. Cox's failure to properly interpret the same MRI study.

56. Defendant Radiology, Inc., as the employer of Dr. Akers, is vicariously liable for all acts and/or failures to act, and damages caused by Dr. Akers as described above.

COUNT IV
NEGLIGENCE OF JAMES B. COX, D.O. AND CHARLESTON AREA MEDCAL
CENTER, INC. AS THE EMPLOYER OF JAMES B. COX, D.O.

57. Plaintiff incorporates by reference all preceding allegations contained above as if fully stated herein.

58. Dr. Cox, individually and while acting in the scope of his employment and/or pursuant to an agency relationship with CAMC was negligent in the care and treatment he rendered or failed to render to Plaintiff.

59. Dr. Cox owed Plaintiff a duty to use the degree of skill and learning required or expected of a reasonably prudent physician practicing orthopedic surgery under the same or similar circumstances in the treatment and management of Mr. Lafferty's care.

60. Dr. Cox owed a duty to recognize Mr. Lafferty's clinical presentation and to properly diagnose his shoulder condition.

61. The standard of care required Dr. Cox in July 2023, to order an MRI with contrast to fully evaluate the labrum which is considered the most likely concerning structure in an overhead athlete.

62. The standard of care required Dr. Cox on July 17, 2023, to correctly read the MRI on July 17, 2023, and correctly diagnose a superior labral tear.

63. The standard of care required Dr. Cox to obtain a signed Informed Consent for the surgical procedure he recommended, including the superior labral tear repair before surgery.

64. The standard of care required Dr. Cox to stop the July 27, 2023, surgical procedure and perform no repair upon discovering that the rotator cuff (for which surgical consent was given) was not damaged and discovering that there was in fact a SLAP lesion (for which there was no surgical consent given).

74. Dr. Cox breached the standard of care by failing to understand that treating a SLAP lesion with surgical repair as a first option is not appropriate for an overhead athlete and that non-invasive treatment is appropriate.

75. As a direct and proximate result of Dr. Cox's failure to act within the standard of care, negligence, gross negligence, careless, and reckless conduct as hereinabove described while acting within the scope of his employment with CAMC, Mr. Lafferty had to undergo unnecessary surgical procedures that have left him with permanent injuries to his shoulder and ruined his baseball career.

76. As a direct and proximate result of Dr. Cox's failure to act within the standard of care, negligence, intentional gross negligence, intentional careless and reckless conduct as hereinabove described while acting within the scope of his employment with CAMC, Plaintiff Tyler Lafferty suffered, continues to suffer and will continue to suffer in the future permanent physical injury, mental and emotional distress, pain, disfigurement, physical limitations, mental anguish, insult, indignity, humiliation, diminished capacity to enjoy life, annoyance and inconvenience.

77. As a direct and proximate result of Dr. Cox's failures to act within the standard of care, negligence, intentional gross negligence, intentional careless and reckless conduct as hereinabove described while acting within the scope of his employment with CAMC, reasonable and necessary medical expenses and other expenses have been incurred, and it is reasonably certain and expected that future health care, with associated expenses, and other pecuniary losses will be experienced.

78. As a direct and proximate result of Dr. Cox's failures to act within the standard of care, negligence, intentional gross negligence, intentional careless and reckless conduct as

hereinabove described while acting within the scope of his employment with CAMC, Plaintiff suffered special damages in the form of the loss of his college athletic scholarship as he can no longer participate as a college athlete.

79. Dr. Cox's failures to follow the accepted standard of care while acting within the scope of his employment and/or agency with CAMC deprived Plaintiff of a chance of a non-surgical recovery and his intentional gross negligence in fact caused permanent harm to Mr. Lafferty.

80. Defendant Charleston Area Medical Center, Inc., as the employer of Dr. Cox, is vicariously liable for all acts and/or failures to act, and damages caused by Dr. Cox as described above.

WHEREFORE, Plaintiff, Tyler Lafferty demands judgment over and against Defendants James B. Cox, D.O., Charleston Area Medical Center, Inc., Paul Dexter Akers, II., M.D. and Radiology Inc. for an amount within the jurisdiction of this Court, for compensatory damages, general damages, and, as to these defendants, punitive damages and for such other relief as this Court deems proper including, but not limited to all reasonable attorney fees, expenses and costs incurred in the pursuit of this claim, as well as pre-judgment and post-judgment interest on all amounts until such monies are fully paid.

Plaintiff hereby demands a trial by jury as to all issues raised herein.

DATED: August 29, 2024

TYLER LAFFERTY,

Plaintiff,

Mark R. Staun

R. Dean Hartley (WV Bar #1619)

Mark R. Staun (WV Bar #5728)

James M. Barber (WV Bar #230)

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