

Ashton J. Hyde (A13248)
ashton@yhmlaw.com
Mathew Purcell (A
matt@yhmlaw.com
P. McKay Corbett (A16800)
mckay@yhmlaw.com
YOUNKER HYDE MACFARLANE, PLLC
Attorneys for Plaintiff
257 East 200 South, Suite 1080
Salt Lake City, UT 84111
Telephone: (801) 335-6467
Facsimile: (801) 335-6478

**FIFTH JUDICIAL DISTRICT COURT
IN AND FOR IRON COUNTY, STATE OF UTAH**

<p>DAVID HINSON, Plaintiff, vs. DARRELL L. WILSON, M.D.; JARED C. COX, D.O.; KIMBERLY D. HAYCOCK, P.A.; DOE INDIVIDUALS 1 through 10; and ROE ENTITIES 1 through 10, inclusive. Defendants.</p>	<p>PLAINTIFF'S TRIAL BRIEF Case No. 170500085 Judge JEFFREY C. WILCOX Tier 3</p>
---	--

David Hinson ("Plaintiff"), hereby presents his Trial Brief:

INTRODUCTION

This is a medical malpractice case. Mr. Hinson was on coumadin (a blood thinner) when he injured his shoulder while visiting his parents in New Harmony. Mr. Hinson was from Texas. The pain in his shoulder increased until he presented to the emergency room at Cedar City Hospital. There, Mr. Hinson was told that he likely had a hematoma in his shoulder and to return

to the emergency room if his condition worsened.

Mr. Hinson did return to the emergency room; two more times. In his second return the next day Mr. Hinson presented complaining of nine out of ten pain in his shoulder. Defendant Dr. Wilson conducted a physical examination and noted that Mr. Hinson had tingling and numbness in his hand and fingers. Dr. Wilson noted that Mr. Hinson was on a blood thinner and he even acknowledged that Mr. Hinson's numbness and tingling was likely caused by nerve impingement from the hematoma. Dr. Wilson still discharged Mr. Hinson home and instructed him to follow up with his primary care provider when he returned home to Texas.

Mr. Hinson returned again two days later where he was treated by Defendant PA Haycock. PA Haycock also conducted a physical examination and noted numbness and tingling. PA Haycock ordered an INR test (which examines the coagulability of the blood) and discharged Mr. Hinson with more medications. She also instructed him to follow up with his physician in Texas. On his way home to Texas, Mr. Hinson received a phone call from PA Haycock informing him that his INR was at 7.1, a high level, meaning his blood was not coagulating. PA Haycock again instructed Mr. Hinson to present to his physician upon arrival to his home in Texas.

Mr. Hinson arrived in Texas the next day and presented to his primary care provider the next morning. His physician sent him directly to the emergency room. There, a surgeon was consulted, and he recommended immediate surgery to remove the hematoma. The hematoma was removed but by then it was too late. Mr. Hinson had suffered permanent damage to his brachial plexus nerve because of pressure from the hematoma. To this day, Mr. Hinson suffers from nerve pain and his hand and arm are physically deformed and almost useless.

To prove that Defendants committed medical malpractice, Mr. Hinson is required to show that (1) Defendants breached the standard of care and that (2) this breach caused him damages. Mr. Hinson will show through expert testimony at trial that Defendants committed medical malpractice when they failed to appreciate and provide proper treatment for the concerning signs and symptoms of nerve impingement from the hematoma to the brachial plexus nerve in his shoulder. Mr. Hinson will also show that if Defendants had acted properly and urgently, he would still have the full use of his arm today and would not suffer from the nerve pain that he does.

BRIEF FACTUAL SUMMARY¹

Mr. Hinson will testify that in July 2015, he, his wife Sami, and his children came to Utah to visit family from Texas. Mr. Hinson's parents lived in New Harmony and his uncle lived in Antimony. Around the Fourth of July, Mr. Hinson was helping one of his daughters onto a horse when he felt something in his left shoulder. It was nothing major at that time, just a small twinge of pain. Gradually, however, the pain in his shoulder worsened until he felt it was severe enough, he needed to go to the emergency room.

Mr. Hinson will testify that he presented to the Cedar City Hospital (then called Valley View Medical Center) emergency room on July 9, 2015, at about 9:30 am, where he was treated by Dr. Jeffery Bleazard. Mr. Hinson will testify that he told Dr. Bleazard of his past medical history.² He told Dr. Bleazard that he had recently suffered a rotator cuff injury in his left

¹ See Ex. A Medical Records

² Ex. B, Depo. of David Hinson at 141:19-23; and Ex. A Medical Record

shoulder that had been treated conservatively.³ He told Dr. Bleazard that around the Fourth of July he had reinjured his shoulder when helping his daughter on a horse and that he had felt pain ever since.⁴ He told Dr. Bleazard that he was taking Coumadin because of heart issues and that his INR was checked often with the most recent reading being within the therapeutic range.⁵

Dr. Bleazard will testify consistent with his medical record that he conducted a physical examination and noted that Mr. Hinson “has some bruising anteriorly on the shoulder” and that he had “limited range of motion” but that he did not have “numbness, tingling, or weakness.”⁶ Dr. Bleazard ordered an x-ray, which did not find anything significant, and discharged Mr. Hinson. At discharge, he instructed Mr. Hinson to wear a sling, to rest his shoulder, to take pain medication, to follow up with his primary care physician, and to return to the emergency room “if symptoms worsen.”⁷ Specifically, the discharge instructions stated, “call us any time if there’s severe pain, numbness, or loss of function.”⁸

Dr. Bleazard also listed the name of Lex S. Allen, M.D. under the “follow up” section of discharge instruction. However, Mr. Hinson will testify that he does not recall Dr. Bleazard giving him the name of an orthopedic surgeon to go see, and that no one told him he could see an orthopedic surgeon.⁹ Dr. Bleazard will also testify that Mr. Hinson “didn’t have nerve compression” at the time of that visit and that he did not give him a referral for an orthopedic

³ Ex. B, Depo. of David Hinson at 21:8-19.

⁴ *Id.* at 24:1-11.

⁵ *Id.* at 144:3-25; Ex. A Medical Record.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ex. B, Depo. of David Hinson at 147:21-148:3; 160:2-5.

surgeon for a nerve compression.¹⁰ Rather, the referral was because Mr. Hinson had a shoulder injury and the referral was in case he wanted to see someone there in Cedar City.¹¹ He will testify there was no urgency in that referral.¹²

Mr. Hinson will then testify that, early the next morning at around 2 to 3 am, on July 10, 2015, he returned to the emergency room at Cedar City Hospital where he was seen by Defendant Dr. Wilson. He will testify that his pain accelerated quickly between the two ER visits and he began to feel numbness in his hand.¹³ He will testify consistent with the medical record that he reported a nine out of ten pain and that he “mentioned [his] fingers were numb” to Dr. Wilson.¹⁴ Dr. Wilson will testify consistent with his record that Mr. Hinson reported “developing some occasional numbness and tingling in his hand and fingers.”¹⁵ Dr. Wilson will also testify that he conducted a physical examination where he noted “a hematoma extending from the axilla, most of the way down the upper arm towards the elbow on the medial side.”¹⁶ Dr. Wilson also noted that the “hematoma is significant and surely is the cause of significant pain.”¹⁷ He also noted that “hematoma is likely contributed to by the fact that the patient is on Coumadin therapy.”¹⁸ Significantly, Dr. Wilson acknowledged in his notes that he “suspect[ed] that the numbness and tingling the patient is having distal to the hematoma is due to some nerve compression uncompromised due to [the] expanding hematoma.”

¹⁰ Ex C. Depo. of Dr. Bleazard at 27:24-28:5.

¹¹ *Id.* At 28:6-15.

¹² *Id.*

¹³ Ex. B, Depo. of David Hinson at 148:10-22.

¹⁴ *Id.* at 28:6-10.

¹⁵ Ex. A, Medical Records.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Dr. Wilson also noted that Mr. Hinson did “not really want any further workup on” his Coumadin level (or INR). But Mr. Hinson will testify that he was never offered an INR test by Dr. Wilson.¹⁹ Sami Hinson, who was there in the emergency room, will also testify that Dr. Wilson did not offer to check Mr. Hinson’s INR level.²⁰

Dr. Wilson will then testify that he gave Mr. Hinson a pain medication injection and prescribed him some Percocet because “the 5mg Norco was not [controlling the pain] adequately.”²¹ Dr. Wilson then discharged Mr. Hinson and instructed him to follow up with his primary doctor when he returned home. Mr. Hinson will also testify that he told Dr. Wilson that he would be going back home to Texas soon and would follow up with his primary care provider and orthopedic surgeon.²² He will further state that Dr. Wilson told him he had a bad bruise and that it would go away over time.²³ He will testify that Dr. Wilson did not tell him he had a serious condition and that, in fact, there was no urgency or any other indication that he had a serious condition.²⁴

Mr. Hinson will then testify that the next day, July 11, the pain medications were dulling the pain but still not completely taking it away. He will also state that he did not go back to the ER that day because Dr. Wilson had told him that it was a bad bruise and that it would go away over time.²⁵

Mr. Hinson returned again and for the third time to the Cedar City Hospital emergency

¹⁹ Ex. B, David Hinson depo at 111:11-24; 159:1-10.

²⁰ Ex. D, Depo. of Sami Hinson at 37:23-38:5.

²¹ Ex. A, Medical Records.

²² Ex. B, Depo of David Hinson at 113:14-18.

²³ *Id.* at 30:15-17.

²⁴ *Id.* at 116:17-117:8.

²⁵ *Id.* 30:15-17

room the next day, July 12 at around 11:42 am and was treated by Defendant PA Kimberly Haycock. Mr. Hinson will testify he presented to the emergency room because he was in so much pain, he wanted to make sure he had enough pain medication for his trip home to Texas the next day.²⁶

PA Haycock will testify consistent with her record that she conducted a physical examination of Mr. Hinson and noted “large hematoma” with “ecchymosis that is traveling down from shoulder to elbow” and that is “tender to palpation,” or, in other words, painful to the touch.²⁷ PA Haycock also noted that Mr. Hinson had “some tingling in his hands on and off” but then contradicted her own note by saying he had no numbness or tingling. PA Haycock will testify that Mr. Hinson did not have numbness and tingling because that is what her note says. But Mr. Hinson will testify that Mr. Hinson reported numbness and tingling to PA Haycock.²⁸

PA Haycock then ordered an INR test and discharged Mr. Hinson with a 30-day refill of Percocet for pain and instructed him to follow up with his primary care provider.²⁹ Later, PA Haycock called Mr. Hinson and informed him that his INR was at 7.1 (which is high) and instructed him to stop his Coumadin.³⁰ She also told Mr. Hinson to see a physician when he returned to Texas.³¹

Dr. Jared Cox was the emergency room physician who oversaw PA Haycock. He will testify that he did not see Mr. Hinson in the emergency room on July 12 and that he did not examine

²⁶ *Id.* at 32:3-10.

²⁷ Ex. A, Medical Records

²⁸ Ex. B, David Hinson depo at 32:17-33:2.

²⁹ Ex. A, Medical Records.

³⁰ Ex. B, David Hinson depo at 164:7-15.

³¹ *Id.*

Mr. Hinson.³² He will also testify that he did not review PA Haycock's note until July 16, four days after Mr. Hinson's presentation, and that he had no "notification or any involvement regarding" Mr. Hinson's case.³³ Neither did he speak with PA Haycock "at all regarding her care and treatment after reviewing the note" immediately afterward.³⁴

Unfortunately, PA Haycock disagrees with Dr. Cox. PA Haycock will testify that her "recollection of that is a little bit different than Dr. Cox's" and that she does "remember talking to him about the patient on that day – on that day that [she] saw him."³⁵ PA Haycock will testify that she remembers "presenting to Dr. Cox ... that [Mr. Hinson's] INR was elevated. He had a mechanical heart valve, and [she] wanted his take on what [they] should do next." Then, she will testify that Dr. Cox agreed with her "line of treatment, and that [she] wanted to discontinue the patient's Coumadin so it could slowly return back to a more normal therapeutic level, and then follow up with his cardiologist within two days to recheck INR and make sure it was not getting too low."³⁶

Mr. Hinson then began his drive home to Texas with his family on July 13. Mr. Hinson's father, Wayne Hinson, and a family friend, Marlo Ready helped drive him back to Utah.³⁷ They drove about nine to ten hours the first day and stayed in Santa Rosa, New Mexico.³⁸ The next day, on July 14, they drove the rest of the way to Wayne's home in Frisco, Texas. Wayne will testify that Mr. Hinson was in pain on the drive to Texas. Marlo will testify that he was in pain and

³² Ex. E, Depo. of Dr. Cox at 22:11-12.

³³ *Id.* at 5:4-21.

³⁴ *Id.* at 5:25-6:3.

³⁵ Ex. F, Depo. of PA Haycock at 4:23-5:4.

³⁶ *Id.* at 6:11-16.

³⁷ Ex. B, Depo. of David Hinson at 31.

³⁸ Ex. G, Depo. of Wayne Hinson at 26:14-20.

uncomfortable.³⁹ Mr. Hinson will testify that on the drive to Texas, he called his orthopedic surgeon to try to make an appointment, but it would take 4-5 days.⁴⁰ Because of this, he went to see his primary care provider, Dr. Ferguson instead.

Mr. Hinson presented to his primary care provider Dr. Ferguson on the morning of July 15. Mr. Hinson provided Dr. Ferguson with a recent history of his condition.⁴¹ Dr. Ferguson will testify that Mr. Hinson reported that “since yesterday he has had an increased swelling in his left arm and particularly in his hand. Since this morning he cannot move his left hand at all.”⁴² The record shows that Mr. Hinson’s blood pressure was at 138/100 that morning and that he was complaining of “numbness and weakness in arms.”⁴³ Dr. Ferguson also conducted a physical examination and will testify as to his findings. Dr. Ferguson noted that Mr. Hinson’s left arm and hand were swollen. He also noted that Mr. Hinson had “limited range of motion of left shoulder due to pain” but that his “left elbow has full active range of motion” and his left wrist and fingers “have full passive range of motion.” However, he noted that Mr. Hinson was unable to move any of his left hand, fingers, or wrist.⁴⁴ He also observed that Mr. Hinson had a “20 cm x 10 cm purple ecchymosis along mid/lower left lateral torso.”⁴⁵

Dr. Ferguson will then testify that he sent Mr. Hinson directly to the emergency room. He will testify that the reason for this action was that he was concerned about Mr. Hinson’s pain and swelling. He will also state that even though he is not “a neurologist or a surgeon or a cardiologist

³⁹ Ex. H, Depo. of Marlo Ready at 15:7-11.

⁴⁰ Ex. B, Depo. of David Hinson at 36:1-25.

⁴¹ Ex. A, Medical Records.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

or those things, you know, I know – I recognize that if someone is getting – they’re losing a loss of a limb, then there could be something where, you know, time is important to get him in and get it checked right away.”⁴⁶

Mr. Hinson did present to the emergency room that same day at Baylor Scott & White Medical Center in Plano Texas. In the emergency room, Dr. Lance Winter, an orthopedic surgeon was consulted, and an MRI of the left shoulder was ordered for concern of a “likely brachial plexus compression from hematoma.”⁴⁷ Upon review of the MRI, Dr. Winter assessed that Mr. Hinson had nerve compression of the “left upper extremity plexial neuropathy” from the hematoma.⁴⁸ He recommended decompression surgery after reversal of the INR. Dr. Winter then conducted the decompression surgery, or removal of the hematoma the next day on July 16.⁴⁹ Dr. Winter will testify that he evacuated about 500 milliliters of “jelly-like” hematoma.⁵⁰ He will also testify that the jelly-like substance of the hematoma indicates that the blood had been there for days rather than hours.⁵¹

Dr. Winter will testify that the significance of an INR of 7.1 is “bleeding. The higher the INR the more likely it is the patient would have spontaneous bleeding.”⁵² Furthermore, Dr. Winter will testify that he was surprised that Mr. Hinson was released from the emergency room with an INR of 7.1 without treatment “because that is an extremely high INR.”⁵³ Dr. Winter will state that

⁴⁶ Ex. I, Depo. of Dr. Ferguson at 37:21-38:5; 47:13-15.

⁴⁷ Ex. A, Medical Records.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Ex. J, Depo. of Dr. Winter at 25:15-26:7; 28:14-18.

⁵¹ *Id.* at 25:23-26:13

⁵² *Id.* at 13:16-19.

⁵³ *Id.* at 18:2-6.

the decision to take a patient with nerve compression to surgery will depend on the size of the hematoma and the amount of neurological changes to the patient. He will further state that even if a patient has a mild neurological change and a very small hematoma, he would want to keep some of those patients for observation.⁵⁴ And, that he “wouldn’t let anybody leave the hospital with an INR of 7.1” but, he would “recommend to the internists that they correct the INR to the desired . . . range . . . and then continue to observe him with either repeat ultrasound or some type of imaging to check the size of the hematoma and then correlate that with the patient’s symptoms if there is any worsening of symptoms.”⁵⁵ More specifically, Dr. Winter testified that he would not let the patient drive multiple days to Texas and that, if he had a bleed, he would expect it to continue bleeding.⁵⁶

NEGLIGENCE

Mr. Hinson presented to the Cedar City Hospital (then called Valley View Medical Center) emergency room on July 9, 2015, at about 9:30 am, where he was treated by emergency medicine physician, Jeffery Bleazard, M.D. Mr. Hinson told Dr. Bleazard his past medical history,⁵⁷ which included a recent rotator cuff injury in his left shoulder that had been treated conservatively.⁵⁸ He told Dr. Bleazard that he had reinjured his shoulder several days prior while helping his daughter mount a horse and that he has been in pain ever since.⁵⁹ He also informed Dr. Bleazard that he was taking Coumadin because of heart issues and that his INR was checked often with the most recent

⁵⁴ *Id.* at 85:20-86:1

⁵⁵ *Id.* at 86:5-18; 92:14-15.

⁵⁶ *Id.* at 92:4-13.

⁵⁷ Ex. B, Depo. of David Hinson at 141:19-23; and Ex. A, Medical Record

⁵⁸ *Id.* 21:8-19.

⁵⁹ *Id.* at 24:1-11.

reading being within the therapeutic range.⁶⁰

Dr. Bleazard conducted a physical examination and noted that Mr. Hinson “has some bruising anteriorly on the shoulder” and that he had “limited range of motion” but that he did not have “numbness, tingling, or weakness.”⁶¹ Dr. Bleazard ordered an x-ray, which was normal, so he discharged Mr. Hinson. At discharge, he instructed Mr. Hinson to wear a sling, to rest his shoulder, to take pain medication, to follow up with his primary care physician, and to return to the emergency room “if symptoms worsen.”⁶² Specifically, the discharge instructions stated that Mr. Hinson should “call us any time if there’s severe pain, *numbness*, or *loss of function*.” (emphasis added).⁶³

The alleged negligent care of Mr. Hinson occurred during two subsequent visits to Cedar City Hospital’s emergency department, the first of which was the following morning, July 10, and the second of which was over 48 hours after that, on July 12, 2015.

I. Dr. Wilson Breached the Standard of Care

Around 3:00 a.m. on July 10, 2015, Mr. Hinson returned to the emergency room at Cedar City Hospital where he was seen by emergency medicine physician, Dr. Wilson. Mr. Hinson’s pain had worsened rapidly over the past 12-18 hours, and he now was experiencing numbness in his hand.⁶⁴ Specifically, Mr. Hinson reported to Dr. Wilson 9/10 pain and that his fingers were numb.⁶⁵ Dr. Wilson’s note states that Mr. Hinson had developed “some occasional numbness and

⁶⁰ Ex. B, Depo. of David Hinson at 144:3-25; Ex. A Medical Records.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Ex. B, Depo. of David Hinson at 147:21-148:3; 160:2-5.

⁶⁵ Ex. C, Depo. of Dr. Bleazard at 27:24-28:5.

tingling in his hand and fingers.”⁶⁶ Dr. Wilson further documented performing a physical examination where he observed “a hematoma extending from the axilla, most of the way down the upper arm towards the elbow on the medial side.”⁶⁷ Dr. Wilson also noted that the “hematoma is significant and surely is the cause of significant pain.”⁶⁸ He also noted that the “hematoma is likely contributed to by the fact that the patient is on Coumadin therapy.”⁶⁹ Significantly, Dr. Wilson acknowledged in his notes that he “suspect[ed] that the numbness and tingling the patient is having distal to the hematoma is due to some nerve compression uncompromised due to [the] expanding hematoma.”

Despite all of those concerning findings, Dr. Wilson discharged Mr. Hinson without further work-up and without obtaining an orthopedic surgery consult. Dr. Wilson claims that an orthopedic surgery consult was not indicated because the neurological deficits with Mr. Hinson’s arm were intermittent and were not causing complete dysfunction of the arm. Dr. Wilson’s two partners, Drs. Cox and Bleazard, offered contradictory testimony about when an orthopedic surgical consult is indicated for a patient with Mr. Hinson’s presentation. Dr. Cox testified that a hematoma with any neurological symptoms should trigger a consult with orthopedic surgery, and Dr. Bleazard explained numbness and uncontrolled pain despite administration of narcotics is a hallmark of nerve impact/compromise necessitating a surgical consult. In other words, according to Dr. Wilson’s two emergency medicine physician partners, Mr. Hinson’s presentation of uncontrolled severe pain and complaints of numbness and tingling required a surgical consult, which did not

⁶⁶ Ex. A, Medical Records.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

happen. Dr. Wilson's failure to obtain a surgical consult during this encounter despite the concerning findings and the fact that Mr. Hinson had been to the emergency department two times in as many days was a breach of the standard of care. Indeed, Plaintiff's emergency medicine physician expert, Dr. Michael Burg, has opined that Dr. Wilson breached the standard of care by failing to adequately recognize and respond to the risk of hematoma nerve impingement/compression, which should be treated as a surgical emergency. The fact that the reported numbness and tingling was not constant at that time is immaterial as to whether there was active nerve compression. Occasional or intermittent numbness and tingling indicate the nerve compression is still in the early stages—not that the situation was less than emergent. Dr. Wilson's handwritten note from this visit references numbness, tingling, and weakness at least two times and were not characterized in that note as "occasional" or intermittent.

According to Dr. Burg, the standard of care required Dr. Wilson to do additional workup of the hematoma and suspected nerve impingement (which should have included labs and an MRI). The standard of care also required Dr. Wilson to obtain an orthopedic surgery consult prior to discharging Mr. Hinson. Dr. Wilson breached the standard of care by not doing additional workup of the hematoma and nerve impingement and by not obtaining the orthopedic surgery consult.

II. Dr. Cox and PA Haycock Breached the Standard of Care

On July 12, just before noon, Mr. Hinson returned to the ED for a third time in four days. This time he was treated by Kimberly Haycock, PA (who was supervised by Jared Cox, M.D.). Mr. Hinson was in extreme pain and wanted to make sure he had enough pain medication for his

trip home to Texas the next day.⁷⁰

PA Haycock apparently conducted a physical examination of Mr. Hinson, noting a “large hematoma” with “ecchymosis that is traveling down from shoulder to elbow” and that is “tender to palpation,” or, in other words, painful to the touch.⁷¹ PA Haycock also documented that Mr. Hinson reported “some tingling in his hands on and off” but then contradicted her own note by saying Mr. Hinson had no numbness or tingling at the time. Mr. Hinson will testify that he reported numbness and tingling to PA Haycock.

PA Haycock ordered an INR test and discharged Mr. Hinson with a 30-day refill of Percocet for pain and instructed him to follow up with his primary care provider.⁷² Later, PA Haycock called Mr. Hinson and informed him that his INR was at 7.1 (which is very high) and indicates that Mr. Hinson was at a high risk of bleeding. PA Haycock instructed Mr. Hinson to stop his Coumadin and to see a physician when he returned to Texas.⁷³

Dr. Jared Cox was the emergency room physician who oversaw PA Haycock. He will testify that he did not see Mr. Hinson in the emergency room on July 12 and that he did not examine Mr. Hinson.⁷⁴ He will also testify that he did not review PA Haycock’s note until July 16, four days after Mr. Hinson’s presentation, and that he had no “notification or any involvement regarding” Mr. Hinson’s case.⁷⁵ He further claims he did not speak with PA Haycock “at all regarding her care and treatment after reviewing the note” immediately afterward.⁷⁶ PA Haycock

⁷⁰ Ex. B, Depo. of David Hinson at 32:3-10.

⁷¹ Ex. A, Medical Records

⁷² *Id.*

⁷³ Ex. B, Depo. of David Hinson at 164:7-15.

⁷⁴ Ex E, Depo. of Dr. Cox at 22:11-12.

⁷⁵ *Id.* at 5:4-21.

⁷⁶ *Id.* at 5:25-6:3.

told a different story. She claims she spoke with Dr. Cox “about the patient on that day – on that day that [she] saw him.”⁷⁷ She claims she remembers “presenting to Dr. Cox ... that [Mr. Hinson’s] INR was elevated. He had a mechanical heart valve, and [she] wanted [Dr. Cox’s] take on what [they] should do next.” She claims Dr. Cox agreed with her proposed “line of treatment, and that [she] wanted to discontinue the patient’s Coumadin so it could slowly return back to a more normal therapeutic level, and then follow up with his cardiologist within two days to recheck INR and make sure it was not getting too low.”⁷⁸

In view of the uncontrolled and worsening pain despite being on his second narcotics prescription in just a few days, the two prior visits to the ED in the span of just a few days, the complaint of numbness and tingling that was not present at the first ED visit, and Mr. Hinson’s very high INR, PA Haycock and Dr. Cox breached the standard of care by failing to request an orthopedic surgery consult and by failing to obtain an MRI to further work up Mr. Hinson’s symptoms. Importantly, Dr. Cox testified that if a patient has a hematoma with neurovascular compromise, the standard of care is to obtain a surgical consult.⁷⁹ Yet none of the defendants requested a consult for Mr. Hinson, nor did they obtain an MRI to further workup Mr. Hinson’s condition.

Plaintiff’s emergency medicine physician assistant expert, Chrysa Charno, PA, testified that PA Haycock breached the standard of care by failing to adequately recognize the significance of Mr. Hinson’s history and presentation. PA Haycock should have recognized the real possibility that Mr. Hinson had a nerve impingement from the hematoma. That should have prompted PA

⁷⁷ Ex. F, Depo. of PA Haycock at 4:23-5:4.

⁷⁸ *Id.* at 6:11-16.

⁷⁹ Ex. E, Depo of Dr. Cox at 10:2-15:15.

Haycock to order additional workup, to report the situation to her supervising physician, Dr. Cox (which Dr. Cox claims never happened and of which there is no evidence in the medical records), and to obtain an orthopedic surgery consult. Mr. Hinson's report of recent trauma, his long-term use of an anticoagulant, the large hematoma on his arm, a high INR (indicating heightened risk for spontaneous bleeds), multiple recent ED visits, uncontrolled pain despite already using an entire narcotics prescription, and the onset of neurological deficits (numbness, tingling, and weakness) during the prior visit and again reported to PA Haycock, were all warning signs of likely nerve compression. For whatever reason, PA Haycock did not recognize or appreciate those warning signs that this could be a surgical emergency. The only thing that would absolve PA Haycock would be if she had communicated to Dr. Cox Mr. Hinson's history and clinical presentation, explained the proposed plan of care (which did not include ortho surgery consult), and then received approval from Dr. Cox. The chart does not indicate that any of that occurred, and Dr. Cox denied that it occurred.

To the extent the jury believes that PA Haycock informed Dr. Cox of the situation and that Dr. Cox approved of the proposed plan of care for Mr. Hinson, Plaintiff's ED medicine physician expert, Dr. Burg, will testify that the same criticisms he offered of Dr. Wilson's care also apply to Dr. Cox's care—perhaps even more so given that Dr. Cox had more information and the encounter was Mr. Hinson's third visit to the ED in several days with complaints of a similar but worsening nature. If Dr. Cox was aware of Mr. Hinson's situation at the time, he breached the standard of care for supporting the proposed plan of care that did not involve additional workup or orthopedic surgery consult.

CAUSATION

Plaintiff has designated expert orthopedic surgeon Julius Bishop, MD to testify as to the cause of Mr. Hinson's injuries in this case. Dr. Bishop is board certified in orthopedic surgery who currently works as an Associate Professor of Orthopaedic Surgery at Stanford University School of Medicine. Dr. Bishop also currently has privileges at Stanford Medical Center and Lucile Packard Children's Hospital.

Dr. Bishop will testify at trial that on the three occasions that Mr. Hinson presented to the emergency room at Cedar City Hospital, he was "experienc[ing] bleeding secondary in part to the shoulder injury of lifting his daughter off of a horse coupled with a high INR."⁸⁰ Dr. Bishop will support this testify by stating it is "overwhelmingly likely that his INR was elevated given that he's chronically taking Coumadin, which the known effect is to elevate the INR. Further evidence for that is the fact that it was 7.1 on July 12th."⁸¹

Dr. Bishop will further testify that Mr. Hinson's bleeding "continued to cause [his] increasing pain."⁸² Dr. Bishop will also state that the bleeding "persisted until he was treated surgically when he arrived in Texas."⁸³ He will testify that if an orthopedic surgeon had been consulted when Mr. Hinson presented to the emergency room on July 10 or July 12, that an ordinary and prudent orthopedic surgeon "would have obtained serial INRs, kept the patient in or near the hospital for close observation, and provided vitamin K or other coagulants to normalize

⁸⁰ Ex. K, Depo. of Dr. Bishop at 18:18-19:2.

⁸¹ *Id.* at 21:11-15.

⁸² *Id.* at 22:12-18.

⁸³ *Id.* at 26:11-12.

the patient's INR and reduce bleeding.”⁸⁴ Furthermore, Dr. Bishop will then testify that an orthopedic surgeon would have observed Mr. Hinson “closely for signs and symptoms of neurologic deterioration which likely would have led to an earlier realization that the patient was experience a clot pressing on the brachial plexus which would have resulted in a much earlier decompression surgery.”⁸⁵

Dr. Bishop will also testify that a surgeon would have examined Mr. Hinson, and, from the evidence of hematoma on physical exam, “and the known presence of long-term Coumadin to measure the INR to know exactly how thin the blood was or wasn't and then to obtain some type of imaging study to assess the size and location of hematoma, either an MRI was done or a CT Scan.” From that, Dr. Bishop believes the imaging “would have shown a hematoma as was found on [Mr. Hinson's] MRI adjacent to the brachial plexus.”⁸⁶

Then, Dr. Bishop believes that a surgeon would have realized that Mr. Hinson had a clot pressing on the brachial plexus nerve “definitely on the visit on the 10th, when, in fact, it was realized by the ER doctor who stated there was a hematoma compressing on the brachial plexus.”⁸⁷ This is because Mr. Hinson was “having progressive symptoms, primarily pain. He's having an increasing narcotic requirement. I know his INR wasn't measured on the 10th, but he has a very elevated INR; and so in the world of hematomas and nerve compression, that's universally agreed upon indication for surgery” and also because “he is already experiencing

⁸⁴ *Id.* at 26:22-27:6.

⁸⁵ *Id.* at 30:1-11.

⁸⁶ *Id.* at 92:8-19.

⁸⁷ *Id.* at 30:12-23.

symptoms of nerve pressure and ischemia that are severe.”⁸⁸

Because of this, Dr. Bishop will testify that “the appropriate treatment would have been admission to the hospital, treatment of the INR to get it to a safe and reasonable level, and then decompression of the hematoma.”⁸⁹ And this is the same on the 10th and the 12th.⁹⁰ Dr. Bishop will testify that “it may have taken 8 or 12 hours before [Mr. Hinson] . . . was ready for surgery” after reversal of his INR” and that Mr. Hinson would have undergone surgery “sometime between the 10th and the 12th.”⁹¹ Dr. Bishop will rely on his training, experience, and authoritative articles to support his opinion on the urgency of Mr. Hinson undergoing decompression surgery.

Dr. Bishop will testify that had Mr. Hinson undergone decompression surgery on July 10th, he would have made a “full recovery.”⁹² By July 12th, however, Dr. Bishop will testify that “the fact that that blood flow has been compromised for a longer period of time and that pressure has been present for a longer period of time, that makes the likelihood of complete recovery less, just based on the passage of time alone.”⁹³ Because of this, he would be concerned that “there would at least be some sequelae, at least in terms of, you know, subtle changes or things of that nature” by July 12th.⁹⁴ Specifically, he will state that “people can have persistent sensory symptoms just related to having pressure on the brachial plexus like that for several days.”⁹⁵ He

⁸⁸ *Id.* at 34:13-18; 36:7-8.

⁸⁹ *Id.* at 92:23-93:1.

⁹⁰ *Id.* at 93:2-4.

⁹¹ *Id.* at 29:3-4; 34:5-7

⁹² *Id.* at 75:10-13

⁹³ *Id.* at 78:11-16.

⁹⁴ *Id.* at 78:17-79:2.

⁹⁵ *Id.* at 85:24-86:1.

will state that by the 15th, once he presented to his primary care provider Dr. Ferguson, he already had permanent motor loss that was “very severe and very likely to be irreversible problem.”⁹⁶ Dr. Bishop will also testify that it is “exceedingly unlikely that an evacuation of a hematoma would cause a brachial plexus injury, especially given that the symptoms were the same before surgery as compared to after surgery.”⁹⁷

Defendants have also designated an orthopedic surgeon, Clive Segil, MD, to testify to causation. Dr. Segil testified in his deposition that he believes Mr. Hinson suffered permanent damage sometime after July 12th “between when [Mr. Hinson] left to travel to Texas during that trip.”⁹⁸ Defendants have also designated Brad Ward, MD, to testify to causation. But he is a neurosurgeon and the relevance of his opinions in this case as a neurosurgeon are questionable. They may also be duplicative with Dr. Segil’s testimony. Dr. Ward testified in his deposition that Mr. Hinson was not permanently damaged until sometime between July 12th and July 14th or 15th.

Plaintiff anticipates that Defendants will blame him for not presenting to an emergency room on his way home to Texas. However, even if the jury believes only Defendants’ experts’ opinions, the jury will know that had Defendants complied with the standard of care (assuming they find a breach), Mr. Hinson would have avoided permanent injury.

Defendants have also designated Marcus Brann, MD, a cardiologist to testify on causation and how long it takes to reverse an INR. Dr. Brann agreed in his deposition that he

⁹⁶ *Id.* at 93:10-15.

⁹⁷ *Id.* at 45:24-46:2.

⁹⁸ Ex. L, Depo. of Dr. Segil at 43:19-21.

would defer to a surgeon to determine if a situation is emergent and if surgery is required.⁹⁹ Dr. Brann testified that, in an emergent situation, a patient's INR could be reversed and brought down from 7.1 to below 2 (the safe range for surgery) in "four, eight, or 12 hours, but usually we can get it reversed within 24 hours."¹⁰⁰ If the Jury were to believe Dr. Brann, then Mr. Hinson could have had surgery by the evening of July 10th or early morning July 11th, after Mr. Hinson's presentation to Dr. Wilson in the emergency room. Or, he could have had surgery in the evening of July 12th or early in the morning on July 13th after Mr. Hinson's presentation to PA Haycock. Either way, Mr. Hinson would have avoided a significant amount of his nerve damage, if not all of it.

DAMAGES

Noneconomic Damages

Mr. Hinson has suffered a considerable amount of general damages because of Defendants. Mr. Hinson, his wife Sami, his father Wayne, and his friend Marlo will testify at trial of the permanent damage done to his hand and arm and how it has affected and completely changed his life. For example, Mr. Hinson will testify and demonstrate to the jury that he has limited range of motion in his hand and arm. His fingers are scrunched up into his hand and he doesn't "really have any use of [his] fingers" and that he uses his thumb to pinch against his knuckles to grab things like tissue.¹⁰¹ He has to physically use his right hand to straighten out the fingers in his left hand and keep them there. Because of this, it is difficult for him to do normal everyday things.

⁹⁹ Ex. M, Depo. of Dr. Brann 22:19-25.

¹⁰⁰ *Id.* at 27:12-15.

¹⁰¹ Ex. B, Depo. of David Hinson at 47:16-25.

For example, he needs to type a lot for his work but because his hand is scrunched up, he does it mostly one handed or types one key at a time with his left hand.¹⁰² Another example is driving a car. He can drive a car but has to do it one handed because he can't get his arm and hand to turn with the wheel.¹⁰³

It takes him longer to dress himself, especially if he has to button something on. He had to relearn how to tie his own tie on with one hand.¹⁰⁴ He does many other things with one hand as well such as tying his shoes, washing his hair, carrying laundry.¹⁰⁵

He will also testify that it is difficult for him to do household services and household chores and has had to make considerable adjustments in how he does things, or just forego doing them altogether. He cannot tear things with his hands and fingers so he has to often use his teeth.¹⁰⁶ He cannot repair things the way he used to around the house because he can't use his hand properly and he cannot do his own lawn care.¹⁰⁷ He cannot clean or wash his car and neither can he do his own car repairs.¹⁰⁸

Mr. Hinson has also suffered and continues to suffer a considerable amount of pain. Mr. Hinson will testify of his car ride home from Utah to Texas in July of 2015 and how painful it was. He will testify of the pain he felt before and after his surgery with Dr. Winter. He will also explain to the jury the pain he went through in physical and occupational therapy. And finally, he

¹⁰² *Id.* at 64:16-21.

¹⁰³ *Id.* at 64:8-9.

¹⁰⁴ *Id.* at 151-152.

¹⁰⁵ *Id.* at 154.

¹⁰⁶ *Id.* at 66:16-23.

¹⁰⁷ *Id.* 67:25-68:9.

¹⁰⁸ *Id.* 68:25-69:4.

will explain the nerve pain he still currently feels.

To this day, he cannot lay left arm down because he feels pain from underneath his armpit all the way down the back of his arm and on the back side of his forearm and down through his hand.¹⁰⁹ Inside the palm of his and his knuckles cannot be touched because it is so hypersensitive. Mr. Hinson uses a brace that he wears an hour or two every day to stretch his hand but it is painful to wear it.

Mr. Hinson also has sensory nerve issues. His skin cannot regulate the temperature on his arm and hand. His hand and fingers will get so cold his hand will turn blue but because he could not feel it, he did not realize how cold it was. Or sometimes, he feels that the sensation will lie to him. It will feel like his hand is burning when it is not. He also feels sharp pains on his skin that feels like pins and needles all the time. It never stops.¹¹⁰ His pain in general is a constant. Normally, when relaxed, he will feel two or three out of ten pain. But it will fluctuate with activity and with the position his hand and arm are in.

Mr. Hinson had many hobbies that he loved doing but unfortunately can no longer do because of his deficient hand and arm. For example, he loved woodworking, golfing, fishing, hunting, and shooting guns in general. He used to be very active but he can no longer do any of these things.¹¹¹

Mr. Hinson has also had mental health problems caused by medications he attempted to take because of the pain. For many months, Mr. Hinson was feeling very down and depressed.

¹⁰⁹ *Id.* 47:20-48:9.

¹¹⁰ *Id.* 120:3-16.

¹¹¹ *Id.* 78.

Finally, he realized it was the Fentanyl he was taking for the pain that was causing his depression and he had to stop taking it.¹¹² The permanent nature of his injury is also difficult for Mr. Hinson. The fact that he will live the rest of his life with his disability is disheartening. Mr. Hinson intends to ask the jury for a considerable amount to compensate him for what he has suffered, and for what he will continue to suffer for the rest of his life.

Economic Damages

Past Medical Expenses

Plaintiff will make a claim to the jury for his past medical expenses. Plaintiff will testify of the care and treatment that he required because of Defendant's negligence. Specifically, Plaintiff required surgery to remove the hematoma. He required additional imaging and lab work. After the surgery, he required an extensive amount of physical and occupational therapy. Mr. Hinson has also needed pain management coupled with a variety of pain medications. Mr. Hinson tried a variety of pain medications until his neurologist, Dr. Kellam, gave him a medication that works without altering his mental status. That is Cymbalta or Duloxetine. He now takes approximately 30 mg daily. Mr. Hinson also has about three pain management visits per year. Currently gathered medical bills show Mr. Hinson has a past medical expense claim of \$64,980.56.

Replacement Services

Mr. Hinson, Sami Hinson, Dr. Miller, Dr. Bishop, and Dr. Sheryl Wainwright will testify of Mr. Hinson's household services and attendant care needs. Mr. Hinson requires help with

¹¹² *Id.* at 45:12-15.

household services such as cooking, yard work, car maintenance, and handyman work.¹¹³

Plaintiff has hired expert Life Care Planner Dr. Sheryl Wainwright to create a life care plan that includes the average costs of replacement services. These are services that Mr. Hinson used to primarily do in the household before his injury but can no longer do on his own without help. Dr. Wainwright has estimated the number of hours of replacement services for each item, such as yard care, season clean up, assistant care (help with repairs, driving long distances, groceries, etc),¹¹⁴ and car maintenance and found the average cost of these hourly services to find a total.

Dr. Wainwright has calculated that the annual cost of these replacement services is \$14,734.89. She then calculated the lifetime cost of the replacement services using Mr. Hinson's life expectancy to calculate a lifetime cost of approximately \$249,020.¹¹⁵ This life care plan was calculated in 2020 so it will be updated for time before trial.

At the time of trial, it will have been more than 8.5 years since Mr. Hinson's injury. Mr. Hinson has required these replacement services since his injury. By multiplying the annual cost of Mr. Hinson's replacement services by 8.5, Mr. Hinson will ask the jury to be compensated for past replacement services of around \$125,247.

Future Medical Expenses

Mr. Hinson, Dr. Bishop, Dr. Miller, and Dr. Wainwright will also testify of the future medical expenses that Mr. Hinson requires. Dr. Wainwright's life care plan was approved by both Dr. Miller and Dr. Bishop. They will testify that Mr. Hinson requires multiple pain management

¹¹³ Ex. B, Depo. of David Hinson at 66;67;68;69;76; Ex. N, Dr. Wainwright Life Care Plan Tables.

¹¹⁴ Ex. O, Depo. of Dr. Wainwright at 49:1-50:3

¹¹⁵ Ex. N, Dr. Wainwright Life Care Plan Tables.

visits a year, physical and massage therapy, medications, and counseling services. Dr. Wainwright has calculated the total cost of these future expenses to be about \$159,021.¹¹⁶ Dr. Wainwright will update these calculations for time before trial.

Present Value of Economic Damages

Plaintiff has also hired Dr. Alan Stephens, an expert economist, to calculate the present value of Mr. Hinson’s economic claims.¹¹⁷ Dr. Stephens will also update his tables for time before trial.

CONCLUSION

As shown above, Plaintiff plans on proving to the jury that Defendants committed medical malpractice when they breached the standard of care, which then caused him damages.

DATED this 14th day of November 2023.

/s/McKay Corbett

Ashton Hyde
Mathew Purcell
McKay Corbett
YOUNKER HYDE MACFARLANE
Attorneys for Plaintiff

¹¹⁶ *Id.*

¹¹⁷ Ex. P, Dr. Stephens Economic Tables.

EXHIBITS

- A. Select Medical Records
- B. Deposition of David Hinson
- C. Deposition of Dr Bleazard
- D. Deposition of Sami Hinson
- E. Deposition of Dr Cox
- F. Deposition of PA Hancock
- G. Deposition of Wayne Hinson
- H. Deposition of Marlo Ready
- I. Deposition of Dr Ferguson
- J. Deposition of Dr Winter
- K. Deposition of Dr Bishop
- L. Deposition of Dr Segil
- M. Deposition of Dr Brann
- N. Life Care Plan Tables
- O. Deposition of Dr Wainwright
- P. Economic Report

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November 2023, I caused to be served, via the court's E-filing system or via email, a true and correct copy of **PLAINTIFF'S TRIAL BRIEF** to the following:

Vaun B. Hall
Derek J. Williams
CAMPBELL WILLIAMS FERENCE & HALL
vaun@cwflaw.com
derek@cwflaw.com
Attorneys for Defendant Darrell L. Wilson, MD.

Nan T. Bassett
Chelsey E. Phippen
Kirk G. Gibbs
KIPP AND CHRISTIAN
nbassett@kippandchristian.com
cphippen@kippandchristian.com
kggibbs@kippandchristian.com
Attorneys for Defendants Jared C. Cox, DO and Kimberly D. Haycock, PA.

/s/ Amber Kranwinkle
AMBER KRANWINKLE