STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: BANS-CV-20-134

SCOTT ARNOLD	*
	*
Plaintiff	*
	*
v.	*
	*
EASTERN MAINE MEDICAL CENTER d/b/a NORTHERN LIGHT EASTERN MAINE MEDICAL CENTER	* * * *
	*
Defendant	*
	*

COMPLAINT

NOW COMES Plaintiff Scott Arnold and avers as follows:

Parties

1. Plaintiff Scott Arnold ("Scott") is a resident of Holden, County of Penobscot, State of Maine.

2. Defendant Eastern Maine Medical Center d/b/a Northern Light Eastern Maine Medical Center ("EMMC") is a Maine corporation which owns and operates a general hospital in Bangor, County of Penobscot, State of Maine.

System Failure, Agency, Direct and Vicarious Liability

3. Like any corporation, EMMC acts through employees and agents, including medical doctors, mid-level providers, physical and occupational therapists, dieticians, technicians, nurses and other staff and personnel who combine to create a system of health-care delivery to a hospital patient.

4. Some of these staff and personnel are required to document their actions in the patient's medical chart, and therefore can be identified in the chart; others are not required to (or

chose not to) document their actions, but their participation and involvement in the system of medical care may nonetheless be critical to meeting the standard of reasonable care.

5. **EMMC defined.** All references to **EMMC** within this Complaint are intended to be inclusive of all employees or agents of these corporations, including physicians, nurses, therapists, technicians, nurse practitioners, medical students, physician assistants or any others—whether specifically identified in the medical chart or not; or specifically identified by name in this Complaint—who participated in and collectively comprised the system of medical care relied upon by Plaintiff while he was admitted to the hospital, and which Plaintiff alleges, through this Complaint, failed to comply with reasonable standards for delivery of medical care in a hospital-based setting.

6. Plaintiff alleges that each and every person involved in the system of medical care upon which he relied while he was admitted to the hospital was, even if not a W-2 employee, an actual or implied agent of EMMC, because each person had authority conferred by EMMC to participate in Plaintiff's medical care while he was admitted to the hospital and Plaintiff reasonably believed and relied upon the belief that EMMC would appropriately select, in both quality and quantity, sufficient personnel with the necessary qualifications, experience, training and supervision to fulfill his or her role within the system of medical care, such that the system as a whole was safe, met the needs of Plaintiff as a patient and thus complied with the standard of reasonable medical care expected of a hospital like EMMC.

7. In this Complaint, Plaintiff specifically contends that EMMC was <u>directly</u> negligent based upon negligent hiring, training, staffing, supervision, policies, communication, documentation, medical record-keeping, culture and systems, as well as <u>vicariously liable</u> for the negligence of each and every one of its personnel whose conduct, either individually or in

combination with other personnel, contributed to the failure of such individual(s) and the system to meet the standard of reasonable care to Plaintiff.

Factual Background

8. On November 26, 2017, at around 6 p.m., Scott Arnold, age 53, presented at EMMC's emergency department with a concern of severe back pain and numbness in certain areas of his body. Nurses documented severe, 10/10 pain in his upper back, left side, between his shoulder blades [EMMC 93, 1303, 1524 & 1535]; numbness in both legs "all the way down" [EMMC 93]; numbness and pain in his left arm [EMMC 93, 1524]; and numbness in his abdomen [EMMC 1524].

9. Scott was seen and evaluated by **Dr. David Saquet, DO**. On initial examination, Dr. Saquet noted that Scott had hypertonicity across his paraspinal muscles in his thoracic and lumbar areas; but, critically, Scott had no saddle anesthesia, his sensation remained intact, and he had no upper or lower extremity muscle weakness or bowel and bladder abnormality. [EMMC 0093-0096]

10. Dr. Saquet recognized that Scott's presentation was consistent with a spinal epidural abscess, but initially he did not order appropriate laboratory testing, such as a complete blood count (CBC) with differential, C-reactive protein (CRP) and erythrocyte sedimentation rate (ESR), which would help clarify whether Scott was suffering from an abscess. This was a deviation from the accepted medical standard of care.

11. Dr. Saquet also did not obtain a complete medical history and thus failed to learn that Scott recently had suffered a tonsillar abscess and had been consuming a lot of alcohol which would increase his risk of an abscess at this presentation. This was a deviation from the accepted medical standard of care.

12. At this juncture, Dr. Saquet ordered only pain medication and observation in violation of the accepted medical standard of care.

13. Later that same shift, Dr. Saquet was called back to the bedside for worsening pain. Scott reported that he was unable to urinate. Dr. Saquet performed a rectal examination, which revealed "somewhat slack" tone. Scott objectively was retaining urine (around 500 ml), and he had become severely diaphoretic. Dr. Saquet was now "more concerned" about an epidural abscess. He thus belatedly ordered labs, including a CBC, ESR and CRP

14. Dr. Saquet also ordered MRI imaging of the spine but only requested an MRI of Scott's thoracic and lumbar spine – not the cervical spine. [EMMC 0093-0096]

15. Dr. Saquet failed to order an MRI of the cervical spine because, *inter alia*, he failed to notice/recall that Scott had pain and numbness in his left arm, which strongly suggested a cervical lesion.

16. Dr. Saquet also failed to take into account that (a) abscesses can occur in more than one location; (b) MRI technicians must be summoned to the hospital after hours; and (c) MRIs are read remotely and require sending large files electronically – a slow process; thus, it could take significant time to perform the imaging that Dr. Saquet ordered and it would take many hours to reimage Scott's spine if the incomplete exam that Dr. Saquet ordered was not diagnostic.

17. Not ordering an MRI of the cervical spine was a deviation from the accepted standard of medical care.

18. Orders for STAT thoracic and lumbar MRIs were entered at 8:54 pm. [EMMC 0389] By policy, STAT MRIs at EMMC are to be completed in 30 minutes. Scott did not even leave for his MRIs until 9:52 p.m. – an hour later. [EMMC 1524]

19. By 9:52 p.m., labs ordered by Dr. Saquet showed significant elevations in the CRP and ESR, strongly suggesting that Scott's problems were related to an abscess. [EMMC 751] His platelet level also had dropped significantly from a prior study, also suggesting infection in this context. [EMMC 725; *compare* EMMC 107]

20. Dr. Saquet, however, failed to add a cervical MRI to Scott's orders. This was a deviation from the accepted medical standard of care.

21. By the time of the shift change at 10:30 p.m., when Dr. Saquet signed off to **Dr. Peter Hulsey, DO**, the MRI had not yet been completed. [EMMC 0094] This was a deviation from the accepted medical standard of care.

22. At around midnight, Scott began suffering leg spasms so severe that he required seizure pads. [EMMC 1524] This problem also is consistent with an epidural abscess. There is no evidence that a physician was consulted about this problem at that time. No additional imaging was ordered in violation of accepted standards of medical care.

23. Critically, Dr. Hulsey admits that he would have ordered STAT MRI imaging of the cervical spine – to rule out an epidural abscess – if he had been aware of Scott's complaint of left arm pain and numbness, a fact that is documented in the E.D. physician admission note. Hulsey dep. pp. 47-48.

24. Ultimately, when the imaging of the thoracic and lumbar spine was belatedly reported, it showed only degenerative changes, but no epidural abscess or other acute process that would in any way explain Scott's symptoms. [EMMC 0786-87]

25. Dr. Hulsey entered a note in the medical chart just after 2 a.m. on November 27, 2017, in which he noted that Scott would be admitted to the hospital for further evaluation and management. He wrote "I do not feel that an emergent neurosurgical consultation was necessary

in the middle of the night. If the admitting service feels that neurosurgical consultation would be beneficial, this can be done in the morning." Failing to order STAT MRI imaging of the cervical spine and/or a STAT neurosurgical consult was a deviation from the accepted medical standard of care.

26. Dr. Hulsey noted that Scott's lower extremity strength was normal on his examination. [EMMC 0089]

27. Dr. Hulsey remained Scott's attending physician, responsible for his medical management, until approximately 4:00 a.m., when the hospitalist service took over responsibility – which was ten (10) hours after presentation to the E.D.

28. At approximately 4:00 a.m. on November 27, Scott was seen by **Dr. Terry Allen, Jr., MD**. The first documented act by Dr. Allen was to order an MRI of the cervical spine, which should have been ordered many hours earlier.

29. Dr. Allen recorded a note at 4:24 am., stating that "on my evaluation Mr. Arnold now reports marked weakness in both is upper and lower extremities." This was a new and critical finding showing that Scott had deteriorated since admission.

30. Dr. Allen stated: "Overall, I remain very concerned that we are missing a rapidly-worsening phenomena." [EMMC 0097-0101]

31. Dr. Allen stated that he would like neurology input but failed to consult neurology. [EMMC 100]

32. Dr. Allen's 4:24 am note states that his plan called for a STAT MRI of Scott's cervical spine. At 4:03 am, there is an order for an "expedited" cervical spine MRI, which was discontinued at 5:18 because it was a mistake – the order was supposed to be STAT [EMMC 0389] At 5:18 am, the order for the STAT MRI was entered. [EMMC 0390] Upon information and

belief, the failure to order a STAT MRI (vs. "expedited") further slowed the process of obtaining the critically needed MRI of Scott's cervical spine.

33. The MRI of the cervical spine was not completed until 6:37 p.m. -- at least thirteen hours after the STAT order should have been entered and more than 24 hours since initial presentation.

34. The MRI showed the presence of a spinal epidural abscess compressing Scott's spinal cord, which was causing all of his symptoms and was a true medical emergency.

35. Following the findings of abscess on the MRI, Scott was taken to surgery to decompress and drain the abscess. However, Scott failed to recover neurological function following the surgery, and continues to be paralyzed to this date, among other significant problems.

36. Dr. Allen entered an addendum to his note indicating that in the morning Scott had been taken for his MRI study but was unable to complete it at that time due to anxiety. Dr. Allen's note fails to mention that he did not speak to Scott at that time – that no doctor spoke to Scott at that time – and that no one explained to Scott how critically important the MRI of the cervical spine was in trying to prevent paralysis. Remarkably, no one had such a conversation with Scott until later in the afternoon, shortly before the MRI of the cervical spine was obtained at around 6:30 p.m.

37. At around 11:00 a.m., a nurse documented that neurologist, **Dr. Muhammad Arshad, MD**, was at the bedside. Dr. Arshad entered a note, indicating that Scott was reporting severe pain in his upper back and neck. Dr. Arshad performed a detailed neurological examination, in which he documented diminished strength in Scott's arms and legs, continued ability to move his upper and lower extremities. Dr. Arshad also documented reduced movement and sensation

in Scott's lower extremities, but with some continued motor and nerve function. [EMMC 0111-0113]

38. At 1:40 p.m., attending Dr. **Monica Blejeru, MD,** requested a consultation with an intensivist. At 1:49 p.m., intensivist **Rajesh Zacharias, MD**, arrived at the bedside. On physical examination, Dr. Zacharias, found that "neurologically, he is unable to move both his lower extremities," although "he is able to wiggle his toes with some difficulty." Scott was unable to lift his left arm off the bed or to grasp with his left hand. However, his right-hand strength was normal. Dr. Zacharias noted that a neurology consult "has been obtained." He recommended, among other things, an urgent MRI of the cervical spine. [EMMC 0106-0109]

39. At just after 4 p.m., Scott was seen by infectious disease doctor, **Rebekah Gass, MD**. Dr. Gass noted that Scott had diminished sensation in all four extremities and "what appears to be flaccid paralysis with no muscle strength in the lower extremities bilaterally." Dr. Gass also noted that Scott had diminished strength in his upper extremities. Dr. Gass wrote: ". . . His cervical spine has not been imaged and I am concerned about the possibility of a cervical spine epidural abscess with obstruction causing the marked elevation in protein." Dr. Gass stated that an MRI of the cervical spine was required "as soon as possible." [EMMC 0102-0105]

40. Dr. Zacharias later added an addendum to his note indicating that the ID doctor had been consulted, and he had spoken with Dr. Gass at length. Dr. Zacharias wrote: "At this point (4:30 pm), I note that the MRI cervical spine is still pending. I have spoken personally with the emergency room physician, [**Niall McGarvey, MD]**, as well as the hospitalist team and the MRI service has been called to facilitate this expediently. I have also spoken with ED nursing to ensure that the study gets done emergently." [EMMC 0106-0109]

41. At 4:45 pm, hospitalist, Dr. McGarvey entered a note, stating that Scott had been signed out to him at 7:00 a.m. by Dr. Hulsey, and that "it came to light that patient had a peritonsillar abscess some weeks ago and that Dr. Allen, the admitting physician, ordered advanced imaging of the cervical spine." He further noted:

> The admitting team and neurology involved infectious disease in the decision making. The intensivist came down to the emergency department and evaluated the patient. I spoke with the intensivist and together we placed neck mobility collar orders and, at this time, which is around 4:00 in the afternoon, the patient had not received his imaging. Several calls were placed over the course of the day through the secretary at the des, face to face, to see if radiology could get the patient over for this critical imaging. This effort was ramped up around 3:00 to 4:00. It seems that nursing was having difficulty acquiring a resource nurse for help to accompany the patient to imaging on this busy Monday where there was great demand for all services. At this point, the patient is admitted to the intensive care unit with the critical piece of cervical spine imaging pending.

[EMMC 0091]

42. At around 9:30 p.m., Scott was seen by neurosurgeon, **David Weitman, MD.** Dr. Weitman read the cervical MRI as showing an epidural abscess with spinal cord compression from vertebrae C6 to T1. His plan was to take Scott the operating room immediately to drain the abscess.

43. Dr. Weitman did perform decompression surgery to reduce and drain the abscess. However, Scott has not experienced substantial recovery, and he remains paralyzed to this day with substantial impairments in bowel, bladder and sexual function and chronic pain.

COUNT I: MEDICAL NEGLIGENCE

44. Plaintiff re-alleges the preceding allegations as if set forth fully herein.

45. The medical care provided by EMMC and its agents (as defined above) was unreasonable and deviated from the acceptable standard of care for reasons including but not limited to the following:

a. Unreasonable delay in diagnosis and treating spinal epidural abscess (SEA)

b. Unreasonable delay in ordering appropriate testing, including the correct imaging studies that would have confirmed a diagnosis of SEA

c. Unreasonable failure to monitor Scott's declining medical condition and to report and act upon this decline and to order the appropriate testing and interventions to prevent the condition from worsening

d. Unreasonable lack or enforcement of policies, practices, or procedures necessary to keep Plaintiff safe and to meet his medical needs, including a failure to have a proper algorithm or protocol for managing acute back pain in the ED and a failure to adhere to MRI policies to assure that MRIs are completed and reported promptly after hours

e. Unreasonable failure to employ, train and supervise enough qualified personnel to keep Plaintiff safe and meet his medical needs

f. Unreasonable documentation and communication of information necessary to keep Plaintiff safe and meet his medical needs, including failing to properly advise Plaintiff of the necessity of undergoing a cervical spine MRI in the morning after admission

g. Unreasonable failure to coordinate Plaintiff's medical care, between and among nurses, therapists, doctors and other medical providers and specialists to keep Plaintiff safe and meet his medical needs, including delaying the performance of an ordered STAT MRI more than 12 hours

h. Unreasonable failure of the system of medical care delivered by EMMC and individual providers to keep Plaintiff safe and meet his medical needs

46. As a result of the unsafe and negligent practices which deviate from the standard of care, identified above, Plaintiff suffered ongoing and permanent effects of spinal cord injury, including weakness, paralysis, sensory deficits, pain, lack of bladder and bowel function, impaired sexual function and immobility. Plaintiff will continue to require full time assistance with daily living and will likely require assistance and nursing care for the rest of his life.

WHEREFORE, Plaintiff requests judgment against Defendant for compensatory damages, including damages for medical and lifecare expenses, lost earnings and earning capacity, pain, suffering and emotional distress, permanent injury, lost enjoyment of life, together with attorneys' fees, costs and such other and further relief as this Honorable Court deems just and equitable.

Dated: November 8, 2021

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