

STATE OF MAINE  
ANDROSCOGGIN, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.:

MICHAEL WHITTIER AND  
NANCY WHITTIER,

\*\*

Plaintiffs

## COMPLAINT

v.

CENTRAL MAINE MEDICAL  
CENTER,

Defendant

NOW COME Plaintiffs Michael and Nancy Whittier, and aver as follows:

### Parties

1. Plaintiffs Michael and Nancy Whittier are residents of Poland, County of Androscoggin, and State of Maine.

2. Defendant Central Maine Medical Center (CMMC) is a registered Maine corporation that provides health care services, including through the CMMC hospital and outpatient locations, including Minot Avenue Family Practice and (formerly) Mechanic Falls Family Practice Center.

### System Failure, Agency, Direct and Vicarious Liability

3. Like any corporation, CMMC acts through its employees and its agents, including medical doctors, mid-level providers, nurses, technicians, medical assistants, information technology professionals and other staff who combine to create a system of health-care delivery to a patient.

4. Some of these CMMC staff 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 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. All references to CMMC within this Complaint are intended to be inclusive of all employees or agents of CMMC—whether specifically identified in the medical chart or not; or specifically identified by name in this Complaint or not—who participated in and collectively comprised the system of medical care relied upon by Plaintiffs for medical care, and which Plaintiffs allege, through this Complaint, failed to comply with reasonable standards for delivery of medical care.

5. Plaintiffs alleges that each and every person involved in the system of medical care upon which they relied was, if not an “employee,” then was an actual or implied agent of CMMC, because each such person had authority conferred by CMMC to represent it in providing medical care to Plaintiff Michael Whittier and Plaintiffs reasonably believed and relied upon the belief that CMMC would appropriately select, in both quality and quantity, sufficient personnel with the necessary qualifications, experience and training and provide the necessary level of training, supervision, oversight and support to enable each individual to properly 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 medical provider like CMMC.

6. In this Complaint, Plaintiff specifically contends that CMMC was both directly negligent based upon CMMC’s negligent hiring, training, staffing, supervision, policies, communication, documentation, medical record-keeping, culture and systems, as well as vicariously liable 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 the CMMC medical care system to meet the standard of reasonable care.

### **Factual Background**

7. Throughout the entire time relevant to this Complaint, Plaintiff Michael Whittier received his primary care from Defendant CMMC.

8. On January 24, 2016, Whittier presented to CMMC, at its Mechanic Falls location, for his annual physical examination. The examination was performed by CMMC employee Christopher Short, DO. Records indicate that Whittier had an enlarged prostate.

9. CMMC ordered laboratory testing of Whittier's Prostate Specific Antigen (PSA) levels to screen for prostate cancer.

10. The PSA test results were reported to CMMC on or about January 29, 2016. The results indicated a PSA of 12.7, which is dangerously high and suggests a high risk of prostate cancer.

11. In a deviation from the standard or reasonable and safe medical care, CMMC did not report the PSA test results to Plaintiffs, order any follow up testing or evaluation, or refer Whittier to a urologist.

12. On April 7, 2017, Whittier presented to CMMC for his annual physical. The examination was again performed Dr. Short.

13. The medical record for this visit again notes that Whittier still had "prostatic enlargement." It further states that Whittier "[h]ad an elevated PSA in the past" and the plan included to "recheck with current lab work."

14. Despite actual knowledge that Whittier had now carried a dangerous PSA result for more than a year, CMMC did not order or perform any follow up testing or evaluation or refer Whittier to a urologist. Indeed, CMMC through its statements and conduct led Whittier to believe that his PSA test results were normal and required no additional follow up.

15. From 2017 through 2020, Whittier continued to receive his primary care from CMMC.

16. In 2017 or 2018, CMMC closed its Mechanic Falls location and transferred existing patients, including Whittier, to other CMMC locations. CMMC transferred Whittier to its Minot Avenue location.

17. During this time, CMMC upgraded its electronic medical record system. During the upgrade, CMMC negligently failed to import certain prior laboratory results, including Whittier's 2016 PSA test result, into the test results dashboard of its new electronic medical records system.

18. CMMC's failure to properly import these tests results continued until 2020, depriving doctors of the key laboratory and test results necessary to properly evaluate and treat its patients.

19. As a result of CMMC's continuing negligence and acts of concealment during 2017-2020, although CMMC was aware of the elevated PSA results from 2017 to 2020, it failed to report those results to Whittier, order follow up evaluation or testing or refer him to a urologist, including during in-person or telephonic visits on April 16, 2018, September 27, 2018, November 1, 2018, August 6, 2019, August 12, 2019, and May 19, 2020.

20. On January 21, 2019, CMMC entered an order for a PSA screening test, but the order was cancelled.

21. On May 19, 2020, Whittier had a telehealth visit with CMMC and its employed physician, Dr. James Ostrander, DO. The record of that visit notes that Whittier "has been in the Carolinas for the last 6 months" and he "just got a call from his primary down there and his PSA was elevated at 9.5."

22. As a result of this elevated PSA, Dr. Ostrander referred Whittier to CMMC's urology practice for further evaluation.

23. On June 30, 2020, Whittier presented to Central Maine Urology, where he was seen by Catherine Salk, NP, under the license of Evan Dunn, MD.

24. The record of that visit states that Whittier had just returned from North Carolina and had received a PSA test result of 9.5.

25. The June 30, 2020, Central Maine Urology note further states: "There is a PSA from 2016 that was 12.70." Whittier "reports he never knew about it and was not addressed." A prostate biopsy was ordered.

26. The prostate biopsy was performed on August 7, 2020. The pathology report, dated August 10, 2020, confirmed that Whittier had prostate cancer, Gleason grade 7 (intermediate), Prognostic groups 2 and 3.

27. On November 12, 2021, Whittier underwent a prostatectomy. Unfortunately, by the time of the prostatectomy, Whittier's cancer had spread beyond the prostate, so that prostatectomy did not eliminate the cancer.

28. Following the prostatectomy, Whittier was started on a course of Lupron injections and radiation.

29. Had Whittier's cancer been properly diagnosed and treated in 2016 when it was first identified on PSA testing, it likely would have been cured by radical prostatectomy. Because of the delay in diagnosis and treatment caused by CMMC's negligence, however, Whittier likely with die from prostate cancer.

### **Count I: Medical Malpractice**

30. Plaintiffs reallege the previous paragraphs.

31. Defendant CMMC owed Plaintiff Whittier a duty to practice safe and reasonable medicine within standards of acceptable medical care. This duty extended not just to licensed medical providers but also to medical assistants, staff, information technology professionals and others who were employed by CMMC and which the hospital relied upon to carry out responsibilities and support critical systems necessary for patient care.

32. Defendant breached this duty for reasons included but not limited to the following:

- a. Failure to reasonably manage his enlarged prostate.
- b. Failure to communicate the results of the PSA tests.
- c. Failure to follow up on dangerously elevated PSA levels.
- d. Failure to appropriately monitor PSA and prostate health.
- e. Failure to make reasonable referrals for testing and treatment.
- f. Failure to refer to a specialist in urology.
- g. Failure to document the medical record accurately.
- h. Failure to manage, implement, maintain and service medical record keeping services appropriate for tracking and reporting laboratory and test results to providers who needed that information to properly evaluate and treat patients;
- i. Failure to share and communicate critical information between and among medical providers.
- j. Failure to have adequate policies, procedures, training, oversight and supervision to ensure that the standard of safe and reasonable medical care

was met.

33. As a direct and proximate result of Defendants' negligence, Plaintiffs have been harmed by the delay in diagnosing and treating Mr. Whittier's prostate cancer and have incurred damages in the form of past and expected future medical and life care expense, lost earnings and earning capacity, pain, suffering, emotional distress, lost enjoyment of life, permanent injury and impairment and curtailed future life expectancy.

### **Count II: Fraudulent Concealment**

34. Plaintiffs reallege the preceding allegations.

35. At all times, Defendant knew that, as Whittier's medical provider, there existed a legal and equitable duty to disclose to Whittier all material medical information that he would need to make safe and reasonable medical decisions for his own care and treatment.

36. The test result showing a dangerously high PSA level of January 29, 2016 was material information that Plaintiffs needed to make safe and reasonable medical decisions.

37. Defendant failed to disclose the PSA test results with the knowledge and intention that such failure would induce Whittier to act or refrain from acting on such non-disclosure.

38. Plaintiffs relied upon the non-disclosure of the PSA test results to their detriment.

39. As a direct and proximate result of Defendants' fraudulent concealment, Plaintiffs have been harmed by the delay in diagnosing and treating Mr. Whittier's prostate cancer and have incurred damages in the form of past and expected future medical and life care expense, lost earnings and earning capacity, pain, suffering, emotional distress, lost enjoyment of life, permanent injury and impairment and curtailed future life expectancy.

### **Count III: Continuing Negligent Treatment**

40. Plaintiff realleges the preceding allegations.

41. Defendant CMMC is a health care company organized as a business corporation.

42. CMMC had an ongoing duty from January 29, 2016 to disclose to Plaintiffs the results of the January 29, 2016 PSA test and to act with reasonable care. Such duty included a duty to review and understand Whittier's medical history and testing results; to accurately document his medical history; to correlate his medical history with his clinical presentation, including ongoing enlarged prostate; to manage its electronic medical records to accurately record, track and report test medical information including test results, and to communicate the medical history to Whittier and other providers who needed this information.

43. CMMC committed acts of negligence within the three-year period of the date of filing of this Notice, and as such, pursuant to the "continuing negligent treatment" doctrine, CMMC is legally responsible for its negligent acts occurring before the three-year period.

44. As a direct and proximate result of Defendants' continuing negligent treatment, Plaintiffs have been harmed by the delay in diagnosing and treating Mr. Whittier's prostate cancer and have incurred damages in the form of past and expected future medical and life care expense, lost earnings and earning capacity, pain, suffering, emotional distress, lost enjoyment of life, permanent injury and impairment and curtailed future life expectancy.

#### **Count IV: Loss of Consortium**

45. Plaintiff realleges the preceding allegations.

46. For the reasons set forth above, Nancy Whittier has and will suffer the loss of care, comfort, and companionship of her husband, Michael Whittier.

WHEREFORE, Plaintiffs request judgment against Defendant, compensatory damages, interest, costs and such other and further relief as this Court deems just and appropriate.



Dated: March 31, 2022

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