COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss **SUPERIOR COURT**
CIVIL ACTION
2481CV00465

JOHN BETTENCOURT

Plaintiff,

v.

JORGE GONZALEZ, M.D. and CHELMSFORD PRIMARY CARE

Defendants

COMPLAINT AND DEMAND FOR JURY TRIAL

The Parties

1. Plaintiff John Bettencourt is a resident of Middlesex County, Massachusetts.

2. Defendant Jorge E. Gonzalez, M.D. is a physician licensed to practice medicine in the State of Massachusetts and regularly engages in the practice of medicine in Middlesex County, Massachusetts.

3. Defendant Chelmsford Primary Care ("CPC") is a Massachusetts Limited Liability Corporation (LLC) with a principal office located at 2 Meeting House Road, Chelmsford, Massachusetts 01824.

4. At all relevant times, Defendant Dr. Gonzalez was employed by Defendant Chelmsford Primary Care (CPC).

Factual Background

5. On April 18, 2018, Dr. Jorge Gonzalez and CPC staff saw John for an annual physical.

6. Dr. Gonzalez assessed John with "cervicalgia," a diagnosis of symptoms that dated back to June 26, 2012, when John first reported tingling and numbness in both arms and

hands, and Dr. Gonzalez diagnosed "numbness," prescribed Amitriptyline, and ordered an electromyogram, which was negative.

7. With respect to John's persistent "cervicalgia," it is unusual for a young person to have ongoing neurological symptoms.

8. John's persistent symptoms were consistent with several spine or disease processes, including bony processes or soft tissue processes (including spinal tumor) which require imaging and advanced imaging studies to confirm or rule out.

9. Despite John's history and symptoms, Defendants did not order imaging.

10. On August 4, 2021, John was seen at CPC by Nurse Practitioner Anna Murphy. John reported "arm hand tingling for a few years getting a little worse (possible carpal tunnel)."

11. NP Murphy noted that John's hand pain radiated to his forearms that he suffered from numbness and tingling of his thumbs, index, middle and ring fingers, and had a weakened grip.

12. NP Murphy further noted that John complained of left-sided neck pain.

13. In physical examination, NP Murphy documented diminished grip strength, diminished sensation in three medial fingers, and mild swelling of the MCP and IP joints.

14. John's mother Pam sent an electronic message to CPC on August 24, 2021. Pam noted that John had seen NP Murphy recently "for the arm pins and needles that he has been experiencing for years."

15. Pam stated that John "has a very stiff like grip with his hands and I have noticed that his gait seems to be a little floppy when he walks."

16. Pam stated that John "also had an incident of urine leaking this weekend."

17. Pam stated that she was concerned about Multiple Sclerosis and asked: "could we please send him to a Neurologist as well ASAP?"

18. In response to the message, CPC called John because they did not have an authorization that allowed them to speak directly to Pam.

19. During the call, John reported that he has had hand numbness "for years" and the abnormal/floppy gait "is constant for over a year."

20. John described having some "urinary urgency," but stated that the only episode of urinary incontinence happened once over the weekend while he was drinking alcohol, and he "feels that is not an issue except urgency which he feels is poor bladder control."

21. John had a telehealth visit with Dr. Gonzalez on October 7, 2021, where he complained of ongoing weakness and numbness of his upper extremities with pain on the left side of his neck similar to what he reported in August.

22. John saw Dr. Gonzalez again on November 3, 2021 for an annual physical.

23. Dr. Gonzalez stated that John had "no complaints." Dr. Gonzalez documented normal musculoskeletal and neurological exams.

24. However, on assessment, Dr. Gonzalez continued to diagnose John with persistent numbness and cervicalgia.

25. On December 22, 2021, John returned to Dr. Gonzalez.

26. The history recorded by Dr. Gonzalez mirrored that documented on August 4 and October 7: numbness in the hands radiating into the forearms, numbness and tingling of the middle three fingers, left-sided neck pain, reduced grip strength and swelling in the hand joints.

27. On physical exam, as he had in the past, Dr. Gonzalez recorded diminished grip strength, sensory deficits in middle three fingers and mild swelling of the MCP and IP joints.

28. Pam wrote to Dr. Gonzalez on December 28, 2021.

29. She noted that the rheumatologist was concerned about John's "drooping right shoulder" and "lack of mobility." Pam observed that John's "symptoms seem to be getting worse daily."

30. A CT of John's head was performed on January 18, 2022. It was read as normal.

31. On February 3, 2022, John had another telehealth appointment with Dr. Gonzalez.

32. The medical record repeats the same history as the prior records.

33. Although this was a phone appointment, Dr. Gonzalez documented physical examination findings, repeating the findings of the past several visits.

34. On February 14, 2022, John saw Dr. Min Zhu, Neurologist with New England Neurological Associates PC.

35. Dr. Zhu noted that John "had bilateral hand pain and tingling sensation for about 10 years." John had "gradually noticed weakness in right arm, clumsiness in right hand. For instance, when he grasps a pen, he uses to whole hand instead of thumb and index finger."

36. Dr. Zhu noted that John has also suffered "decreased mobility of right shoulder." She noted that John "used to [work] [sic]but has to change job due to right arm weakness."

37. Dr. Zhu also noted that John "has gradually noticed leg stiffness and subtle balance difficulty, urinary urgency," and reported "sporadic falls." John's mother "noticed his right foot tended to turn inward when he walks."

38. Dr. Zhu stated that John was seen by Dr. Milosavljevic in 2012 "when hand symptoms started."

39. Dr. Zhu observed that, in 2012, a "cervical MRI was mentioned but never ordered."

40. Dr. Zhu diagnosed John with cervical myelopathy, noting that his exam "is significant for mild right-side spastic hemi-weakness, spastic gait, along with several myelopathic signs including brisk DTRs, sustained bilateral clonus, and Hoffman's sign, highly suspicious for cervical myelopathy. His symptom onset can be traced back to 2012."

41. Dr. Zhu indicated that she would request a cervical MRI with and without contrast "ASAP."

42. The MRI was performed and demonstrated a large ependymoma extending from C2 to C4 within John's cervical spinal cord.

43. On February 23, 2022, John followed up with Dr. Zhu, and Dr. Zhu noted that "neurosurgery consultation would be next step, although prognosis is guarded." Dr. Zhu further noted that John and his mother "were understandably emotional."

44. On February 28, 2022, John was evaluated by neurosurgeon, Bruce Cook, MD. Dr. Cook noted that, on imaging, the mass "appears to be well demarcated" and "takes up contrast uniformly."

45. On neurological exam, Dr. Cook documented John's reflexes 3+ and brisk in the upper extremities; knee reflexes 3+ and brisk; ankle reflexes 4+ with sustained clonus bilaterally. Dr. Cook found John's plantar responses extensor (indicative of potential central nervous system injury). Dr. Cook found a Romberg sign present (indicative of undermined proprioception/sense

of balance), and noted that John could not tandem walk. Dr. Cook found that John had significant weakness through both upper extremities, right worse than left. Dr. Cook explained the risks and alternatives of surgery, cervical laminectomy, and excision of tumor.

46. On March 18, 2022, John was admitted to Newton-Wellesley Hospital for C2-C4 laminectomy, foraminotomy with decompression of the spinal cord, performed by Dr. Hiren Patel, D.O.

47. Dr. Patel dissected down to the spinal cord and exposed an intramedullary tumor. According to the operative note, the "tumor was carefully dissected from its anterior, posterior, ventral, and lateral margins carefully with micro instruments and continuous neuromonitoring. Hemorrhagic cyst was evacuated, and tumor folded into itself. The tumor was carefully resected."

48. John was transferred to the intensive care unit following surgery for neuro monitoring and blood pressure control.

49. The surgical pathology report described a 3 x 2 x .4 cm tissue fragment.

50. On March 22, 2022, John was transferred to Spaulding for acute inpatient rehabilitation. John remained at Spaulding for almost a month, until April 19, 2022.

51. At Spaulding providers noted that the tingling in John's hands had improved since the surgery. The strength in all of John's extremities had also improved since surgery, more noticeably in the left hand.

52. John participated in physical and occupational therapy during his admission to Spaulding.

53. On discharge, PT reported that John still required supervision in rolling to his left and right; minimum assist with supine to sit activities; and moderate assist with sit to stand activities. John required a rolling walker for ambulation.

54. OT reported that John required moderate assistance with toileting and lower body dressing, and minimum assistance with upper body dressing. John required supervision for shower and tub transfers and minimum assistance for bathing and showering.

55. Following discharge from Spaulding, John continued to participate in physical and occupational therapy on an outpatient basis.

56. John currently suffers from incomplete tetraplegia (loss of motor and sensory function of all four extremities due to cervical spinal cord injury), neurogenic bladder (loss of bladder function due to neurological injury), neurogenic pain, neurogenic bowel dysfunction, neurogenic sexual dysfunction, respiratory insufficiency (at risk for respiratory infections), spasticity, absent proprioception (perception of anatomical position) in his bilateral fingers and hands, risk for bone loss, and impairment of the ability to perform activities of daily living.

57. These injuries are permanent. John will require medical and life care services for the rest of his life.

58. John is currently 32 years old.

Count I: Medical Negligence

59. Plaintiff alleges the preceding allegations as if set forth fully herein.

60. Defendants owed Plaintiff a duty to reasonable medical care consistent with standards of care for primary care medicine under the same or similar circumstances.

61. Defendants breached the duty for reasons including but not limited to the following:

a. Defendants unreasonably failed to diagnose a cervical spinal cord tumor that grew slowly over many years and eventually compressed John's spinal cord resulting in permanent injury to his spinal cord.

b. Defendants unreasonably failed to recognize and act upon neurological signs and symptoms that are not typical or normal for a young man like John.

c. Defendants unreasonably failed to order timely and appropriate imaging of John's spine to confirm or rule out a dangerous spinal cord disease or process.

d. Defendants unreasonably failed to order timely referral to appropriate medical specialists for further workup, evaluation, and treatment.

e. Defendants unreasonably diagnosed John with carpal tunnel syndrome, despite this diagnosis being inconsistent with John's presentation and the results of prior testing.

f. Defendants failed to develop a reasonable differential diagnosis.

g. Defendants failed to listen to the concerns of their patient and his family, or to take a careful, focused, and appropriate medical history.

h. Defendants lacked sufficient standards, policies, practices, and procedures to ensure reasonable supervision, practice standards, quality of care, and medical decision making.

i. Defendants lacked sufficient, qualified, personnel to provide reasonable medical care and effectuate reasonable medical decision making.

j. Defendants lacked sufficient and necessary communication between and among staff, doctors, outside specialists, and their patient to understand John's medical condition and formulate a reasonable plan of care.

62. As a direct and proximate result of the breach of the duty outlined above, Plaintiff has suffered severe, ongoing, and permanent effects of spinal cord injury, including weakness,

paralysis, sensory deficits, pain, and immobility. Plaintiff continues to require medical treatment and assistance with activities of daily living, which he will require for the rest of his life.

WHEREFORE, Plaintiff requests judgment against Defendants and damages in an amount to be determined by a jury, including compensatory damages, past and future medical expenses, loss of earnings and earning capacity, emotional distress, lost enjoyment of life, costs, attorneys' fees, and such other and further relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on issues so triable.

Dated: February 16, 2024

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