

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

LEE THOMAS, As Parent and Next  
Friend of L.T., A Minor, And  
LEE THOMAS, Individually,

Plaintiff,

V.

JERRY E. BERLAND, M.D.,  
JESSICA D. MCCLUSKEY, M.D.,  
A/K/A JESSICA MCCLUSKEY CRANE  
AND THOMAS EYE GROUP, P.C.

Defendants.

**GRANTED**

CIVIL ACTION FILE NO.  
15EV000733G

JURY TRIAL DEMANDED

**CONSOLIDATED PRE-TRIAL ORDER**

The following constitutes a Consolidated Pre-Trial Order entered in the above styled case after conference with counsel for the parties:

- The name, address and phone number of the attorneys who will conduct the trial are as follows:**

Plaintiff: Curtis J. Dickinson  
Laura M. Barron  
The Dickinson Law Firm, LLC  
1198 Buckhead Crossing, Suite F  
Woodstock, GA 30189  
Phone (770) 924-8155  
Fax (770) 924-4585  
[curtis@dickinsonlaw.net](mailto:curtis@dickinsonlaw.net)  
[laura@dickinsonlaw.net](mailto:laura@dickinsonlaw.net)

**For Defendants Jerry E. Berland, M.D.; Jessica D. McCluskey, M.D. ak/a  
Jessica McCluskey Crane; and Thomas Eye Group, P.C.**

Robert P. Monyak  
Melissa B. Johnson  
Peters & Monyak, LLP  
Blackstone Center  
1777 Northeast Expressway, NE, Suite 100  
Atlanta, GA 30329

Phone: (404) 607-0100  
Fax: (404) 607-0465  
Email: [rmonyak@petersmonyak.com](mailto:rmonyak@petersmonyak.com)  
[mjohnson@petersmonyak.com](mailto:mjohnson@petersmonyak.com)

2. **The estimated time required at trial is: 7-8 days**
3. **There are no motions or other matters pending for consideration by the court  
except as follows:**

**For Plaintiff:**

Plaintiff's Motions In Limine.

Plaintiff's Deposition Designations and objections to Defendants' deposition  
designations.

Plaintiff reserves the right to *voir dire* any of the defense experts and subsequent  
treating medical personnel outside the presence of the jury on the extent of their trial  
testimony.

Plaintiff reserves the right to file trial briefs on anticipated legal issues.

**By the Defendants:**

Defendants' Motions in Limine;

Defendants' Deposition Designations; and

Defendants' Objections to Plaintiffs' Deposition Designations.

The Defendants reserve the right to file trial briefs addressing particular issues, as necessary. In addition, the parties anticipate filing a consent motion authorizing (1) access to the courtroom before trial by audio-visual staff for set-up purposes, and (2) early access to the courtroom by the parties and counsel during the trial.

**4. The jury will be qualified as to the relationship with the following:**

**By the Plaintiff:**

- 1) Lee Thomas
- 2) L.T. a minor
- 3) Laura Thomas
- 4) Thomas Eye Group, P.C.
- 5) Jerry E. Berland, M.D.
- 6) Jessica D. McCluskey, M.D.
- 7) Amy Dragiceanu
- 8) Megan Rogers
- 9) Beverly Rogers, M.D.
- 10) Blaine Cribbs, M.D.
- 11) Danielle Jules Mitchell
- 12) Debbie King, CFNP
- 13) Donna Fearing, M.D.
- 14) Mitchell Fineman, M.D.

- 15) Alan Franklin, M.D.
- 16) Joseph Hilinski, M.D.
- 17) Hong Ho
- 18) G. Baker Hubbard, III, M.D.
- 19) Juanita Jeffries
- 20) Robert Jerris, PhD
- 21) Harold Koller M.D.
- 22) Susan McCart
- 23) Zane Pollard, M.D.
- 24) Rodney Roeser
- 25) Steven Yeh, M.D.
- 26) Officers, directors, shareholders, policy holders, and employees of MAG Mutual Insurance Company
- 27) Plaintiff's counsel: Curtis J. Dickinson and Laura M. Barron
- 28) Defendants' counsel: Robert P. Monyak and Melissa B. Johnson
- 29) Any attorney with PETERS & MONYAK, LLP.

**By the Defendants:** The jury will be qualified as to relationships with the

following:

- (1) Lee Thomas;
- (2) Laura Thomas;
- (3) L.T. Thomas;
- (4) Curtis J. Dickinson, Esq.;
- (5) Laura M. Barron, Esq.;
- (6) The Dickinson Law Firm, LLC.;

- (7) Jerry E. Berland, M.D.;
- (8) Jessica D. McCluskey, M.D. a/k/a Jessica McCluskey Crane;
- (9) Thomas Eye Group, P.C.; and
- (10) Officers, directors, and employees of MAG Mutual Insurance Company.

**5. Discovery**

A. All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

B. Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or non-joinder of any parties.

**6. The following is the Plaintiff's brief and succinct outline of the case and contentions:**

In this medical malpractice action, Defendants failed to appropriately and timely test, diagnose, and treat L.T., a twelve-year old boy. Defendants' negligent care and treatment of L.T. during the time of the April 9<sup>th</sup> through April 26<sup>th</sup> caused or contributed to the entire loss of sight and function of L.T.'s right eye.

On March 29, 2013, L.T. was outside in the yard with his family doing yard work when he felt the sensation of something in his right eye. Soon afterwards, L.T. began experiencing itching and discomfort in his right eye. A small area of L.T.'s right eye became red. Over the weekend, that redness continued. On Sunday, L.T.'s right eyelid

was noticeably swollen, and he told his mom that it hurt. She gave him Tylenol and took him to his pediatrician's office the next day—April 1, 2013. L.T. was examined by Debbie King, CFNP, who performed a Fluorescein, and Nurse King noted that L.T. had “mild micro abrasions” and allergy. L.T. was prescribed Gentak, an antibiotic ointment, and Pataday eye drops.

L.T.'s symptoms continued, so on April 9, 2013, his mother took him to Thomas Eye Group. L.T. was examined Dr. Berland, who noted, “Sudden onset edema and FB sensation while working in yard about 10 days ago. FB sensation resolved followed by itching. Swelling persists, no pain.” Dr. Berland's assessment was “environmental allergy vs. lymphangioma.” Dr. Berland prescribed Pred Forte, a steroid, four times a day for one week, instructing that L.T. return in one week for a comprehensive examination.

On April 16, 2013, L.T.'s dad, Lee Thomas, took L.T. to his one-week follow-up appointment with Dr. Berland, who described L.T.'s condition as “Swelling or Mass of Eye.” The redness had grown from a small area to the entire half of his right eye. By now, L.T.'s right eye had been partially red with varying degrees of swelling and pain for seventeen (17) consecutive days. Dr. Berland noted that L.T.'s dad was concerned about the continued redness in L.T.'s right eye. Dr. Berland noted that swelling had improved and directed that the Pred Forte be reduced to twice a day for the next week and then once a day for the succeeding week. L.T. was told by Dr. Berland to return in two weeks. Dr. Berland did not perform or order any tests to rule out infection.

L.T.'s condition worsened significantly, so on April 22, 2013, Mr. Thomas took L.T. to Thomas Eye Group. The redness had grown from half of his right eye to his entire eye. By this date, L.T.'s right eye had been red with varying degrees of swelling and pain for twenty-three (23) consecutive days. It was noted under "Review of Systems" that L.T. had seasonal allergies and "[f]ungus on nail of toe." Dr. Berland noted new symptoms and findings, which are signs of acute inflammation.

One of the most serious causes of acute inflammation, in the eye, if not *the* most serious cause, is endophthalmitis: an infection inside the eye that can cause blindness. Endophthalmitis can result from a bacteria, fungus, or virus entering the eye.

During his April 22, 2013 exam of L.T.'s right eye, Dr. Berland noted a sub-optimal view of L.T.'s retina. Dr. Berland's assessment was that L.T. had iritis, which is nonspecific inflammation of the iris. Without knowing the source of the inflammation, Dr. Berland significantly increased the dosage of steroids for L.T. Dr. Berland also ordered a non-urgent lab work-up for uveitis, which is inflammation inside part of the eye due to noninfectious causes. L.T. was sent back to his pediatrician for lab work and was instructed to return to Dr. Berland three days later. Dr. Berland did not perform or order any stat or urgent tests to rule out infection. Dr. Berland did not recommend or order that L.T. be examined by a retina specialist or any other physician.

On April 25, 2013, Mr. Thomas brought L.T. back to Thomas Eye Group, because L.T.'s symptoms had worsened. By this date, L.T.'s right eye had been red with varying degrees of swelling and pain for twenty-six (26) consecutive days. Dr. Berland noted increased right upper lid swelling and ocular discharge. L.T.'s vision had significantly

decreased from 20/40 to just light perception in his right eye. Dr. Berland did not recommend or order that L.T. be examined by a retina specialist that day. Rather, Dr. Berland called Dr. Jessica McCluskey, a retina specialist working in another location of Thomas Eye Group. In L.T.'s medical records, Dr. Berland noted that he "[d]iscussed with Dr. Jessica McCluskey in detail. She feels this represents uveitis, NOT endophthalmitis. She suspects rheumatic, not infectious etiology due to recent normal fundus examination. She feels [history] of trauma is unrelated. Adjusting meds per recommendation." In their telephone conversation, Dr. McCluskey told Dr. Berland that she did not need to see L.T. that day.

Dr. McCluskey made recommendations and conclusions about L.T.'s condition, diagnosis, and treatment without examining L.T. Neither Dr. Berland nor Dr. McCluskey performed or ordered any tests to rule out infection. Dr. Berland and Dr. McCluskey made conclusions about L.T.'s condition, diagnosis, and treatment without reviewing the results of the tests non-urgently ordered by Dr. Berland on April 22, 2013. Dr. Berland and Dr. McCluskey significantly increased L.T.'s steroids even further.

On April 26, 2013, both of L.T.'s parents took him to Thomas Eye Group to see Dr. McCluskey. By this date, L.T.'s right eye had been red with varying degrees of swelling and pain for twenty-seven (27) consecutive days. It was noted under "Review of Systems" that L.T. had seasonal allergies and "[f]ungus on nail of toe." Dr. McCluskey noted that L.T.'s right eye was swollen closed, and that he had light sensitivity in his right eye. Upon examination, Dr. McCluskey noted dense fibrinous material in the anterior chamber with dense vitreous debris. Dr. McCluskey diagnosed L.T.'s condition



as panuveitis, which is inflammation of all layers of the eye due to a noninfectious source. She noted that “foreign body april 1, 2013 that is likely unrelated.” Dr. McCluskey ordered a B-scan ultrasound of the eye, prescribed Valtrex, an antiviral drug, and made a same-day referral to vitreo-retinal surgeon, Dr. Steven Yeh, at Emory Hospital.

L.T’s parents took him that day to be examined by Dr. Yeh. His impression was: “Hypopyon uveitis, right eye, worsening over past week. [L.T.] has developed a hypopyon uveitis that is concerning for an infectious process. Given his history of eye redness after outside activities, a fungal etiology is a possibility. Other considerations include bacterial and, less likely, viral.” Dr. Yeh recommended hospitalization at Children’s Hospital at Egelston for an intravitreal tap and injection of antibiotics into the eye. Dr. Yeh also recommended that any systemic corticosteroids be discontinued.

Ultimately, fungal endophthalmitis developed in L.T.’s right eye. L.T.’s physicians determined that the damage caused by the infection was so great that the retina had become detached and could not be reattached. As a result of the permanently detached retina, L.T.’s eye was dying and would steadily deteriorate over time. Over the months following, L.T.’s right eye atrophied in his eye socket, and the lid of his right eye closed. L.T. has been permanently injured and has lost all use and function of his right eye. He now wears a scleral shell, which is an ocular prosthesis that he wears over his existing blind and shrinking right eye.

**7. The following is the Defendant’s brief and succinct outline of the case and contentions:** Dr. Jerry Berland is a local pediatric ophthalmologist. He is Board

Certified in ophthalmology and fellowship trained in pediatric ophthalmology. Dr. Jessica Crane is a local retina specialist. She is Board Certified in ophthalmology, and she is a fellowship trained retina specialist. Dr. Berland and Dr. Crane are employed by the Thomas Eye Group, P.C.

Dr. Berland cared for L.T. Thomas, who was then 12 years old, on April 9, April 16, April 22, and April 25, 2013. On April 9, 2013, L.T.'s right eye was itching and red, and his lids were swollen. About 10 days before, he had been raking leaves in his yard and felt like something had gotten into his eye. Dr. Berland examined L.T. and thought he most likely had an allergy – L.T. had a history of seasonal allergies. Dr. Berland prescribed eye medicine and asked for L.T. to come back for follow-up in one week.

On April 16, L.T. came back and was again seen and examined by Dr. Berland. L.T.'s eye was improved. Dr. Berland still believed it likely that L.T. was having allergies. Dr. Berland changed his medications and asked for L.T. to come back for follow-up.

On April 22, L.T. came back and was again seen by Dr. Berland. When Dr. Berland examined L.T.'s right eye, he saw inflammation in the front chamber of the eye for the first time, and diagnosed a condition known as iritis. Dr. Berland prescribed treatment for the iritis, ordered a battery of tests to see what might be causing L.T.'s issue, and spoke with L.T.'s pediatrician. He asked that L.T. be brought back in 3 days for follow-up.

On April 25, L.T.'s right eye was unexpectedly worse and his vision was very poor. Dr. Berland examined him and was concerned that he now had inflammation in

both the front and back chambers of the eye. Dr. Berland telephoned Dr. Jessica Crane, a retina specialist with the Thomas Eye Group who was at a different office, for a consultation. Dr. Berland told Dr. Crane about L.T. and they both agreed that L.T. most likely had a condition known as pan-uveitis. Dr. Berland and Dr. Crane decided to prescribe medication to address that condition, and arranged for L.T. to see Dr. Crane the next morning.

On April 26, L.T. was examined by Dr. Crane. He was somewhat improved but still had inflammation in both chambers of his eye. Dr. Crane tested and confirmed that L.T. did not have a retinal detachment, and arranged to have him transferred to the care of Dr. Steven Yeh, a specialist in treating uveitis. Dr. Yeh saw L.T. later that same day and took over his care, with others from The Emory Clinic. Unfortunately, their further efforts to treat L.T.'s condition were not successful and L.T. suffered a retinal detachment and lost vision in his right eye.

Dr. Berland and Dr. Crane did not commit medical malpractice. They were not required to diagnose a rare condition known as infectious exogenous endophthalmitis. That condition can occur when an infection finds its way into the inside of a patient's eye, because the eyeball was punctured or penetrated. Here, there was no evidence that L.T.'s right eye was ever punctured. He had not had surgery on his right eye, he was not in an accident, and no one ever described anything happening to L.T. that sounded like his right eyeball had been punctured. L.T.'s right eye was examined a few days after he had been raking leaves at his pediatrician's office, and no sign of any puncture was found. Dr. Berland likewise examined L.T. more than once and never saw any sign that

L.T.'s right eyeball had been punctured. And, the way L.T.'s condition progressed between April 9 and April 25 did not appear to be a case of infectious endophthalmitis.

The patient probably did not have infectious endophthalmitis – testing at Emory for this infection, for example, was negative. It is more likely that L.T. had pan-uveitis, which is what Dr. Berland and Dr. Crane believed and treated.

Dr. Berland and Dr. Crane acted reasonably in caring for L.T. Thomas. They did not commit medical malpractice and should not be found liable to the plaintiffs.

**8. The issues for determination by the jury are as follows:**

**By the Plaintiffs:**

- 1) Whether the conduct of the Defendants, individually and/or severally violated the applicable standard of care?
- 2) Whether the negligence of the Defendants, individually and/or severally, caused or contributed to the injury suffered by Plaintiff?
- 3) What amount of past general and special damages have been suffered by Plaintiff and what amount of general and special damages will Plaintiff suffer in the future.

**By the Defendants:**

Jerry E. Berland, M.D.; Jessica D. McCluskey, M.D. a/k/a Jessica McCluskey Crane; and Thomas Eye Group, P.C.:

- (1) Whether the care and treatment provided by Jerry Berland, M.D. and/or Jessica Crane, M.D. complied with the applicable standard of care;
  - (2) Whether any act or omission by Jerry Berland, M.D. and/or Jessica Crane, M.D. proximately caused the alleged injuries to L.T. Thomas; and
  - (3) Compensatory damages, if any.
9. Specifications of negligence including applicable code sections are as follows:

**By the Plaintiff:**

The Defendants, individually and/or severally, were negligent in the diagnosis, treatment, and care which they individually and/or severally rendered to L.T., and this negligence was the proximate cause of his general and special damages he has suffered, including the entire loss sight in L.T.'s right eye.

Defendants Dr. Berland and Dr. McCluskey individually and/or severally failed to exercise that degree of care and skill required to be exercised by physicians generally under like and similar circumstances with respect to the diagnosis, care, and treatment of L.T. See O.C.G.A. § 51-1-27. Contrary to this duty, the Defendants individually and/or severally were negligent in the examination, diagnosis, treatment, and care which they individually and/or severally rendered to L.T. As a result of the negligence of the

Defendants, individually and/or severally, L.T. has suffered general, special, and permanent injury.

Including but not limited to:

1. On April 9, 2013, Dr. Berland should have followed L.T. more closely, considering his eye had been red and his eye lid swollen for 10 consecutive dates; should have required a 3-day return to the Thomas Eye Group and should have utilized available tests to determine the etiology of L.T.'s condition; should have taken a culture of the conjunctiva (for bacteria, virus, and fungus); and should have prescribed L.T. a high dose broad spectrum antibiotic.
2. On April 16, 2013, Dr. Berland should have recognized the severity of the intra-ocular inflammatory reaction and diagnosed what was the most serious and obvious condition causing the signs and symptoms, namely infectious Endophthalmitis; should have taken a culture of the conjunctiva; should have prescribed L.T. a high dose broad spectrum antibiotic.
3. On April 22, 2013, Dr. Berland should have recognized the signs of acute inflammation of which Endophthalmitis is the most dangerous condition; failed to take steps to rule out Endophthalmitis, which, if found, is a medical emergency; should have ordered a PCR test (for fungus) via an anterior chamber tap; should have used Atropine, a stronger dilating agent; should not have increased the Pred Forte without having antibiotic coverage; should have prescribed L.T. a high dose broad spectrum

antibiotic; should have had a same-day phone consult with an infectious disease doctor; should have had a same day in-person consultation with a retinal specialist; and should have performed a B-scan.

4. On April 25, 2013, Dr. McCluskey should have seen L.T. immediately that day; should have recommended a B Scan; should have done further testing to determine the etiology of the inflammation; should not have ruled out Endophthalmitis; should not have increased steroid dosage orally and topically without examining L.T. and ruling out the possibility of a fungal infection; should not concluded that yhe history of trauma was unrelated without examining L.T.; and failed to make an adequate differential diagnosis.

**By Defendants:**

Jerry E. Berland, M.D.; Jessica D. McCluskey, M.D. a/k/a Jessica McCluskey Crane; and Thomas Eye Group, P.C.:

O.C.G.A. § 51-1-27 (malpractice liability generally).

Jerry Berland, M.D. and Jessica Crane, M.D. deny that they were negligent.

10. If the case is based on a contract, either oral or written, the terms of the contract are as follows:

Not applicable.

11. The types of damages and the applicable measure of those damages are stated as follows:

**By Plaintiff:**

Past and future medical expenses and past and future pain and suffering.

Damages for the pain and suffering of L.T. as measured by the enlightened conscience of the jury.

**By Defendants:**

Defendants deny that plaintiffs are entitled to any damages.

12. If the case involves divorce, each party shall present to the court at the pretrial conference, the affidavits required by Rule 24.2:

Not applicable.

13. The following facts are stipulated:

**By Plaintiff:**

Pre-Trial Stipulations of the parties:

1. Parties may use copies of records in lieu of originals.
2. Parties do not challenge the admissibility of medical records on grounds of authenticity subject to review.



3. The parties agree to sequestration of all non-party witnesses unless and until the witness is excused.
4. The parties will, in good faith, attempt to advise each other and the Court at the close of trial each day which witness(es) they intend to call the next trial day.

**By Defendants:**

Jerry Berland, M.D. and Jessica Crane, M.D. were acting within the course and scope of their employment with Thomas Eye Group, P.C. when they provided care and treatment to L.T. Thomas.

14. The following is a list of all documentary evidence and physical evidence that will be tendered at the trial by the Plaintiff or Defendants. Unless noted, the parties have not stipulated as to the authenticity of each of the documents. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

**(a) By Plaintiff**

1. Selected Portions of the Medical Records of L.T.;
2. Medical Records of L.T. from Thomas Eye Group, P.C.;
3. Medical Records of L.T. from Pediatrics and Adolescent Medicine, P.A.;
4. Medical Records of L.T. from Laboratory Corporation of America, a.k.a. LabCorp;
5. Medical Records of L.T. from Children's Healthcare of Atlanta;
6. Medical Records of L.T. from the Children's Physician Group;

7. Medical Records of L.T. from The Emory Clinic, Inc.;
8. Medical Records of L.T. from Emory Eye Center;
9. Medical Records of L.T. from Angela Cotton, B.C.O. & Assoc., Inc.
10. Medical Records of L.T. from Williams Orthodontics;
11. Medical Records of L.T. from Village Podiatry Centers;
12. Prescription records from CVS Pharmacy;
13. Prescription records from Kroger Pharmacy;
14. Prescription records from Rite Aid Pharmacy;
15. Prescription records from Walgreens Pharmacy;
16. Correspondence between Steven Yeh, M.D. and Dr. Jessica McCluskey, M.D., including any text messages and the April 26, 2013 letter from Dr. Yeh;
17. Cell phone records of Dr. Jerry Berland
18. Cell phone records of Dr. Jessica McCluskey
19. Summary of medical bills incurred on behalf of L.T.;
20. Redacted medical bills incurred on behalf of L.T.;
21. Mortality Table;
22. Pictures of L.T. and family;
23. Records of L.T. from Cherokee Christian Schools;
24. Audit Trail produced by Thomas Eye Group;
25. Any documents related to EMR produced by Thomas Eye Group;

26. Schedule of Jerry Berland, M.D. for April 9, 16, 22, 25, and 26 provided by Thomas Eye Group;
27. Schedule of Jessica McCluskey, M.D. for April 25 and 26 provided by Thomas Eye Group;
28. Any and all pleadings;
29. Responses to discovery by any party, including supplemental discovery responses and correspondence regarding the same;
30. Any documents or materials produced by any party;
31. Any documents or materials produced by any non-party;
32. Any documents or materials identified during the course of discovery;
33. Any documents or materials provided to or by Defendants' experts;
34. Any documents or materials contained in the files of Defendants' experts
35. Any documents identified during the course of depositions;
36. Any and all exhibits to depositions;
37. Any depositions taken;
38. Any pleadings, including exhibits;
39. Illustrative exhibits;
40. Demonstrative exhibits;
41. Any exhibits listed by Defendants.

Plaintiff reserves the right to use impeachment materials and Demonstrative aids as allowed by law without being listed herein.

Plaintiff reserves the right to identify other documents or physical evidence provided that adequate notice is given prior to trial of the identification of the evidence to the other parties.

The parties further reserve the right to use additional documents for purposes of cross-examination, impeachment, or rebuttal.

Plaintiff objects to supplementation of this list without sufficient prior notice prior to trial.

Plaintiff objects to improper use of any and all medical literature and medical treatises without proper foundation "which Defendants' may require."

Plaintiff objects to the introduction into evidence of medical literature and medical treatises.

Plaintiff objects to the introduction into evidence of all documents not previously disclosed in discovery.

Plaintiff objects to the introduction into evidence of any and all expert's CV's.

Plaintiff objects to the introduction into evidence of expert fee schedules.

**(b) By Defendants:**

Jerry E. Berland, M.D.; Jessica D. McCluskey, M.D. a/k/a Jessica McCluskey Crane; and Thomas Eye Group, P.C.:

1. Medical Records and any and all imaging studies maintained by the following providers:
  - a. Pediatric and Adolescent Medicine, PA;
  - b. Thomas Eye Group, P.C. (including B-scan ultrasound images);
  - c. Children's Healthcare of Atlanta;
  - d. The Emory Clinic and Emory Specialty Associates;
  - e. Angela Rhea Cotton / BCO & Associates, Inc.;

- f. The Pediatric Hand & Upper Extremity;
  - g. Perimeter Dermatology;
  - h. D. Casey Hart, DDS, P.C.;
  - i. Williams Orthodontics;
  - j. Village Podiatry Group, LLC;
  - k. Publix Pharmacy;
  - l. Rite Aid;
  - m. Kroger;
  - n. Walgreens;
  - o. CVS;
  - p. BlueCross BlueShield of Georgia;
  - q. Cigna;
2. CV of Dr. Jerry Berland;
  3. CV of Dr. Jessica Crane;
  4. CV of Dr. Zane Pollard;
  5. CV of Dr. Alan Franklin;
  6. CV of Dr. Donna Fearing;
  7. CV of Deborah King, NP;
  8. CV of Dr. Robert Jerris;
  9. CV of Dr. Beverly Rogers;
  10. Dr. Jerry Berland, M.D.'s cell phone records;
  11. Jessica Crane, M.D.'s cell phone records;
  12. Complaint and First Amended Complaint;
  13. Affidavit of Harold P. Koller, M.D.;
  14. Exemplar records printed under different EMR screen/print selections
  15. Any document received in response to the defendants' trial notice to produce
  16. Any deposition exhibit;

17. All pleadings filed and discovery/discovery documents served in this case; including supplemental discovery by letter and/or pleading;
18. Any document produced by any party or third party in this case;
19. Any document identified in discovery in this action;
20. Evidence used for impeachment purposes;
21. Any materials contained in the files of Plaintiff's experts;
22. Any materials provided to Plaintiff's experts;

Defendants object to plaintiff introducing into evidence documents and/or other physical evidence not previously disclosed in discovery. Defendants object to supplementation of plaintiff's exhibit list without sufficient notice prior to trial.

Defendants object to supplementation of plaintiff's exhibit list without sufficient notice prior to trial.

Portions of exhibits, redacted versions and enlargements may be used as allowed by law. Learned treatises and medical articles may be used as allowed by law without being listed in this Pre-Trial Order. Transcripts, statements, or other documents used to impeach witnesses may be used as allowed by law without being listed in this Pre-Trial Order. Demonstrative aids need not be listed in this Pre-Trial Order. These exhibits may be renumbered before trial.

The parties shall be permitted to supplement this list before trial with any document previously disclosed in discovery, provided notice is given to the other party. The parties shall be permitted to supplement this list prior to trial with additional, previously undisclosed documents only upon agreement of the parties or Order of this Court.

15. Special authorities relied upon by **Plaintiff** relating to peculiar evidentiary or other legal questions are as follows:

None at this time. All the parties reserve the right to amend this list prior to the trial of the case.

16. Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows:

Jerry E. Berland, M.D.; Jessica D. McCluskey, M.D. a/k/a Jessica McCluskey Crane; and Thomas Eye Group, P.C.:

Defendants will address any peculiar evidentiary issues in *motions in limine* or a trial brief.

17. All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18. The testimony of the following persons may be introduced by depositions:

**For the Plaintiff:**

- a. Hong Ho;
- b. Blaine Cribbs, M.D.;
- c. Rodney Roeser;

- d. Danielle Jules Mitchell;
- e. Steven Yeh, M.D.
- f. G. Baker Hubbard, III, M.D.
- g. Joseph Hilinski, M.D.;
- h. Any person already deposed or has been named as a witness;

**For Defendants:**

Jerry E. Berland, M.D.; Jessica D. McCluskey, M.D. a/k/a Jessica McCluskey Crane; and Thomas Eye Group, P.C.:

Jerry Berland, M.D.; Jessica Crane, M.D.; and Thomas Eye Group, P.C. may introduce portions of the depositions of Hong Ho; Danielle Jules Mitchell; Rodney Roeser; Amy Draghiceanu; Juanita Jeffries; Susan McCart; Baker Hubbard, M.D.; Steven Yeh, M.D.; Blain Cribbs, M.D.; Joseph Hilinski, M.D.; Dr. Robert Jerris; and/or Dr. Beverly Rogers.

19. The following are lists of witnesses that:

(a) Plaintiff will have present at trial:

- 1. Lee Thomas;
- 2. L.T.;
- 3. Laura Thomas;

(b) Plaintiff may have present at trial:

- 1. Mitchell Fineman, M.D.



2. Harold Koller M.D.
3. Megan Rogers
4. Beverly Rogers, M.D.
5. Blaine Cribbs, M.D.
6. Danielle Jules
7. Debbie King, CFNP
8. Donna Fearing, M.D.
9. Alan Franklin, M.D.
10. Joseph Hilinski, M.D.
11. Hong Ho;
12. G. Baker Hubbard, III, M.D.
13. Juanita Jeffries
14. Robert Jerris, PhD
15. Zane Pollard, M.D.
16. Steven Yeh, M.D.
17. Sharon Lowers
18. Michael Lee
19. Any person deposed in this case.
20. Any person identified in any deposition.
21. Any person identified in any medical record.
22. Any person required for rebuttal;

23. Records custodians or any other person designated by any person, entity, or medical provider to authenticate their records;
24. Any persons identified by Defendants “will have present” or “may have present” list herein.

(c) Defendant will have present at trial:

Jerry E. Berland, M.D.; Jessica D. McCluskey, M.D. a/k/a Jessica McCluskey Crane; and Thomas Eye Group, P.C.:

- 1) Jerry Berland, M.D. and
- 2) Jessica Crane, M.D.

(d) Defendant may have present at trial:

Jerry E. Berland, M.D.; Jessica D. McCluskey, M.D. a/k/a Jessica McCluskey Crane; and Thomas Eye Group, P.C.:

- 1) Zane Pollard, M.D.;
- 2) Alan Franklin, M.D.;
- 3) Juanita Jeffries;
- 4) Megan Rogers;
- 5) Susan McCart;
- 6) Amy Dragiceanu;
- 7) Hong Ho;
- 8) Neda Akbarshahi;
- 9) Rod Roeser;
- 10) Daniel Mitchell (Jules);

- 11) Jessica Chilena, RN;
- 12) Debbie King, CFNP;
- 13) Donna Fearing, MD;
- 14) Justin Townsend, M.D.;
- 15) Steven Yeh, M.D.;
- 16) Baker Hubbard, M.D.;
- 17) Joseph Hilinski, M.D.;
- 18) Blain Cribbs, M.D.;
- 19) Beverly Rogers, M.D.;
- 20) Robert Jerris, PhD;
- 21) Any person deposed in this lawsuit;
- 22) Any person identified in any deposition taken in this lawsuit;
- 23) Any person required for rebuttal;
- 24) Medical records custodians, if necessary;
- 25) Any person designated by any medical provider to authenticate their medical records;
- 26) Any person designated by any entity to authenticate their records;
- 27) Any medical provider or other person identified in L.T. Thomas' medical records; and
- 28) Any person listed on the Plaintiff's "will call" and "may call" lists.

Defendants reserve the right to object to plaintiff calling any new witness not previously disclosed during discovery.

Opposing counsel may rely on representation by the designated party that he or she will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

20. Verdict forms: The form of all possible verdicts to be considered by the jury are as follows:

As determined by the Court, and each party will submit proposed verdict forms to the Court.

**Plaintiffs Proposed Verdict form:**

This will be submitted to the Court prior to closing argument.

**Defendants' Proposed Verdict form:**

The Defendants will submit a verdict form to the Court prior to the submission of the case to the jury.

21. (a) The possibilities of settling the case are poor.
- (b) The parties do want the case reported.
- (c) The cost of take-down will be shared by the parties.
- (d) Other matters:
- 1) The case will be tried to a jury of twelve (12) with one or two alternates.
  - 2) The Court understands that there are various witnesses, including physicians and others, who are under subpoena or who will be subpoenaed to testify at

the trial of this case. Counsel are authorized by this Court to have any such witnesses which they have caused to be served with a subpoena, to be available to testify on reasonable notice, rather than to appear at the call of this case. This reasonable notice rule is designed to accommodate the witnesses, counsel, and the Court and does not affect the validity of any such subpoena served or to be served in this case.

Respectfully submitted this 29th day of March 2019.

/s/ Curtis J. Dickinson  
Curtis J. Dickinson  
Georgia Bar No. 221127  
Laura M. Barron  
Georgia Bar No. 159015  
Attorneys for Plaintiff

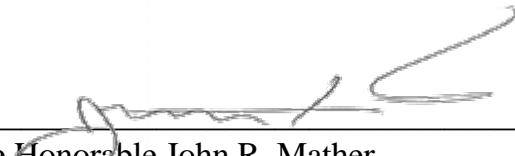
THE DICKINSON LAW FIRM, LLC  
1198 Buckhead Crossing, Suite F  
Woodstock, Georgia 30189  
(770) 924-8155 (Phone)  
(770) 924-4585 (Fax)  
[curtis@dickinsonlaw.net](mailto:curtis@dickinsonlaw.net)  
[laura@dickinsonlaw.net](mailto:laura@dickinsonlaw.net)

/s/ Melissa B. Johnson  
Robert P. Monyak  
Georgia Bar No. 517675  
Melissa B. Johnson  
Georgia Bar No. 064539  
Attorneys for Defendants

PETERS & MONYAK, LLP  
Blackstone Center  
1777 Northeast Expressway, NE, Suite 100  
Atlanta, GA 30329  
Telephone: (404) 607-0100  
Facsimile: (404) 607-0465  
[rmonyak@petersmonyak.com](mailto:rmonyak@petersmonyak.com)  
[mjohnson@petersmonyak.com](mailto:mjohnson@petersmonyak.com)

**IT IS HEREBY ORDERED** that the foregoing, including the attachments thereto, constitute the Pretrial Order in the above case and supersede the pleadings, which may not be further amended except by Order of the Court to prevent manifest injustice.

**SO ORDERED** this \_\_\_\_\_ day of 3/31/18 2018.

  
\_\_\_\_\_  
The Honorable John R. Mather  
Judge State Court of Fulton County