

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

MARK GAYLOR,)

Plaintiff,)

v.)

NORTH ATLANTA UROLOGY ASSOCIATES,)
P.C. AND HOWARD CRAIG GOLDBERG,)
M.D.,)

Defendants.)

Civil Action File No.
13EV018146B

AMENDED CONSOLIDATED PRETRIAL ORDER

Come now all parties and file this Consolidated Pretrial Order as follows:

1.

The name, address and phone number of the attorneys who will conduct the trial

are as follows:

Plaintiff:

**Thomas D. Trask, Esq.
Trask Law Firm
One Atlantic Center
1201 W. Peachtree Street NW
Suite 2300
Atlanta, Georgia 30309
(404) 795-5010**

**Maha Amircani, Esq.
Amircani Law, LLC
1230 Peachtree Street NE
19th Floor
Atlanta, GA 30309
(678)861-7164**

Defendants:

**R. Page Powell, Esq.
David D. Mackenzie, Esq.
Huff, Powell & Bailey, LLC
999 Peachtree Street, Suite 950
Atlanta, Georgia 30309
(404) 892-4022**

2.

The estimated time of trial is five days.

3.

Motions or other matters pending for consideration by the court at this time are as follows:

Plaintiff: Motions in *limine* will be filed pursuant to the Court's instructions. Plaintiff reserves the right to file any motions in *limine* before or during trial as evidentiary issues arise.

Defendant: Motions in *limine* will be filed pursuant to the Court's instructions. The defendants will file responses to any motion in *limine* filed by the plaintiff. These defendants may file trial briefs depending on the presentation of evidence.

Additionally, the parties may take evidentiary depositions if necessary for preservation of evidence for use at trial, and they reserve the right to file any motions prior to trial that may stem from that testimony.

4.

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

- (a) Mark Gaylor;
- (b) Howard Craig Goldberg, M.D.;
- (c) North Atlanta Urology Associates, P.C.;
- (d) MAG Mutual Insurance Company;
- (e) Thomas Trask, Esq.;
- (f) Trask Law Firm and Thomas D. Trask, LLC;
- (g) Maha Amircani
- (h) Amircani Law, LLC
- (i) Parks, Chesin & Walbert, PC

- (j) Atlanta Bar Association; and
- (k) Any other law firms or entities who have a financial interest in the outcome of the case.

5.

(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 for the preservation of evidence for use at trial. Parties may also depose material witnesses who were not identified prior to the submission of the pre-trial order. The parties shall be permitted to take the deposition of any listed witness upon reasonable notice to the other side for use as evidence up until the time of trial. Any objections to these depositions shall be taken up by the Court prior to trial.

Plaintiff: Plaintiff may take depositions for use in evidence at trial.

Defendants: The Defendants will file objections to the evidentiary deposition of Ralph Duncan, M.D.

(b) Unless otherwise noted, the names of the parties as shown in the caption of this Order are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties. Joint: None.

6.

The following consists of the plaintiff's brief and succinct outline of the case and contentions:

In September 2011, Plaintiff was a 46 year-old male with a history of hypospadias repair. Plaintiff presented to Dr. Goldberg with a complaint of increasing difficulty urinating and straining to void. Dr. Goldberg diagnosed the Plaintiff with a stricture of the distal penial shaft and with

possible hair in the urethra just proximal to it. On September 12, 2011, Dr. Goldberg performed an urethrotomy on the Plaintiff, including the removal of the urethral hair. Dr. Goldberg used a scope to advance to the point of the stricture. The stricture was identified, along with visible urethral hair. An internal urethrotomy was then carried out by Dr. Goldberg, under direct vision incising through the stricture until the urethrotome was able to be advanced proximally. Proximal strands of hair were identified. These strands were not occluding the lumen of the urethra to any degree.

Using alligator grasping forceps, Dr. Goldberg made attempts to remove the strands of hair. Dr. Goldberg then proceeded to use a Bugbee cautery, which was introduced through the working channel, to remove remaining hairs. He then used a Bugbee cautery to burn the remaining hairs. During this procedure, Dr. Goldberg noted significant edema of the penile shaft in the scrotum secondary to irrigant that was escaping into the subcutaneous tissue at the point of the stricture. Dr. Goldberg removed the scope and next attempted to insert a 20-French and then a 16-French Councill tip catheter over the guide wire, but met resistance at the point of the stricture and the catheter could not be advanced. The urethrotome was then reinserted under direct vision along with its outer sheath. Once it was advanced beyond the sheath into the proximal urethra, the sheath was left indwelling when the urethrotome was removed and the 16-French Councill tip catheter was then able to be passed via the sheath per urethra into the bladder. The sheath was then removed, leaving the catheter in place.

On September 16, 2011, Mark Gaylor went to the Emergency Room at Gwinnett Medical Center because of excessive edema urinary retention and stayed overnight in the emergency room. By September 18, 2011, Plaintiff saw a portion of the catheter emerging through a hole in the middle of his penis. On September 19, 2011, Plaintiff returned to see Dr. Goldberg. Dr. Goldberg

chose to leave the catheter in place for several more days. Dr. Goldberg removed the catheter on September 22, 2011. At this time, Dr. Goldberg noted erosion of the ventral urethra.

At no time did Dr. Goldberg inform Plaintiff that it was not medically necessary to remove the urethral hair and/or of the risk involved in removing the urethral hair. At the time that Dr. Goldberg chose to remove the urethral hair with forceps and a bugbee cautery, the urethral hair was causing no known problem that required any procedure that would cause harm or an increased risk of harm to the healthy tissue of Plaintiff's penis. The use of a cautery and heat and the removal of urethral hair were unnecessary procedures and were performed by Dr. Goldberg without Plaintiff's knowledge or permission. If the material risks of the procedures performed by Dr. Goldberg on September 12, 2011 (including the use of a cautery for the removal of urethral hair) had been disclosed to Plaintiff prior to the procedures, Plaintiff would have declined the procedures proposed (including the use of the bugbee cautery for removal of urethral hair) on the basis of the fear or risk of injury that could result from the procedures. Dr. Goldberg did not have sufficient knowledge, training or experience to address the condition of the Plaintiff, given that he had a prior hypospadias repair. Prior to performing the procedures on September 12, 2011, Dr. Goldberg did not inform Plaintiff that he did not have sufficient knowledge, training or experience in addressing strictures suffered by patient with a hypospadias repair, performing the procedures performed on the plaintiff, and the risks to Plaintiff involved in these procedures.

Dr. Goldberg's failure to inform Plaintiff of his lack of sufficient knowledge, training and/or experience with addressing strictures in patients with hypospadias repair unnecessarily exposed Plaintiff to an increased risk of harm. Dr. Goldberg knew or should have known that the procedures performed on Plaintiff for the removal of urethral hair unnecessarily exposed Plaintiff to an increased risk of harm. Dr. Goldberg, while acting as an agent and/or employee of NAUA PC and

NAUA LLC, failed to exercise the degree of care and skill ordinarily employed by the medical profession generally under similar conditions and like surrounding circumstances to those involved in the medical care and treatment he provided to Plaintiff. Dr. Goldberg, as an agent and/or employee of NAUA PC and NAUA LLC, did not meet the standard of care required of physicians in the care and treatment of Plaintiff by performing unnecessarily invasive procedures to repair a stricture within a patient who had a prior history of a hypospadias repair. Dr. Goldberg, as an agent and/or employee of NAUA PC and NAUA LLC, did not meet the standard of care required of physicians in the care and treatment of Plaintiff by performing unnecessary procedures to remove urethral hair patient who had a prior history of a hypospadias repair. Dr. Goldberg, as an agent and/or employee of NAUA PC and NAUA LLC, deviated from the standard of care in additional respects during the care and treatment he provided to the Plaintiff.

Prior to the procedures performed by Dr. Goldberg on September 12, 2011, Plaintiff was not adequately informed of:

(a) the diagnosis of his condition requiring the proposed surgical procedures performed by Dr. Goldberg;

(b) the nature and purpose of the proposed surgical procedure performed by Dr. Goldberg;

(c) the material risks generally recognized and accepted by reasonably prudent physicians of loss of function of an organ, paralysis or partial paralysis, disfiguring, scarring, nerve damage and other risks, including destruction and necrosis of tissue involved in procedures performed by Dr. Goldberg;

(d) the likelihood of success of the procedures performed by Dr. Goldberg, including use of the bugbee cautery and removal of urethral hair;

(e) the practical alternatives to the proposed surgical procedures performed by Dr. Goldberg (including use of a bugbee cautery and removal of urethral hair) which are generally recognized and accepted by reasonably prudent physicians; and

(f) the prognosis of the patient's condition if the proposed procedures performed by Dr. Goldberg (including the use of the bugbee cautery and removal of urethral hair) are rejected.

The failure of Dr. Goldberg to obtain oral and written informed consent for the procedures performed was a violation of standard of care and Georgia informed consent law O.C.G.A. § 31-6-9.1

At no time prior to the procedures performed by Dr. Goldberg was Mark Gaylor informed that Dr. Goldberg would use cauterization or any type of heat to burn any urethral hair. The invasive procedures performed by Dr. Goldberg, including cauterization of the urethral hair, destroyed the blood supply of to the hypospadias repair flap and caused necrosis of Mark Gaylor's urethra. As a result of the procedures performed without Mark's consent, reconstructive surgery was required due to the severe breakdown of the Plaintiff's penile tissue. The Plaintiff has undergone a procedure to place a suprapubic for urination and reconstructive surgeries to repair the damage to his penis caused by the procedure performed by Dr. Goldberg.

As a result of the acts and/or omissions of Dr. Goldberg, Mark Gaylor suffered permanent injuries and impairment, including urinary dysfunction, sexual dysfunction, permanent disfigurement, scarring and mental anguish. Mark Gaylor has also incurred medical expenses to date exceeding \$150,000. Mark Gaylor will incur medical expenses in the future and will most likely require additional reconstructive surgery.

The acts and omissions of Defendants that proximately caused the injuries suffered by the Plaintiff, including the lack of appropriate informed consent, showed an entire want of care that

raises the presumption of conscious indifference to the consequences to the Plaintiff, entitling the Plaintiff to an award of punitive damages against Defendants. O.C.G.A. § 51-12-5.1. The acts and omissions of Defendants that proximately caused the injuries suffered by the Plaintiff include intentional tort of battery. The intentional tort of battery entitles the Plaintiff to an award of punitive damages against Defendants without limitation. All negligent acts and/or omissions and intentional acts or omissions of Dr. Goldberg are imputed to NAUA PC via the doctrine of respondeat superior.

7.

The following is the Defendants' brief and succinct outline of the case and contention:

This case concerns the August and September, 2011 urologic surgical care of Mark Gaylor by Howard Goldberg, M.D. The plaintiff alleges that Dr. Goldberg was negligent in performing an direct vision internal urethrotomy (DVIU). Mr. Gaylor had a prior history of hypospadias repair. Hypospadias is a male birth defect in which the opening of the tube that carries urine from the body (urethra) develops abnormally, usually on the underside of the penis. The urethra opening can occur anywhere from just below the end of the penis to the scrotum.

Dr. Goldberg first saw Mr. Gaylor as a patient on August 9, 2011 although Mr. Gaylor had been a patient at North Atlanta Urology Associates for several years prior. At the August 9th visit, Mr. Gaylor complained of difficulty voiding, including difficulty initiating and maintaining a urine stream. He had been taking Flomax without success, and Dr. Goldberg's plan was to rule out urethral stricture disease. A retrograde urethrogram was performed on August 15, 2011 which appeared normal and showed no definite stricture. Mr. Gaylor returned to see Dr. Goldberg on August 17, 2011, and on that date a flexible cystoscopy revealed "a stricture approximately 2-3cm proximal to the urethral meatus with a fibrous band across the urethra which the scope could not pass." Dr. Goldberg also noted that there was some question about remaining hair within the urethra. He therefore scheduled Mr. Gaylor for an urethrotomy to attempt to relieve the stricture and to remove hair. Mr. Gaylor was appropriately consented for this surgery via oral and written consent.

The urethrotomy was performed on September 12, 2011. Dr. Goldberg identified the

stricture and urethral hairs, made an incision through the stricture to increase the diameter of the lumen, and removed as many urethral hairs as possible using forceps and cautery. While the stricture was treated successfully, significant edema developed along the penile shaft which Dr. Goldberg believed was secondary to irrigant escaping into the subcutaneous tissue along the penile shaft.

Mr. Gaylor returned to see Dr. Goldberg on September 19, 2011 for a scheduled post-op visit. At that time, he continued to complain of pain and swelling in his penis and scrotum, and he reported that he had been to the emergency room several days prior. Dr. Goldberg's exam revealed skin breakdown and necrosis of the previous graft for hypospadias repair. Mr. Gaylor returned to Dr. Goldberg's office on September 22nd and 26th with continuing complaints associated with the edema Dr. Goldberg referred Mr. Gaylor to Dr. Jeff Carney at Emory for evaluation for reconstructive surgery. Mr. Gaylor did not return to Dr. Goldberg's office after September 26, 2011.

In February, 2012, Mr. Gaylor underwent a first stage urethroplasty. A second stage urethroplasty was scheduled for January 31st, 2013. On March 27, 2013, Mr. Gaylor had a follow-up visit with Dr. Carney. He was doing well with no complaints. He did not have any complaints of urinary retention, and was voiding with a full and forceful stream. He returned for evaluations in July and September, 2013. His main complaints were a spraying stream and the need for medications to achieve erections. Dr. Carney indicated that Mr. Gaylor was stable from a urinary standpoint and planned to see him again in one year.

Dr. Goldberg's participation in the care of Mr. Gaylor was at all times appropriate and complied with the standard of care. None of the alleged negligent actions or omissions of Dr. Goldberg caused or contributed to Mr. Gaylor's injuries. Dr. Goldberg's alleged acts and omissions did not constitute battery. Dr. Goldberg's alleged acts and omissions did not constitute actions that would give rise to punitive damages. Dr. Goldberg's alleged acts and omissions did not constitute an intentional tort that would give rise to punitive damages.

The Defendants object to the Court reading or otherwise presenting to the jury the parties' outlines of the case and contentions.

8.

The issues for determination by the jury are as follows:

For Plaintiff:

- 1) Liability
- 2) Damages and Punitive Damages
- 3) Attorneys' Fees

For Defendant:

- 1) Whether Dr. Goldberg was professionally negligent in his treatment of Mr. Gaylor;
- 2) Whether Dr. Goldberg's alleged professional negligence proximately caused injury to Mr. Gaylor;
- 3) Whether Plaintiff is entitled any damages; and
- 4) The amount of damages, if any.

Defendants oppose punitive damages and filed a partial motion for summary judgment on this topic. To the extent punitive are sought, Defendants renew their opposition and incorporate the arguments made in support of partial summary judgment.

9.

Specifications of negligence are as follows:

For Plaintiff: The Plaintiff's specifications of negligence are identified in Section 6 of this pretrial order. Plaintiff contends that Defendants, their agents and employees, failed to exercise that degree of care and skill which is ordinarily employed generally under similar conditions and like surrounding circumstances in their treatment, care, management and diagnosis of the Plaintiff. Plaintiff also contends that procedures were performed without appropriate informed consent and that he is entitled to attorneys' punitive damages and attorneys' fees.

The applicable code sections are:

O.C.G.A. §51-1-1; 51-1-8; 51-1-13; 51-1-27; 51-12-1; 51-12-2; 51-12-7; 31-9-6.1; 9-11-68; 51-12-5.1.

For Defendant: The Defendants deny they were negligent or that they caused or contributed to Mr. Gaylor's injuries. These Defendants object to the introduction of any testimony, reference, or any evidence whatsoever of any alleged negligence against these Defendants not identified with specificity in this Consolidated Pretrial Order.

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 as follows:

For Plaintiff: Past and Future Medical Expenses; Past and Future and Pain, Suffering including permanent impairment, loss of use of body part, nerve damage, urinary dysfunction, sexual dysfunction; mental anguish and suffering; Punitive Damages; Attorneys' Fees.

For Defendant:

These Defendants deny that the Plaintiff is entitled to any damages. Defendants specifically deny that Plaintiff is entitled to any punitive damages, including any uncapped punitive 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 the parties: None at this time.

14.

The following is a list of all documentary and physical evidence that may be tendered at the trial by the plaintiff and the defendants. Unless noted, the parties have **not** stipulated as to the authenticity of the documents listed and the exhibits listed may be not submitted without further proof of authenticity subject to admissibility. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

(a) Plaintiffs:

1. All pleadings and discovery filed and served in this case
2. All depositions and video depositions taken in this case
3. All exhibits to depositions
4. All medical records and bills for the plaintiff from North Atlanta Urology Associates, Georgia Clinic, P.C, Georgia Urology, Grady Health System, Emory Healthcare, Emory University Hospital, The Emory Clinic, Gwinnett Medical Center, Gwinnett

Health System, Gwinnett Hospital, Dr. Hadley Wyre, Dr. Asha Parikh, Georgia Baptist Hospital, Dr. John Hartley.

5. Imaging Studies
6. Pharmacy Records and bills
7. Photographs
8. Medical Journals, Articles and Texts
9. C.V's for all expert witnesses
10. C.V. of Howard Goldberg, M.D.
11. Audio Recording of Dr. Goldberg
12. Plaintiff's urination video
13. Studies, treatises, photographs, videos and diagrams in support of opinions of Dr. Ralph Duncan, Dr. Konstantin Walmsley and Dr. Jeff Carney.
14. Contingent Fee Contract
15. List of Attorneys' Fees and Expenses
16. Bugbee Cauteary
17. Instruments used in medical procedures performed on Plaintiff
18. Instructions for use of Bugbee Cauteary
19. Medical Illustrations
20. Medical Diagrams
21. Medical Animations
22. Urethrograms
23. Demonstrative Exhibits
24. Documents and records related to use of Bugbee cauteary on patients by Defendants and all expert witnesses identified.
25. Records for all medical care providers referenced in discovery and depositions
26. Medical Literature
27. All documents, records and records identified in discovery
28. Mortality Table, 1949 Ultimate
29. Documents needed for impeachment or rebuttal
30. Documents lists by the defendants

31. Documents that may have been inadvertently omitted in this section of the pretrial order will be identified by the plaintiff.

Plaintiff reserves the right to supplement this list prior to trial with notice to opposing counsel so as not to delay trial. The Defendant is hereby notified pursuant to O.C.G.A. §§ 24-8-803(6) and 24-9-902(11) of Plaintiff's intent to offer the documents identified in this paragraph into evidence at trial. If a document is inadvertently omitted from this list, the Plaintiff will properly notify Defendant. The Plaintiff reserves the right to object to any proposed documentary and/or physical evidence until it is properly authenticated and tendered. Further, the Plaintiff reserves the right to use impeachment materials and demonstrative aids as allowed by law without being listed herein.

(b) Defendants:

1. Complaint & Affidavit
2. Amended Complaint & Affidavit.
3. North Atlanta Urology Associates Medical Records
4. Blank NAUA Consent Form
5. Georgia Clinic, P.C. Medical Records
6. Georgia Urology Medical Records
7. Grady Health System Medical Records (two sets)
8. Emory Healthcare Medical Records (two sets)
9. Emory University Hospital Medical Records
10. The Emory Clinic Medical Records
11. Gwinnett Medical Center Medical Records
12. Gwinnett Health System Medical Records
13. Gwinnett Hospital Medical Records
14. Gwinnett Hospital Radiology Films and Records
15. Georgia Baptist Medical Records
16. John Hartley, M.D. Medical Records

17. Asha Parikh, M.D. Medical Records
18. Innovation Compounding Billing Records
19. Mr. Gaylor List of Doctors
20. Mr. Gaylor List of Medications from Medco and CVS Pharmacy
21. Records from North Georgia Urology
22. "Pharmacy Records" produced by Mr. Gaylor
23. Plastic Surgery Center of Atlanta Records Billing
24. Center for Medicine, Endocrinology, and Diabetes Medical and Billing Records
25. Resurgens Orthopedics Medical Records
26. Gwinnett Dermatology Medical Records
27. Georgia Pulmonary and Critical Care Medical Records
28. CVS Pharmacy Medical Records
29. Emory Johns Creek Medical Records
30. Deposition Transcript of Mark Gaylor and exhibits thereto
31. Deposition Transcript of Howard Goldberg, M.D. and exhibits thereto
32. Deposition Transcript of Carolyn Gaylor and exhibits thereto
33. Deposition Transcript of Jeff Carney, M.D. and exhibits thereto
34. Deposition Transcript of Ralph Duncan, MD and exhibits thereto
35. Deposition Transcript of Konstantin Walmsley, MD and exhibits thereto
36. Deposition Transcript of Chris Cassisi, M.D. and exhibits thereto
37. Deposition Transcript of Andrew Peterson, MD and exhibits thereto
38. Deposition Transcripts of future witnesses and exhibits thereto, including second deposition of Mr. Gaylor
39. Documents Produced by Defendants in Discovery, Including:
 - a. CV of Dr. Goldberg
 - b. Medical Bills
 - c. North Atlanta Urological Acquisitions Certificate of Dissolution
 - d. NAUA Registered Agent information.
40. CV of Jeff Carney, M.D.
41. CV of Ralph Duncan, M.D.

42. CV of Konstantin Walmsley, M.D.
43. CV of Chris Cassisi, M.D.
44. CV of Andrew Peterson, M.D.
45. Any medical journal and textbook articles written by the plaintiff's experts
46. Any medical journal and textbook articles written by the Jeff Carney, M.D.
47. All pleadings, including but not limited to the Complaints, Answer, Written Discovery, formal and informal Expert Designations, and deposition notices.
48. All documents produced by Plaintiff in response to written discovery including:
 - a. Correspondence and Payment to Experts.
 - b. Verifications to Discovery Responses.
 - c. Expert Identifications.
 - d. Photographs of Mr. Gaylor produced in discovery.
 - e. Recent Photographs of Mr. Gaylor's injuries, produced 2/20/2020.
 - f. Audio recordings taken by Mr. Gaylor of Dr. Goldberg.
 - g. Docs produced by plaintiffs on 12.12.13:
 1. Urination video (2.13.12)
 2. Urination video (02.20.20)
 3. CD with medical records, misc. documents and photos, including:
 - a. Center for Medicine, Endocrinology and Diabetes (medical & billing)
 - b. Claim History Report 10.1.10 to 11.18.13
 - c. Criminal History (ROGs #9 and 10)
 - d. Digestive Healthcare Appt. Scheduling
 - e. Dr. Crispin Letter 10.4.11
 - f. Dr. Lucas Letter 4.30.13
 - g. Eastside Medical Center (billing)
 - h. Eastside Meds List
 - i. Emory Clinic (billing 8.27.13)
 - j. Emory Clinic (billing 8.28.13)
 - k. Emory Clinic (certification) – did not get records 3.26.12
 - l. Emory Healthcare (Dr. Wyre) – random records not entire chart

- m. Emory University Hospital (medical records) 3.16.12
- n. Georgia Clinic (billing) 10.22.13
- o. Georgia Clinic, PC (one page 9.23.11)
- p. Georgia Urology Forms
- q. Grady (billing) 11.12.13
- r. Grady Misc. Records
- s. Grady Reports (Dr. Carney)
- t. Gwinnett Health System (Dr. Middlebrooks)
- u. Gwinnett Hospital Radiology Consult 8.15.11
- v. Gwinnett Hospital Radiology Consult 9.16.11
- w. Gwinnett Medical Center (billing) 10.22.13
- x. Gwinnett Medical Center ER Report 9.16.11
- y. Gwinnett Medical Center Op Note 9.12.11 (Dr. Goldberg)
- z. Innovation Compounding (billing) 10.22.13
- aa. List of Doctors (ROG #14)
- bb. List of drugs from Medco Mail Order and CVS (ROG#17)
- cc. Medical records from North Georgia Urology
- dd. North Georgia Urology Consent for Surgery 9.7.11
- ee. North Georgia...North Atlanta Urology Misc. Records
- ff. National Elevator Industry Benefit Plans Letters
- gg. North Atlanta Urology Assoc. (medical records and billing) 2.6.12
- hh. North Fulton Urology (medical records) 2.13.12
- ii. North Fulton Urology 9.30.11
- jj. Pharmacy Records
- kk. Plastic Surgery Centre of Atlanta (Crispin) billing 10.22.13
- ll. Random Medical Records
- mm. Skin Graft Picture
- nn. UTI after First Spinal Fusion dated 5.28.10 Dr. Middlebrooks

49. Documents produced by Kone Inc., including

- a. Personnel File

- b. Gaylor W-2s
- c. Affidavit

- 50. Expert designations and supplemental discovery responses in email, letter, or any non-formal pleading form
- 51. Demonstrative evidence and exhibits, such as timelines, exemplar photographs, anatomical drawings, etc.
- 52. Errata Sheets for all depositions of witnesses
- 53. Depositions of plaintiff's experts from prior testimony
- 54. Any documents generated by the plaintiff's expert in relationship to this case, including correspondence and billing records
- 55. Any documents provided to the Plaintiff's expert by the plaintiff or plaintiff's counsel
- 56. Medical charts, diagrams, blow-ups, and animations, including enlarged portions of Mr. Gaylor's medical records and/or radiology studies
- 57. Images of the radiology studies, including enlargements
- 58. Surgical tools used during performance of DVIU procedure including bugbee cautery
- 59. Any document listed by the plaintiff in the pretrial order, not objected to by Defendant

The Defendants respectfully request the right to amend this list of documentary and physical evidence by giving appropriate notice to opposing counsel prior to the trial. The Defendants have not seen the Plaintiff's exhibits and therefore cannot stipulate to their authenticity. Additionally, the Defendants reserve the right to object to any proposed documentary and/or physical evidence until it is properly authenticated and tendered. Further, the Defendants reserve the right to use impeachment materials and demonstrative aids as allowed by law without being listed herein. The Defendants object to the admissibility of any documentary or physical evidence not previously identified and produced during discovery.

15.

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

None at this time.

16.

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

For Defendant: Motions *in limine* have been filed.. Defendants may file trial briefs on other peculiar evidentiary or legal questions that may arise and will cite to particular authorities and as appropriate in those pleadings.

17.

The parties will submit all requests to charge by the first day of trial or on such other date as ordered by the Court.

18.

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

For Plaintiff: Ralph Duncan, M.D.; Carolyn Gaylor; any witness identified in paragraph 19.

For Defendant: Any person whose evidentiary deposition has been taken by any party, and any person who is identified as a may call witness by either party and who is statutorily unavailable to appear in person. These Defendants object to the presentation of discovery depositions at trial if that deponent is not statutorily unavailable to appear in person at trial. Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the court prior to the reading or presentation of the testimony at trial.

The parties reserve the right to introduce testimony in whole or in part of any person deposed in the present action for purposes of impeachment.

19.

The following are lists of witnesses Plaintiff will have present at trial:

1. Mark Gaylor

The following are lists of witnesses Plaintiff may have present at trial:

1. Dr. Jeff Carney
2. Dr. Ralph Duncan
3. Dr. Konstantin Walmsley
4. Carolyn Gaylor
5. Dr. Andrew Peterson

6. Dr. Chris Cassisi
7. Dr. Hadley Wyre
8. Dr. Asha Parikh
9. Dr. Howard Goldberg
10. Any medical care provider of the plaintiff contained in the medical records identified in the pretrial order.

The following are lists of witnesses Defendant will have present at trial:

1. Howard Goldberg, M.D.

The following are lists of witnesses Defendants may have present at trial:

1. Andrew Peterson, M.D.
2. Chris Cassisi, M.D.
3. Mark Gaylor, M.D.
4. Jeff Carney, M.D.
5. Any records custodian from the medical providers listed above to authenticate records and documents produced in discovery unless the parties stipulate to their authenticity;
6. Any witness identified during the remainder of discovery in this case
7. Any witness needed for impeachment purposes;
8. All other witnesses who have been deposed; and
9. Any witnesses listed by plaintiff of as a "may call" or "will call" witness in their portion of the Pre-Trial Order.

20.

The form of all possible verdicts to be considered by the jury will be submitted at the time of trial consistent with the Court's instructions.

21.

- (a) The possibilities of settling this case are **unknown**.
- (a) The parties **do** want the case reported in its entirety;
- (b) The cost of take-down **will be divided evenly among the parties**.
- (c) Other matters:

Defendants:

1. The defendants request a hearing on motions *in limine* prior to the trial date.
2. The defendants request that two alternate jurors be selected.
3. The defendants request that a written copy of the Court's charge to the jury be provided to the jury at the beginning of deliberations.
4. The defendants request that this Court allow the parties to use technology, including the use of a PowerPoint and video screens during opening statement. The defendants also request that this Court allow the parties to preview during opening statement certain materials that are stipulated as admissible or are reasonably expected to be admitted into evidence. The defendants also seek to present non-exhibit demonstrative aids that have been shown to opposing counsel prior to use. Defendants believe such material will be a preview of the evidence for their case in chief, are not objectionable or argumentative, and will help the jury better understand the evidence to be presented. See *Franks v. State*, 188 Ga. App. 263 (1988).

This 20th day of February, 2020.

Respectfully submitted,

/s/ Thomas D. Trask

Thomas D. Trask
State Bar No. 715620
Counsel for Plaintiff

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/s/ David D. Mackenzie

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Ga. Bar No. 586696

DAVID D. MACKENZIE

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Counsel for Defendants

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the Court to prevent manifest injustice.

SO ORDERED, this 24 day of February, 2020.


PATSY Y. PORTER, JUDGE
STATE COURT OF FULTON COUNTY