

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

JAMES MCCLURE

PLAINTIFF

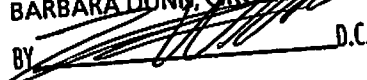
VS.

ANTHONY PETRO, M.D., CLARK ETHERIDGE
AND MISSISSIPPI BAPTIST MEDICAL CENTER

FILED

CAUSE NO.: 08-445

JUN - 9 2008

BARBARA DUNN, CIRCUIT CLERK
BY  D.C.

DEFENDANTS

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes plaintiff, James McClure, a person of the full age of majority and a residents and domiciliary of the County of Bolivar, State of Mississippi, and represents as follows:

1.

Dr. Anthony Petro, M.D., a person of the full age of majority and a physician licensed to practice medicine by the Mississippi State Board of Medical Licensure;

Dr. Clark Etheridge, M.D. a person of the full age of majority and a physician licensed to practice medicine by the Mississippi State Board of Medical Licensure; and

Mississippi Baptist Medical Center, Inc., a nonprofit corporation organized under the laws of the State of Mississippi authorized to do and doing business within the jurisdiction of this Honorable Court.

2.

The foregoing defendants are liable unto petitioners herein for such damages as are reasonable in the premises which are within the jurisdictional amount of the Court and exceed \$10,000, together with legal interest thereon from the date of judicial demand until paid and for all costs and disbursements of these proceedings for the following reasons, to wit:

3.

At all times pertinent hereto, defendant, Mississippi Baptist Medical Center, Inc. [the "HOSPITAL"], owned, operated, and/or had the care, custody and control of the health care facility known as Mississippi Baptist Medical Center.

4.

James McClure [hereinafter "MCCLURE"] began having difficulties with swallowing and keeping food down sometime in 2005. After seeing various physicians and taking various medications without success, MCCLURE saw Dr. Anthony Petro [hereinafter "PETRO"] on or about April 6, 2006. PETRO diagnosed MCCLURE with "mild dilation of the esophagus with increased contractions but persistent smooth narrowing at the gastroesophageal junction level." PETRO determined that MCCLURE's esophagus needed surgical repair.

5.

On April 11, 2006, MCCLURE presented to the HOSPITAL to undergo a laparoscopic procedure [Laparoscopic Heller myotomy, posterior fundoplication], which was performed by PETRO the same day.

6.

Immediately following the aforementioned procedure, MCCLURE had severe abdominal pain, felt faint, and experienced an increased heart rate. Over the course of the next three (3) days, these symptoms persisted and/or increased. In addition, the day after surgery, MCCLURE had great difficulty breathing. Despite the severe pain MCCLURE was exhibiting, doctors and/or HOSPITAL staff informed MCCLURE that he was experiencing "gas" pains.

7.

MCCLURE was given pain medication [Tyolox], which did not ease his pain, and medication for “gas”.

8.

On April 12, 2006, the day after the laparoscopic procedure, PETRO seemed agitated with MCCLURE for failing to meet discharge criteria. PETRO intimated that MCCLURE was drug seeking by stating that “some of my patients like my bed and pills for an extra day.” PETRO added that MCCLURE would be discharged the next day.

9.

MCCLURE languished for the next several days and was admitted to ICU on or about the late ours of April 13, 2006.

10.

Upon information and belief, on or about April 14, 2006 PETRO made a decision to perform an exploratory laparotomy to determine the cause of MCCLURE’s persistent symptoms. As pled below more fully, PETRO should have known at this time and prior thereto that MCCLURE had sustained a perforation.

11.

PETRO did in fact perform a laparotomy on April 14, 2006. During the laparotomy, it was discovered that MCCLURE sustained a “through-and-through puncture of the jejunum probably related to the initial 5 millimeter Optiview port insertion for his laparoscopic Heller myotomy.” In other words, PETRO perforated MCCLURE’s bowels during the April 11th procedure.

12.

During the above mentioned laparotomy, MCCLURE was the victim of anesthesia awareness. MCCLURE recalls being on the surgery table while being washed out. MCCLURE recalls being "freezing" and felt absolutely helpless during a prolonged period of being washed out. Upon information and belief, this awareness was caused by inadequate anesthesia and/or improper monitoring.

13.

The risks of anesthesia were not fully explained to MCCLURE. More specifically, it was not explained to MCCLURE that there was a .1 - .9% chance that he could experience anesthesia awareness. Therefore, MCCLURE could not and did not give informed consent to the administration of anesthesia.

14.

At all time relevant herein, Dr. Clark Etheridge [hereinafter "ETHERIDGE"] was responsible for the administration of anesthesia and either directly administered and monitored the same individually or through a CRNA for whom ETHERIDGE is responsible under the theory of *respondeat superior*.

15.

PETRO examined MCCLURE on multiple occasions following the laparoscopic procedure performed on April 11th and prior to the laparotomy of April 14th. During the examinations, MCCLURE exhibited severe abdominal pain along with various other symptoms including, but not limited to shortness of breath and a sense of impending doom. Upon information and belief, despite these symptoms PETRO failed to timely order appropriate diagnostic studies in order to rule out a

perforation of the bowel. PETRO knew or should have known that the differential diagnosis of MCCLURE's symptoms at that time included the diagnosis of a perforation.

16.

On April 13, 2006, PETRO finally, and untimely, ordered appropriate diagnostic studies including a CT Scan and a Gastrograffin Swallow. Both tests showed abnormalities and indicated that MCCLURE was in fact suffering from a perforated bowel; a fact that should have been obvious to PETRO long before. Nonetheless, PETRO ignored the evidence demonstrating a perforation and allowed MCCLURE to suffer from a leaking bowel yet another day longer.

17.

MCCLURE was not treated for his perforation until April 14, 2006 and only after his condition required that he be transferred to ICU. For more than three (3) days, MCCLURE languished and was in pain while his body was being poisoned by his own bile and by the various medications and fluids given to him her in accordance with PETRO's orders.

18.

During MCCLURE's hospital stay, appropriate standards were not followed by the staff of the HOSPITAL including, but not limited to, the following: failed to properly assess MCCLURE for risk of skin problems; failed to implement measures to prevent skin deterioration, which led to one or more decubitus ulcers; and prematurely discharging MCCLURE who was in need of further hospital care.

19.

Upon information and belief, at all times pertinent hereto, the staff members who treated MCCLURE were employed by the HOSPITAL and were acting within the course and scope of their

employment with the HOSPITAL, which is vicariously liable for the acts and omissions of their employees under the doctrine of *respondeat superior*.

20.

Plaintiffs aver that the HOSPITAL failed to employ individuals with the requisite knowledge and skill to properly provide care to MCCLURE and, through its employees, failed to use reasonable care and diligence, along with its best judgment, causing the severe injuries to MCCLURE asserted herein.

21.

The HOSPITAL was negligent under the circumstances and/or that its conduct fell below the applicable standard of care as a health care provider generally and particularly within its areas of specialization in the following non-exclusive particulars:

1. Failing to have adequate procedures to insure that proper treatment is initiated in a timely fashion;
2. Failing to perform reasonable and necessary post-surgical care;
3. Failing to adequately staff Mississippi Baptist Medical Center;
4. Failing to properly train the staff of Mississippi Baptist Medical Center;
5. Failing to properly monitor the staff of Mississippi Baptist Medical Center;
6. Negligent hiring and /or retention of their employees;
7. Generally failing to adhere to the standard of care of healthcare providers in general;
and
8. Any and all other acts of negligence and/or deviations from the standard of care as may be proven at the trial of this matter.

22.

PETRO was negligent under the circumstances and/or that his conduct fell below the applicable standard of care as a health care provider generally and particularly within its areas of specialization in the following non-exclusive particulars:

1. Failure to timely recognize and diagnose a life-threatening complication;
2. Failure to order necessary diagnostic procedures;
3. Failure to properly read diagnostic images;
4. Failure to treat life-threatening complication;
5. Failure to timely perform reasonable and necessary post-surgical care;
6. Generally failing to adhere to the standard of care of healthcare providers in general;
and
7. Any and all other acts of negligence and/or deviations from the standard of care as may be proven at the trial of this matter.

23.

ETHERIDEGE was negligent under the circumstances and/or that his conduct fell below the applicable standard of care as a health care provider generally and particularly within its areas of specialization in the following non-exclusive particulars:

1. Failure to fully explain all of the risks of anesthesia to MCCLURE;
2. Failure to properly administer anesthesia during MCCLURE's laparotomy;
3. Failure to properly monitor MCCLURE during the administration of anesthesia;
4. Generally failing to adhere to the standard of care of healthcare providers in general;

and

5. Any and all other acts of negligence and/or deviations from the standard of care as may be proven at the trial of this matter.

24.

As a result of the above and foregoing, MCCLURE was caused to suffer and endure needless severe pain and suffering, both physical and mental; was put at risk for serious harm; he suffered, and continues to suffer, from the physical and psychological effects of defendant's breaches of the standard of care, all of which is to his damage and all of which warrant an award of damages deemed reasonable in the premises.

25.

Additionally, MCCLURE has sustained economic losses in the premises, including, but not limited to, past and future medical expenses; all of which as a result of defendant's actions and/or inactions related herein.

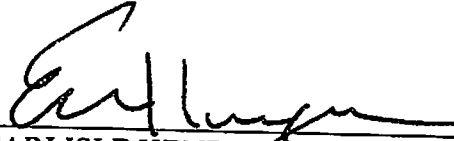
26.

The mental and physical anguish caused by anesthesia awareness can not be overstated. Being aware of an ongoing laparotomy and being unable to communicate the same or otherwise remedy the situation can be described as the most severe form of mental and physical anguish any human being could possibly be expected to live through.

WHEREFORE, plaintiff prays that defendants, Anthony Petro, M.D, Clark Etheridge, M.D., and Mississippi Baptist Medical Center, Inc. be duly cited and that after all legal proceedings and due delays are had there be judgment in favor of petitioner and against defendants in an amount deemed to be reasonable in the premises, together with legal interest thereon from the date of judicial demand

until paid, plus all costs and disbursements of these proceedings and for all general and equitable relief.

Respectfully submitted,



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Pro Hac Vice Application Pending

PLEASE SERVE:

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DEFENDANTS

CERTIFICATE

I, Salvador I Bivalacqua, do hereby certify that I have reviewed the facts of the case and have consulted with at least one (1) expert qualified pursuant to the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence who is qualified to give expert testimony as to standard of care or negligence and who I believe is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of such action.

This 3rd day of June, 2008.



Salvador I Bivalacqua