
IN THE
Supreme Court of Virginia

RECORD NO. 991993

RAYMOND WILLIAM WALSH,

Appellant,

v.

DEAN R. BENNETT, M.D.,

Appellee.

APPENDIX

**Ray J. Walsh
LAW OFFICES
7431 Grace Street
Springfield, Virginia 22150
(703) 451-6679**

Counsel for Appellant

**Tara M. McCarthy
MCCARTHY & MASSEY, P.C.
Post Office Box 2908
Merrifield, Virginia 22116-2908
(703) 330-2726**

Counsel for Appellee

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Raymond William Walsh
versus
Inova Health Systems et al

CASE NO. L174460

STATUS CONFERENCE ORDER

The Status Conference was held November 17, 1998. After discussing the various issues presented; it was ORDERED that:

A. Plaintiff's and Counter Plaintiff's experts must be identified on or before 90 days prior to trial. All opposing experts must be identified on or before 60 days prior to trial. Identification of experts must set out all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of the Supreme Court of Virginia, or the expert may not be permitted to express any non-disclosed opinions at trial. All discovery except Requests for Admissions shall be completed 30 days prior to trial.

B. A Settlement Conference Date is April 12, 1999, at 8:30 a.m. A factual statement of the case must be submitted to the Case Management Office on the 5th floor of the Judicial Center no later than five days before the Settlement Conference. Lead counsel for each of the parties and the parties (or if applicable, the insurance adjuster with authority to settle) must attend the settlement conference, unless excused in advance by the Judge or Evaluator conducting the conference. However, parties (or adjusters) who reside over 50 miles from the Fairfax Courthouse may be available by phone.

C. Counsel or pro se parties shall deliver to opposing counsel or party a copy of all exhibits and a list of names of witnesses proposed to be introduced at trial, on or before 15 days prior to trial. A list of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall not then be filed. No exhibit or witness not so identified and filed will be received in evidence, except in rebuttal or for impeachment. Any objections to exhibits except on relevancy grounds need to be filed with the Clerk of the Court and a copy mailed to opposing counsel or pro se parties no later than five days prior to trial or the objection will be deemed waived. Objections shall be to particular exhibit numbers and must state the legal reason for the objection.

D. Counsel shall exchange and confer about proposed jury instructions in advance of the trial date. At the commencement of trial, counsel shall tender to the Court the originals of all agreed upon instructions and copies of all contested instructions with appropriate citations.

E. Deadlines established in this Order may be extended or waived by the Court for good cause shown, but only after considering the extent to which the opposing party may be prejudiced thereby.

F. The Trial date is June 21, 1999. / with a Jury ☒ without a Jury ☐
Estimated trial time is 4 days.

G. Motions in limine which require argument exceeding five minutes shall be heard on a motions day before the trial date.

H. All dispositive motions shall be presented to the Court for hearing as far in advance of the trial date as possible.

I. The Court's Case Management Instructions dated January 1, 1994 are incorporated herein by reference and the parties shall comply with each term thereof.

Entered this _____ day of _____, 19____.

Counsel for Plaintiff(s)

Counsel for Defendant(s)

JUDGE

EXHIBIT

ALL-STATE LEGAL SUPPLY CO.

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

RAYMOND WILLIAM WALSH,
Plaintiff

V.

CIVIL DIVISION

INOVA HEALTH SYSTEMS,
FAIRFAX HOSPITAL,
BRANTLEY VITEK, M.D.,
DEAN R. BENNETT, M.D.,
KATHLEEN B. FRENCH, M.D.,

Defendants

CASE NO. L-174460

3300 Gallows Road
Falls Church, Virginia 22040

PURSUANT TO THE ORDER OF December 18, 1998 by Honorable Circuit Court Judge Woolridge, Plaintiff hereby submits an Amended Motion for Judgment:

AMENDED MOTION FOR JUDGMENT

Plaintiff, Raymond William Walsh, moves for judgment against Defendants, described above, on the grounds and in the amount set forth below:

1.) On the 24th day of May, 1995, Plaintiff, Raymond William Walsh was admitted to Fairfax Hospital under emergency conditions following a fall of approximately 75 feet from a Railroad Trestle Bridge at Lake Accotink, Springfield, Fairfax County, Virginia.

2.) On the 24th and 25 of May, 1995, Plaintiff, Raymond William Walsh, was operated on for broken legs, broken back and numerous other injuries occasioned by the above described

fall.

3.) From May 24, 1995 to July 13, 1995 , Plaintiff, Raymond William Walsh, was a patient at Fairfax Hospital, under the care of its agents, nurses, doctors and the above name defendants, specifically Dean Bennett, M.D., Brantley Vitek, M.D., Kathleen French, M.D.

4.) After discharge on July 13, 1995 and on several occasions thereafter, Plaintiff, Raymond William Walsh, remained under the care of Defendants, Doctors Brantley Vitek and Dean Bennett, and Doctor Wan Shin, Head of Rehabilitation for Fairfax Hospital on an outpatient basis for follow-up treatment.

5.) Since the dates of treatment, Plaintiff, Raymond William Walsh, has suffered a "freezing" or "locking" of the hips, rendering him almost immobile and able only to ambulate with great difficulty.

6.) Plaintiff, Raymond William Walsh, has been advised by Doctors, including Doctor Wan Shin, of the Fairfax Hospital Rehabilitation Department, that this condition, characterized by the "freezing" or "locking" of the hips, is caused by lack of movement, stimulation and effective physical therapy or rehabilitation after back fusion operations.. Plaintiff also suffers from "flat back" a condition caused by improper installation of the fusion apparatus in the back by the operating Defendant surgeons.

7.) Plaintiff, Raymond William Walsh, has been also advised by Doctors, as recently as Spring, 1998, that the screws which were inserted in the fused back apparatus, are coming loose and will require a re-operation on his back.

8.) Plaintiff, Raymond William Walsh, has also recently been advised that the contractures and "flat back" can be surgically corrected by a re-operation of the back, involving rebreaking the back and straightening the fusion apparatus, as it should have been done in the original operation.

9.) Plaintiff, Raymond William Walsh, contends that the Defendants, Doctor Dean Bennett and Doctor Kathleen French, were negligent and deviated from acceptable standards of medical practice in their operation of this patient, Raymond William Walsh, in that they, inter alia:

a) improperly inserted the distraction instrumentation distally to the lower lumbar spine or sacrum causing a loss of lordosis and interfering with the patient's sagittal plane balance, causing his trunk to lean forward, thereby making him unable to ever stand erect again;

b) failed to call in appropriate consultants when they were unable to

maintain lordosis;

c) failed perform appropriate tests and evaluations which would have revealed the "flatback" syndrome;

d) failed to appropriately follow-up on the postoperative symptoms displayed by the Plaintiff in subsequent visits;

e) failed to advise Plaintiff of the correct nature of his condition, namely, "flat back" syndrome and "hip contractures";

f) failed to advise Plaintiff of remedial actions which might cure or alleviate the condition their negligence caused;

10.) Plaintiff, Raymond William Walsh contends that Defendant surgeons, Bennett, French and Brantley Vitek were negligent and deviated from acceptable standards of medical practice in:

a) failing to administer or order the administration of stimulation to the hip muscles to prevent the exacerbation of the aforesaid condition as a reasonably prudent health provider would do;

b) failing to prescribe a regimen of exercise or rehabilitative physical therapy treatment program to prevent the exacerbation of the aforesaid condition from developing;

d) failing to follow up in subsequent outpatient visits by Plaintiff to advise Plaintiff of his defective condition and failing to advise him of remedial actions which might be taken to alleviate, cure or otherwise lessen the decrease of lordosis and hip contracture;

c) being wantonly negligent in abandoning Plaintiff by failing to follow-up or advise or schedule future outpatient visits for Plaintiff or inform him of the nature of his condition, namely "flat-back syndrome" and "hip contractures";

11.) Plaintiff, Raymond William Walsh contends that Fairfax Hospital and/or Inova Health Systems, negligently employed rehabilitative personnel, including its agent, Doctor Wan Shin, who were either incompetent or negligent or both in allowing Plaintiff's "hip contractures" to develop, and in failing to adequately follow up to assist Plaintiff or to otherwise employ or consult with competent personnel who could have assisted them in rendering adequate medical and post-operative care to Plaintiff.

12.) Plaintiff contends that Defendant, Fairfax Hospital and/ or Inova Health Systems, failed to uphold the proper standard of care owed to its patient, in failing to provide services and advice to prevent the above described condition to develop and in failing to employ competent physicians and surgeons and rehabilitative personnel which allow the condition to develop;

13.) Plaintiff is greatly physically handicapped as a result of the aforesaid negligence of the Defendants and is unable to engage in exercise and otherwise move in a fashion, which he otherwise would be able to do, except that his hips are "locked" or "frozen" and that his "flat back" condition caused by the negligence of Defendants prevents Plaintiff from standing erect or at all for more than several minutes and has subjected him and will subject him to social ridicule due to the unsightly physical spectacle the "flat back" condition presents, causing him to waddle for the short distances he is able to walk;

14.) Whereas, Plaintiff, Raymond William Walsh, has and will continue to suffer embarrassment, pain and suffering, greatly reduced motion, decreased enjoyment of life and other activities and engagements, which he would otherwise have been able to engage in, were it not for the negligence of the Defendants, in allowing or causing this debilitating condition to develop and in negligently installing the fusion apparatus, requiring Plaintiff to undergo the risks, fear, expenses and uncertainty of another operation to remedy the conditions caused by Defendant's negligence and failure to adhere to the ordinary and reasonable standards of medical care.

15.) Plaintiff demands a jury trial.

16.) Plaintiff maintains that the above described condition arose solely through the negligence of Defendants and not through any negligence on his part.

WHEREAS, Plaintiff demands judgment against Defendants in the sum of (\$800,000.) Eight Hundred Thousand Dollars and his costs expended in this action.

BY 
RAYMOND JOHN WALSH
Of Counsel

Ray J. Walsh
7631 Grace St.
Springfield, VA 22150
Virginia State Bar Number #36999

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

RAYMOND WILLIAM WALSH,)	
)	
Plaintiff,)	
)	
v.)	Case No. L174460
)	
INOVA HEALTH SYSTEMS,)	
FAIRFAX HOSPITAL,)	
BRANTLEY VITEK, M.D.)	
DEAN R. BENNETT, M.D., and)	
KATHLEEN B. FRENCH, M.D.)	
)	
Defendants.)	

**DEFENDANTS BRANTLEY VITEK, M.D. AND DEAN R. BENNETT, M.D.'S
MOTION TO EXCLUDE PLAINTIFF'S DESIGNATION OF EXPERTS AND
MEMORANDUM IN SUPPORT THEREOF**

COME NOW Brantley Vitek, M.D. and Dean R. Bennett, M.D., by counsel, and files this their Motion to Exclude Plaintiff's Designation of Experts, and in support thereof, state as follows:

1. This is a medical malpractice case which is currently scheduled to be tried in June, 1999.
2. On or about March 22, 1999, plaintiff was required to designate, pursuant to the Scheduling Order and the Supreme Court of Virginia Rules, the experts he intended to call at the trial of this matter. This case has been previously nonsuited.
3. Plaintiff filed the Designation of Experts, attached hereto as Exhibit "A".
4. As one can see from a review of Exhibit A, the plaintiff has failed to comply with any rule applicable to the designation of experts in a pending civil case in the Circuit Court of Fairfax County.

5. By way of illustration, but not of limitation, the plaintiff's designation lists a family practice doctor, chiropractor and a physical therapist who were alleged to be offered to testify that the defendants deviated from the standard of care. There is no family practice doctor, chiropractor, or physical therapist who is a defendant in this case. Additionally, the plaintiff has simply made a conclusion as to what his witnesses will say and it is that they are offered on the standard of care. Some of the physicians are designated to give testimony regarding their care and treatment of the plaintiff. Clearly, none of the designation is adequate.

6. The Rules of the Supreme Court of Virginia, Rule 4:1(b)(4)(A)(i) states as follows:

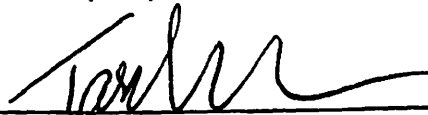
A party made through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

7. As can be seen from a review of Exhibit A, plaintiff has failed to do what the Rules require.

WHEREFORE, the above premises considered, these defendants ask that the plaintiff's designation be stricken and that he not be permitted to call on the experts at the trial.

BRANTLEY VITEK, M.D.
DEAN R. BENNETT, M.D.
By counsel

MCCARTHY & MASSEY, P.C.
9315 Center Street, Suite 104
Manassas, Virginia 20110
(703) 330-2726
Facsimile: (703) 330-2429

By: 
Tara M. McCarthy
VSB #22223

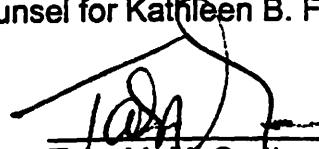
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 1999, a true and accurate copy of the foregoing DEFENDANTS BRANTLEY VITEK, M.D. AND DEAN R. BENNETT, M.D.'S MOTION TO EXCLUDE PLAINTIFF'S DESIGNATION OF EXPERTS AND MEMORANDUM IN SUPPORT THEREOF was mailed first class, postage prepaid, to:

Raymond J Walsh, Esq.
7631 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff

Thomas C. Junker, Esq.
Hazel & Thomas, P.C.
510 King Street, Suite 200
Alexandria, Virginia 22314
Counsel for Defendant Inova Health
Care Services

Mark R. Lightfoot, Esq.
Gary A. Godard, Esq.
Godard, West & Adelman
3975 University Drive, Suite 220
Fairfax, Virginia 22030
Counsel for Kathleen B. French, M.D.


Tara M. McCarthy, Attorney-at-Law

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

RAYMOND WILLIAM WALSH,

Plaintiff,

V.

**INOVA HEALTH SYSTEMS, FAIRFAX
HOSPITAL, BRANTLEY VITEK, M.D.,
DEAN R. BENNET, M.D., AND
KATHLEEN B. FRENCH, M.D.,**

Defendants.

LAW NO. 174460

PLAINTIFF'S DESIGNATION OF EXPERTS

COMES NOW, the Plaintiff, Raymond William Wash, by counsel, and files this his Designation of Experts pursuant to the Scheduling Order:

1. John P. Kostuik, M.D., Professor and Chief, Spine Division, Department of Orthopedic surgery, Johns Hopkins Medicine, 601 North Caroline St., Baltimore, MD 21287-0882.

Dr. Kostuik will testify that the Defendants did not comply with the applicable standard of care, and will testify in accordance with his care and treatment of the Plaintiff.

2. Richard C. Gardner, M.D., Orthopedic Surgeon, Gardner Orthopedic Clinic, 3653 Central Avenue, Fort Meyers, Fl. 33901.

Dr Gardner will testify that the Defendants did not comply with the applicable standard of care.

3. Anthony Fasano, M.D., D.O., 10721 Main St., Fairfax, Va. 22034, General Practitioner.

Dr. Fasano will testify that the Defendants did not comply with the applicable standard of care, and will testify in accordance with his care and treatment of the Plaintiff.

4. Lawrence G. Sassadeck, Chiropractic Physician, 7501 Little River Turnpike, Suite G-3, Annandale, Va. 22003.

Dr. Sassadeck will testify that the defendants fell below the normal standard of care in treatment of Plaintiff and will testify in accordance with his care and treatment of Plaintiff.

5. Keith Scott, Physical Therapist, 10721 Main St., Suite G-5, Fairfax, Va. 22030.

Mr. Scott will testify as the departure from general accepted standards of care by Defendants and will testify in accordance with his care and treatment of Plaintiff.

Curricula Vitae of each of the above witnesses will be submitted under separate cover. Reports will be generated shortly and submitted.



Ray J. Walsh

Ray J. Walsh
Ray Walsh Law Offices
7431 Grace Street
Springfield, Va. 22150
VSB # 36999
Phone: (703) 451-6679

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of March, 1999, a true and accurate copy of the foregoing **PLAINTIFF'S DESIGNATION OF EXPERTS** was mailed first class postage prepaid to:

Tara M. McCarthy
Attorney at Law
9315 Center St. Suite 104
Manassas, Va. 20110

Thomas C. Junker, Esq.
Hazel & Thomas, P.C.
510 King St. Suite 200
Alexandria, Va. 22314

Mark R. Lightfoot, Esq.
3975 University Drive, Suite 220
Fairfax, Va. 22030



Ray J. Walsh, Attorney-at-Law

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

RAYMOND WILLIAM WALSH,)

Plaintiff,)

v.)

Case No. L174460

INOVA HEALTH SYSTEMS,)

FAIRFAX HOSPITAL,)

BRANTLEY VITEK, M.D.)

DEAN R. BENNETT, M.D., and)

KATHLEEN B. FRENCH, M.D.)

Defendants.)

DEFENDANTS BRANTLEY VITEK, M.D. AND DEAN R. BENNETT, M.D.'S
OBJECTIONS TO PLAINTIFF'S DESIGNATION OF EXPERTS

COME NOW defendants Brantley Vitek, M.D. and Dean R. Bennett, M.D., by counsel, and pursuant to Fairfax Circuit Court Civil Trial Practice Rules and the Rules of the Virginia Supreme Court, object to plaintiff's designation of experts as follows:

1. Plaintiff has failed to adequately designate their experts pursuant to the Scheduling Order, Fairfax Circuit Court Civil Trial Practice Rules and the Virginia Rules of the Supreme Court.

WHEREFORE, the above premises considered, these defendants move that the designation be stricken.

BRANTLEY VITEK, M.D.
DEAN R. BENNETT, M.D.
By counsel

MCCARTHY & MASSEY, P.C.
9315 Center Street, Suite 104
Manassas, Virginia 20110
(703) 330-2726
Facsimile: (703) 330-2429

By: _____

Tara M. McCarthy
VSB #22223

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 1999, a true and accurate copy of the foregoing DEFENDANTS BRANTLEY VITEK, M.D. AND DEAN R. BENNETT, M.D.'S OBJECTIONS TO PLAINTIFF'S DESIGNATION OF EXPERTS was mailed first class, postage prepaid, to:

Raymond J Walsh, Esq.
7631 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff

Thomas C. Junker, Esq.
Hazel & Thomas, P.C.
510 King Street, Suite 200
Alexandria, Virginia 22314
Counsel for Defendant Inova Health
Care Services

Mark R. Lightfoot, Esq.
Gary A. Godard, Esq.
Godard, West & Adelman
3975 University Drive, Suite 220
Fairfax, Virginia 22030
Counsel for Kathleen B. French, M.D.

Tara M. McCarthy, Attorney-at-Law

C
✓

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

RAYMOND WILLIAM WALSH,)

Plaintiff,)

v.)

Case No. L174460

INOVA HEALTH SYSTEMS,)

FAIRFAX HOSPITAL,)

BRANTLEY VITEK, M.D.)

DEAN R. BENNETT, M.D., and)

KATHLEEN B. FRENCH, M.D.)

Defendants.)

ORDER

THIS MATTER came before the Court on Defendants Brantley Vitek, M.D. and Dean R. Bennett, M.D. ^{and Dr. French's} Motions to Exclude Plaintiff's Designations of Experts; and

IT APPEARING TO THE COURT, after reviewing the Motion and hearing the argument of counsel, ~~that the Motion is proper and should be granted;~~ it is accordingly

ORDERED and ADJUDGED that defendants' Motions to Exclude Plaintiff's Designations of Experts is granted with leave to the plaintiff to amend the designation of experts on or before April 26, 1999. FURTHER ORDERED That plaintiff will not be allowed to file any additional amendments to the designation. FURTHER ORDERED THAT THE DEFENDANTS' expert designations will be due on or before 5.26.99
ENTERED this 16 day of April, 1999.


JUDGE

WE ASK FOR THIS:

MCCARTHY & MASSEY, P.C.

By: 

Tara M. McCarthy, VSB # 22223
9315 Center Street
Suite 104
Manassas, Virginia 20110
(703) 330-2429; Facsimile (703) 330-2429

SEEN AND OBJECTED TO:



Raymond J. Walsh, Esq., VSB # _____
7631 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff

SEEN AND _____:

HAZEL & THOMAS, P.C.

By:  

Thomas C. Junker, Esq., VSB # _____
510 King Street, Suite 200
Alexandria, Virginia 22314
Counsel for Defendant Inova Health Care Services

GODARD, WEST & ADELMAN

By: 

Mark R. Lightfoot, Esq., VSB# _____
3975 University Drive, Suite 220
Fairfax, Virginia 22030
Counsel for Defendant Kathleen B. French, M.D.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
99 APR 28 PM 2:18

RAYMOND WILLIAM WALSH

Plaintiff

v.

INOVA HEALTH SYSTEMS,
et al.

Defendants

AT LAW NO. 174460

PLAINTIFF'S SUPPLEMENTAL DESIGNATION OF EXPERT WITNESSES

COMES NOW the Plaintiff, RAYMOND WILLIAM WALSH, by and through counsel, and files this Supplemental Designation of Expert Witnesses pursuant to this Court's Order of April 16, 1999:

1. John P. Kostuik
Johns Hopkins Hospital
Suite 5215
601 N. Caroline Street
Baltimore, MD 21287-0882

Dr. Kostuik is a physician specializing in the practice of orthopedic surgery, and particularly surgery to the spine. A copy of his curriculum vitae is attached hereto. Dr. Kostuik has reviewed the medical records concerning the injury and subsequent treatment of Plaintiff, has seen and examined the Plaintiff, and has performed reparative surgery on the Plaintiff's spine. His opinions will be based upon his review of the records, his examination and treatment of Plaintiff, and his experience and training.

Dr. Kostuik is expected to testify that Defendant Dean R. Bennett, M.D. failed to comply with the appropriate standard of care in his treatment of the Plaintiff in

the following particulars:

Dr. Bennett's approach to the burst fracture of L3 and the compression fractures of L2 and L4 was deficient in a technical sense in respect to the fact that mechanical stabilization of the lumbar spine was performed in such a fashion that lumbar lordosis was effectively obliterated. The anticipated result of such a technical deficiency is the development of "flat back" syndrome, which in fact occurred. None of the available avenues to avoid this result were utilized. Since, by 1995, the "flat back" syndrome was well understood and recognized, it was below the standard of care not to take some acceptable approach to avoid creating this complication at the time of surgery.


Following surgery, the signs and symptoms of "flat back" syndrome, namely a flexed or forward bending posture and hip contractures with attendant difficulties in loco motion and balance, were recognized and recorded in the records of Dr. Bennett. These symptoms will progress in severity of time if untreated. Appropriate treatment involves a necessity for reoperation and reconfiguration of the lumbar spine to recreate appropriate physiological lordosis. Dr. Bennett did not perform this procedure, nor did he recommend it to be performed by others to the patient or his family. Indeed, Dr. Bennett advised against any further operative intervention. This was also the appropriate standard of care under the circumstances.

Dr. Kostuik is further expected to testify that had an appropriate surgical procedure been performed, to a reasonable degree of medical probability, "flat back" syndrome would not have occurred. Had appropriate evaluation been promptly made of the onset of "flat back" syndrome, and prompt surgical correction been undertaken,

to a reasonable degree of medical certainty, correction of this problem would have been more prompt, sparing the patient the pain, discomfort and disability, and resulting in a more nearly normal physiological function of the lower back than was ultimately obtained, due to the fact that substantial delay occurred before effective treatment was instituted.

2. Plaintiff expects to call his treating physicians, whose identity are known to Defendant, to testify as to their findings, their opinions as to his prognosis, as well as a causal connection between his conditions and results of his injury and surgery by Dr. Bennett, including, the development of "flat back" syndrome.

RAYMOND WILLIAM WALSH
Plaintiff
By Counsel



By: Ray Walsh, Esq.
7431 Grace Street
Springfield, VA 22150
(703) 451-6679
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of APRIL, 1999, I sent via first-class mail, postage prepaid, a true copy of the foregoing to the following:

Tara McCarthy, Esq.
MCCARTHY & MASSEY
9315 Center Street
Suite 104
Manassas, VA 20110

Gary A. Godard, Esq.
Mark Lightfoot, Esq.
GODARD WEST & ADELMAN
3975 University Drive
Suite 220
Fairfax, VA 22030

Thomas C. Junker, Esq.
HAZEL & THOMAS
510 King Street
Suite 200
Alexandria, VA 22313



Ray Walsh

**RAY WALSH LAW OFFICES
7431 GRACE ST.
SPRINGFIELD, VA. 22150
PHONE: (703) 451-6679**

VSB NO. 36999

4-30-99

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX: 00

99 APR 30 PM 12:00
CLERK OF COURT
FAIRFAX, VA

RAYMOND WILLIAM WALSH,)

Plaintiff,)

v.)

Case No. L174460

INOVA HEALTH SYSTEMS,)
FAIRFAX HOSPITAL,)
BRANTLEY VITEK, M.D.)
DEAN R. BENNETT, M.D., and)
KATHLEEN B. FRENCH, M.D.)

Defendants.)

DEFENDANTS BRANTLEY VITEK, M.D. AND DEAN R. BENNETT, M.D.'S
MOTION TO STRIKE PLAINTIFF'S EXPERTS AND
MEMORANDUM IN SUPPORT THEREOF

COME NOW Defendants, Brantley Vitek, M.D. and Dean R. Bennett, M.D., by counsel, and files this their Motion to Strike the Plaintiff's Designation of Experts and in support thereof, state as follows:

1. This is a medical malpractice case which is currently scheduled to be tried in June, 1999.
2. This is at least the third motion that these defendants have filed regarding the vague and insufficient information that the plaintiff has provided regarding designation of expert witnesses.
3. Judge Hudson granted the plaintiff one last chance to designate expert witnesses pursuant to proper procedure, the Fairfax Circuit Court Status Conference Order, and the Rules of the Virginia Supreme Court. Plaintiff filed the attached 2 1/2 page Designation on or about April 26 (attached hereto as Exhibit 1).

4. Regarding the Designation, there is no mention in the Designation as to any alleged deviation from the standard of care by Dr. Vitek. In fact, the entire Supplemental Designation of Expert Witnesses is devoid of any information regarding Dr. Vitek.

5. Regarding Dr. Kostuick's alleged testimony, the Designation is still vague and insufficient and not in compliance with appropriate procedure nor the Rules of the Virginia Supreme Court regarding designation of expert witness testimony. The allegations with reference to Dr. Bennett are conclusory and do not contain the appropriate facts nor the other information required to be provided pursuant to the Rules of the Virginia Supreme Court.

6. Additionally, paragraph 2, wherein the plaintiff indicates that he intends to call his treating physicians to testify as to their opinions and a causable connection between his conditions and the results of his injury and surgery by Dr. Bennett, is equally lacking in foundation and fails to conform to the requirements of the Rules of the Virginia Supreme Court regarding designation of expert testimony.

WHEREFORE, the above premises considered, these defendants ask, again, that the plaintiff's experts be stricken and for costs attendant to the filing of this Motion.

BRANTLEY VITEK, M.D.
DEAN R. BENNETT, M.D.
By counsel

MCCARTHY & MASSEY, P.C.
9315 Center Street, Suite 104
Manassas, Virginia 20110
(703) 330-2726
Facsimile: (703) 330-2429

By: 

Tara M. McCarthy
VSB #22223

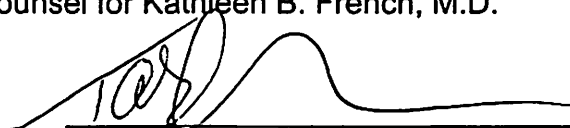
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 1999, a true and accurate copy of the foregoing DEFENDANTS BRANTLEY VITEK, M.D. AND DEAN R. BENNETT, M.D.'S MOTION TO STRIKE PLAINTIFF'S EXPERTS AND MEMORANDUM IN SUPPORT THEREOF was hand-delivered to:

Raymond J Walsh, Esq.
7431 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff

Thomas C. Junker, Esq.
Hazel & Thomas, P.C.
510 King Street, Suite 200
Alexandria, Virginia 22314
Counsel for Defendant Inova Health
Care Services

Mark R. Lightfoot, Esq
Gary A. Godard, Esq.
Godard, West & Adelman
3975 University Drive, Suite 220
Fairfax, Virginia 22030
Counsel for Kathleen B. French, M.D.


Tara M. McCarthy, Attorney-at-Law

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

RAYMOND WILLIAM WALSH

Plaintiff

v.

INOVA HEALTH SYSTEMS,
et al.

Defendants

AT LAW NO. 174460

FILED
99 APR 30 PM 12:00
CLERK-CIRCUIT COURT
FAIRFAX CO. VA.

PLAINTIFF'S SUPPLEMENTAL DESIGNATION OF EXPERT WITNESSES

COMES NOW the Plaintiff, RAYMOND WILLIAM WALSH, by and through counsel, and files this Supplemental Designation of Expert Witnesses pursuant to this Court's Order of April 16, 1999:

1. John P. Kostuik
Johns Hopkins Hospital
Suite 5215
601 N. Caroline Street
Baltimore, MD 21287-0882

Dr. Kostuik is a physician specializing in the practice of orthopedic surgery, and particularly surgery to the spine. A copy of his curriculum vitae is attached hereto. Dr. Kostuik has reviewed the medical records concerning the injury and subsequent treatment of Plaintiff, has seen and examined the Plaintiff, and has performed reparative surgery on the Plaintiff's spine. His opinions will be based upon his review of the records, his examination and treatment of Plaintiff, and his experience and training.

Dr. Kostuik is expected to testify that Defendant Dean R. Bennett, M.D. failed to comply with the appropriate standard of care in his treatment of the Plaintiff in

the following particulars:

Dr. Bennett's approach to the burst fracture of L3 and the compression fractures of L2 and L4 was deficient in a technical sense in respect to the fact that mechanical stabilization of the lumbar spine was performed in such a fashion that lumbar lordosis was effectively obliterated. The anticipated result of such a technical deficiency is the development of "flat back" syndrome, which in fact occurred. None of the available avenues to avoid this result were utilized. Since, by 1995, the "flat back" syndrome was well understood and recognized, it was below the standard of care not to take some acceptable approach to avoid creating this complication at the time of surgery.

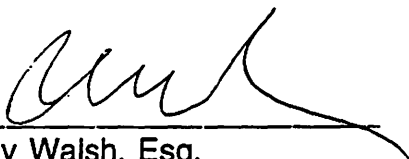
Following surgery, the signs and symptoms of "flat back" syndrome, namely a flexed or forward bending posture and hip contractures with attendant difficulties in loco motion and balance, were recognized and recorded in the records of Dr. Bennett. These symptoms will progress in severity of time if untreated. Appropriate treatment involves a necessity for reoperation and reconfiguration of the lumbar spine to recreate appropriate physiological lordosis. Dr. Bennett did not perform this procedure, nor did he recommend it to be performed by others to the patient or his family. Indeed, Dr. Bennett advised against any further operative intervention. This was also the appropriate standard of care under the circumstances.

Dr. Kostuik is further expected to testify that had an appropriate surgical procedure been performed, to a reasonable degree of medical probability, "flat back" syndrome would not have occurred. Had appropriate evaluation been promptly made of the onset of "flat back" syndrome, and prompt surgical correction been undertaken,

to a reasonable degree of medical certainty, correction of this problem would have been more prompt, sparing the patient the pain, discomfort and disability, and resulting in a more nearly normal physiological function of the lower back than was ultimately obtained, due to the fact that substantial delay occurred before effective treatment was instituted.

2. Plaintiff expects to call his treating physicians, whose identity are known to Defendant, to testify as to their findings, their opinions as to his prognosis, as well as a causal connection between his conditions and results of his injury and surgery by Dr. Bennett, including, the development of "flat back" syndrome.

RAYMOND WILLIAM WALSH
Plaintiff
By Counsel



By: Ray Walsh, Esq.
7431 Grace Street
Springfield, VA 22150
(703) 451-6679
Counsel for Plaintiff

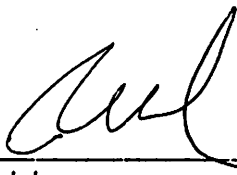
CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of APRIL, 1999, I sent via first-class mail, postage prepaid, a true copy of the foregoing to the following:

Tara McCarthy, Esq.
MCCARTHY & MASSEY
9315 Center Street
Suite 104
Manassas, VA 20110

Gary A. Godard, Esq.
Mark Lightfoot, Esq.
GODARD WEST & ADELMAN
3975 University Drive
Suite 220
Fairfax, VA 22030

Thomas C. Junker, Esq.
HAZEL & THOMAS
510 King Street
Suite 200
Alexandria, VA 22313



Ray Walsh

**RAY WALSH LAW OFFICES
7431 GRACE ST.
SPRINGFIELD, VA. 22150
PHONE: (703) 451-6679**

VSB NO. 36999

5-7-17

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CLERK
JULY -7 PM 2:58

RAYMOND WILLIAM WALSH,)

Plaintiff,)

v.)

Case No. L174460

INOVA HEALTH SYSTEMS,)

and)

FAIRFAX HOSPITAL,)

and)

BRANTLEY VITEK, M.D.)

and)

DEAN R. BENNETT, M.D.)

and)

KATHLEEN B. FRENCH, M.D.)

Defendants.)

**DEFENDANT DEAN R. BENNETT'S DESIGNATION
OF EXPERT WITNESSES**

COMES NOW the defendant Dean R. Bennett, M.D., by counsel, and files this his Designation of Expert Witnesses as follows:

1. *William C. Lauerman, M.D., Georgetown University, Washington, D.C.*

Dr. Lauerman is a physician specializing in the practice of orthopaedic surgery.

A copy of his curriculum vitae is attached hereto. Dr. Lauerman has reviewed all of the

records and applicable information in this case . Dr. Lauerman will testify that Dr. Bennett met the applicable standard of care in all of the care and treatment he rendered to the plaintiff. He will testify that all of Mr. Walsh's alleged injuries are attributable to the severity of his fall and are not attributable to any alleged deviation in the standard of care. He will testify that Dr. Bennett performed an appropriate procedure, that an appropriate and informed consent was obtained, and that the x-rays demonstrate excellent orthopaedic care of Mr. Walsh.

Dr. Lauerman will testify that Dr. Bennett took care to preserve the lordotic curvature. He will testify that Dr. Bennett curved the rods into position. Dr. Lauerman will testify that Dr. Bennett appropriately stabilized the fracture and removed boney fragments which helped to increase the patient's mobilization post operatively. Dr. Lauerman will testify that the fracture could have been fixed non-surgically if the fracture had been limited to the L5. However, Dr. Lauerman will state that Mr. Walsh had multiple injuries and therefore, the standard of care required surgical reduction.

Dr. Lauerman will further testify that there was a solid fusion obtained with reference to Mr. Walsh's back surgery. He will testify that the plaintiff's allegations in this case are not reasonable based upon the medical records. He will testify that a "flat back" is a well known complication and can happen under the best of operative circumstances. In this case, Dr. Bennett met the applicable standard of care.

Dr. Lauerman will also testify that the post operative management of Mr. Walsh was totally appropriate and within the applicable standard of care. He will testify that the operative technique employed by Dr. Bennett was standard and in accordance with the custom and practice of orthopaedic surgeons.

Dr. Lauerman will testify that Dr. Bennett did not take any action or engage in any inaction that proximately caused the plaintiff's damages in this case. Dr. Lauerman will testify that "flat back" is a known complication and that if it occurred in this case, that Dr. Bennett was not responsible for it.

2. *Robert B. Stinger, M.D.*

Dr. Stinger is a physician specializing in the practice of orthopaedic surgery. A copy of his curriculum vitae is attached hereto. Dr. Stinger has reviewed all of the records and applicable information in this case. Dr. Stinger will testify that Dr. Bennett met the applicable standard of care in all of the care and treatment he rendered to the plaintiff. He will testify that all of Mr. Walsh's alleged injuries are attributable to the severity of his fall and are not attributable to any alleged deviation in the standard of care. He will testify that Dr. Bennett performed an appropriate procedure, that an appropriate and informed consent was obtained, and that the x-rays demonstrate excellent orthopaedic care of Mr. Walsh.

Dr. Stinger will testify that Dr. Bennett took care to preserve the lordotic curvature. He will testify that Dr. Bennett curved the rods into position. Dr. Stinger will testify that Dr. Bennett appropriately stabilized the fracture and removed bony fragments which helped to increase the patient's mobilization post operatively. Dr. Stinger will testify that the fracture could have been fixed non-surgically if the fracture had been limited to the L5. However, Dr. Stinger will state that Mr. Walsh had multiple injuries and therefore, the standard of care required surgical reduction.

Dr. Stinger will further testify that there was a solid fusion obtained with reference to Mr. Walsh's back surgery. He will testify that the plaintiff's allegations in this case are

not reasonable based upon the medical records. He will testify that a "flat back" is a well known complication and can happen under the best of operative circumstances. In this case, Dr. Bennett met the applicable standard of care.

Dr. Stinger will also testify that the post operative management of Mr. Walsh was totally appropriate and within the applicable standard of care. He will testify that the operative technique employed by Dr. Bennett was standard and in accordance with the custom and practice of orthopaedic surgeons.

Dr. Stinger will testify that Dr. Bennett did not take any action or engage in any inaction that proximately caused the plaintiff's damages in this case. Dr. Stinger will testify that "flat back" is a known complication and that if it occurred in this case, that Dr. Bennett was not responsible for it.

3. *Dean R. Bennett, M.D.*

Dr. Bennett will testify that he complied with the applicable standard of care in this case and will testify in accordance with his care and treatment of the plaintiff as evidenced by the medical records. He will testify that he performed the appropriate procedure on the patient and that he caused no damage to the patient.

4. *Jeffrey S. Malka, M.D.*

Dr. Malka is a physician specializing in the practice of orthopaedic surgery. A copy of his curriculum vitae is attached hereto. Dr. Malka has reviewed all of the records and applicable information in this case. Dr. Malka will testify that Dr. Bennett met the applicable standard of care in all of the care and treatment he rendered to the plaintiff. He will testify that all of Mr. Walsh's alleged injuries are attributable to the severity of his fall and are not attributable to any alleged deviation in the standard of

care. He will testify that Dr. Bennett performed an appropriate procedure, that an appropriate and informed consent was obtained, and that the x-rays demonstrate excellent orthopaedic care of Mr. Walsh.

Dr. Malka will testify that Dr. Bennett took care to preserve the lordotic curvature. He will testify that Dr. Bennett curved the rods into position. Dr. Malka will testify that Dr. Bennett appropriately stabilized the fracture and removed boney fragments which helped to increase the patient's mobilization post operatively. Dr. Malka will testify that the fracture could have been fixed non-surgically if the fracture had been limited to the L5. However, Dr. Malka will state that Mr. Walsh had multiple injuries and therefore, the standard of care required surgical reduction.

Dr. Malka will further testify that there was a solid fusion obtained with reference to Mr. Walsh's back surgery. He will testify that the plaintiff's allegations in this case are not reasonable based upon the medical records. He will testify that a "flat back" is a well known complication and can happen under the best of operative circumstances. In this case, Dr. Bennett met the applicable standard of care.

Dr. Malka will also testify that the post operative management of Mr. Walsh was totally appropriate and within the applicable standard of care. He will testify that the operative technique employed by Dr. Bennett was standard and in accordance with the custom and practice of orthopaedic surgeons.

Dr. Malka will testify that Dr. Bennett did not take any action or engage in any inaction that proximately caused the plaintiff's damages in this case. Dr. Malka will testify that "flat back" is a known complication and that if it occurred in this case, that Dr. Bennett was not responsible for it.

DEAN R. BENNETT, M.D.
By counsel

MCCARTHY & MASSEY, P.C.
9315 Center Street, Suite 104
Manassas, Virginia 20110
(703) 330-2726
Facsimile: (703) 330-2429

By: 

Tara M. McCarthy
VSB #22223

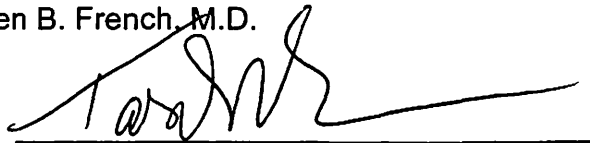
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of May, 1999, a true and accurate copy of the foregoing was mailed first class, postage prepaid, to:

Raymond J Walsh, Esq.
7631 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff

Thomas C. Junker, Esq.
Hazel & Thomas, P.C.
510 King Street, Suite 200
Alexandria, Virginia 22314
Counsel for Defendant Inova Health Care Services

Mark R. Lightfoot, Esq
Gary A. Godard, Esq.
Godard, West & Adelman
3975 University Drive, Suite 220
Fairfax, Virginia 22030
Counsel for Kathleen B. French, M.D.


Tara M. McCarthy, Attorney-at-Law

FILED

99 MAY 17 PM 3:30

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

CLERK CIRCUIT COURT
FAIRFAX, VA

RAYMOND WILLIAM WALSH,

Plaintiff

V.

CIVIL DIVISION

INOVA HEALTH SYSTEMS,

FAIRFAX HOSPITAL,

BRANTLEY VITEK, M.D.,

DEAN R. BENNETT, M.D.,

KATHLEEN B. FRENCH, M.D.,

Defendants

Case No. L-174460

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF HIS REQUEST FOR AN
EXTENSION OF TIME FOR DISCOVERY
OR IN THE ALTERNATIVE, A CONTINUANCE OF
SCHEDULED TRIAL DATE OF JUNE 21, 1999

Plaintiff, Raymond William Walsh, by counsel, hereby submits a request for an extension of time to permit completion of discovery, or in the alternative, a Continuance of the Scheduled Trial date of June 21, 1999, based upon the following considerations:

WHEREAS, pursuant to the Status Conference Order of November 17, 1998, a Settlement

Conference Date was set as April 13, 1999; and,

WHEREAS, Defendants indicated that they did not wish to attend the Settlement Conference to which Plaintiff agreed; and,

WHEREAS, the Status Conference Order set the trial date for the captioned case as June 21, 1999; and, **THEREFORE, PLAINTIFF MAKES THE FOLLOWING PLEA:**

Plaintiff has had a difficult and arduous task in securing the services of an expert orthopedic surgeon witness to testify on his behalf. This has been due mainly to the fact that the evolution of this case has not followed a logical nor normal course. Suit was commenced in FAIRFAX Circuit Court in late May, 1997 due to the unsatisfactory post-operative condition of Plaintiff. He could not walk. Without specific knowledge of what or whom caused the poor post-operative condition of Plaintiff's back, suit was filed to prevent the passage of the two year Statute of Limitation barring any possible claim that Plaintiff might have for negligence. Due to the fact that the operating physician defendant, Dean Bennett, did not disclose Plaintiff's true medical condition, i.e., that his spine surgery on May 25, 1995 had the effect of leaving the Plaintiff with a postoperative condition known as "flat-back" syndrome or postsurgical lumbar kyphosis, and, in fact concealed it, and made no recommendations concerning this condition nor how to alleviate it, Plaintiff pursued various programs of physical therapy and rehabilitative medicine, all to no avail, and in fact due to the passage of time, exacerbated Plaintiff's condition.

At this disadvantage, Plaintiff was forced to Nonsuit its case on March 4, 1998. Eventually, in the Summer of 1998, Plaintiff was advised by a former family physician, Dr. Anthony M. Fasano of Fairfax, Virginia that, in 25 years of practice he had seen only two patients, Plaintiff and an unnamed woman, emerge from a spinal fusion with complete obliteration of lordosis (flat-back) and referred Plaintiff, as he had the un-named woman patient to Dr. Thomas Schuler, an orthopedic spinal surgeon in Reston, Virginia, who examined Plaintiff on June 19, 1998 and disclosed to Plaintiff, for the first time, the true nature of his malady, what and who caused it, and the proper remedial steps to take, namely a reoperation. Dr. Schuler advised Plaintiff to secure a second opinion from a Doctor Lauerma of Georgetown University Hospital. After Plaintiff made an appointment with Doctor Lauerma, several dates prior to the date of his examination, Dr. Lauerma advised Plaintiff that he would be unable to examine him due to the fact that he had been employed by the Defendant doctor in this case, Dr. Dean Bennett, or his insurance company. Whereupon, Plaintiff asked Dr. Schuler if he was familiar with an eminent orthopedic back surgeon by the name of Dr. John P. Kostuik at Johns Hopkins Hospital whose name Plaintiff had been given by an unknown source. Dr. Schuler said that he was familiar with Doctor Kostuik, that he had an outstanding reputation and was able, as he Dr. Schuler was not, to perform both the back osteotomy and release of the hip contractures. The reoperation was performed on November 24, 1998 at Johns Hopkins Hospital by Dr. Kostuik, almost 3 1/2 years subsequent to the date of the accident, who advised Plaintiff of the true nature of his condition. Plaintiff did not have the operation at Johns Hopkins Hospital by Dr. John P. Kostuik with the intention of having Dr. Kostuik testify. Plaintiff employed Dr. Kostuik to obtain the benefit of his renowned skill, hoping to employ a Virginia orthopedic surgeon as an expert witness. Failing to find

a Virginia expert witness, Plaintiff ultimately, in March, 1999, asked Dr. Kostuik if he would be an expert witness to Plaintiff, to which he agreed.

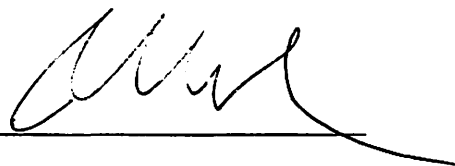
Thereupon, it appeared Dr. Kostuik could only appear on Videotaped Deposition and due to the nature of his schedule (out of the office all of the month of May) Doctor Kostuik would be only available on one day prior to the trial, namely June 11, 1999. This is also the only day on which Plaintiff will be able to secure the expert witness Dr. John Kostuik's testimony by Videotape, so that it is clear that Plaintiff did not intend to put Defendant at an unfair disadvantage and is not thereby unduly prejudiced, but Plaintiff is also subject to this same disadvantage. Whereupon, the attorney for the defendant, Dean Bennett, advised Plaintiff's attorney that she would move to have his testimony excluded (see attached letter, attachment #1) on the basis that he had not been made available for deposition until after the 30 day period prior to trial to complete discovery. Inasmuch as this is Plaintiff's sole expert witness, the exclusion of the witness would have the effect of depriving Plaintiff of his day in court and would result in a directed verdict for Defendant.

It is also noteworthy that the attorney for the Defendant, on May 3, 1999 provided Plaintiff with only one date (May 20th, for which Plaintiff's attorney had a prior commitment) to make the Defendant available for deposition before 30 days prior to trial. It is also noteworthy that the attorney for the Defendant did not advise the attorney for the Plaintiff until sometime in late April that she wished an available date to take Plaintiff's expert witness's deposition. Plaintiff's attorney advised Defendant's attorney, as he had earlier requests by counsel for Defendants no longer party to this suit, that the sole available date for deposing Plaintiff's expert witness was June 11, 1999.

If it please the Court, Plaintiff can substantiate Dr. John P. Kostuik's unavailability during the months of May and June, for other than the date of June 11, 1999.

**THEREFORE, PLAINTIFF PRAYS THE CALENDAR CONTROL JUDGE HEREIN, TO
EITHER EXTEND THE TIME FOR COMPLETION OF DISCOVERY OR IN THE
ALTERNATIVE TO CONTINUE THE TRIAL DATE TO A DATE CERTAIN BEYOND
JUNE 21, 1999.**

RESPECTFULLY SUBMITTED

BY 

RAYMOND JOHN WALSH

Of Counsel

Ray J. Walsh
7631 Grace St.
Springfield, VA 22150
Virginia State Bar Number #36999
Phone: (703) 451-6679

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of May, 1999, a true and accurate copy of Plaintiff's Memorandum in Support of Its Request for an extension of time for Discovery or, in the alterternative, A REQUEST FOR CONTINUANCE OF THE TRIAL DATE OF June 21, 1999 was mailed first class postage prepaid to the following counsel for Defendants:

Ms. Tara McCarthy, Esquire
McCarthy & Massey
9315 Center St., Suite 104
Manassas, Va. 20110

A handwritten signature in black ink, appearing to read 'R. Walsh', is written over a horizontal line.

Ray J. Walsh, Attorney-at-Law
Counsel for Plaintiff

5-17-99

FILED
99 MAY 17 PM 3:23
CLERK OF CIRCUIT COURT
FAIRFAX, VA

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

RAYMOND WILLIAM WALSH,)
Plaintiff)
)
)
V.)
)
INOVA HEALTH SYSTEMS,)
)
FAIRFAX HOSPITAL,)
)
BRANTLEY VITEK, M.D.,)
)
DEAN R. BENNETT, M.D.,)
)
KATHLEEN B. FRENCH, M.D.,)
Defendants)

CIVIL DIVISION

Case No. L-174460

ADDENDUM TO
PLAINTIFF'S MEMORANDUM IN
SUPPORT OF HIS REQUEST FOR AN
EXTENSION OF TIME FOR DISCOVERY
OR IN THE ALTERNATIVE, A CONTINUANCE OF
SCHEDULED TRIAL DATE OF JUNE 21, 1999

Plaintiff, Raymond William Walsh, by counsel, hereby submits THIS ADDENDUM TO HIS MEMORANDUM IN request for an extension of time to permit completion of discovery, or in the alternative, a Continuance of the Scheduled Trial date of June 21, 1999, based upon the following additional matters:

- 1) The attorney for the Defendant has, for the first time, on May 9, 1999, provided

Plaintiff's attorney with Defendant's DESIGNATION OF EXPERT WITNESSES, listing three orthopedic surgeons as potential witnesses. As the attorney for Defendant has indicated in objecting to Plaintiff's witness and Plaintiff's Deposition of Defendant, it would be virtually impossible at this point for Plaintiff to schedule and take Depositions of Defendant's three expert witnesses before May 21, 1999, 30 days prior to the scheduled trial date of June 21, 1999.

Accordingly, Plaintiff offers this impracticality and failure of Counsel for the Defenant to provide enough time to schedule dates for depositions of Defendant's expert witnesses, in support of Plaintiff's request to the Calendar Control Judge for an extension of the time to complete discovery in this case or, in the alternative for a Continuance of the scheduled trial date of June 21, 1999 which Plaintiff has already requested.

Attachment #1 (previously omitted) Copy of letter of Defendant's Counsel's position that she would move to exclude Plaintiff's Expert Witness at trial.

Attachment #2 Copy of Defendant's Counsel "Designation of Expert Witnesses", letter, mailed on May 5, 1999 and received by Plaintiff's Counsel on May 9, 1999.

Attachment #3 Copy of Defendant's letter dated May 14, 1999 reiterating threat to exclude Plaintiff's Expert Witness's testimony at trial.

**THEREFORE, PLAINTIFF PRAYS THAT THE CALENDAR CONTROL JUDGE HEREIN,
EXTEND THE TIME FOR COMPLETION OF DISCOVERY BY BOTH PARTIES,
PLAINTIFF AND DEFENDANT, OR IN THE ALTERNATIVE, GRANT A
CONTINUANCE, CONTINUING THE TRIAL DATE TO A DATE CERTAIN BEYOND
JUNE 21, 1999**

RESPECTFULLY SUBMITTED,

By  _____

RAYMOND J. WALSH,

OF COUNSEL

**Ray J. Walsh
7631 Grace St.
Springfield, Va. 22150
VSB #36999**

Phone (703) 451-6679

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of May, 1999, a true and accurate copy of Plaintiff's Addendum To Plaintiff's Memorandum in Support of Its Request for an extension of time for Discovery or, in the alternative, A REQUEST FOR CONTINUANCE OF THE TRIAL DATE OF June 21, 1999 was mailed first class postage prepaid to the following counsel for Defendants:

Ms. Tara McCarthy, Esquire
McCarthy & Massey
9315 Center St., Suite 104
Manassas, Va. 20110



Ray J. Walsh, Attorney-at-Law
Counsel for Plaintiff

99 MAY 17 PM 3:23

Completed By Party Requesting Continuance.

Completed by Judge.
CLERK OF CIRCUIT COURT
FALLS CHURCH, VA.

RAYMOND W. WALSH, PLAINTIFF

versus

INOVA, ET AL., DEFENDANT

CASE NO. L-174460

Criminal J&DR X
Law Chancery Fiduciary

Party requesting continuance: (Please check as appropriate)

Atty. for Plaintiff x **Atty. for Defendant** _____

Atty. for Commonwealth _____

Previous mistrial (Please check one) ☐ Yes ☒ No (If yes, heard by Judge _____)

Reason for Continuance: UNAVAILABILITY OF PLAINTIFF'S EXPERT WITNESS PRIOR
TO 30 DAYS PRIOR TO TRIAL DATE OF JUNE 21, 1999 and UNAVAILABILITY
OF DEFENDANT FOR DEPOSITION PRIOR TO 30 DAYS PRIOR TO TRIAL DATE.

Name of Attorney(s) for Plaintiff/Commonwealth:

RAY J. WALSH

Please Print Name

Telephone No. (703) 451-6679

Signature

Name of Attorney(s) for Defendant:

TARA MCCARTHY

Please Print Name

Telephone No. _____

Signature

TO BE COMPLETED BY CALENDAR CONTROL JUDGE:

Continuance Granted _____

Continuance Denied

Old Trial Date

New Trial Date

Judge Assigned

Time Estimate

SET FOR: Trial _____ Motions _____
Jury _____ No Jury _____ **43**

Other

ATTACHMENT #1

McCarthy & Massey, P.C.

Trial Attorneys and Counselors at Law

9315 Center Street, Suite 104
Manassas, Virginia 20110

Tara M. McCarthy
Joyce A. N. Massey
Susan L. Mitchell
Margo R. Conklin, Paralegal

Telephone (703) 330-2726
Metro (703) 551-2146
Facsimile (703) 330-2429

April 30, 1999

Raymond J. Walsh, Esq.
7431 Grace Street
Springfield, Virginia 22150

Re: Walsh v Bennett, et al.
Case No.: L174460

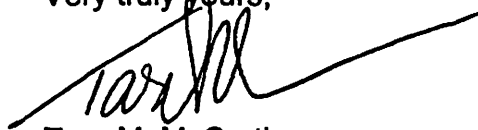
Dear Mr. Walsh:

I received your voice mail today indicating that you would be signing the order I forwarded to you dismissing Dr. Vitek from the above-captioned case. I look forward to receiving that order in the next few days.

With regard to your statement that Dr. Kostiuk is only available on June 4th from 12:30 TO 1:30 for a deposition or on June 11 at 12:30, this is simply not acceptable. As you know, the discovery cut-off in this case is on May 21st and the trial date is June 21st. A request for the deposition of Dr. Kostiuk has been outstanding for quite some time without any response from you whatsoever.

If you do not make Dr. Kostiuk available in May, I will move to exclude him at the trial on the grounds that you have not made him available in a timely manner.

Very truly yours,


Tara M. McCarthy

cc: Dean Bennett M.D.
Brantley Vitek M.D.
Gena Gustin Claim No. SS000592 & 595

McCarthy & Massey, P.C.

Trial Attorneys and Counselors at Law

9315 Center Street, Suite 104
Manassas, Virginia 20110

Tara M. McCarthy
Joyce A. N. Massey
Susan L. Mitchell
Margo R. Conklin, Paralegal

Telephone (703) 330-2726
Metro (703) 551-2146
Facsimile (703) 330-2429

May 5, 1999

Mr. John T. Frey, Clerk
Fairfax County Circuit Court
4110 Chain Bridge Road
Fairfax, Virginia 22030

Re: Walsh v Inova Health Systems, et al.
Case No.: L174460
Our File No.: 98-59

Dear Mr. Frey:

Enclosed for filing, please find Defendant Dean R. Bennett's Designation of Expert Witnesses. Please place this document in the appropriate file jacket.

Thank you for your attention to this matter.

Very truly yours,



Tara M. McCarthy

TMM:ldh
Enclosure

cc: Raymond J. Walsh, Esq. (w/enc.)
Thomas C. Junker, Esq. (w/enc.)
Mark R. Lightfoot, Esq. (w/enc.)

McCarthy & Massey, P.C.

Trial Attorneys and Counselors at Law

9315 Center Street, Suite 104

Manassas, Virginia 20110

Tara M. McCarthy

Joyce A. N. Massey

Susan L. Mitchell

Margo R. Conklin, Paralegal

Telephone (703) 330-2726

Metro (703) 551-2146

Facsimile (703) 330-2429

May 14, 1999

VIA FEDEX

Ray J. Walsh, Esq.
7431 Grace Street
Springfield, Virginia 22150

Re: Walsh v Bennett, et al.
At Law No. L174460

Dear Mr. Walsh:

I understand today, from my secretary, that you now wish to cancel the deposition that you have scheduled of Dr. Bennett. As you know, despite the fact that this case has been pending for quite some time, and the fact that you previously nonsuited this case prior to the established trial date, you did not even ask to depose Dr. Bennett until approximately a week before the discovery cut off. You have now indicated that you want to take Dr. Bennett's deposition "any time after May 21". Be advised that the discovery cut off is May 21, 1999, and it is inappropriate for you to make such a request.

Likewise, this will serve as a reminder that you have not made Dr. Kostuik available to me for deposition pursuant to my request, and, based upon that, I will take the action as I previously described to you.

Therefore, I am currently leaving Dr. Bennett's deposition as scheduled. If I do not hear from you by noon on May 17, 1999, I will assume you do, indeed, mean what you say and that you want to cancel Dr. Bennett's deposition. To insure that you do receive this correspondence in a timely manner in order to allow you to make this decision, I am Federal Expressing this letter for Saturday delivery so that you can have the opportunity to review it on May 15 and make your decision.

Ray J. Walsh, Esq.
May 14, 1999
Page Two

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Tara M. McCarthy

TMM:ls

cc: Dean R. Bennett, M.D.
Ms. Gena Gustin, Claim No.: SS000565

Washington, D.C., Virginia Office:
7431 Grace Street
Springfield, Virginia 22150
(703) 451-6679

Philadelphia Office:
903 Lincoln Avenue, Suite #1
Springfield, Pennsylvania 19064
(610) 544-2537

May 14, 1999

Ms. Tara M. McCarthy, Esquire
McCarthy & Massey
9315 Center St., Suite 104
Manassas, Va. 20110

Re: Walsh v. Inova, et al.
Case No. L-174460

Dear Ms. McCarthy:

This will confirm my telephone conversation this date with your secretary, Lynn, to whom I indicated that unfortunately, my Philadelphia office had scheduled me for May 20, so I will not be available to depose Dr. Dean Bennett on that date. I advised her that I would be available most dates after May 21, 1999. Please advise of a mutually suitable date.

Sincerely,

Ray J. Walsh
RJW/jkw

2
VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

RAYMOND WILLIAM WALSH,)

Plaintiff,)

v.)

Case No. L174460

INOVA HEALTH SYSTEMS,)

FAIRFAX HOSPITAL,)

BRANTLEY VITEK, M.D.)

DEAN R. BENNETT, M.D., and)

KATHLEEN B. FRENCH, M.D.)

Defendants.)

ORDER

THIS MATTER came before the Court on Defendant Dean R. Bennett, M.D.'s Motion to Strike the Plaintiff's Experts; and

IT APPEARING TO THE COURT, that all parties were present as represented by counsel, and that argument was had; it is therefore

ORDERED and ADJUDGED that the defendant Dr. R. Bennett, M.D.'s Motion to Strike the Plaintiff's Experts is hereby granted *and that by the*

Class of Business of V.P. *the defendant must*
ENTERED this 21st day of May, 1999. *have had the opportunity*

to adequately depose Dr. Kosturik
otherwise the experts will be struck.

Th. J. H.
JUDGE

seen & objected to :
~~WE ASK FOR THIS.~~

MCCARTHY & MASSEY, P.C.

By: *Tara M. McCarthy*

Tara M. McCarthy, VSB # 22223
9315 Center Street
Suite 104
Manassas, Virginia 20110
(703) 330-2429; Facsimile (703) 330-2429

SEEN AND OBJECTED TO:

Raymond J. Walsh

Raymond J. Walsh, Esq., VSB # _____
7631 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff

SEEN AND _____:

HAZEL & THOMAS, P.C.

By: *No appearance*

Thomas C. Junker, Esq., VSB # _____
510 King Street, Suite 200
Alexandria, Virginia 22314
Counsel for Defendant Inova Health Care Services

IN THE CIRCUIT COURT OF FAIRFAX COUNTY
REQUEST FOR CONTINUANCE/DATE CERTAIN

PLEASE PRINT

WALSH

VERSUS

DR BENNETT et al

CASE NO.

174460

Criminal

Juvenile

Law

Chancery

Viduary

PARTY REQUESTING CONTINUANCE (Please check)

Counsel for Plaintiff ☒

Counsel for Defendant

Counsel for Commonwealth

Pro Se Plaintiff/Defendant

IF THERE HAS BEEN A PREVIOUS MISTRIAL, PLEASE INDICATE WHICH JUDGE HEARD THE PREVIOUS TRIAL.

REASON FOR CONTINUANCE: UNAVAILABILITY OF PLAINTIFF'S EXPERT

WITNESS PRIOR TO 30 DAYS PRIOR TO TRIAL DATE OF JUNE 21, 1999 AND

UNAVAILABILITY OF DEFENDANT FOR DEPOSITION BY PLAINTIFF 130 DAYS PRIOR

TO TRIAL DATE AND DEFENDANT HAS NOT GIVEN PLAINTIFF ANY AVAILABLE DATE

NAME OF ATTORNEY(S) FOR PLAINTIFF/COMMONWEALTH TO DEPOSE DEFENDANT'S EXPERT WITNESSES

RAY WALSH

Please print name

Telephone: (703) 451-6679

Signature

NAME OF ATTORNEY(S) FOR DEFENDANT:

Tara McCarthy

Please print name

Telephone: (703) 330 2726

Signature

TO BE COMPLETED BY CALENDAR CONTROL JUDGE

CONTINUANCE GRANTED

CONTINUANCE DENIED ☒

6.21.99

Old Trial Date

New Trial Date

Judge Assigned

Time Estimate

SET FOR: TRIAL

JURY

NO JURY

MOTIONS

*If set for a FRIDAY, indicate which Motion Docket.

9 AM WJ

10 AM 2-WEEK MOTION

10 AM REGULAR

Calendar Control Judge Signature

5/26/99

CALENDAR CONTROL JUDGE

DATE

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

RAYMOND WILLIAM WALSH,)

Plaintiff,)

v.)

INOVA HEALTH SYSTEMS,)
FAIRFAX HOSPITAL,)
BRANTLEY VITEK, M.D.)
DEAN R. BENNETT, M.D., and)
KATHLEEN B. FRENCH, M.D.)

Defendants.)

Case No. L174460

DEFENDANT DEAN R. BENNETT, M.D.'S
MOTION TO STRIKE PLAINTIFF'S EXPERT
AND MEMORANDUM IN SUPPORT THEREOF

COMES NOW Defendant, Dean R. Bennett, M.D., by counsel, and files this his Motion to Strike the Plaintiff's Expert and Memorandum in Support Thereof, and states as follows:

1. As this Court is well aware, this is a medical malpractice action currently scheduled for trial on June 21, 1999.
2. On no less than three occasions, this defendant has been before the Court seeking to exclude the plaintiff's expert based on the plaintiff attorney's failure to adequately designate the scope and substance of the testimony expected from the expert witness, Dr. Kostuick.
3. On May 21, 1999, this defendant argued a Motion to Strike the plaintiff's expert before this Honorable Court.
4. At that time, Judge Hudson ruled that the Motion to Strike would be denied,

but that the plaintiff would be required to make Dr. Kostuick available for a deposition, to last a minimum of three hours, on or before the close of business on June 4, 1999. Judge Hudson further ruled that unless the defendant had the opportunity to depose Dr. Kostuick in this manner, that the expert would be stricken.

5. Subsequent to that order, defense counsel advised Mr. Walsh that she was not available on June 4 as she was scheduled to be out of town. Despite that notification, Mr. Walsh continued to persist in his statement that Dr. Kostuick was available on June 4 from 12:30 p.m. to 1:30 p.m.

6. On May 25, 1999, Mr. Walsh sent a Motion for Continuance which he stated he was going to present to the Calendar Control Judge on the morning of May 26, 1999.

7. On May 26, 1999, Mr. Walsh presented his Motion for Continuance to Judge Wooldridge. Judge Wooldridge denied the Motion for Continuance, but granted Mr. Walsh the right to take the depositions of defendant's experts (despite the fact that Mr. Walsh had never made a request to depose the defendant's experts until the morning of the motion for the continuance). Judge Wooldridge denied Mr. Walsh the right to depose Dr. Bennett. Further, Judge Wooldridge indicated that Mr. Walsh would have to give available dates to defense counsel (dates meaning more than one) so that the discovery deposition of Dr. Kostuick could proceed in a timely fashion on or before the close of business on June 4, 1999 pursuant to Judge Hudson's preexisting order.

8. Counsel for defendant Bennett represented to both Judge Wooldridge and Mr. Walsh that she would be able to take Dr. Kostuick's deposition at 5:00 a.m., 9:00 p.m., Saturday or Sunday, or at any time other than on June 4.

9. Mr. Walsh indicated that he wanted defense counsel for Dr. Bennett to contact Dr. Kostuick (see Exhibit A)

10. Therefore, counsel for defendant noticed Dr. Kostuick's deposition (see Exhibit B).

11. Shortly thereafter, defense counsel received a call from Dr. Kostuick's administrative assistant indicating that Dr. Kostuick was only available from 12:30 p.m. to 1:30 p.m. to give a deposition on June 4. Defense counsel asked that Dr. Kostuick's assistant fax information confirming that and Exhibit C was subsequently received.

12. Subsequently, defense counsel received a letter from Mr. Walsh, attached hereto as Exhibit D, indicating many things, but essentially that Dr. Kostuick was "graciously allowing me one hour" and that my demand of several hours to depose Dr. Kostuick was "unreasonable".

13. Unfortunately, defense counsel is put in the position of seeking redress from this Court once again. We would submit to the Court that we have been more than reasonable in attempting to accommodate Mr. Walsh and his witness. However, there has been no corresponding accommodation which requires that this motion be filed requesting that the Court strike Dr. Kostuick as an expert witness.

WHEREFORE, the above premises considered, this defendant asks, again, that the plaintiff's expert be stricken and for costs attendant to the filing of this Motion.

DEAN R. BENNETT, M.D.
By counsel

MCCARTHY & MASSEY, P.C.
9315 Center Street, Suite 104
Manassas, Virginia 20110
(703) 330-2726
Facsimile: (703) 330-2429

By: 

Tara M. McCarthy
VSB #22223

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 1999, a true and accurate copy of the foregoing DEFENDANT DEAN R. BENNETT, M.D.'S MOTION TO STRIKE PLAINTIFF'S EXPERT AND MEMORANDUM IN SUPPORT THEREOF was hand-delivered to:

Raymond J Walsh, Esq.
7431 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff



Tara M. McCarthy, Attorney-at-Law

McCarthy & Massey, P.C.

Trial Attorneys and Counselors at Law

9315 Center Street, Suite 104

Manassas, Virginia 20110

Tara M. McCarthy

Joyce A. N. Massey

Susan L. Mitchell

Margo R. Conklin, Paralegal

Telephone (703) 330-2726

Metro (703) 551-2146

Facsimile (703) 330-2429

May 26, 1999

HAND DELIVERED

Ray J. Walsh, Esq.
7431 Grace Street
Springfield, Virginia 22150

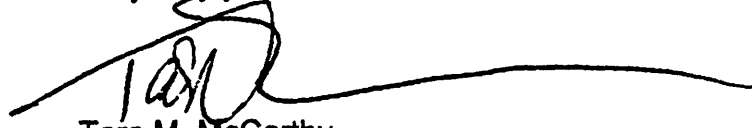
Re: Walsh v Bennett, et al.
At Law No. L174460

Dear Mr. Walsh:

I have received your letter indicating that I should make arrangements with Dr. Kostuik for the taking of his deposition. Please be advised I do not believe this to be proper and, further, that you were instructed by Judge Hudson to give me deposition dates before June 4. As I told you before, I am not available on June 4. I will have to cancel other depositions, but I can be available on June 2 at 10:30 a.m. or June 3 in the afternoon. As I indicated, I am canceling depositions in other cases to accommodate you and your witness.

I expect to hear from you on or before May 27 by 4:00 p.m. regarding the date you select. Obviously, I would like to give the lawyers in the other cases as much notice as possible regarding the depositions I need to cancel.

Very truly yours,



Tara M. McCarthy

TMM:ls

cc: Dean R. Bennett, M.D.
Ms. Gena Gustin, Claim No.: SS000565

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

RAYMOND WILLIAM WALSH,)	
)	
Plaintiff,)	
)	
v.)	Case No. L174460
)	
INOVA HEALTH SYSTEMS,)	
FAIRFAX HOSPITAL,)	
BRANTLEY VITEK, M.D.)	
DEAN R. BENNETT, M.D., and)	
KATHLEEN B. FRENCH, M.D.)	
)	
Defendants.)	

NOTICE OF DISCOVERY DEPOSITION

PLEASE TAKE NOTICE that defendant Dean R. Bennett, M.D. will take the deposition of John P. Kostuick, M.D. on Friday, June 4, 1999 commencing at 1:30 p.m. and continuing until completed, at his office at Johns Hopkins Department of Orthopaedic Surgery, 601 N. Caroline Street, Baltimore, Maryland. This deposition will be taken before an officer authorized to administer oaths, for the purpose of discovery or use as evidence at trial, upon oral examination pursuant to the Rules of the Supreme Court of Virginia, before an officer authorized by law to administer oaths.

The deponent is instructed to bring to the deposition, the items found in Attachment

A.

DEAN R. BENNETT, M.D.
By counsel

MCCARTHY & MASSEY, P.C.
9315 Center Street, Suite 104
Manassas, Virginia 20110
(703) 330-2726
Facsimile: (703) 330-2429


By: 

Tara M. McCarthy
VSB #22223

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May, 1999, a true and accurate copy of the foregoing Notice of Discovery Deposition was mailed, first-class mail, postage prepaid, to:

Raymond J Walsh, Esq.
7431 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff


Tara M. McCarthy, Attorney-at-Law

ATTACHMENT A

- 1. All records that you have reviewed in this case.**
- 2. All correspondence from Ray Walsh regarding this case.**
- 3. All x-rays in your possession regarding Raymond William Walsh.**
- 4. All opinion letters you have written regarding this case.**
- 5. A compilation of all of the cases in which you have given expert testimony.**
- 6. Any deposition that you have given expert testimony in.**
- 7. Your 1099s with reference to any income you have earned regarding professional, medical legal testimony.**
- 8. Copies of any literature you have reviewed with reference to this case.**
- 9. Copies of any photographs you have made with reference to this case.**
- 10. Copies of any exhibits you intend to use during the course of your testimony.**
- 11. Copies of any notes you have made with reference to this case.**
- 12. A copy of your most recent and up to date Curriculum Vitae.**
- 13. Copies of any articles, treatises, books, chapters in books, etc., that you have authored which pertain to any issue in this case.**
- 14. Copies of any opinion letters that you have written in medical legal cases involving orthopedics.**



Department of Orthopaedic Surgery

601 North Caroline Street
Baltimore, MD 21287-0882

JOHN P. KOSTUIK, M.D.

Professor
Chief, Spine Division

410-955-1785 Spine Administration & Surgery Scheduling
410-955-7389 Patient Appointments
410-955-6938 Spine Research
410-614-1451 Fax

May 27, 1999

FAX:

TO: Ms. Tara McCarthy
Law Firm of McCarthy & Massey, P.C.
Fax: (703) 330-2429

FROM: Dr. John P. Kostuik
The Johns Hopkins Hospital

RE: Deposition of Walsh v. Bennett, et al of June 4, 1999

Dear Ms. McCarthy:

We are in receipt of your fax of 5-26-99, stating that you will be deposing Dr. Kostuik with reference to the above case, and that the deposition would commence at 1:30 p.m. through 5:00 p.m. I would like to inform you that this has not been scheduled with Dr. Kostuik. The only conversation that transpired with reference to this was that with Mr. Walsh, where he was informed that Dr. Kostuik only had one hour time window available from 12:30 p.m. to 1:30 p.m.

The purpose of writing you is to inform you that this time which you have requested is not available. Again, the only time that would be available, as stated to Mr. Walsh, is from 12:30 p.m. to 1:30 p.m. Dr. Kostuik is going out-of-town to attend a medical conference and will be leaving the hospital at 1:30 p.m. to catch his flight out-of-town which leaves at 2:45 p.m. from BWI airport.

Should you wish to schedule a deposition in that time frame, please contact our office with reference to this so that further details can be worked out.

If you should have further questions, please feel free to contact the office.

cc: Mr. Ray Walsh, Esq.

**LAW OFFICES
RAY WALSH**

Member: Virginia, District of Columbia Bar

Member: Pennsylvania Bar

Washington, D.C., Virginia Office:
7431 Grace Street
Springfield Virginia 22150
(703) 451-6679

Philadelphia Office:
903 Lincoln Avenue, Suite #1
Springfield, Pennsylvania 17004
(610) 544-2557

May 28, 1999

VIA FACSIMILE (703) 330-2429

Ms. Tara McCarthy, Esq.
McCarthy & Massey
9315 Center Street, Suite #104
Manassas, Va. 20110

Re: Walsh v. Bennett, et al.
Case No. L-174460

Dear Ms. McCarthy:

I have just received a telephone call from Dr. John Kostiuk's Administrative Assistant, Halina Kowalczyk, who advised me that you demanded a deposition period of three to four hours. You must recall, and I am enclosing a copy of your letter of April 30, 1999, that you acknowledged that Dr. Kostiuk was only "available for deposition on June 4th, from 12:30 TO 1:30 for a deposition." Therefore, you were aware, at least sometime earlier than April 30th, that this was the available window, as Dr. Kostiuk has a long standing airplane reservation on June 4th and is graciously allowing you an hour of his very valuable time. Even if Dr. Kostiuk did not have an airplane reservation, his time is too valuable, to allow you more than an hour of it. I am appalled at your unprofessionalism, in suddenly pretending to be ignorant of the time available.

Your unreasonable demand of several hours is an apparent attempt to argue that only three or four hours meets Judge Hudson's criteria of having the "opportunity to adequately depose Dr. Kostiuk." What is an "adequate opportunity" depends on several factors, including the status of the deponent and his time constraints. I submit that the Chief of Spine Surgery, a position Dr. Kostiuk occupies at Johns Hopkins Hospital, voted for the last ten years as the number #1 Hospital in the United States, as well as a professorship at Johns Hopkins University Medical School, confers a special consideration upon him and his time.

You were given an opportunity this morning before Judge Woolridge to join me in my request for a continuance. You opposed this request, which if granted would have given you, perhaps, more latitude in deposing Dr. Kostiuk. The request was denied as you know. However, you were aware since prior to April 30, 1999 that the available time to depose Dr. Kostiuk on June 4, 1999 was an hour, between 12:30 and 1:30, but you saw fit to oppose my request for a continuance.

Thank you for the information and let me know that you will not depose Dr. Kostiuk, so that I can free his schedule of this imposition on his time. Further, I would appreciate it if you do intend to depose Dr. Kostiuk at the available time, that you have no further contact with Dr. Kostiuk and his Administrative Assistant, Ms. Kowalczyk. Rather, I would prefer and I insist that you kindly work exclusively through me to make your physical or other necessary arrangements. These professionals at Johns Hopkins Hospital have important work to do other than scheduling legal depositions.

Sincerely,



Ray J. Walsh

RJW/jkw

Encls.

cc: Fax : Halina Kowalczyk

ATTACHMENT #1

McCarthy & Massey, P.C.

Trial Attorneys and Counselors at Law

9315 Center Street, Suite 104
Manassas, Virginia 20110

Tara M. McCarthy
Joyce A. N. Massey
Susan L. Mitchell
Margo R. Conklin, Paralegal

April 30, 1999

Telephone (703) 330-2726
Metro (703) 551-2146
Facsimile (703) 330-2429

Raymond J. Walsh, Esq.
7431 Grace Street
Springfield, Virginia 22150

Case No.: L174460

Dear Mr. Walsh:

I received your voice mail today indicating that you would be signing the order I forwarded to you dismissing Dr. Vitek from the above-captioned case. I look forward to receiving that order in the next few days.

With regard to your statement that Dr. Kostiuik is only available on June 4th from 12:30 TO 1:30 for a deposition or on June 11 at 12:30, this is simply not acceptable. As you know, the discovery cut-off in this case is on May 21st and the trial date is June 21st. A request for the deposition of Dr. Kostiuik has been outstanding for quite some time without any response from you whatsoever.

If you do not make Dr. Kostiuik available in May, I will move to exclude him at the trial on the grounds that you have not made him available in a timely manner.

Very truly yours,


Tara M. McCarthy

cc: Dean Bennett M.D.
Brantley Vitek M.D.
Gena Gustin Claim No. SS000592 & 595

✓
VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

RAYMOND WILLIAM WALSH,)

Plaintiff,)

v.)

Case No. L174460

INOVA HEALTH SYSTEMS,)

FAIRFAX HOSPITAL,)

BRANTLEY VITEK, M.D.)

DEAN R. BENNETT, M.D., and)

KATHLEEN B. FRENCH, M.D.)

Defendants.)

ORDER

THIS MATTER came before the Court on Defendant Dean R. Bennett, M.D.'s Motion to Exclude Plaintiff's Expert on Wednesday, June 2, 1999; and

IT APPEARING TO THE COURT, that the defendant's Motion is proper; it is therefore

ORDERED and ADJUDGED that Dr. Kostuick will not be permitted to testify as an expert witness at the trial of this matter *and the case is dismissed.*

ENTERED this 2 day of June, 1999.


JUDGE

b-16-9967

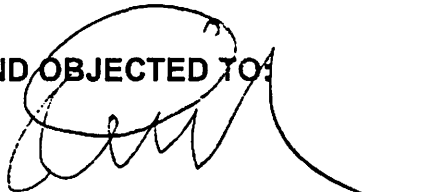
WE ASK FOR THIS:

MCCARTHY & MASSEY, P.C.

By: 

Tara M. McCarthy, VSB # 22223
9315 Center Street
Suite 104
Manassas, Virginia 20110
(703) 330-2429; Facsimile (703) 330-2429

SEEN AND OBJECTED TO:



Raymond J. Walsh, Esq., VSB #
7631 Grace Street
Springfield, Virginia 22150
Counsel for Plaintiff

FILED
COURT SERVICES
VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX VIRGINIA

COPY

RAYMOND WILLIAM WALSH
Plaintiff

v

Inova Health Systems, Bennett, et al.
Defendant

CIVIL DIVISION

CASE NO. L-174460

NOTICE OF APPEAL

RAYMOND WILLIAM WALSH hereby appeals to the Court of Appeals of Virginia from the Order Dismissing the Captioned Case and Ordering that Dr. Kostiuik, Plaintiff's expert witness, not be permitted to testify as an expert witness, in the Fairfax County Circuit Court entered on June 2, 1999.

A transcript or statement of facts and other incidents of the case will be filed.

CERTIFICATE

The undersigned certifies as follows:

(1) The name and address of appellant is:

Raymond William Walsh, 7431 Grace Street, Springfield, Virginia 22150

(2) The name, address and telephone number of counsel for appellant is:

Ray J. Walsh, Esq., 7431 Grace Street, Springfield, Virginia 22150
(703)451-6679.

(3) The name and address of appellee is:

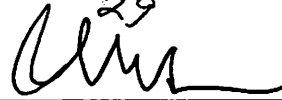
Dean R. Bennett, M.D., 13350 Franklin Farm Road, Suite 220, Herndon, Virginia 22071, (703) 471-5300.

(4) The name and address and telephone number of counsel for appellee is:

Tara McCarthy, Esq., 9315 Center Street, Manassas, Virginia 20110. (703) 330-2429.

(5) Counsel for appellant has ordered from the court reporter who reported the case the transcript for filing as required by Rule 5A:8(a).

(6) A copy of this Notice of Appeal has been mailed to all opposing counsel and to the Clerk of the Court of Appeals this ~~23~~²⁹ day of JUNE, 19 99.

A handwritten signature in cursive script, appearing to read 'Walsh', written over a horizontal line.

Ray J. Walsh, Esq.
Counsel for appellant

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

Raymond William Walsh,

Plaintiff,

v.

Dean R. Bennett, M.D., et al

Defendants.

)
)
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)
)
)
)

Law No. 174460

CORRECTED STATEMENT OF FACTS

After reviewing the Statements of Facts presented by the parties and the record in this case, pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia, the Court issues the following corrected Statement of Facts:

1. This medical malpractice case was originally filed in the Circuit Court of Fairfax County in May of 1997. On March 4, 1998, prior to argument of a motion for summary judgment based upon Plaintiff's failure to timely designate expert witnesses, Plaintiff nonsuited this case. It was refiled on September 2, 1998. Subsequently, orders were entered dismissing all other Defendants in this case except Dean R. Bennett, M.D. The case was set for trial on June 21, 1999.

2. In accordance with the Court's scheduling order, Plaintiff designated his expert witnesses on March 9, 1999. The Defendant objected to the expert designation on March 11, 1999, and filed a motion to exclude Plaintiff's designated experts, which was noticed for argument on April 16, 1999.

3. The Court on April 16, 1999 granted the Defendant's motion to exclude Plaintiff's designated of expert with leave to the Plaintiff to amend the designation on or before April 29, 1999. The Court further ordered that Plaintiff was prohibited from filing any additional amendments to the designation. Plaintiff filed his amended designation of expert witnesses on April 28, 1999. On April 30, 1999, Defendant filed an objection to Plaintiff's amended designation of experts on the ground that it

was still insufficient to satisfy the Rules of the Virginia Supreme Court. The Defendant filed a motion to strike the Plaintiff's expert, which was scheduled for argument on May 21, 1999.

4. At the close of the May 21, 1999 hearing, the Court denied the Defendant's motion to strike Plaintiff's experts, but ordered that the Defendant be afforded the opportunity to adequately depose Plaintiff's expert by the close of business June 4, 1999, or the Court would revisit its decision on the motion to strike.

5. On May 26, 1999, counsel for the Plaintiff appeared before Judge Robert W. Wooldridge, Jr. and requested a continuance of the June 21, 1999 trial date. The Court denied Plaintiff's motion for continuance but granted Plaintiff the right to take the depositions of Defendant's experts and ordered Plaintiff's counsel to provide defense counsel with a number of available dates for the discovery deposition of plaintiff's expert, Dr. John Kostuick. Pursuant to the Court's ruling of May 21, 1999, Judge Wooldridge further ordered that the deposition of Dr. Kostuick be taken on or before the close of business on June 4, 1999.

6. On May 26, 1999, counsel for the Defendant noticed the discovery deposition of Dr. Kostuick for Friday, June 4, 1999 commencing at 1:30 p.m.

7. After receiving the notice of deposition, Dr. Kostuick's office called defense counsel and informed her that Dr. Kostuick was only available from 12:30 p.m. to 1:30 p.m. on June 4, 1999 for deposition.

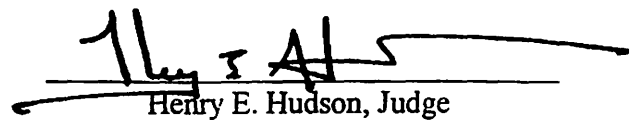
8. Counsel for the Defendant indicated to both Judge Wooldridge and Plaintiff's counsel that she would be available to take Dr. Kostuick's deposition at any time other than June 4, 1999, between 12:30-1:30 p.m. including weekends, early mornings and late evenings.

9. Plaintiff's counsel represented that he informed the counsel for the Defendant that Dr. Kostuick was also available for deposition between 10:00 a.m. and 12:30 p.m. June 4, 1999. The counsel for the Defendant denies receiving this information.

10. Defense counsel subsequently filed a motion to strike the Plaintiff's experts for failure of Plaintiff to abide by the Court's previous order to make Dr. Kostuick available for deposition. In her view the time allotted was insufficient. The Court heard argument on June 2, 1999. At that time the Plaintiff informed the Court that his expert would be available from 10:00 a.m. to 1:30 p.m. on June 4, 1999 for deposition. Plaintiff further advised the Court that this was in compliance with the Court's order of May 21, 1999. Counsel for the Defendant reiterated that she had informed the Plaintiff on several prior occasions that she was available on any day other than that time frame on June 4, 1999. The Court then agreed to extend the June 4, 1999 deadline in order to accommodate the deposition of Dr. Kostuick.

11. Counsel for the Plaintiff informed the Court that the June 4, 1999 time frame was the only opportunity Dr. Kostuick had available for the deposition. When pressed by the Court for additional information concerning Dr. Kostuick's availability, counsel for the Plaintiff replied that the court may as well "go ahead and dismiss the case." Failing in an attempt to find alternative dates for the deposition of Dr. Kostuick, the Court granted the Defendant's motion to preclude Dr. Kostuick's testimony as an expert witness at trial. Counsel for the Defendant then moved to dismiss the case on the ground that Plaintiff's evidence as a matter of law was insufficient to prove medical malpractice without a medical expert. Again, Plaintiff's only response was "go ahead and dismiss the case." The Court granted the Defendant's motion and the case was dismissed.

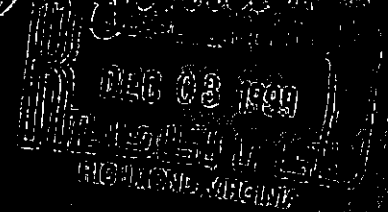
Dated this 20 day of August 1999


Henry E. Hudson, Judge
Fairfax County Circuit Court

ASSIGNMENTS OF ERROR

- I. THE PRETRIAL MOTIONS JUDGE IN FAIRFAX COUNTY CIRCUIT COURT ERRONEOUSLY GRANTED DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S EXPERT THEREBY IN EFFECT RENDERING A DIRECTED VERDICT IN FAVOR OF DEFENDANT, PRIOR TO PLAINTIFF BEING GIVEN HIS DAY IN COURT AND OFFERING EVIDENCE IN SUPPORT OF HIS MALPRACTICE ACTION.
- II. THE PRETRIAL MOTIONS JUDGE ERRED IN DISMISSING HIS ORDER OF MAY 21, 1999 WITH WHICH PLAINTIFF COMPLIED BY MAKING HIS EXPERT WITNESS AVAILABLE FOR AN ADEQUATE PERIOD OF TIME FOR DEFENDANT TO DEPOSE SUCH EXPERT WITNESS.

In The
Supreme Court of Virginia



RECORD NO. 991880

JOHNNIE W. RICE and RITA S. RICE,
Co-Administrators of the Estate of
LEONA LYNN RICE, Deceased,

Appellants,

v.

CLIFFORD ANTHONY CHARLES,

Appellee.

APPENDIX

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