COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL DEPARTMENT
CIVIL ACTION NO: 00-4988G

DAVID LEE MEGGETT
Plaintiff

VS.

NEW ENGLAND PATRIOTS LIMITED PARTNERSHIP, BERTRAM ZARINS, M.D., MICHAEL G. ZARINS, M.D. AND RONALD O'NEIL

PLAINTIFF DAVID MEGGETT'S RESPONSE TO DEFENDANT BERTRAM ZARINS INTERROGATORIES

Comes now plaintiff, David Meggett by and through his undersigned attorneys, and answers Defendant Bertram Zarins interrogatories as follows:

INTERROGATORY NO. 1

Please state your full name, and nicknames, date of birth, residence address, occupation, name and address of your employer and your Social Security number.

David Meggett. [redacted]**h.**

INTERROGATORY NO. 2

Please state when the alleged malpractice/negligence of the defendant, Dr. Zarins, occurred, giving date(s), places(s) and time(s) of day.

Plaintiff objects to this interrogatory as being complex and compound, and overly broad and unduly burdensome. Plaintiff further objects to this interrogatory because Defendant has not provided detailed answers in a similar request that preceded this one.

Without waiving these objections, Plaintiff's action against Dr. Zarins includes his negligence in failing to diagnose and/or treat Mr. Meggett's Lisfranc injury. Dr. Zarins missed numerous opportunities from halftime of the New England Patriots game with the Pittsburg Steelers on January 2, 1998 until Dr. Wilson immediately diagnosed his injury on April 8, 1998. Plaintiff presented with classical signs of a Lisfranc injury that was readily discernable by symptoms and Plaintiff's radiograph taken on January 4, 1998. Plaintiff's injury would have been even more readily apparent to Dr. Zarins if he had met the appropriate standard of care and ordered weight-bearing radiographs. If Dr. Zarins did not have the medical expertise to properly diagnose and treat Plaintiff's injury, he should have immediately referred Plaintiff to a physician who was qualified to treat these injuries. Assuming Dr. Zarins did properly appreciate the scope of Mr. Meggett's injury as he testified at his deposition, it was a negligent breach of the appropriate standard of care to prescribe 4-6 weeks of non-weight bearing activity. This is not consistent with the proper treatment of this injury. Dr. Zarins also failed to give clear instruction to Mr. Meggett with respect to follow-up care. *See also* Plaintiff's Answer to New England Patriots Interrogatories, Plaintiff's Answer to Interrogatories #8 and #10, Plaintiff's Deposition Testimony, and Plaintiff's Second Amended Complaint.

INTERROGATORY NO. 3

Please describe in detail and chronological order how the alleged malpractice of Dr. Zarins occurred, setting forth a description of all events immediately preceding, during and immediately following such alleged malpractice, including who was present and what *they* did and what happened to the plaintiff.

***See* Interrogatory Answer #2.**

INTERROGATORY NO. 4

Please state the names and addresses of all witnesses to the alleged malpractice or other negligence of Dr. Zarins, or anyone with knowledge of the alleged malpractice, referred to in the Complaint of whom you or your attorneys are aware and state in as much detail as possible.

a. everything such person saw or knows regarding the alleged malpractice or other negligence.

b. where each person was at the time they witnesses or learned of the alleged malpractice or other negligence; and

c. what testimony you would expect from each should he or she be called as witness in a trial of this action.

See Interrogatory Answer #2.

INTERROGATORY NO. 5

With respect to all communications between plaintiff and Dr. Zarins. Relating to Dr. Zarins' treatment plan, proposed medical treatment by Dr. Zarins or medical treatment for the plaintiff's injury, please state:

a. the date and circumstances of such communications;

b. the names and addresses of all parties to the communication and any witness;

c. whether the communication was recorded in any manner; and

d. in detail, what was said by each party to the communication as accurately as you are able.

See Interrogatory Answer #2.

INTERROGATORY NO. 6

Please state the basis and all facts, which you base the allegations in the Complaint that Dr. Zarins was negligent and how such alleged negligence caused harm to the plaintiff.

See Interrogatory Answer #2.

INTERROGATORY NO. 7

If plaintiff has been advised or informed by any person other than his attorney that the care provided by the defendant was not proper or was otherwise deficient, please state:

a. the name and address of such person(s);

b. as accurately as possible, the information you received; and

c. the dates, as accurately as you can, when you received the information.

Certainly, friends and family members stated the obvious that Dr. Zarins committed medical error in treating Mr. Meggett. Plaintiff has not personally discussed this lawsuit with any health care providers who would be in a position to evaluate the details of Dr. Zarins' malpractice.

INTERROGATORY NO. 8

If plaintiff alleges that Dr. Zarins violated any federal, state or municipal statute rule, standard, regulation, by-law or other law or any hospital or health care facility rule, regulation policy or procedure, please fully identify each, including title and citation, and state the manner in which it is alleged that the defendant violated the same.

Dr. Zarins violated the AMA's guidelines regarding informed consent, because he failed to communicate to Plaintiff with respect to the risks associated with masking pain generally and, specifically, masking pain in Plaintiff's mid-foot on January 3, 2003. The 1980 version of the AMA's Principles of Medical Ethics ("Principles"), in effect today, includes the statement "a physician shall respect the rights of patients." The AMA's Council on Ethical and Judicial Affairs provides interpretation of the basic premises set forth in the Principles and recognizes that informed consent. "The patient has the right to receive information from physicians and to discuss the benefits, risks, and costs of appropriate treatment alternatives," and "the patient should make his or her own determination on treatment." Defendant Zarins also violated Massachusetts's law by not following the standard of care of a normal, ordinary, prudent physician.

INTERROGATORY NO. 9

If, during the ten years before the malpractice alleged in the Complaint, or, if subsequent to the malpractice, the plaintiff's physical or mental condition was affected by conditions, illnesses, operations, medical treatments, injuries, or other accidents, kindly state full details of each and by whom the plaintiff was treated and where any treatment was rendered.

Mr. Meggett has suffered no foot injuries, relevant to this lawsuit, prior to this. Plaintiff also refers Defendant to Plaintiff's medical records and deposition testimony.

INTERROGATORY NO. 10

Please describe in detail the injuries sustained by the plaintiff as a result of the alleged malpractice of Dr. Zarins as alleged in the Complaint.

Plaintiff objects to this interrogatory as being complex and compound, and overly broad and unduly burdensome. Plaintiff further objects to this interrogatory, because Defendant has not provided detailed answers in a similar request that preceded this one. Without waiving these objections, Plaintiff lost valuable time in the failure to properly diagnose Mr. Meggett's Lisfranc injury. Had he made the diagnosis, it would have improved his recovery and may have given Mr. Meggett additional treatment options, such as a non-weight bearing cast, that might have avoided Dr. Wilson's malpractice.

INTERROGATORY NO. 11

If plaintiff received medical treatment for the injuries alleged in the Complaint, please state the name and address of each hospital, physician or other health care provider who treated, attended, examined or admitted him for the alleged injuries and the dates of such treatment.

***See* medical records of Dr. Zarins and Dr. Wilson and Plaintiff's deposition testimony.**

INTERROGATORY NO. 12

If plaintiff received psychiatric treatment for the injuries alleged in the Complaint, please state the name and address of each hospital, physician or other health care provider who treated, attended, examined or admitted him for the alleged injuries and the dates of such treatment.

No.

INTERROGATORY NO. 13

If plaintiff claims that Dr. Zarins' (sic) action or inaction aggravated, accelerated or exacerbated any condition, disease, injury or problem, please describe in detail each such condition, disease, injury, or problem, where and by whom the plaintiff received treatment for such condition prior and subsequent to the incident and the exact manner in which Dr. Zarins' actions aggravated, accelerated or exacerbated each.

***See* Interrogatory #10.**

INTERROGATORY NO. 14

If plaintiff was confined to bed or the house as a result of the malpractice alleged in the Complaint, please state as nearly as you can, the dates between which you were so confined.

Not applicable.

INTERROGATORY NO. 15

If the plaintiff has recovered from the injuries sustained as a result of the malpractice alleged in the Complaint, please state the approximate date by which recovery was complete; if not, please state exactly in what manner he is now affected by said injuries.

***See* Interrogatory #10.**

INTERROGATORY NO. 16

Please give an itemized statement of all financial loss or expense incurred by the plaintiff or by anyone or any entity on the plaintiff's behalf as a result of the alleged malpractice, including medical expenses, lost wages or business, and property damage or loss, if any.

Plaintiff's lost wages as a result of Dr. Zarins' negligence will be provided by expert testimony.

INTERROGATORY NO. 17

Please identify and state separately in full the name and address of each person whom the plaintiff expects to call as an expert witness including, but not limited to, all expert witnesses relative to liability and damages at the trial of the above matter, including as to each person

(a) the nature of his or her specialization;

(b) the subject matter on which each such expert is expected to testify;

(c) the substance of the facts and opinions to which each such expert is expected to testify; and

(d) a summary of the grounds for each such opinion.

Plaintiff objects to this interrogatory, because Defendant has not provided detailed answers in a similar request that preceded this one. Plaintiff will answer this interrogatory at a time consistent with local Massachusetts's rules.

INTERROGATORY NO. 18

Please identify and state the name and address of each and every expert witness who has been retained or specially employed by the plaintiff or on his behalf in anticipation of the instant litigation and/or in preparation for the trial of the above matter, which experts are not expected to be called as witnesses on behalf of the plaintiff at the time trial.

Plaintiff objects to this request because it calls for attorney work product that is beyond the scope of discovery. Defendant has objected and refused to answer a similar request. With respect to experts Plaintiff intends to use at trial, see Interrogatory Answer #17.

INTERROGATORY NO. 19

If the plaintiff has ever made any other claim(s) for personal injuries please state in full detail as to each claim the name of the case, venue of the case, and the court docket number and year.

No, except for the workers' compensation claim made in this case.

INTERROGATORY NO. 20

Please list all sources of income of the plaintiff since January 1998 until the present.

***See* Plaintiff's tax returns already provided to counsel.**

INTERROGATORY NO. 21

Please describe complete detail all conversations between yourself and Dr. Zarins relating to your health and/or medical care and treatment from June 30, 1997 to the present.

Plaintiff objects to this interrogatory, because Defendant has not provided detailed answers in a similar request that preceded this one. Notwithstanding this objection, see Plaintiff's deposition testimony and medical records.

INTERROGATORY NO. 22

Please describe your understanding as of January 3, 1998, of health risks and benefits associated with an injection of bupivacaine.

Plaintiff understood on Janaury 3, 1998 that pain medication masks pain. He had received pain medication in the past although he does not know the exact kind of medication received. See Plaintiff's deposition testimony. He did not understand all of the implications of how pain medication can exacerbate injury generally, nor did he understand the risks of continuing to play football with his mid-foot injury on January 3, 1998.

INTERROGATORY NO. 23

Please describe in complete detail all of the medical treatment provided to you by Dr. Zarins from January 1, 1997 to the present.

Plaintiff objects to this interrogatory because Defendant has not provided detailed answers in a similar request that preceded this one. Notwithstanding this objection, see Plaintiff's deposition testimony, medical records, Interrogatory #2 and Plaintiff's Second Amended Complaint.

INTERROGATORY NO. 24

Please describe the number of times that you have been injected with bupivacaine (or any other pain relief medication) and the date and reason for each injection.

See Interrogatory #22.

INTERROGATORY NO. 25

Please list all trips of more than two hundred miles made by the plaintiff since January 3, 1998.

Plaintiff objects to this request because it is vague, overly broad, and not reasonably calculated to lead to admissible evidence.

INTERROGATORY NO. 26

Please list all occasions since January 3, 1998 when you were arrested, identifying where the arrest occurred, the date of the arrest, the alleged criminal violation associated with the arrest.

Plaintiff objects to this request, because it is not reasonably calculated to lead to admissible evidence. Notwithstanding this objection, see Plaintiff's deposition testimony.

As to the objections

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