

8275

THE COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

WORCESTER SUPERIOR COURT  
CIVIL ACTION NO. 23cv558B

CATHY BUDRY,  
Plaintiff,  
  
v.  
  
KELLY ROBINSON, MD, REID  
MOTHA, PA, ELLEN M. RAY, MD,  
STACEY BRACKETT, RN, JESSICA  
BOUTELL, RN, HEYWOOD  
HEALTHCARE, INC., d/b/a  
HEYWOOD HOSPITAL,  
HEYWOOD MEDICAL GROUP, INC.,  
and HEYWOOD PHYSICIAN HOSPITAL  
ORGANIZATION, INC.  
Defendants.

COMPLAINT &  
JURY DEMAND

FILED

MAY 22 2023

ATTEST

 CLERK

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PARTIES

1. The plaintiff, Cathy Budry, is an individual residing in Worcester, Worcester County, Massachusetts.
2. At all times material hereto, the defendant, Heywood Healthcare, Inc., d/b/a Heywood Hospital, was a Massachusetts corporation with a principal place of business located in Gardner, Worcester County, Massachusetts, which operated a hospital therein known as "Heywood Hospital".
3. At all times material hereto, the defendant, Heywood Medical Group, Inc., was a Massachusetts corporation with a principal place of business located in Gardner, Worcester County, Massachusetts, that was owned by, controlled by, and/or affiliated

with, Heywood Hospital, and which provided medical services to patients, through its employees, contractors and/or agents, at Heywood Hospital.

4. At all times material hereto, the defendant, Heywood Physician Hospital Organization, Inc., was a Massachusetts corporation with a principal place of business located in Gardner, Worcester County, Massachusetts, that was owned by, controlled by, and/or affiliated with, Heywood Hospital, and which provided medical services to patients, through its employees, contractors and/or agents, at Heywood Hospital.
5. The defendant, Kelly Robinson, MD, maintains both a residence and a usual place of business in Gardner, Worcester County, Massachusetts, and was, at all times material hereto, a licensed physician holding himself out as a medical doctor specializing in internal medicine and emergency medicine, and an attending physician working at Heywood Hospital.
6. The defendant, Ellen M. Ray, MD, maintains a residence in Winchendon, Worcester County, Massachusetts, and a usual place of business in Gardner, Worcester County, Massachusetts, and was, at all times material hereto, a licensed physician holding herself out as a medical doctor specializing in internal medicine and emergency medicine, and Chief of Emergency Services at Heywood Hospital.
7. The defendant, Reid Motha, PA, maintains a residence in Gill, Franklin County, Massachusetts, and a usual place of business in Gardner, Worcester County, Massachusetts, and was, at all times material hereto, a certified physician's assistant working in the Emergency Department at Heywood Hospital.

8. The defendant, Stacey Brackett, RN, maintains a residence in Hubbardston, Worcester County, Massachusetts, and a usual place of business in Gardner, Worcester County, Massachusetts, and was, at all times material hereto, a registered nurse working in the Emergency Department at Heywood Hospital.
9. The defendant, Jessica Boutell, RN, maintains both a residence and a usual place of business in Gardner, Worcester County, Massachusetts and was, at all times material hereto, a registered nurse working in the Emergency Department at Heywood Hospital.

**STATEMENT OF FACTS COMMON TO ALL COUNTS**

10. On June 23, 2020, at or about 6:00 p.m., the plaintiff, Ms. Cathy Budry, presented at the Emergency Department at Heywood Hospital in Gardner, MA.
11. Ms. Budry screened negative for Covid-19 and was admitted to the Emergency Department where the defendants, Ellen M. Ray, MD, Kelly Robinson, MD, Reid Motha, PA, Stacey Brackett, RN, and Jessica Boutell, RN, participated in the evaluation, care and treatment of Ms. Budry.
12. At the time of her presentation, Ms. Budry was suffering from multiple spinal epidural abscesses (“SEAs”), and was displaying signs and symptoms of SEA(s), a bacterial infection(s) in the spinal canal that can grow and expand quickly, causing neurological injury by compressing the spinal cord.
13. At the time of her presentation, Ms. Budry was known to the defendants to have a prior history of SEA(s), and to be an intravenous drug user (“IVDU”), and for these reasons to be at a higher risk for SEA(s).

14. In June of 2020, SEA was known to physicians and medical providers to be a rapidly progressive condition that constituted a medical emergency requiring prompt diagnosis and treatment in order to prevent devastating neurological injury, permanent paralysis and/or death.
15. In June of 2020, the earlier an SEA(s) could be diagnosed and treated, *via* surgical intervention/decompression and antibiotics, the better the medical outcome for the patient, as such treatment would halt neurological injury and permit the patient to retain function.
16. In June of 2020, the defendants were aware that an SEA(s) left undiagnosed and untreated until the onset of paralysis was more likely to result in permanent paralysis and/or limited restitution of function in the patient, even with surgical intervention.
17. At the time of Ms. Budry's presentation at Heywood Hospital, the medical standard(s) of care required an emergency and/or internal medicine physician, physician's assistant, and/or registered nurse, to recognize the signs and symptoms of SEA(s), and to suspect SEA(s) in patients presenting with Ms. Budry's signs and symptoms and/or prior medical history.
18. At the time of Ms. Budry's presentation at Heywood, the applicable medical standard(s) of care required the average qualified emergency and/or internal medicine physician, physician's assistant, and/or registered nurse, when presented with a patient with Ms. Budry's signs and symptoms and/or prior history, to suspect SEA(s) and to seek and/or order an emergent MRI, and/or admit the patient for observation until SEA(s) was ruled out or confirmed by MRI, and/or to order or request an infectious disease and/or

neurological/neurosurgical consultation, which would likely similarly result in an MRI being ordered.

19. At the time of Ms. Budry's presentation, MRI was the standard of care for the diagnosis of SEA because it provided superior visualization, could detect SEA early in the course, and could distinguish SEA from other conditions.
20. Notwithstanding Ms. Budry's signs and symptoms, and/or her known medical history, and notwithstanding the seriousness and emergent nature of SEA, and that time was of the essence, none of Ms. Budry's providers at Heywood – including Ellen M. Ray, MD, Kelly Robinson, MD, Reid Motha, PA, Stacey Brackett, RN, and Jessica Boutell, RN - recognized or appreciated Ms. Budry's signs/symptoms of SEA(s), sought or ordered an MRI, admitted her inpatient for observation until SEA(s) was ruled out or confirmed by MRI, or ordered an infectious disease or neurological/neurosurgical consultation.
21. Instead, a CT without contrast, ineffective for detecting SEA and below the standard of care, was ordered, and about three (3) hours later, after having reviewed “documentation of the patient's history, exam findings, diagnostics, interventions and procedures” – including the radiologist's report recommending MRI - Dr. Kelly Robinson discharged Ms. Budry to home with her symptoms “unchanged”, and with an incomplete or incorrect diagnosis of “cervical disc disorder with radiculopathy, unspecified cervical region”, and with no scheduled follow-up.
22. Her condition having not been properly diagnosed or treated, about forty-eight (48) hours later, on the evening of June 25, 2020, Ms. Budry presented again at the Emergency Department at Heywood Hospital, *via* ambulance, with signs and symptoms “similar” to

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