

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GERALD ANDERSON,)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO. <u>1:21-cv-334</u>
UNITED STATES OF AMERICA;)	
UNITED STATES DEPARTMENT OF)	
VETERANS AFFAIRS; DEPARTMENT)	
OF VETERANS AFFAIRS; VETERANS)	
HEALTH ADMINISTRATION; and)	
ERIE VETERANS ADMINISTRATION)	
MEDICAL CENTER,)	
Defendants)	JURY TRIAL DEMANDED

COMPLAINT

AND NOW, comes Plaintiff, Gerald Anderson, by and through his counsel, Purchase George & Murphey, P.C., and files this complaint against Defendants United States of America; United States Department of Veterans Affairs; Department of Veterans Affairs; Veterans Health Administration; and Erie Veterans Affairs Medical Center:

PARTIES

1. Plaintiff Gerald Anderson (“Mr. Anderson”) is an adult citizen of the Commonwealth of Pennsylvania and a United States military veteran, residing and domiciled at 1158 East 10th Street, Erie, Pennsylvania 16503.

2. Defendant Erie Veterans Administration Medical Center (“Erie VA”) is a federally operated and funded medical treatment facility located at 135 East 38th Street, Erie, Pennsylvania 16504, responsible for serving United States Military veterans, including Gerald Anderson.

3. Defendants United States Department of Veterans Affairs, Department of Veterans Affairs, and/or Veterans Health Administration are cabinet-level executive branch departments of the United States federal government charged with providing healthcare services to military

veterans, including Gerald Anderson, through veterans medical centers, including the Erie (Pennsylvania) Veterans Administration Medical Center.

4. Defendant United States of America is subject to suit for personal injury caused by the negligent and wrongful acts and omissions of employees of the federal government while acting within the course and scope of their office or employment, under the circumstances where the Defendant, if a private person, would be liable to the Plaintiff, pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.*

JURISDICTION AND VENUE

5. This action arises under the Federal Tort Claims Act, 28 U.S.C. §1346(b)(1), §7316(a)(1), §7316(a)(2), §2671, *et seq.*, and §1151(a), *inter alia*.

6. This Court has original jurisdiction over the proceedings against all Defendants because Plaintiff suffered injuries and damages as a result of the medical negligence of the medical providers and staff of the Erie VA, while said medical providers and staff were employees, agents or ostensible agents of some or all of the Defendants and were acting within the course and scope of their employment or agency. The claims herein are for money damages as compensation for the personal injuries and pecuniary losses caused by the negligent and wrongful acts and omissions of employees of the United States and/or other Defendants, while acting within the scope of their offices and employment, under circumstances where the Defendants, if private persons, would be liable to the Plaintiff in accordance with the laws of the Commonwealth of Pennsylvania.

7. Under the laws of the Commonwealth of Pennsylvania, the Defendants, jointly and severally, including the Erie VA Medical Center and its medical providers and staff, owed a duty to provide prompt and appropriate medical care to Mr. Anderson; the care provided to him

breached the standard of care; the breaches are the proximate cause of Mr. Anderson's harm; and Mr. Anderson suffered damages as a result of the Defendants' breach.

8. Venue is appropriate in this District pursuant to 28 U.S.C. §1391 (b) in that, at all times relevant hereto, the Plaintiff was a resident of Erie County, Pennsylvania and the defendant medical facility was located in Erie County, Pennsylvania. Furthermore, the events and/or omissions giving rise to this claim occurred in Erie County, Pennsylvania, which is within this judicial district.

9. Plaintiff presented his claim via Registered Mail, Return Receipt Requested and regular first-class United States Mail, to Defendants pursuant to 28 U.S.C. §2675. Said claim contained a demand for money damages, and such demand was a sum certain in excess of the required jurisdictional amount. The claim was received by Defendants on June 1, 2021, as acknowledged by letter dated June 17, 2021 from the U.S. Department of Veterans Affairs, Office of General Counsel. Six months later, Defendants have not responded to plaintiff's claim.

10. Plaintiff has complied with all administrative requirements to assert this action, and all administrative remedies have been exhausted. In compliance with 28 U.S.C. Section 2401(b) Plaintiff brings his cause of action within six months of the appropriate Federal agency's failure to deny or settle Plaintiff's claim for \$3,000,000.

FACTS

11. Mr. Anderson established primary care at the Erie VA on or about December 16, 2016, during an initial medical visit and physical examination.

12. At that first medical visit, Mr. Anderson told the nurse practitioner that his parents had a history of cancer, and he was concerned about his risk of prostate cancer because his brother had recently died from complications of prostate cancer.

13. At that first medical visit, Mr. Anderson informed the nurse practitioner that his last physical exam was seven (7) to eight (8) years prior to that visit.

14. At that first medical visit, Mr. Anderson was asked his “level of interest in learning about illness and/or health promotion.” Mr. Anderson’s response was “great interest”.

15. Despite Mr. Anderson’s concerns pertaining to his family history of cancer and his brother’s death of prostate cancer, Mr. Anderson was not advised about the benefits and risks of prostate screening, nor was he given any other information regarding prostate cancer screening or the possibility of prostate cancer screening at his December 2016 medical visit at the Erie VA.

16. No genitourinary exam or PSA testing were performed at the December 2016 medical visit.

17. Almost a year later, on August 29, 2017, Mr. Anderson returned for another physical examination at which time there was again no documentation showing that Mr. Anderson was advised about the possibility of prostate cancer screening.

18. On June 29, 2018, Mr. Anderson returned again to the primary care clinic at the Erie VA. He expressed concern for potential prostate abnormalities. He mentioned he was getting up from sleep to urinate two to three times a night and did not feel that his bladder was emptying.

19. The June 29, 2018 medical records fail to record these symptoms under “review of systems”.

20. No prostate exam was conducted.

21. A serum prostate specific antigen (PSA) test was ordered and conducted. A bladder ultrasound was ordered and conducted. An alpha-blocking medication was discussed to potentially relieve the urinary symptoms.

22. A urology consultation was to be considered pending the results of the PSA test and bladder ultrasound.

23. On July 2, 2018, Mr. Anderson's PSA test came back highly elevated and grossly abnormal at 46.986 ng/mL. (A normal PSA range is less than or equal to 4 ng/mL.)

24. Mr. Anderson was not notified regarding his severely elevated PSA level as revealed by the July 2, 2018 PSA test result.

25. There is no documentation in the medical records indicating that Mr. Anderson's doctors, physician's assistant, nurse, nurse practitioner, or any of his medical care providers or staff at the Erie VA ever reviewed Mr. Anderson's highly elevated PSA test result of July 2, 2018.

26. There is no documentation that Mr. Anderson's doctors, physician's assistant, nurse, nurse practitioner, or any of his medical care providers or staff at the Erie VA ever inquired into the results of Mr. Anderson's 2018 PSA test results.

27. The bladder ultrasound was performed on July 26, 2018 and revealed a mildly enlarged prostate gland (volume 41 mL) and a moderate post-void residual in the bladder at 38 mL indicating that the bladder was not completely emptying.

28. Together, the 2018 PSA result, enlarged prostate gland, and bladder test results were very concerning for prostate malignancy and should have prompted an urgent referral to a urologist for additional evaluation and work-up.

29. Despite these red flags, no further treatment or testing was ordered or performed to diagnose Mr. Anderson's prostate cancer until almost one year later.

30. On June 28, 2019, Mr. Anderson returned to the Erie VA primary clinic with complaints of numbness and tingling in his feet, as well as continuing dysuria.

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