

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

JAMES COX and DEANNE COX,

Plaintiffs,

vs.

THOMAS W. PHILLIPS, M.D.;
THE SOUTHEAST PERMANENTE MEDICAL
GROUP, INC.; NORTHSIDE RADIATION
ONCOLOGY, P.C.; and
RADIATION ONCOLOGY OF ATLANTA, LLC,

Defendants.

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CIVIL ACTION
FILE NO.:

JURY TRIAL DEMANDED

PLAINTIFFS' COMPLAINT FOR DAMAGES

COME NOW, Plaintiffs and file this, their Complaint for Damages against the above-named Defendants, and show this Honorable Court the following:

INTRODUCTION

1.

This action is based upon professional negligence arising out of substandard medical care and treatment that Defendants rendered to Plaintiff JAMES COX, which proximately caused Plaintiff JAMES COX to experience unnecessary injury and related pain and suffering.

PARTIES, JURISDICTION AND VENUE

2.

Plaintiffs JAMES COX and DEANNE COX, husband and wife, are residents of the State of Georgia, and are the proper parties to bring these claims. By bringing these claims in this lawsuit, Plaintiffs submit to the jurisdiction of this Court and venue in Fulton County.

3.

Defendant THOMAS W. PHILLIPS, M.D. (hereafter referred to as "Defendant PHILLILPS"), is a medical doctor, and, at all times relevant herein, was a medical doctor licensed in the State of Georgia. Defendant PHILLIPS is subject to the jurisdiction and venue of this Honorable Court pursuant to Ga. Const. 1983, Art. VI, § II, paras. IV and VI and O.C.G.A. §§ 14-2-510 and 15-7-4. Defendant PHILLIPS may be served personally at his residence located at 1022 Tignall Road, Washington, Wilkes County, GA 30673-2400.

4.

Defendant THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC. is a domestic corporation organized and existing under the laws of the State of Georgia ("Defendant SOUTHEAST PERMANENTE"). Defendant SOUTHEAST PERMANENTE is subject to the jurisdiction and venue of this Honorable Court pursuant to Ga. Const. 1983, Art. VI, § II, para. VI and O.C.G.A. §§ 14-2-510 and 15-7-4. Defendant SOUTHEAST PERMANENTE may be served by serving its registered agent **Corporation Service Company, at 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, GA 30092.**

5.

Defendant NORTHSIDE RADIATION ONCOLOGY, P.C. was a domestic corporation organized and existing under the laws of the State of Georgia ("Defendant NORTHSIDE RADIATION") at the time of the medical treatment at issue. Defendant NORTHSIDE RADIATION is subject to the jurisdiction and venue of this Honorable Court pursuant to Ga. Const. 1983, Art. VI, § II, para. VI and O.C.G.A. §§ 14-2-510 and 15-7-4. Defendant

NORTHSIDE RADIATION may be served by serving its registered agent **Robert Threlhold**, at **3343 Peachtree Road, 160 Atlanta Financial Center, Atlanta, Fulton County, GA 30326**.

6.

Defendant RADIATION ONCOLOGY OF ATLANTA, LLC is a domestic corporation organized and existing under the laws of the State of Georgia ("Defendant RADIATION ONCOLOGY"). Defendant RADIATION ONCOLOGY is subject to the jurisdiction and venue of this Honorable Court pursuant to Ga. Const. 1983, Art. VI, § II, para. VI and O.C.G.A. §§ 14-2-510 and 15-7-4. Defendant RADIATION ONCOLOGY may be served by serving its registered agent **Robert C. Threlkeld**, at **160 Atlanta Financial Center, 3343 Peachtree Road, Atlanta, Fulton County, GA 30326**.

OPERATIVE FACTS

7.

Plaintiffs incorporate paragraphs 1 through 6 above as if fully restated herein.

8.

Plaintiff **JAMES COX** presented to **THOMAS W. PHILLIPS, M.D.** on February 9, 2015 to discuss treatment options for his confirmed squamous cell carcinoma after undergoing an endoscopy, bronchoscopy, bilateral tonsillectomy, and biopsies of nasopharynx and base of tongue on January 21, 2015.

9.

THOMAS W. PHILLIPS, M.D.'s treatment note of February 9, 2015 states, "Discussed plan for high dose radiation for head and neck cancer including possibility of spinal cord injury, osteoradionecrosis of the mandible, permanent xerostomia, permanent swallowing abnormalities

and skin changes. The patient and his wife have expressed clear understanding and would like to proceed.”

10.

On February 13, 2015, Mr. Cox underwent Transoral Robotic Surgery (TORS) with left hemiglossectomy, left limited pharyngectomy and left pharyngoplasty.

11.

On February 19, 2015, Mr. Cox presented to THOMAS W. PHILLIPS, M.D., for additional consultation. THOMAS W. PHILLIPS, M.D.’s treatment note of February 19, 2015 states, “Plan to use IMRT to the most likely sites for his primary to be located which include the tonsils and base of tongue and glottis.”

12.

Mr. Cox began radiation treatment under the direction of THOMAS W. PHILLIPS, M.D., on March 16, 2015 and continued with such treatment through April 29, 2015.

13.

The radiation prescription and target volumes show that a dose of 6,600 cGy was administered to the known left neck nodal tumor as well as to the left oropharynx, left hypopharynx and left supraglottic larynx (regions that were free of any clinically evident tumor). These regions were the site of the patient’s subsequent necrosis and perforation.

14.

These areas should have received no more than the “elective mucosal dose” of radiation which is 5400 cGy. Because of the previous TORS in this area, and because the radiation was administered with concurrent chemotherapy, the risk of damage to this area was high and strict avoidance of excess radiation dose should have been observed.

15.

On September 8, 2015, Brian J. Chung, M.D., performed a flexible fiberoptic laryngoscopy on Mr. Cox, which revealed an exposed hypoid bone and necrotic tissue.

16.

Mr. Cox subsequently presented to Northside Hospital coughing up blood. CT of the neck revealed a hypermetabolic cavity lesion, which contained air within the immediate submucosal tissue and showed evidence of perforation in the region of the left hypopharynx.

17.

Over the next several months, multiple surgical procedures were performed to address the problems in Mr. Cox's neck and larynx. In addition to other procedures, Mr. Cox's voicebox was removed. Notation from a September 24, 2015 procedure indicates "deep necrosis of underlying tissue due to burn."

18.

At all times Defendant PHILLIPS provided care to Plaintiff JAMES COX, including, but not limited to, from March 16, 2015 through April 29, 2015, he was acting as an employee and/or agent of Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; and/or RADIATION ONCOLOGY OF ATLANTA, LLC, and he was acting within the course and scope of such employment and/or agency.

19.

Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; and/or RADIATION ONCOLOGY OF ATLANTA, LLC, are vicariously liable to Plaintiffs under the doctrine of *respondent superior*

and/or principles of agency law for all injuries and damages set forth herein caused or contributed to by its officers, directors, employees and/or agents including, but not limited to, its physicians, nurses, physician assistants, and/or other medical providers, including, but not limited to, Defendant PHILLIPS.

COUNT I: PROFESSIONAL NEGLIGENCE

20.

Plaintiffs incorporate paragraphs 1 through 19 above as if fully restated herein.

21.

The Defendants held themselves out to the public as competent to provide medical care and treatment within the standard of care and owed a duty to exercise that degree of care and skill ordinarily exercised by health care providers generally and under like conditions and similar surrounding circumstances.

22.

All of the Defendants were negligent and deviated from the standard of care ordinarily exercised by health care providers generally and under like conditions and similar surrounding circumstances when providing care to Plaintiff JAMES COX in March through April of 2015.

23.

Defendant PHILLIPS was negligent and deviated from the standard of care ordinarily exercised by health care providers generally and under like conditions and similar surrounding circumstances when providing care to Plaintiff JAMES COX, including from March 16, 2015 through April 29, 2015.

24.

Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; and/or RADIATION ONCOLOGY OF ATLANTA, LLC, by and through the actions of its officers, directors, employees and/or agents including, but not limited to, its physicians, nurses, physician assistants, and/or other medical providers, including, but not limited to, Defendant PHILLIPS, were negligent and deviated from the standard of care ordinarily exercised by health care providers generally and under like conditions and similar surrounding circumstances when providing care to Plaintiff JAMES COX, including from March 16, 2015 through April 29, 2015.

25.

In full compliance with O.C.G.A. § 9-11-9.1 and in support of all claims set forth in this Complaint, Plaintiffs attach and incorporate herein by reference Exhibit "A", the expert Affidavit of Robert C. Wollman, M.D. which specifies at least one act of negligence by each Defendant, or with respect to the corporate defendants, an agent or employee of such corporate defendant, named in this lawsuit.

COUNT II: LOSS OF CONSORTIUM

26.

Plaintiffs incorporate paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27.

At all time materials to this action, Plaintiff DEANNE COX was married to Plaintiff JAMES COX.

DAMAGES

28.

As a direct and proximate result of the negligence of Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; and/or RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS, or a combination thereof, Plaintiff JAMES COX suffered substantial pain and suffering, for which Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; and/or RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS, or a combination thereof, are liable.

29.

As a direct and proximate result of the professional negligence of Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; and/or RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS, or a combination thereof, Plaintiff JAMES COX incurred medical, rehabilitative and other related expenses, and will continue to incur medical, rehabilitative and other related expenses in the future, for which Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; and/or RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS, or a combination thereof, are liable.

30.

As a direct and proximate result of the injuries to her husband, Plaintiff DEANNE COX has been deprived of the love, society, companionship, and consortium of her husband for which Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE

RADIATION ONCOLOGY, P.C.; and/or RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS, or a combination thereof, are liable.

WHEREFORE, Plaintiffs pray for the following relief:

- (a) that Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS be served with process;
- (b) that Plaintiff JAMES COX, individually, recover all damages permitted by law from Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS, or from a combination thereof, in an amount in excess of \$10,000.00 for his medical care and pain and suffering;
- (c) that Plaintiff DEANNE COX, individually, recover all damages permitted by law from Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS, or from a combination thereof, in an amount in excess of \$10,000.00 for her loss of consortium;
- (d) that Plaintiffs have a trial by jury on all issues;
- (e) that all costs be taxed against Defendants THE SOUTHEAST PERMANENTE MEDICAL GROUP, INC.; NORTHSIDE RADIATION ONCOLOGY, P.C.; RADIATION ONCOLOGY OF ATLANTA, LLC and Defendant PHILLIPS; and
- (f) for such other and further relief as the Court deems just and appropriate.

This 13th day of March, 2017.

/s/ M. Paul Reynolds

M. PAUL REYNOLDS

Georgia Bar No. 601573

Attorney for Plaintiffs

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