

**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
CITY OF ST. LOUIS**

BRIAN KOON

and

MICHELLE KOON,

Plaintiffs,

v.

HENRY D. WALDEN, M.D.,

and

SAINT LOUIS UNIVERSITY,

Defendants.

Cause No.: 1422-CC01258

Division: 1

MEDICAL MALPRACTICE

JURY TRIAL DEMANDED

THIRD AMENDED PETITION

COME NOW Plaintiffs Brian and Michelle Koon, by and through their attorneys of record and for their claims and causes of action against Defendants Henry D. Walden, M.D. and Saint Louis University, state as follows:

PARTIES

1. Plaintiffs Brian Koon and Michelle Koon are and were at all times mentioned herein residents of the State of Missouri
2. Plaintiff Michelle Koon is the lawfully wedded spouse of Plaintiff Brian Koon.
3. Plaintiff Brian Koon's claims arise from medical and healthcare treatment that took place from on or about August 19, 2008 to on or about August 28, 2012 at SLU Hospital

located in St. Louis City, Missouri where the Defendants accepted Brian Koon as a patient for the purpose of providing healthcare services.

4. At all times hereto, Defendant Dr. Henry Walden (hereinafter “Dr. Walden”) was and is a resident of the state of Missouri. Dr. Walden is a licensed medical doctor who held himself out as a professional health care provider engaged in the practice of general internal medicine offering health care services to the general public for consideration. At all times mentioned herein, Dr. Walden acted through his agents, servants and employees who acted within the course and scope of their agency and employment.

5. Defendant Saint Louis University is a Missouri corporation in good standing doing business in the State of Missouri with the capacity to sue and be sued in its own name. At all pertinent times, Saint Louis University employed physicians with specialized expertise in all aspects of medical, surgical, hospital and nursing care, who provide and offer professional health care services to the general public for consideration. At all times mentioned herein, Saint Louis University acted by and through its agents, servants and employees who acted within the scope and course of their agency and employment.

6. At all times mentioned herein, Dr. Walden was a physician who was employed by Defendant Saint Louis University to provide medical care and treatment to patients and is therefore engaged in the practice of medicine.

7. At all times mentioned herein, Dr. Walden acted as the agent, servant and employee of Defendant Saint Louis University and was acting within the scope and course of that agency and employment.

VENUE

8. Venue is proper in the Circuit Court of the City of St. Louis pursuant to MO. REV. STAT. § 508.010 because the events that gave rise to the lawsuit occurred in the City of St. Louis, Missouri.

FACTUAL ALLEGATIONS

9. On or about August 19, 2008, Plaintiff Brian Koon complained of back and spinal pain and sought medical treatment from Defendant Dr. Walden and Defendant Saint Louis University.

10. From on or about August 19, 2008 to on or about August 28, 2012, Dr. Walden served as Plaintiff Brian Koon's primary care physician. During this time period, Defendant Dr. Walden frequently treated Plaintiff Brian Koon for chronic pain in his back and spine.

11. During this time period, either Plaintiff Brian Koon or Plaintiff Michelle Koon encountered Defendant Dr. Walden, either in-person or via telephone, concerning Plaintiff Brian Koon's pain management and medication for his back and spine injuries on thirty-four (34) separate occasions.

12. During this period of treatment, Defendant Dr. Walden prescribed OxyContin, Oxycodone, and Hydrocodone-Acetaminophen to Plaintiff Brian Koon for treatment of his back and spinal pain.

13. OxyContin and Oxycodone are opiate-based pain-relievers and are classified by the United States Drug Enforcement Administration as schedule II controlled substances with a high risk of addiction, dependence, and abuse.

14. Hydrocodone-Acetaminophen is an opiate-based, synthetic, narcotic pain reliever and is classified by the United States Drug Enforcement Administration as a schedule III control substance with a high risk of addiction, dependence, and abuse.

15. During the course of treatment, Defendant Dr. Walden regularly prescribed high doses and high quantities of all three medications simultaneously to Plaintiff Brian Koon as treatment for his back and spine pain.

16. During the course of treatment, Defendant Dr. Walden continually increased the dosage and quantity of the opiate-based pain-relief medications to Plaintiff Brian Koon.

17. Defendant Dr. Walden continued to prescribe the opiate-based pain-relief medications without considering any alternative treatments to alleviate Plaintiff Brian Koon's back pain, even though Defendant Dr. Walden knew alternative treatments were available.

18. During the course of treatment, Plaintiff Brian Koon became dependent upon and addicted to the opiate-based pain-relief medications prescribed by Defendant Dr. Walden.

19. On or about September 28, 2012, Plaintiff Brian Koon had ceased taking all pain-relief medication prescribed by Defendant Dr. Walden and, as a result, suffered intense and painful withdrawals.

20. On or about September 28, 2012, Plaintiff Brian Koon was admitted to Center Point Hospital rehabilitation facility for his dependence and addiction to opiate-based pain-relief medication.

21. Due to his addiction to and dependence upon opiate-based pain-relief medication, Plaintiff Brian Koon suffered immense mental and physical distress during his drug rehabilitation program.

22. Plaintiff Brian Koon incurred significant costs to attend the Center Point Hospital rehabilitation facility and undergo psychiatric treatment.

23. As a result of his untreated back and spinal injuries, Plaintiff Brian Koon underwent a C5/6 anterior cervical discectomy and fusion surgery to repair a degenerative bulging disk in his spine on or about November 19, 2012.

24. As a result of his untreated back and spinal injuries, Plaintiff Brian Koon underwent a bilateral L4-5 microdiscectomy surgery to repair a herniated disk and relieve his back and leg pain on or about August 22, 2013.

25. Plaintiff Brian Koon was physically unable to work or make a living while attending the Center Point Hospital rehabilitation facility and recovering from two major back surgeries.

26. Due to his addiction to and dependence upon opiate-based pain relief medication, Plaintiff Brian Koon suffered from erectile dysfunction for three (3) years during his marriage to Plaintiff Michelle Koon.

27. Prior to filing this petition, Plaintiffs' attorneys obtained a written opinion from a competent and qualified physician certifying the merit of this claim as required by law.

Count I (Medical Malpractice – Defendant Dr. Walden)

COMES NOW Plaintiff Brian Koon, and for his cause of action against Defendant Dr. Walden states as follows:

28. Plaintiff Brian Koon realleges and incorporates by reference paragraphs 1 through 27 as though fully set forth herein.

29. During Plaintiff Brian Koon's care and treatment by Dr. Walden, Defendant owed a duty to Mr. Koon to render medical services, care and treatment consistent with the medical

requirements of his patients therein, and to use that degree of skill and learning ordinarily used by skillful, careful and prudent members of the medical profession in providing medical services.

30. Defendant Dr. Walden accepted Plaintiff Brian Koon as a patient for the purpose of providing medical and diagnostic care and treatment to him.

31. Defendant Dr. Walden breached this duty owed to Plaintiff Brian Koon in one or more of the following respects:

- a. Defendant failed to properly evaluate Plaintiff's medical condition;
- b. Defendant failed to properly diagnose Plaintiff;
- c. Defendant failed to conduct the proper diagnostic tests and exams;
- d. Defendant failed to properly treat Plaintiff's medical condition, including his back and spinal pain;
- e. Defendant failed to provide the proper medications;
- f. Defendant failed to recognize the danger of prescribing high quantities of various opiate-based pain-relief medications;
- g. Defendant overmedicated Plaintiff;
- h. Defendant failed to attempt any other treatment besides the prescription of high quantities of various opiate-based pain-relief medications;
- i. Defendant failed to follow known medical guidelines regarding the prescription and use of narcotic pain medicine;
- j. Defendant failed to properly educate and warn Plaintiff Brian Koon of the high risk potential for substance abuse and/or dependence from the taking of opiate-based pain-relief medication;
- k. Such further negligence as revealed through discovery and the evidence.

32. Defendant Dr. Walden engaged in intentional, malicious and wrongful conduct, without just cause or excuse, in one or more of the following respects:

- a. Defendant knowingly prescribed dangerously high doses and quantities of various opiate-based pain-relief medications for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff;
- b. Defendant knowingly overmedicated Plaintiff for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff;
- c. Defendant knowingly violated medical guidelines regarding the prescription and use of narcotic pain medicine for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff;
- d. Defendant Dr. Walden ignored alternative treatments to alleviate Plaintiff Brian Koon's back pain for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff;
- e. Defendant Dr. Walden continued to prescribe opiate-based pain-relief medications to Plaintiff despite knowledge and indications that Plaintiff had become dependent upon and addicted to same, which was done for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff; and
- f. Such further acts as revealed through discovery and the evidence.

33. As a direct and proximate result of the aforesaid intentional acts, negligence and carelessness of Defendant Dr. Walden, Plaintiff suffered severe addiction to and dependence upon opiate-based pain-relief medication.

34. As a direct result of the aforesaid occurrences and resulting injuries, Plaintiff has been required to undergo and will continue to undergo extensive medical, therapeutic, rehabilitative and related care and treatment for which reasonable and necessary expenses have been incurred, and he will require further such care and treatment in the future.

35. Plaintiff has suffered severe discomfort, pain, functional disabilities, memory loss, mental anguish and embarrassment, and will suffer the same in the future; he lost the ability to enjoy fully the ordinary pursuits of life and will continue those losses in the future.

36. As a direct and proximate result of the aforesaid occurrences and injuries, Plaintiff lost the ability to function, work, labor, and earn wages and will continue to suffer those losses in the future.

37. Defendant knew or had information from which Defendant, in the exercise of ordinary care, should have known that such conduct as described above created a high degree of probability of injury to Plaintiff.

38. The conduct of Defendant as described above demonstrated willful, wanton and malicious conduct, as well as a complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby justifying an award of punitive damages in such sum which will serve to punish Defendant and to deter Defendant and others from like conduct in the future.

WHEREFORE, Plaintiff Brian Koon prays judgment against Defendant Dr. Walden in an amount in excess of Twenty-Five Thousand Dollars (\$25,000), which is just, fair, and adequate under the circumstances, for punitive damages, for his costs herein expended, and for such other relief as the Court deems just.

Count II (Medical Malpractice – Defendant Saint Louis University)

COMES NOW Plaintiff Brian Koon, and for his cause of action against Defendant Saint Louis University states as follows:

39. Plaintiff Brian Koon realleges and incorporates by reference paragraphs 1 through 38 as though fully set forth herein.

40. During Plaintiff Brian Koon’s care and treatment by Defendant Saint Louis University, Defendant owed a duty to Mr. Koon, individually and/or by and through its employees, agents, servants and representatives as aforesaid, to render hospital and medical services, care and treatment consistent with the medical requirements of the patients therein, and to use that degree of skill and learning ordinarily used by skillful, careful and prudent members of the medical profession in providing medical services.

41. Defendant Saint Louis University accepted Plaintiff Brian Koon as a patient for the purpose of providing medical and diagnostic care and treatment to him.

42. Defendant Saint Louis University, by and through its employees, agents and/or representatives including Defendant Dr. Walden breached this duty owed to Plaintiff Brian Koon in one or more of the following respects:

- a. Defendant negligently hired, supervised and retained its employees, agents and/or representatives that treated Plaintiff, including Defendant Dr. Walden;
- b. Defendant failed to follow its own policies and procedures, or to have any in place, regarding the treatment of Plaintiff’s medical condition and the prescription of narcotic pain medications;
- c. Defendant failed to properly evaluate Plaintiff’s medical condition;
- d. Defendant failed to properly diagnose Plaintiff;

- e. Defendant failed to conduct the proper diagnostic tests and exams;
 - f. Defendant failed to properly treat Plaintiff's medical condition, including his back and spinal pain;
 - g. Defendant failed to provide the proper medications;
 - h. Defendant failed to recognize the danger of prescribing high quantities of various opiate-based pain-relief medications;
 - i. Defendant overmedicated Plaintiff;
 - j. Defendant failed to attempt any other treatment besides the prescription of high quantities of various opiate-based pain-relief medications;
 - k. Defendant failed to follow known medical guidelines regarding the prescription and use of narcotic pain medicine;
 - l. Defendant failed to properly educate and warn Plaintiff Brian Koon of the high risk potential for substance abuse and/or dependence from the taking of opiate-based pain-relief medication;
 - m. Such further negligence as revealed through discovery and the evidence.
43. Defendant Saint Louis University engaged in intentional, malicious and wrongful conduct, without just cause or excuse, in one or more of the following respects:
- a. Defendant knowingly prescribed dangerously high doses and quantities of various opiate-based pain-relief medications for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff;
 - b. Defendant knowingly overmedicated Plaintiff for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff;

- c. Defendant knowingly violated medical guidelines regarding the prescription and use of narcotic pain medicine for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff;
- d. Defendant ignored alternative treatments to alleviate Plaintiff Brian Koon's back pain for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff;
- e. Defendant continued to prescribe opiate-based pain-relief medications to Plaintiff despite knowledge and indications that Plaintiff had become dependent upon and addicted to same, which was done for a profit motive and with knowledge that such conduct created a high degree of probability of injury to Plaintiff; and
- f. Such further acts as revealed through discovery and the evidence.

44. As a direct and proximate result of the aforesaid intentional acts, negligence and carelessness of Defendant Saint Louis University, Plaintiff suffered severe addiction to and dependence upon opiate-based pain-relief medication.

45. As a direct result of the aforesaid occurrences and resulting injuries, Plaintiff has been required to undergo and will continue to undergo extensive medical, therapeutic, rehabilitative and related care and treatment for which reasonable and necessary expenses have been incurred, and he will require further such care and treatment in the future.

46. Plaintiff has suffered severe discomfort, pain, functional disabilities, memory loss, mental anguish and embarrassment, and will suffer the same in the future; he lost the ability to enjoy fully the ordinary pursuits of life and will continue those losses in the future.

47. As a direct and proximate result of the aforesaid occurrences and injuries, Plaintiff lost the ability to function, work, labor, and earn wages and will continue to suffer those losses in the future.

48. Defendant Saint Louis University knew or had information from which Defendant, in the exercise of ordinary care, should have known that such conduct as described above created a high degree of probability of injury to Plaintiff.

49. The conduct of Defendant as described above demonstrated willful, wanton and malicious conduct, as well as a complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby justifying an award of punitive damages in such sum which will serve to punish Defendant and to deter Defendant and others from like conduct in the future.

WHEREFORE, Plaintiff Brian Koon prays judgment against Defendant Saint Louis University in an amount in excess of Twenty-Five Thousand Dollars (\$25,000), which is just, fair, and adequate under the circumstances, for punitive damages, for his costs herein expended, and for such other relief as the Court deems just.

COUNT IV (Loss of Consortium – all Defendants)

50. Plaintiff Michelle Koon realleges and incorporates by reference Paragraphs 1 through 49 as if fully set forth herein.

51. At all times relevant to this cause of action, Plaintiff Michelle Koon is and was the lawfully wedded spouse of Plaintiff Brian Koon.

52. As a direct and proximate result of the aforesaid intentional acts, negligence and recklessness of Defendants, as described above, Plaintiff Michelle Koon sustained the loss of services, society, companionship, assistance with household chores, care, love, comfort, affection, consortium of her husband, and expenses for necessary medical care, treatment, and

services received by her husband. Plaintiff Michelle Koon will continue to sustain such losses in the future.

53. The conduct of Defendants, their agents, servants, and employees, as described above, demonstrated willful, wanton and malicious conduct, as well as a complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby justifying an award of punitive damages in such sum which will serve to punish Defendant and to deter Defendant and others from like conduct in the future.

WHEREFORE, Plaintiff Michelle Koon prays judgment against Defendants each in an amount in excess of Twenty-Five Thousand Dollars (\$25,000), which is just, fair, and adequate under the circumstances, for punitive damages, for her costs herein expended, and for such other relief as the Court deems just.

Respectfully Submitted,

THE SIMON LAW FIRM, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 14, 2015 a copy of the foregoing was electronically filed with the Circuit Clerk for the City of St. Louis using the Missouri Electronic Document Management System.

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