

**IN THE COURT OF [ ] JUDICIAL DISTRICT OF TARRANT COUNTY**

Michael A. Stuart, Plaintiff,

v.

Dr. Oliver Lee Kesterson III, and

The Center for Neurological Disorders,

Defendants.

CAUSE NO.: [ - ]

**COMPLAINT IN SUPPORT OF PLAINTIFF'S CLAIM FOR MEDICAL NEGLIGENCE****I. INTRODUCTION**

Plaintiff, Michael A. Stuart, alleges that the Defendants, Dr. Oliver Lee Kesterson, and the Center for Neurological Disorders (hereinafter referred to as "CND"), committed medical negligence. The Texas Medical Board has taken action against Dr. Kesterson concerning the issues raised in this complaint.

**THE PLAINTIFF:**

Michael A. Stuart, residing in Dallas, Texas, is a veteran officer of the United States Air Force and is currently under the medical care of the Dallas VA Medical Center.

**THE DEFENDANTS:**

1. Dr. Oliver Lee Kesterson, NPI number 130699751 and Texas Medical License F9664.
2. Center for Neurological Disorders (CND) , NPI number 1770509234, , overseen by Dr. George F. Cravens, NPI number 1164462131 and Texas Medical License F6547.

CND is located at 1000 Houston St, Suite 200, Fort Worth, TX 76102. Dr. Cravens serves as the head of the CND.

**II. FACTUAL BACKGROUND**

On January 22, 2021, the Dallas VA Medical Center referred to Dr. Kesterson and the Center for Neurological Disorders based on the expertise of Doctor George F Cravens for specialized surgical procedures. These referrals, part of the VA community care program, carry specific contractual obligations. The program is managed by TriWest Insurance.

1. On March 24, 2021, the plaintiff consulted Dr. Kesterson for chronic back pain and received a surgical recommendation for the L2-L4 spine levels.

2. Pre-surgical imaging was conducted twice:

2.1. Touchstone Medical Imaging, dated April 13, 2021, ordered by Dr. Kesterson.

2.2. UT Southwestern Medical Imaging, dated June 03, 2021, ordered by Dr. Ankit M. Patel.

Both reports identified concerns at L2-L3 and L3-L4, especially neural foraminal stenosis.

3. Surgery was scheduled for August 03, 2021, at the John Peter Smith Hospital in Fort Worth, with a surgical plan for "left L2 and L3 foraminotomies, TLIF L3-L4, and L2-L4 pedicle screw fixation."

3.1. The plaintiff provided consent for this plan at 10:00 AM on August 03, 2021.

3.2. Dr. Kesterson reaffirmed this plan at 2:33 PM the same day.

4. However, during the procedure, Dr. Kesterson fused the L1-L3 spine levels, deviating from the agreed plan without prior consent or explanation.

4.1. A subsequent record by Dr. Kesterson, post-surgery, suggests a discrepancy in timing.

4.2. This altered record seems to have been used to justify the deviation and potentially mask an error.

4.3. Dr. Kesterson ceased post-surgical care on August 30, 2021 and became unresponsive to the plaintiff's communication efforts. No updates on medical records or surgical status were provided to the plaintiff or the Dallas VA Medical Center.

4.4. By the end of the year, Dr. Kesterson and the Center for Neurological Disorders ceased their practice operations.

5. On August 19, 2022, the Texas Medical Board took remedial actions against Dr. Kesterson regarding his unexplained surgical deviation.

6. A subsequent CT Scan on October 30, 2021, revealed issues with the surgical interventions, notably loose pedicle screws at L3.

7. The plaintiff experienced severe mobility challenges by May 01, 2022, indicating a failed surgical outcome.

8. The attempts by Dr. Kesterson and the Center for Neurological Disorders to hide the purported incorrect-level spine surgery came to light following actions by the Texas Medical Board. This led to a review of medical records and a neurosurgery analysis, ultimately resulting in corrective surgery currently underway by the Dallas VA Medical center at UT Southwestern.

### **III. ISSUE**

Did the deviations from the agreed surgical plan and abrupt cessation of post-surgical care by the Defendant result in the Plaintiff's post-operative complications?

#### **IV. LEGAL ARGUMENT**

1. **Duty of Care:** Medical professionals owe their patients a duty of care. The Defendant had an obligation to adhere to the agreed surgical plan and safeguard the Plaintiff's health.
2. **Breach of Duty:** The Defendant diverged from the pre-established surgical plan without informed consent, which directly caused post-operative complications. The subsequent finding of loose screws further underscores a breach of standard care.
3. **Causation:** The changes implemented by the Defendant during the surgery led to the Plaintiff's deteriorating health and severe mobility challenges.
4. **Damages:** The Plaintiff now bears substantial medical expenses and endures pain and suffering, decreased quality of life, and future uncertainties because of the Defendant's negligence.

#### **V. APPLICABLE STATUTES AND PRECEDENTS**

1. **Texas Medical Liability Act:** This pivotal legislation delineates patient rights in medical negligence matters, prescribing the healthcare standards within Texas. Pertinent provisions of this Act that relate to potential violations by the defendant will be drawn upon during proceedings.
2. **Section 164.002(d) of the Texas Occupations Code:** An essential note is that while a remedial plan established between the Texas Medical Board and a healthcare professional can serve as evidence in a civil lawsuit, it represents an attempt at rectification rather than an outright admission of guilt.
3. **Texas Health & Safety Code § 241.103:** Enshrining the duty of doctors to maintain comprehensive and precise medical records for all patients, any deviation or falsification, as alleged in this case, can be construed as a contravention of this provision.
4. **Texas Penal Code § 37.10:** While tampering with governmental records, including medical files, constitutes a criminal offense, its interpretation and relevance in a civil context may differ. The alleged deliberate alteration or tampering of patient records by a physician falls within the purview of this code.
5. **Doctrine of Res Ipsa Loquitur:** Given the nature of the surgical error outlined, the principle of "Res Ipsa Loquitur" can be invoked. The harm experienced by the plaintiff is not characteristic of standard surgical procedures, indicating negligence. Given the exclusive control of the

surgical process by the defendant and no contribution by the plaintiff to the error, this doctrine underscores the defendant's presumed negligence.

6. Breach of Contract under the VA Community Care Provider Program: The non-adherence to contractual obligations by Dr. Kesterson and the Center for Neurological Disorders has ramifications. Their omission in transmitting crucial surgical details, medical documents, and ensuring adequate post-operative care not only breached the contract but directly precipitated the subsequent complications and treatment delays. The Dallas VA medical center's lack of awareness regarding the alleged surgical malpractice and patient abandonment resulted in significant delays in corrective treatments for the post-surgical complications spearheaded by Dr. Kesterson and the Center for Neurological Disorders.

7. Reference: Hsiang J. Wrong-level surgery: A unique problem in spine surgery. *Surg Neurol Int.* 2011;2:47. doi: 10.4103/2152-7806.79769. Epub 2011 Apr 19. PMID: 21660270; PMCID: PMC3108446.

Wrong-site surgery is one of the "never events" in healthcare, meaning they should never occur and are largely preventable. When they do occur, they may form the basis for a medical malpractice claim. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the National Quality Forum (NQF) have emphasized that such mistakes are unacceptable and avoidable with the proper protocols. Moreover, covering up or attempting to conceal a medical mistake can exacerbate the legal consequences for medical professionals and healthcare organizations. Not only is the original act of negligence an issue, but the subsequent deceit can also affect the credibility of the defendants and could potentially bring about punitive damages or additional legal consequences.

## **VI. REQUEST FOR RELIEF**

1. Award economic damages for past and future medical costs, lost earnings, and other quantifiable financial losses, the exact amount to be determined during the trial.
2. Award non-economic damages up to the maximum permissible under Texas law, for physical pain, mental anguish, and other intangible damages.
3. Grant any other relief deemed appropriate and just.

## **VII. NOTICE OF INTENT TO FILE**

In compliance with §74.051 of the Texas Civil Practice and Remedies Code, the Plaintiff hereby confirms that he provided each Defendant named in this lawsuit with a written notice of intent to file a healthcare liability claim at least 60 days prior to filing this complaint. The written notice was delivered to each Defendant on June 30, 2023, which is in accordance with the

requirements of the Texas Medical Liability Act. Copies of the written notices, along with proof of delivery, are attached hereto as Exhibit A.

**Supplementary Notes:**

Due to the constraints of the statute of limitations, we have filed the legal complaint while certain evaluations and procedures remain in progress.

1. Relevant case law or judicial decisions related to Texas medical malpractice will be presented to support our claims and offer clarity on the court's interpretation of the statutes in the context of this case.
2. Legal specialists will be engaged to accurately assess potential damages, encompassing both tangible expenses and non-economic losses.
3. The Department of Veterans Affairs is calculating its costs associated with this surgery, the ongoing corrective procedure, and additional disability expenses for a reimbursement lien.

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**Michael A Stuart, Plaintiff**

1800 Main St, Apt 1554

Dallas, TX 75201

PHONE: (361) 446-5392

DATE: 8/31/2023

### Automated Certificate of eService

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Status as of 9/5/2023 1:08 PM CST

Associated Case Party: Michael Stuart

Name	BarNumber	Email	TimestampSubmitted	Status
Michael AStuart		michaelalanstuart@hotmail.com	9/5/2023 12:00:03 PM	SENT

Associated Case Party: Center for Neurological Disorders

Name	BarNumber	Email	TimestampSubmitted	Status
George FCravens		gpochemd@hotmail.com	9/5/2023 12:00:03 PM	SENT

Associated Case Party: OliverLeeKesterson

Name	BarNumber	Email	TimestampSubmitted	Status
Oliver LeeKesterson		leekesterson@msn.com	9/5/2023 12:00:03 PM	SENT