

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOHN BOYLE and
CHERYL MCKINNEY,

CIVIL DIVISION

Plaintiffs,

No. *6D-21-4147*

v.

JUDITH MEYER and ORTHOPEDIC
& SPORTS PHYSICAL THERAPY
ASSOCIATES, INC.,

COMPLAINT IN CIVIL ACTION

Defendants.

FILED ON BEHALF OF PLAINTIFFS

ATTORNEY OF RECORD
FOR THIS PARTY:

JOHN P. CORCORAN, JR., ESQUIRE
PA. ID. NO. 74906

MARK E. CASPER, JR., ESQUIRE
PA. ID. NO. 326381

JONES, GREGG, CREEHAN &
GERACE, LLP
411 SEVENTH AVENUE
SUITE 1200
PITTSBURGH, PA 15219
(412) 261-6400

FILED

2021 APR 20 PM 3:04

DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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20 April 2021
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6D-21-004147

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ASSOCIATES, INC.,

Defendants.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
11TH FLOOR KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PENNSYLVANIA 15219

TELEPHONE: (412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
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Defendants.

COMPLAINT IN CIVIL ACTION

AND NOW, come the Plaintiffs, JOHN BOYLE and CHERYL MCKINNEY, by and through their undersigned counsel, John P. Corcoran, Jr., Esquire, Mark E. Casper, Jr., Esquire and the law firm of Jones, Gregg, Creehan & Gerace, LLP, and hereby file the within Complaint in Civil Action, and in support thereof avers as follows:

FACTS

A. Parties

1. Plaintiff, John Boyle, is an individual residing at 189 Old Village Lane, Bethel Park, Allegheny County, Pennsylvania 15102.
2. Plaintiff, Cheryl McKinney (collectively "Plaintiffs"), is an individual residing at 189 Old Village Lane, Bethel Park, Allegheny County, Pennsylvania 15102.
3. Defendant, Orthopedic & Sports Physical Therapy Associates, Inc. ("Defendant-OSPTA"), is a Pennsylvania professional corporation with an office at 625

Lincoln Avenue, Professional Plaza Suite 107, Charleroi, Washington County, Pennsylvania.

4. Defendant, Judith Meyer, P.T. ("Defendant-Therapist"), is an individual with a place of business at 625 Lincoln Avenue, Professional Plaza Suite 107, Charleroi, Washington County, Pennsylvania.

5. At all times relevant, Defendant-Therapist was employed by and performed home physical therapy services for Defendant-OSPTA.

B. COVID-19 Pandemic

6. At all times relevant, Defendant-Therapist was employed by and performed at-home physical therapy services for Defendant-OSPTA.

7. For over a year, there has been a worldwide outbreak of a new strain of the Coronavirus (COVID-19).

8. Most recently, COVID-19 has ravaged the United States, causing over 31,700,000 cases reported and at least 567,000 deaths reported.

9. Those fatalities have largely been amongst the elderly population and those with underlying medical complications.

10. The disease can spread both through the air, as well as on surfaces.

11. The U.S. Center for Disease Control ("CDC") has listed various safety precautions individuals can take to prevent the spread of the disease, including wearing masks, gloves, and other personal protective equipment ("PPE").

12. In response to the CDC guidelines, many corporations and medical professionals have created COVID-19 policies to prevent against the quick spread of the illness.

C. Factual Background

13. Mr. Boyle and Ms. McKinney are both of an advanced age and suffer from various physical ailments.

14. At the time of the incident, Mr. Boyle was recovering from a recent open-heart surgery.

15. As a result of his open-heart surgery, Mr. Boyle was required to take physical therapy.

16. In order to reduce the likelihood of contact with any individuals outside of his residence, Mr. Boyle arranged for physical therapy at his home with Defendant-OSPTA.

17. On November 8, 2020, Defendant-Therapist, working for Defendant-OSPTA, arrived at Mr. Boyle's home in Allegheny County to provide at-home physical therapy to Mr. Boyle.

18. Upon arrival, Defendant-Therapist was not wearing gloves, a face shield, or an appropriate face mask; Defendant-Therapist only had a thin, disposable surgical mask.

19. Defendant-Therapist immediately shook Mr. Boyle's hand, despite not having gloves or other appropriate protective equipment.

20. Defendant-Therapist did not wash her hands upon arrival or before performing physical therapy on Mr. Boyle.

21. Defendant-Therapist touched numerous other surfaces and objects in the Plaintiff's home.

22. Defendant-Therapist, acting within the scope of her employment with Defendant-OSPTA, provided the above-discussed physical therapy to Mr. Boyle.

23. Defendant-Therapist was supposed to provide physical therapy for Mr. Boyle the following Thursday, but she was not present – another physical therapist provided physical therapy for Mr. Boyle.

24. On November 14, 2020, Defendant-Therapist called Mr. Boyle and Ms. McKinney and informed them that she and her son had both tested positive for COVID-19.

25. Shortly thereafter, both Mr. Boyle and Ms. McKinney developed symptoms associated with COVID-19.

26. Mr. Boyle and McKinney's symptoms include, but are not limited to:

- a. Severe respiratory trauma;
- b. Fever and chills;
- c. A persistent, painful cough;
- d. Fatigue and shortness of breath;
- e. Muscle and body aches;
- f. Headache;
- g. Chest pain and pressure; and
- h. Other flu-like symptoms.

27. As a result, Mr. Boyle and Ms. McKinney were both admitted to the hospital and were put on oxygen on November 19, 2020.

28. Mr. Boyle returned home on November 29, 2020, and Ms. McKinney returned home on November 28, 2020.

29. Mr. Boyle and Ms. McKinney continue to suffer adverse effects associated with the disease, and Ms. McKinney still relies on an oxygen tank to breath.

30. Neither Mr. Boyle nor Ms. McKinney had outside contact with any individual other than Judith Meyers during this time.

COUNT I
JOHN BOYLE and CHERYL MCKINNEY v. JUDITH MEYER
NEGLIGENCE

31. Plaintiffs hereby incorporate Paragraphs 1 through 30 above as if set forth more fully herein at length.

32. Defendant-Therapist owed Mr. Boyle and Ms. McKinney a duty to wear PPE and ensure that they would not be exposed to unreasonable risk of harm that Defendant-Therapist should have known about.

33. Defendant-Therapist breached her duty to Mr. Boyle and Ms. McKinney by initiating skin-to-skin contact with Mr. Boyle and failing to wear PPE while in Mr. Boyle and Ms. McKinney's home for the physical therapy session.

34. Defendant-Therapist breached her duty to Mr. Boyle and Ms. McKinney by providing physical therapy in Mr. Boyle's home when she knew or should have known that she and her son had been exposed to COVID-19.

35. As a result of Defendant-Therapist's negligence, the COVID-19 virus was transmitted to Mr. Boyle and Ms. McKinney.

36. As a direct and proximate result Defendant-Therapist's negligence, Mr. Boyle and Ms. McKinney have suffered damages.

37. In addition to their physical ailments, Mr. Boyle and Ms. McKinney have incurred costly medical bills and other expenses as a direct result of the Defendants' negligence.

WHEREFORE, Plaintiffs, John Boyle and Cheryl McKinney, demand judgment in his favor and against Defendant, Judith Meyer, P.T., in an amount in excess of Thirty-Five Thousand Dollars (\$35,000.00), plus interest, costs, reasonable attorney's fees, and other such relief as is appropriate.

COUNT II
***JOHN BOYLE and CHERYL MCKINNEY v. ORTHOPEDIC & SPORTS PHYSICAL
THERAPY ASSOCIATES, INC.***
NEGLIGENCE – RESPONDEAT SUPERIOR

38. Plaintiffs hereby incorporate Paragraphs 1 through 37 above as if set forth more fully herein at length.

39. Defendant-OSPTA, by their agent, Defendant-Therapist, administered, directed, operated, controlled, and supervised the at-home physical therapy of Mr. Boyle and had undertaken and assumed a duty to assure their compliance with all standards of care.

40. At all times relevant, Defendant-Therapist was an agent, ostensible agent, servant, and/or employee of Defendant-OSPTA.

41. All actions, inaction, negligence, and/or breaches of any standards of care by Defendant-Therapist in providing at-home physical therapy to Mr. Boyle were performed within the course and scope of employment and/or agency of Defendant-Therapist.

42. Defendant-OSPTA is responsible and legally liable for all negligent acts or failures to act by Defendant-Therapist because she acted under the supervision and control of the Defendants.

43. Defendant-OSPTA failed to create and enforce effective COVID-19 policies to prevent the transmission of the disease to Mr. Boyle and Ms. McKinney.

44. Defendant-OSPTA also failed to:

- a. properly and consistently train, retrain, and guide Defendant-Therapist on administering at-home physical therapy during the COVID-19 pandemic;
- b. provide adequate supervision of Defendant-Therapist in adhering to the appropriate standard of care in administering at-home physical therapy during the COVID-19 pandemic; and
- c. provide adequate safeguards and screening of its employees so as to prevent the spread of COVID-19.

45. As a direct and proximate result of Defendant-Therapist's negligence, as well as Defendant OSPTA's negligence as set forth above, Mr. Boyle and Ms. McKinney have suffered damages.

46. In addition to their physical ailments, Mr. Boyle and Ms. McKinney have incurred costly medical bills and other expenses as a direct result of the Defendants' negligence.

WHEREFORE, Plaintiffs, John Boyle and Cheryl McKinney, demand judgment in their favor and against Defendant, Orthopedic & Sports Therapy Associates, Inc., in an amount in excess of Thirty-Five Thousand Dollars (\$35,000.00), plus interest, costs, reasonable attorney's fees, and other such relief as is appropriate.

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

DATED: 4/19/2021

BY: 

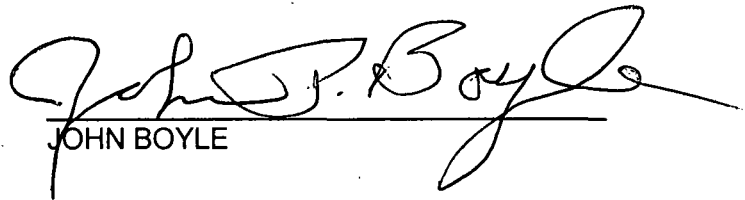
MARK E. CASPER, JR., ESQUIRE
ATTORNEY FOR PLAINTIFF

VERIFICATION

I, **John Boyle**, Plaintiff, in the above-captioned matter, hereby verify that the statements set forth in the foregoing **Complaint in Civil Action** are true and correct to the best of my knowledge, information, and belief.

Any false statements contained herein are made subject to the penalties of 18 Pa. §4904 relating to unsworn falsification to authorities.

DATED: 2/17/2021



JOHN BOYLE

VERIFICATION

I, **Cheryl McKinney**, Plaintiff, in the above-captioned matter, hereby verify that the statements set forth in the foregoing **Complaint in Civil Action** are true and correct to the best of my knowledge, information, and belief.

Any false statements contained herein are made subject to the penalties of 18 Pa. §4904 relating to unsworn falsification to authorities.

DATED: 2-17-21


CHERYL MCKINNEY

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Mark E. Casper Jr., Esquire

Signature:  _____

Name: Mark E. Casper Jr.,

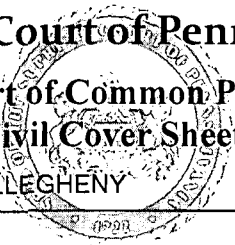
Attorney No. (if applicable): 326381

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

ALLEGHENY

County



For Prothonotary Use Only:

Docket No:

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name:
JOHN BOYLE and CHERYL McKINNEY

Lead Defendant's Name:
JUDITH MEYER and OSPTA

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: John P. Corcoran, Jr., Esq. and Mark E. Casper, Jr., Esq.

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case:

Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other:
 NEGLIGENCE

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other:

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional:

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute:
 Discrimination
 Employment Dispute: Other

 Other:

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other:

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other

 Zoning Board
 Other:

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations
 Restraining Order
 Quo Warranto
 Replevin
 Other:

Sheriff Return

Case No: GD-21-004147

Case Description: *Boyle etal vs Meyer etal*

Defendant: *Orthopedic & Sports Physical Therapy Associates Inc.*

Service Address: *625 Lincoln Avenue Charleroi, PA 15022 Washington*

Writ Description: *Complaint*

Issue Date: *04/20/2021 03:01 PM*

Service Status: *Served - Adult Agent or person in charge of Defendant(s) office or usual place of business*

Served Upon: *ORTHOPEdic & SPORTS PHYSICAL THERAPY ASSOCIATES INC*

Served By: *DEPUTY RYAN MCWREATH*

Served On: *04/23/2021 11:15 AM*

Service Method: *Deputize*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

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CIVIL DIVISION

Plaintiffs,

No. GD 21-004147

v.

JUDITH MEYER and ORTHOPEDIC &
SPORTS PHYSICAL THERAPY
ASSOCIATES, INC.,

**PRAECIPE FOR ENTRY OF
APPEARANCE**

Defendant.

Filed on behalf of Defendants

Counsel of Record for this party:

Patrick L. Mechas, Esquire
PA ID No. 61362

Allison M. Erndl, Esquire
PA ID No. 327818

Burns White LLC
Burns White Center
48 26th Street
Pittsburgh, PA 15222

(412) 995-3000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN BOYLE and CHERYL McKINNEY,)	CIVIL DIVISION
)	
Plaintiffs,)	
)	
v.)	No. GD 21-004147
)	
JUDITH MEYER and ORTHOPEDIC &)	
SPORTS PHYSICAL THERAPY)	
ASSOCIATES, INC.,)	
)	
Defendant.)	

PRAECIPE FOR ENTRY OF APPEARANCE

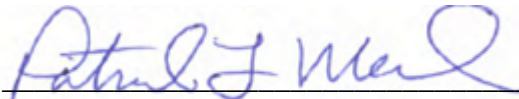
To: Department of Court Records:

Kindly enter the appearances of Patrick L. Mechas, Esquire and Allison M. Erndl, Esquire on behalf of Defendants, Judith Meyer and Orthopedic & Sports Physical Therapy Associates, Inc., relative to the above-captioned matter.

JURY TRIAL DEMANDED.

Respectfully submitted,

BURNS WHITE LLC

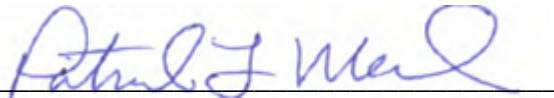
BY: 
 Patrick L. Mechas, Esquire
 Allison M. Erndl, Esquire
 Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PRAECIPE FOR ENTRY OF APPEARANCE** has been served upon all counsel of record by United States First Class Mail, postage prepaid, this 10th day of May, 2021, addressed as follows:

John P. Corcoran, Jr., Esquire
Mark E. Casper, Jr., Esquire
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219

BURNS WHITE LLC

BY: 

Patrick L. Mechas, Esquire
Allison M. Erndl, Esquire
Attorneys for Defendants